

State of Florida



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: January 14, 2001
TO: Division of Commission Clerk and Administrative Services
FROM: Patricia Brady, Division of Economic Regulation *pb pjd*
RE: Docket No. 011402-WU - Notice of abandonment of water services in Marion County by Silver City Utilities.

Please add to the docket file the attached letter dated January 3, 2002, from W. Christopher Browder, Esq., representing Marion County, to Vincent Riccobono and Janet Tutt, Marion County officials. The letter is a copy of the County's Petition for Appointment of Receiver "if and when there is an abandonment of the Silver City System."

Attachment

cc: Division of Economic Regulation (Redemann, Iwenjiora)
Office of General Counsel (Harris)
Division of Commission Clerk and Administrative Services (Security File)

DOCUMENT NUMBER-DATE
00468 JAN 14 2001
FPSC-COMMISSION CLERK

GRAY, HARRIS & ROBINSON

PROFESSIONAL ASSOCIATION

ATTORNEYS AT LAW

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407-244-5648

W. Christopher Browder

E-MAIL ADDRESS
cbrowder@ghrlaw.com

January 3, 2002

Our File No: 40200-1

Vincent M. Riccobono, P.E.
Utilities Director
Marion County Utilities Department
P.O. Box 7160
Ocala, Florida 34472-0160

Janet Tutt
Assistant County Administrator
Marion County
601 S. E. 25th Avenue
Ocala, FL 34471-2690

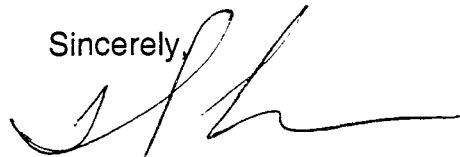
Re: Silver City Water System Abandonment

Dear Vince and Janet:

I am sending to you for your records a copy of the Petition for Appointment of Receiver which we have filed on behalf of Marion County in compliance with Section 367.165, Florida Statutes. As you may recall, Section 367.165 requires that after receipt of Notice of Abandonment of a Utility System, the County must file a petition with the circuit court for the appointment of a receiver to operate the abandoned utility system until such time as the receiver can properly dispose of the utility assets.

It is our understanding from conversations with the Florida Public Service Commission staff that the current owner of the Silver City Water System continues to operate the system past the December 31, 2001 abandonment date that was first stated in their Notice of Abandonment letter which was sent to the County. In spite of that, however, the Florida Public Service Commission issued Order No. PSC-01-2510-PCO-WU dated December 21, 2001 in which it officially recognized the Notice of Abandonment of the Silver City System. Therefore, we felt that the statute requires the County file this petition. All we have asked the court to do at this time is to appoint a receiver "if and when there is an abandonment of the Silver City System". If you have any questions please do not hesitate to call me or Tom.

Sincerely,



W. Christopher Browder

GRAY, HARRIS & ROBINSON, P.A.

RECEIVED

JAN 07 2002

Florida Public Service Commission
Division of Regulatory Oversight



GRAY, HARRIS & ROBINSON
PROFESSIONAL ASSOCIATION

Vincent M. Riccobono, P.E.
Janet Tutt
Utilities Director
Page 2
January 3, 2002

WCB:gcj

cc: Thomas A. Cloud, Esquire
Pat Brady, Regulatory Analyst
Division of Commission Clerk *Docket No. 011402-WU*
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

FORM 1.997. CIVIL COVER SHEET

The civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to Florida Statute 25.075. (See instructions on the reverse of the form.)

I. CASE STYLE

In the Circuit Court of the Fifth Judicial Circuit,
in and for Marion County, Florida

Petitioner: MARION COUNTY, FLORIDA

Case #: _____

Judge: _____

vs.

Respondents: DAVID L. SMALL and DOUGLAS SMALL

II. TYPE OF CASE

(Place an x on one line only. If the case fits more than one type of case, select the most definitive.)

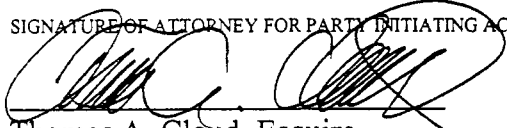
Domestic Relations	Torts	Other Civil
<input type="checkbox"/> Simplified Dissolution	<input type="checkbox"/> Professional	<input type="checkbox"/> Contracts
<input type="checkbox"/> Dissolution	<input type="checkbox"/> Malpractice	<input type="checkbox"/> Condominium
<input type="checkbox"/> Support - IV-D	<input type="checkbox"/> Products	<input type="checkbox"/> Real Property
<input type="checkbox"/> Support - Non IV-D	<input type="checkbox"/> Liability	<input type="checkbox"/> /Mortgage
<input type="checkbox"/> URESA - IV-D	<input type="checkbox"/> Auto Negligence	<input type="checkbox"/> Foreclosure
<input type="checkbox"/> URESA - Non IV-D	<input type="checkbox"/> Other Negligence	<input type="checkbox"/> Eminent
<input type="checkbox"/> Domestic Violence		<input type="checkbox"/> Domain
<input type="checkbox"/> Other Domestic Relations		<input checked="" type="checkbox"/> Other

III. Is Jury Trial Demanded in Complaint?

Yes No

DATE: January 2, 2002

SIGNATURE OF ATTORNEY FOR PARTY INITIATING ACTION


Thomas A. Cloud, Esquire
Florida Bar No.: 293326
GRAY, HARRIS & ROBINSON, P.A.
301 E. Pine Street, Suite 1400
Post Office Box 3068
Orlando, Florida 32802-3068
Phone: (407) 843-8880
Fax: (407) 244-5690

Attorneys for Petitioner

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR MARION COUNTY, FLORIDA

MARION COUNTY, FLORIDA,
a political subdivision of the
State of Florida,

CASE NO.
DIVISION NO.

Petitioner,

v.

**DAVID L. SMALL and DOUGLAS
SMALL,** in their capacity as owners
of Silver City Utilities,

Respondents.

PETITION FOR APPOINTMENT OF RECEIVER

Petitioner, MARION COUNTY, FLORIDA ("Marion County"), by and through its undersigned counsel and pursuant to §367.165, *Florida Statutes* (2001), sues Respondents, DAVID L. SMALL AND DOUGLAS SMALL, in their capacity as owners of Silver City Utilities (collectively "Respondents"), seeking the appointment of a receiver and alleges as follows:

PARTIES

1. Marion County is a political subdivision of the State of Florida.
2. Respondents are the owners of Silver City Utilities, a water treatment and distribution system operating under Certificate WU362 and located within the jurisdictional limits of Marion County, Florida ("Silver City System").

JURISDICTION AND VENUE

3. This is an action for the appointment of a receiver to operate the Silver City System pursuant to §367.165, *Florida Statutes*.

4. Venue is proper in this Court because the Silver City System is domiciled in Marion County, Florida.

FACTUAL BACKGROUND

5. The Silver City System is a privately owned and operated public utility, which provides water service to retail customers in Marion County, Florida occupying approximately 46 currently developed lots in a 200 lot mobile home community.

6. Under §367.165, *Florida Statutes*, no person, lessee, trustee or receiving owner operating, managing, or controlling a utility shall abandon the utility without giving sixty days' notice to the county or counties in which the utility is located and to the Florida Public Service Commission ("FPSC"). Further, §367.165 requires that the county or counties, after receiving such notice, petition the Circuit Court of the Judicial Circuit in which the utility is domiciled to appoint a receiver, which may be the governing body of a political subdivision or any other person deemed appropriate. This is required in an effort to allow the utility to be operated from the date of abandonment until such time as the receiver disposes of the property in a manner designed to continue the efficient and effective operation of the utility without interruption of service.

7. By letter dated October 24, 2001, Respondents notified the FPSC and Marion County of their intent to abandon the Silver City System as of December 31, 2001. A copy of Mr. David L. Small's letter notifying the FPSC and Marion County of their intent to abandon the Silver City System is attached hereto as Exhibit "A." By Order No. PSC-01-2510-PCO-WU, dated December 21, 2001, the FPSC formally acknowledged that notice of abandonment had been provided by Respondents and that

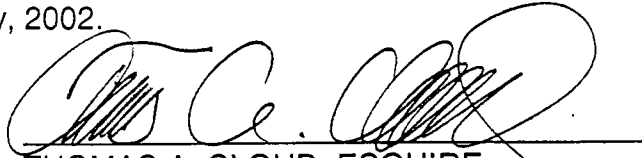
the notice indicated the Respondents' intent to abandon the Silver City System as of December 31, 2001. A copy of FPSC Order No. PSC-01-2510-PCO-WU is attached hereto as Exhibit "B."

8. Representatives for Marion County have been in communication with the FPSC regarding this matter.

9. Concurrently with the filing of its notice of intent to abandon the Silver City System, Mr. David L. Small, on behalf of Respondents, has been in communication with the Silver City Subdivision Homeowner's Association ("HOA") regarding the potential of a transfer of the Silver City System to the HOA. The FPSC has indicated in both Order No. PSC-01-2510-PCO-WU and verbally that at this time, it does not appear that the Silver City System will become abandoned by Respondents on December 31, 2001, due in part to the ongoing discussions with the HOA. However, in an abundance of caution, and in order to protect the health and safety of the individuals served by the Silver City System, Marion County has determined that it must file this petition for the appointment of a receiver in the event that the Silver City System does, in fact, become abandoned by Respondents.

WHEREFORE, Marion County requests that, if and when there is an abandonment of the Silver City System, this Court issue an order appointing a receiver to take possession, operate, and maintain the Silver City System and to collect all monthly bills payable to the Silver City Utility from its customers and all other revenues produced by the Silver City System, and to take such other actions as may be necessary to provide said customers with uninterrupted service until such time as this Court orders the receiver to dispose of the Silver City System in an appropriate manner.

Dated this 3rd day of January, 2002.

A handwritten signature in black ink, appearing to read 'T.A. Cloud', written over a horizontal line.

THOMAS A. CLOUD, ESQUIRE
Florida Bar No. 293326
GRAY, HARRIS & ROBINSON, P.A.
301 East Pine Street, Suite 1400
Orlando, Florida 32801
Telephone: 407-244-5624
Facsimile: 407 244-5690
Attorneys for Petitioner
MARION COUNTY, FLORIDA

*Madeline
Copy - Janet Tatt
Foot m/c*

355 Princes Street,
Kincardine, Ontario.
Canada N2Z 2T7

RECEIVED
01 OCT 29 PM 3:31
CLERK OF CIRCUIT COURT
MARION COUNTY, FL

October 24, 2001.

Division of Commission Clerk and Fiscal Services,
Florida Public Service Commission,
2540 Shumard Oak Boulevard,
Tallahassee, Florida 32399-0850

RECEIVED
OCT 31 2001
MARION COUNTY
ADMINISTRATIVE OFFICE

Dear Sirs:

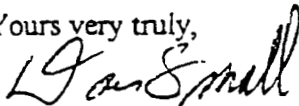
RE: Silver City Utilities WU362

We wish to advise that we would like to commence abandonment of the above-noted water system as of December 31, 2001. We will co-operate with any organization regarding this matter if an extension is warranted.

We would like to offer a brief history of the Utility and enclose herewith photocopies of letters to the Commission dated July 27, 1999 and February 28, 2001. We again reiterate that the Utility has never received any revenue from its customers at any time and also has never had a rate case done.

We feel that the homeowners association has been given ample time to assume full responsibility for the water system. We are sorry that a more amicable conclusion could not be reached to this problem. We trust that you will give this your utmost consideration. We can be reached at the above-noted address or by telephone at 519-396-2350 or 519-396-2658.

Yours very truly,



David L. Small

✓ c.c. Marion County, Board of County Commissioners
Florida Department of Environmental Protection

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Notice of abandonment of
water services in Marion County
by Silver City Utilities.

DOCKET NO. 011402-WU
ORDER NO. PSC-01-2510-PCO-WU
ISSUED: December 21, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER ACKNOWLEDGING NOTICE OF ABANDONMENT
OF SILVER CITY UTILITIES

BY THE COMMISSION:

BACKGROUND

Silver City Utilities (Silver City or utility) is a Class C water utility currently serving approximately 46 unmetered mobile home lots in a remote area of Marion County (County). This area is in the St. Johns River Water Management District (SJRWMD) but is not considered a water use caution area. Wastewater is provided by septic system. On its 2000 annual report, the utility reported no revenues and a net operating loss of \$3,958.

Order No. 13160, issued April 2, 1984, in Docket No. 830254-W, granted Certificate No. 413-W to Silver City and established initial rates and charges using a base facility/gallongage charge rate structure. However, meters have never been installed and customers have never been billed. In addition, the utility has never filed a petition for an index, rate proceeding, or for any type of rate relief.

On October 30, 2001, one of the utility owners, Mr. David L. Small, noticed us of the owners' intent to abandon the utility as of December 31, 2001.

We have jurisdiction pursuant to Section 367.165, Florida Statutes.

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ACKNOWLEDGMENT OF NOTICE OF ABANDONMENT

Section 367.165, Florida Statutes, requires 60 days' notice be given to us and to the County or Counties in which the utility is located prior to the abandonment of a utility. By letter dated October 24, 2001, and filed with us on October 30, 2001, Mr. Small gave the County, the Florida Department of Environmental Protection (FDEP), and this Commission 60 days' notice of the owners' intent to abandon the utility water facilities as of December 31, 2001. Mr. Small also indicated the intent of the owners to cooperate should an extension of the notice beyond December 31, 2001, be warranted.

The Silver City Subdivision is a mobile home community located in a remote area of Marion County. Originally it was exclusively a seasonal development. Currently there are a few residents living there all year. Approximately 200 lots in the Silver City Subdivision and the water facilities which serve those lots were jointly owned by Mr. Small and two other members of the Small family. Of the 200 lots, about 100 have been sold. However, only 46 are currently receiving service. The remaining unsold lots and water facilities are still owned jointly by the Smalls.

We have been aware for some time of the potential for the utility facilities to be abandoned. As a history of the events leading up to the notice of abandonment, Mr. Small attached copies of letters to us dated July 27, 1999, and February 28, 2001. Mr. Small's July 27, 1999, letter explains that the owners' initial objective was to sell lots in the subdivision. As such, free water was offered as an incentive and no revenues were collected by the utility.

Sometime in 1997, the owners decided they could no longer afford to offer free water and approached the informal association formed by the mobile home owners (HOA) regarding the option of owning the water system. In May of 1998, the HOA began assuming the expenses of the water system but has never completed the legal steps necessary to assume ownership. In the Spring of 2000, Mr. Small made inquiries of our staff regarding procedures for abandonment. Our staff followed up by speaking with representatives of the HOA to explain the potential ramifications of abandonment.

In January of 2001, we were contacted by the HOA. Since the HOA was paying the expenses for the utility, Mr. Small had sent the HOA the forms to file the utility's 2000 annual report. According

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to a representative for the HOA, there had been discussions in December of 2000 regarding acquisition of the utility facilities but the matter was not resolved. Meanwhile, the HOA was concerned about its responsibility with respect to the 2000 annual report and also about a potential abandonment. Our staff indicated that the responsibility for the annual report still resided with the utility and that the owners could not abandon the utility without first giving notice.

Mr. Small's February 28, 2001, letter confirmed that the HOA was still considering the acquisition of the utility facilities. Meanwhile, the utility owners agreed to file the utility's 2000 annual report. Such report was timely filed on March 7, 2001. In October of 2001, our staff was we were again contacted by Mr. Small for the procedures for abandonment. Believing that the HOA had been given ample time to assume full responsibility for the water system, Mr. Small formally noticed the owners' intent to abandon the utility as of December 31, 2001. However, Mr. Small also indicated the owners' willingness to cooperate regarding an extension beyond December 31st, if warranted.

Since receiving the notice of abandonment, our staff has been in contact with legal counsel for the County, the FDEP, the SJRWMD, Mr. Small, and representatives for the HOA. In addition, our staff has been in contact with the current contract operator for the water system. As such, we find that all entities involved with the utility facilities are fully appraised of the situation and working as expeditiously as possible towards a mutually acceptable resolution of the matter.

At this time, it does not appear that the utility will become abandoned on December 31, 2001. However, should the utility become abandoned, Section 367.165(2), Florida Statutes, requires the County to petition the circuit court for the appointment of a receiver. Such receiver can be the County or any other person or entity such as the HOA. The responsibility of the receiver is to operate the utility efficiently and effectively from the date of abandonment until disposition of the property.

The FDEP has indicated that the water system currently meets all FDEP standards and regulations and there do not appear to be any environmental issues for the foreseeable future. The plant is designed to pump a maximum of 180,000 gallons per day (gpd). However, as noted earlier, only 46 lots are currently being served from the well. As such, average daily use is approximately 5,000 to 6,000 gpd. In addition, due to the number of current

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DOCKET NO. 011402-WU
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connections, the FDEP considers the Silver City facilities a non-community system. This means that reporting requirements and tests are minimal.

The SJRWMD did not know of the utility's existence until contacted by our staff. As a result, the utility does not have a consumptive use permit (CUP). This appears to be due to some confusion about the size of the system. In most respects, the well falls below the threshold size in which a water management district would issue a CUP. However, some specific aspects of the well design could trigger the need for a CUP. We have advised Mr. Small of the potential problem and he is in the process of sending the engineering information on the well to the SJRWMD for a determination of the need for a CUP. We will continue to monitor the situation.

The County has indicated that it intends to cooperate with this Commission in every way possible to bring this matter to a successful conclusion. The Silver City Subdivision is nearly 10 miles from the County's nearest service area. The County has also indicated that the only basis upon which it would provide service to the mobile home park would be by extension of a water line from its nearest facility.

Meanwhile, the HOA is in the process of obtaining the paperwork from the Florida Department of State, Division of Corporations, in the event it decides to form a non-profit corporation for ownership of the utility. We have verified that the HOA is paying all the operating costs for the system. According to the contract operator, which is the biggest portion of the operating costs, the HOA has been very responsible with respect to its accounts. The operator is willing to continue to operate the system as long as it is on behalf of Mr. Small and the HOA. We will continue to work with the County, the utility, and representatives for the HOA towards a permanent resolution for the utility facilities.

Rule 25-30.110, Florida Administrative Code, requires each utility which is subject to this Commission's jurisdiction as of December 31st of that year, to file an annual report. Since Silver City is expected to be subject to our jurisdiction on December 31, 2001, the utility will be required to file a 2001 annual report and remit the 2001 regulatory assessment fees.

Based on all the above, we acknowledge the potential for the utility to be abandoned as of, or subsequent to, December 31, 2001.

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PAGE 5

We further place the utility on notice that it will be required to file a 2001 annual report and to remit the 2001 regulatory assessment fees within the time frame and manner prescribed by Commission rules. As there has been no final resolution of this matter, this docket shall remain open pending resolution of the status of Silver City Utilities.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Notice of Abandonment of Silver City Utilities is acknowledged. It is further

ORDERED that Silver City Utilities is put on notice of its responsibility to file a 2001 annual report and remit 2001 regulatory assessment fees. It is further

ORDERED that this docket shall remain open pending resolution of the status of Silver City Utilities.

ORDER NO. PSC-01-2510-PCO-WU
DOCKET NO. 011402-WU
PAGE 6

By ORDER of the Florida Public Service Commission this 21st
day of December, 2001.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: /s/ Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

This is a facsimile copy. Go to the
Commission's Web site,
<http://www.floridapsc.com> or fax a request
to 1-850-413-7118, for a copy of the order
with signature.

(S E A L)

LDH

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

ORDER NO. PSC-01-2510-PCO-WU
DOCKET NO. 011402-WU
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Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.