

ORIGINAL

LAW OFFICES
ROSE, SUNDSTROM & BENTLEY, LLP
2548 BLAIRSTONE PINES DRIVE
TALLAHASSEE, FLORIDA 32301

FREDERICK L. ASCHAUER, JR.
CHRIS H. BENTLEY, P.A.
ROBERT C. BRANNAN
DAVID F. CHESTER
F. MARSHALL DETERDING
JOHN R. JENKINS, P.A.
STEVEN T. MINDLIN, P.A.
DAREN L. SHIPPY
WILLIAM E. SUNDSTROM, P.A.
DIANE D. TREMOR, P.A.
JOHN L. WHARTON
ROBERT M. C. ROSE, OF COUNSEL
WAYNE L. SCHIEFELBEIN, OF COUNSEL

(850) 877-6555
FAX (850) 656-4029
www.rsbatorneys.com

CENTRAL FLORIDA OFFICE
600 S. NORTH LAKE BLVD., SUITE 160
ALTAMONTE SPRINGS, FLORIDA 32701-6177
(407) 830-6331
FAX (407) 830-8522

REPLY TO ALTAMONTE SPRINGS

October 8, 2004

MARTIN S. FRIEDMAN, P.A.
VALERIE L. LORD
OCT - 8 AM 10:20
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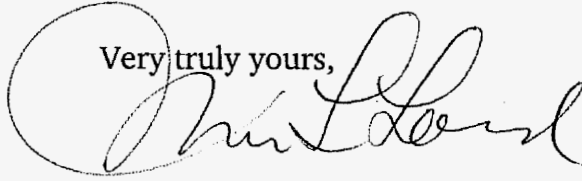
Ms. Blanca Bayo
Commission Clerk and Administrative Services Director
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Re: Docket No. 030444-WS; Application by Bayside Utility Services, Inc., for Rate Increase in Bay County, Florida
Our File No.: 30057.57

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and seven (7) copies of Bayside Utility Services, Inc.'s Response to Motion for Commission to Relinquish Jurisdiction and Request for Oral Argument on Motion for Commission to Relinquish Jurisdiction.

Should you have any questions concerning the enclosed, please do not hesitate to give me a call.

Very truly yours,


VALERIE L. LORD
For the Firm

CMP _____
COM 3
CTR _____
ECR _____
GCL VLL/mp
OPC _____
Enclosures

MMS cc: Stephen C. Reilly, Associate Public Counsel (w/enclosures) (via U.S. Mail 10/7/04)
RCA _____ Ralph Jaeger, Esquire (w/enclosures) (via U.S. Mail 10/7/04)
SCR _____ Mr. Steven M. Lubertozzi (w/enclosures)
_____ Mr. Patrick Flynn (w/enclosures)

SEC 1 M:\1 ALTAMONTE\UTILITIES INC\BAYSIDE\(.57) BAYSIDE 2003 RATE CASE\PSC Clerk 22 (Jurisdiction Motions).ltr.wpd

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of
BAYSIDE UTILITY SERVICES, INC.,
for an increase in water and wastewater
rates in Bay County, Florida

DOCKET NO. 030444-WS

RESPONSE TO MOTION FOR COMMISSION TO RELINQUISH JURISDICTION

BAYSIDE UTILITY SERVICES, INC. (*Bayside*), by and through its undersigned attorneys, responds to the Motion for Commission to Relinquish Jurisdiction by the Office of Public Counsel (*OPC*).

1. OPC alleges that this Commission may dispose of Bayside's pending rate case by issuing a final order relinquishing jurisdiction to Bay County. OPC has failed to grasp the meaning and impact of the word "shall" in Section 367.171(5), Florida Statutes, which precedes the words, "until disposed of":

"When a utility becomes subject to regulation by a county, all cases in which the utility is a party then pending before the commission, or in any court by appeal from any order of the commission, **shall remain** within the jurisdiction of the commission or court until disposed of in accordance with the law in effect on the day such case was filed." (Emphasis added.)

The statute clearly does not allow this Commission voluntarily abdicate jurisdiction to a county which has decided to "opt out", especially by the means suggested by OPC.

2. OPC has urged this Commission can meet its obligation to render a final decision for purposes of Section 367.081(8), Florida Statutes, by relinquishing jurisdiction, a decision "that does not resolve the disputed issues of material fact in a case, but is nevertheless the agency's final action with regard to the case ...". (Motion at page 3) This assertion is patently absurd. Section 367.081(8) provides that the Commission's **obligation to render**

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FPSC-COMMISSION CLERK

a final decision within 8 months exists only after its proposed agency action, based on its findings of fact in the case, is protested. The only sensible interpretation of the statute is that this Commission must retain jurisdiction and render a decision on the merits of the case that affects all parties properly before it.

3. Section 367.171(6), Florida Statutes, provides:

“Any county in which utilities ... were regulated by the commission ..., which subsequently cease to be so regulated, shall, within 90 days of the cessation of commission regulation, **adopt and follow** as minimum standards of regulation the provisions of s. 367.081 ...” (Emphasis added).

Both this Commission and Bay County are therefore bound by law to determine rates according to the standard specified in Section 367.081(2), Florida Statutes, that are “just, reasonable, compensatory, and not unfairly discriminatory”. OPC has asserted that this Commission is somehow predisposed to render its decision on the complex issues of this case in a manner that is not “just, reasonable, compensatory, and not unfairly discriminatory”. In particular, OPC argues that Bay County would not allow a negative acquisition adjustment, while this Commission would. Such a statement is particularly disturbing because there are no precedents at Bay County on which it could be based. It certainly indicates that OPC knows the outcome of the case if it was handled by Bay County, leading Bayside to the troubling conclusion that it would not receive a fair hearing before the County.

The Motion contemplates that even if this Commission handled this case to conclusion as it is statutorily obligated to do, Bay County would still initiate some yet undesignated proceeding for some purpose not yet determined. If this Commission follows its statutory obligation, there is no need for Bay County to initiate rate revision proceedings.

There is no reason to believe that Bay County would arrive at a different conclusion than this Commission, given the same facts and properly applying the same standard. Therefore, there is no reason to believe that Bay County would conduct another duplicate proceeding to redetermine rates, resulting in increased rate case expense and waste of this Commission's valuable resources.

4. OPC's reliance on a 1935 U.S. Supreme Court opinion is misplaced. The case OPC relies upon, Penn Central Casualty Co. V. Pennsylvania ex rel Schnader, 294 U.S. 189 (1935), involved the concurrent jurisdiction of the federal and state courts over the liquidation of an insolvent insurance company. Interestingly, in that case, the Supreme Court ruled that the federal court, which first exercised jurisdiction over the insurance company, had the exclusive jurisdiction to proceed. OPC relies on dicta in the Supreme Court's opinion as the only support for its Motion. Frankly, that decision has no application to the instant case. In this case, the Commission has no discretion to relinquish jurisdiction. The Legislature has determined that the Commission, in these instances, must continue to handle a proceeding until it is concluded on the merits. The federal court has no such mandatory requirement applicable to insolvent insurance companies.

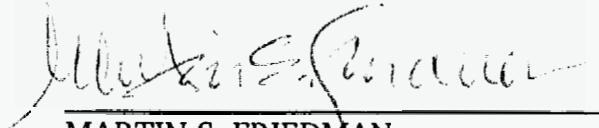
5. OPC argues that relinquishment would best serve the public interest so that Bay County can conduct further proceedings to resolve the case. Nothing could be further from the truth. Bay County has not yet shown that it has the regulatory framework in place to regulate water and wastewater utilities in that county. However, Bayside has developed its case with Commission's Staff, who have already acquired an intimate knowledge of the particular facts and circumstances of this case. This Commission also has knowledge of

those facts and circumstances and possesses the expertise to determine and resolve the issues efficiently and without undue cost to Bayside's customers. If this Commission relinquishes jurisdiction to Bay County, Bayside will have to start over again with new Bay County staff, resulting in increased costs which will ultimately be passed on to Bayside's customers. If OPC was genuinely concerned about rate case expense, it would not have filed this frivolous motion, requiring Bayside to incur additional rate case expense in researching and drafting a response. Further, the delay in resolving the issues will prejudice Bayside, and ultimately its customers, and any benefit to the efficient administration of justice would be lost.

BAYSIDE UTILITY SERVICES, INC. requests that this Commission deny OPC's Motion for Commission to Relinquish Jurisdiction.

Respectfully submitted this 9th day
of October, 2004, by:

ROSE, SUNDSTROM & BENTLEY, LLP
600 S. North Lake Boulevard, Suite 160
Altamonte Springs, Florida 32701
(407) 830- 6331
(407) 830-8522 (fax)


MARTIN S. FRIEDMAN
VALERIE L. LORD
For the Firm

CERTIFICATE OF SERVICE
DOCKET NO. 030444-WS

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Hearing on Motion for Commission to Relinquish Jurisdiction has been furnished by U.S. Mail to the following parties on this 7th day of October, 2004:

Stephen C. Reilly
Associate Public Counsel
Office of Public Counsel
C/o The Florida Legislature
111 W. Madison Street
Room 812
Tallahassee, FL 32399-1400

Ralph Jaeger, Esq.
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850



MARTIN S. FRIEDMAN
VALERIE L. LORD