

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Objection to Notice by SEBRING)	DOCKET NO. 880459-WU
COUNTRY ESTATES WATER COMPANY of)	
application for transfer of Certificate)	ORDER NO. 21034
No. 420-W in Highlands County to)	
HEARTLAND UTILITIES, INC.)	ISSUED: 4-12-89

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
 THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 JOHN T. HERNDON

ORDER GRANTING MOTION TO DISMISS OBJECTIONS

BY THE COMMISSION:

On March 13, 20 and 27, 1988, Sebring Country Estates Water Company (SCE) and Heartland Utilities, Inc. (Heartland) published notice of their intent to apply for a transfer of Certificate No. 420-W from SCE to Heartland. On March 18, 1988, Sebring Utilities Commission (SUC) filed an objection to this notice. On May 24, 1988, Heartland furnished notice of the proposed transfer to SCE's customers. By letter dated May 31, 1988, Mr. Melvin E. Rhodes, Sr. objected to the notice of the proposed transfer. Based upon the objections, this case is currently scheduled for a formal hearing on April 20, 1989.

On March 23, 1989, Heartland filed a motion to dismiss the objections of SUC and Mr. Rhodes. The basis of Heartland's motion to dismiss is that neither of the objectors have filed anything in this docket other than their objections and that, even disregarding this fact, the objections are, in any event, moot.

SUC's objection went not to the transfer itself, but rather, to the territory to be transferred. SCE serves two separate areas, known as Sebring Country Estates and DeSoto City. SUC specifically objected to the the Sebring Country Estates territory, as described in the notice of intent to transfer.

The issue of SCE's appropriate service area has already been addressed by this Commission in a related show cause case against SCE, which was processed under Docket No. 871308-WU. SUC intervened in that case for the purpose of clarifying SCE's appropriate service territory. By Order No. 20137, issued October 10, 1988, the Commission determined that SCE had violated Section 367.171, Florida Statutes, by claiming more territory than it actually served in its application for a grandfather certificate and ordered SCE to submit a description of the territory actually served by it as of July 15, 1988, in metes and bounds.

On February 24, 1989, Heartland prefiled direct testimony of Howard E. Short in contemplation of the hearing in this case. A copy of Mr. Short's testimony was served upon counsel

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for SUC. Attached to Mr. Short's testimony was a legal description of the Sebring Country Estates territory actually served by SCE as of July 15, 1988. As stated above, SUC's objection in this case went solely to the appropriate territory to be included in the Sebring Country Estates portion of SCE's service area. As further stated above, SUC has already had an opportunity to litigate this matter. We believe that SUC has had adequate time to review the above-mentioned legal description and make any specific objection that might remain to that description. In the absence of such an objection, we believe that it is appropriate to grant Heartland's motion to dismiss SUC's objection.

Mr. Rhodes' objection went to the matter of the transfer itself. On March 23, 1989, the staff of this Commission attempted to contact Mr. Rhodes to determine if he still objected to the transfer and if so, whether he intended to respond to Heartland's motion to dismiss. Staff was informed by Mrs. Rhodes that Mr. Rhodes had passed away last November and that she had no specific objection to the transfer. We, therefore, believe that it is appropriate to grant Heartland's motion to dismiss Mr. Rhodes' objection.

Based upon the discussion above, it is

ORDERED by the Florida Public Service Commission that the motion of Heartland Utilities, Inc. to dismiss the objections by Sebring Utilities Commission and Mr. Melvin E. Rhodes, Sr. is hereby granted, as set forth in the body of this Order. It is further

ORDERED that Docket No. 880459-WU shall be kept open in order to process the proposed transfer.

By ORDER of the Florida Public Service Commission,
this 12th day of April, 1989.



STEVE TRIBBLE, Director,
Division of Records and Reporting

(S E A L)

RJP

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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

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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.

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 25-22.038(2), 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 sewer utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, 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.