

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into) DOCKET NO. 941292-WU
ownership of Marina) ORDER NO. PSC-95-0840-FOF-WU
Club Homeowners Utility, Inc.,) ISSUED: July 14, 1995
and provision of water service)
to Marina Club Estates, Inc.,)
homeowners in Osceola County)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

Osceola County presently operates a water system providing drinking water services to 67 residences in the subdivisions of Marina Club Estates (MCE) and Sunny Lake Estates (SLE). We first learned of this water system on March 19, 1992, when the City of St. Cloud informed us that it would be discontinuing electrical service to the water plant due to nonpayment for service. Since learning of the system, we have attempted to determine its ownership and its jurisdictional status.

First, we requested jurisdictional information from the utility's plant engineer, Ivan Dory, who appeared to be the utility's owner as well, in order to determine whether the utility would be required to apply for an original certificate or for an exemption from regulation. In Mr. Dory's response he stated that he was charging consumers for service. Therefore, we advised him to apply for an original certificate for a utility in existence and charging rates, pursuant to Section 367.031, Florida Statutes, and Rule 25-30.034, Florida Administrative Code.

Mr. Dory was unresponsive for awhile, but on December 28, 1992, after we advised him that we were prepared to initiate a show cause proceeding, Mr. Dory advised us that a cooperative, which would purchase the utility, would be formed within two or three

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months. We then asked Mr. Dory to keep us apprised of the impending purchase so that we could forward the appropriate application once the purchase was complete.

When we learned that the cooperative did not form, we, again, advised Mr. Dory that the utility must apply for an original certificate. However, we then learned that, although he had represented himself to be the utility's owner, he was not. B.C.D. Industries, Inc., an affiliate of the developer, Marina Club Estates, Inc., (MCEI) had constructed the water system in 1976, apparently becoming its owner, and on March 30, 1981, entered into an easement agreement with Mr. Dory by which Mr. Dory was to be responsible for maintaining the water system.

In late August, 1993, Mr. Dory discontinued his association with the utility. The Department of Environmental Protection (DEP) advised us that they believed that MCEI was the record owner of the utility. Accordingly, we informed MCEI of its obligation to apply for an original certificate. In the meantime, a homeowners association in MCE hired an operator for the plant, Lynn Todd & Associates, paying for the operator's services by means of funds collected directly from its members.

MCEI failed to respond. The homeowners association informed us that MCEI remained uninvolved with the utility and that, consequently, the association continued to operate the plant.

On February 17, 1994, the president of the homeowners association, Donald Wilson, informed us that the land upon which the water plant is situated had been auctioned at a public tax sale. The association had been outbid at the sale by Walter Medlin, dba Marina Club Homeowners Utility Co. (MCHUC). MCHUC is a closely held corporation formed by Mr. Medlin in February, 1994. MCHUC, thereupon, offered the association a long term lease of that land, but the association, noting that it did not own the plant, turned down the offer.

Since we believed that MCHUC had become responsible for the operation of the utility, on February 22, 1994, we informed Mr. Medlin of his obligation to apply for an original certificate. At the same time, the homeowners association took steps to relinquish operating responsibility for the water plant, informing its members and any interested party or agency that any correspondence should be forwarded to MCHUC. However, MCHUC informed us that it would exercise no control over the water system, that it had not acquired title to the plant in the tax sale, and that, accordingly, it was not authorized to, and would not, bill for water service. Furthermore, MCHUC stated that it had been advised by counsel that

it should pursue an ejectment action. On December 13, 1994, we determined that it had become necessary to open a docket in order to finally resolve the long-standing questions of the utility's ownership and jurisdictional status.

DOCKET STATUS

On June 3, 1994, the DEP, seeking to enforce the utility's compliance with certain requirements of Chapter 403, Florida Statutes, filed a Complaint for a Declaratory Judgment and Other Relief in Circuit Court, Ninth Judicial Circuit, Osceola County, against several persons thought, at one time or another, to be responsible for the water plant. The DEP requested the court to establish the identity of the "supplier(s) of water of the drinking water system." Osceola County agreed to operate the plant as a "facilitator of water service in order to protect the health, safety and welfare" of those served by the utility on an informal and interim basis in August, 1994.

On March 9, 1995, the DEP convened a comprehensive settlement meeting to resolve the legal problems surrounding the water plant. At this meeting it was decided that Osceola County would attempt to take eventual control of the water system by forming a municipal service benefit unit (MSBU), a special taxing district, which would allow the county to specially assess the affected residents for the needed improvements to and the operation of the water plant. The county informed the residents at a meeting held March 30, 1995, that it would consider forming the MSBU if the residents would file a petition with signatures of 50% + 1 of the homeowners. The residents met the requirement and filed their petition with the county on April 27, 1995.

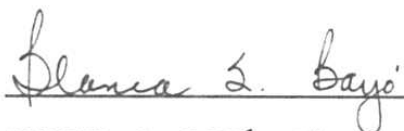
On June 5, 1995, the Osceola County Commission enacted a resolution creating an MSBU to be known as the Marina Club Municipal Service Benefit Unit. The MSBU will allow the county to impose a special assessment on lots within MCE and SLE to fund "the provision, operation, and maintenance of potable water, and charge service charges for such services." Accordingly, we find it appropriate to order that this docket be closed. Pursuant to Section 367.022(2), Florida Statutes, and Rules 25-30.060(1), (2), and (3)(b), Florida Administrative Code, the county would be expected to qualify for and request an exemption from our regulation. No further action is required in this docket; hence, it shall be closed.

Based on the foregoing, it is, therefore,

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ORDERED by the Florida Public Service Commission that Docket No. 941292-WU shall be closed.

By ORDER of the Florida Public Service Commission, this 14th day of July, 1995.

A handwritten signature in cursive script, reading "Blanca S. Bayó", is written over a horizontal line.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CJP

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 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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.