

MEMORANDUM

November 23, 1998

NOV 23 AM 10:31
REPORTING

TO: DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF LEGAL SERVICES (JAEGER)
RE: DOCKET NO. 980846-WS - APPLICATION FOR TRANSFER OF FACILITIES OF GARDEN GROVE WATER COMPANY, INC. TO THE CITY OF WINTER HAVEN AND CANCELLATION OF CERTIFICATES NOS. 597-W AND 512-S IN POLK COUNTY.

98-1565-FOF-WS

Attached is an ORDER DECLINING TO INITIATE A SHOW CAUSE PROCEEDING, ACKNOWLEDGING TRANSFER AND CLOSING DOCKET, to be issued in the above-referenced docket.

(Number of pages in order - 15)

See 14

RRJ/lw

Attachment

cc: Division of Water and Wastewater (CLAPP)

I:980846OR.RRJ

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of facilities of Garden Grove Water Company, Inc. to the City of Winter Haven and cancellation of Certificates Nos. 597-W and 512-S in Polk County.

DOCKET NO. 980846-WS
ORDER NO. PSC-98-1565-FOF-WS
ISSUED: November 23, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

ORDER DECLINING TO INITIATE A SHOW CAUSE PROCEEDING.
ACKNOWLEDGING TRANSFER AND CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

Garden Grove Water Company, Inc. (Garden Grove or utility) is a Class A utility serving approximately 6,211 water and 3,149 wastewater customers in Polk County. The utility's last annual report on file with the Commission for 1997 lists annual revenues of \$2,298,723 and net income of \$115,300.

Garden Grove has provided water and wastewater services since July 1965. The utility was under the jurisdiction of Polk County until May 14, 1996, when the Board of County Commissioners adopted a resolution, pursuant to Section 367.171, Florida Statutes, declaring the water and wastewater utilities in Polk County subject to the provisions of Chapter 367, Florida Statutes. We acknowledged this resolution on July 11, 1996, by Order No. PSC-96-0896-FOF-WS. Garden Grove submitted an application for certification on October 29, 1996. By Order No. PSC-98-0929-FOF-WS issued July 8, 1998, we granted the utility Water Certificate No. 597-W and Wastewater Certificate No. 513-S.

DOCUMENT NUMBER - DATE

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FLORIDA PUBLIC SERVICE COMMISSION

ORDER NO. PSC-98-1565-FOF-WS
DOCKET NO. 980846-WS
PAGE 2

On July 9, 1998, Garden Grove submitted its application to transfer its facilities to the City of Winter Haven (the City). The closing and actual transfer took place on July 15, 1998.

NO SHOW CAUSE PROCEEDING REQUIRED

As discussed above, we received the application for transfer on July 9, 1998. However, before we could acknowledge the transfer, Garden Grove transferred its facilities to the City on July 15, 1998. Section 367.071 (1), Florida Statutes, requires that:

No utility shall sell, assign, or transfer its certificate of authorization, facilities, or any portion thereof . . . , without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest and that the buyer, assignee, or transferee will fulfill the commitments, obligations, and representations of the utility.

Section 367.161 (1), Florida Statutes, authorizes us to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or have willfully violated, any provision of Chapter 367, Florida Statutes.

Garden Grove appears to have violated Section 367.071(1), Florida Statutes, by failing to obtain our approval before transferring its facilities to the City. However, there are circumstances which appear to mitigate the utility's apparent violation. The City was anxious to expedite the closing to take advantage of favorable financial terms in the bond issue to purchase the utility, merge it into the City's existing system, and to upgrade both the existing system and the Garden Grove system.

We do not believe that the apparent violation of Section 367.071, Florida Statutes, rises in these circumstances to the level which warrants the initiation of a show cause proceeding. Therefore, we decline to initiate a show cause proceeding for Garden Grove's failure to obtain our approval prior to transferring its facilities to the City.

ACKNOWLEDGMENT OF TRANSFER

As stated above, on July 9, 1998, we received an application from Garden Grove to transfer its facilities to the City pursuant to Section 367.071, Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code. The application included a copy of the transfer agreement between the two parties.

Pursuant to Rule 25-30.037(4)(d), Florida Administrative Code, the application for transfer referred to a list of assets that Garden Grove would retain, but the list was not included with the application. The agent was asked about the list and immediately sent it and a cover letter which stated that Garden Grove no longer owns, operates, maintains or controls any system providing water or wastewater service. The application contained a statement that pursuant to Rule 25-30.037(4)(e), Florida Administrative Code, the City obtained Garden Grove's most recently available income and expense statement, balance sheet, statement of rate base for regulatory purposes, and contributions-in-aid-of-construction.

The application and transfer agreement included a statement that the customer deposits will be given to the City as required in Rule 25-30.037(4)(g), Florida Administrative Code. There was no interest on the deposits, because, under Polk County's regulation, the utility did not pay interest on customer deposits. This issue was raised when the utility applied for certification, but the utility was advised not to change any rates until after certification took place. Since the transfer took place about a week after the utility was certificated, no modification for interest payments on customer deposits was requested.

Pursuant to the requirements of Rule 25-30.037(4)(h), Florida Administrative Code, Garden Grove included the statement that it would pay outstanding regulatory assessment fees. Garden Grove has already paid regulatory assessment fees for 1996 and 1997.

The application for transfer to a governmental authority was received prior to the issuance of water and wastewater certificates to the utility. Consequently, the original certificates were never mailed and are in our possession.

ORDER NO. PSC-98-1565-FOF-WS
DOCKET NO. 980846-WS
PAGE 4

Garden Grove has submitted an application for transfer to a governmental authority which meets the requirements of Section 367.071(4)(a), Florida Statutes. Therefore, we acknowledge the transfer of Garden Grove to the City as of July 15, 1998. The utility has agreed to pay the fees from January 1 through July 15, 1998, on or before the due date. Therefore, Water Certificate No. 597-W and Wastewater Certificate No. 512-S shall be canceled effective July 15, 1998.

CLOSING DOCKET

With the cancellation of the certificates, no further action is required, and this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that initiation of a show cause proceeding is not warranted. It is further

ORDERED that the application of Garden Grove Water Company, Inc., 3601 Cypress Gardens Road, Winter Haven, Florida 33884-2426, to transfer its facilities to the City of Winter Haven, 451 Third Street, Northwest, Post Office Box 2277, Winter Haven, Florida 33811, is acknowledged. It is further

ORDERED that Water Certificate No. 597-W and Wastewater Certificate No. 512-S are hereby canceled effective July 15, 1998. It is further

ORDERED that Garden Grove Water Company, Inc., shall be responsible for paying regulatory assessment fees through July 15, 1998. It is further

ORDERED that this docket shall be closed.

ORDER NO. PSC-98-1565-FOF-WS
DOCKET NO. 980846-WS
PAGE 5

By ORDER of the Florida Public Service Commission this 23rd
day of November, 1998.



KAY FLYNN, Chief
Bureau of Records

(S E A L)

RRJ

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.

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.