

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Objection to application of) DOCKET NO. 880830-WS
SEACOAST UTILITIES for approval of) ORDER NO. 20717
transfer of Certificates Nos. 29-W) ISSUED: 2-9-89
and 29-S in Palm Beach County to)
Juniper Development Group.)
_____)

The following Commissioners participated in the disposition of this matter:

MICHAEL MCK. WILSON, CHAIRMAN
THOMAS M. BEARD
BETTY EASLEY
JOHN T. HERNDON

ORDER ACKNOWLEDGING WITHDRAWAL
OF APPLICATION FOR TRANSFER

AND

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING MOTION TO REFUND
FILING FEE

BY THE COMMISSION:

NOTICE is hereby given by the FPSC that the action discussed herein is final except for the denial of the motion to refund filing fee, which is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

Seacoast Utilities is an operating division of the John D. and Catherine T. MacArthur Foundation (the MacArthur Foundation) and the holder of utility Certificates Nos. 29-W and 29-S in Palm Beach County. In June, 1988, Seacoast Utilities published notice pursuant to Section 367.071, Florida Statutes (1987), and Rule 25-30.030, Florida Administrative Code, of its intent to apply for a transfer of those certificates.

Five local governments (Palm Beach County, the City of Palm Beach Gardens, the Town of Lake Park, the Town of Juno Beach, and the Village of North Palm Beach) intervened in opposition to the transfer. The joint transfer application was therefore set for administrative hearing.

The five intervening local governments formed a joint water and sewer authority called the Seacoast Utility Authority. On September 12, 1988, the Seacoast Utility Authority filed a condemnation action against Seacoast Utilities. The circuit court in Palm Beach County granted an injunction prohibiting the parties from going forward with proceedings toward approval of the transfer application.

In Order No. 20034, issued September 20, 1988, the Prehearing Officer granted a motion for continuance filed by the five local government intervenors as a result of discovery

100-RECORDS SECTION

disputes and the circuit court injunction. The hearing was rescheduled for May of 1989. Other than the prehearing conference, the prehearing obligations of the parties were held in abeyance pending further order.

The prehearing conference was held in Tallahassee on September 19, 1988 for the purposes of determining the status of the transfer application and the proceedings in light of the condemnation action and the circuit court injunction. Order No. 20120, issued by the Prehearing Officer on October 5, 1988, stayed Seacoast Utilities from closing on the sales contract already before the Commission for its approval or closing on any other sales contract which required Commission approval, but not including a condemnation or negotiated sale to a governmental entity. A status conference was set and all discovery and other proceedings on the transfer application were stayed pending further order.

The status conference was held on December 5, 1988. Counsel for Seacoast Utilities informed the Prehearing Officer that a sale in lieu of condemnation was being negotiated with the water and sewer authority formed by the five local government objectors. Since the sale was expected to be agreed to soon thereafter, no additional action was ordered except that Seacoast was to state its intentions by letter if the sale was not agreed to within ten days. The sale was, in fact, agreed to within that time. On December 29, 1988, the MacArthur Foundation filed a notice of transfer pursuant to Section 367.071, Florida Statutes (1987). That notice is being processed in Docket No. 881605-WS.

In this proceeding, the MacArthur Foundation has claimed that there are unspecified "extenuating circumstances" which justify refund of its filing fee. Our practice is to refund the filing fee if no significant time and effort have been spent on a case. In this instance, Commission Staff has expended substantial time and effort in analysis of this application.

Accordingly, we deny Seacoast Utilities' request for refund of its filing fee. Since the transfer application has been withdrawn, this docket can be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the request of the John D. and Catherine T. MacArthur Foundation for refund of its application fee is denied. It is further

ACKNOWLEDGED that Seacoast Utilities has withdrawn its application for transfer filed in this docket. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final unless an appropriate petition in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records & Reporting, 101 E. Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on March 2, 1989. It is further

ORDERED that this docket may be closed if no timely protests are received.

By Order of the Florida Public Service Commission
this 9th day of FEBRUARY, 1989.



STEVE TRIBBLE Director
Division of Records and Reporting

(S E A L)

KJM

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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on March 2, 1989. In the absence of such a petition, this order shall become effective March 3, 1989 as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on March 3, 1989, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or sewer 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 of the effective date 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.

MEMORANDUM

February 9, 1989

TO : DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF LEGAL SERVICES (MUSZYNSKI)
RE: : DOCKET NO. 880830-WS - OBJECTION TO APPLICATION OF
SEACOAST UTILITIES FOR APPROVAL OF TRANSFER OF
CERTIFICATES NOS. 29-W AND 29-S IN PALM BEACH COUNTY
TO JUNIPER DEVELOPMENT GROUP.

20717

Attached is an Order to be issued in the
above-referenced docket.

KJM/lp
Attachment/Order
cc: Division of Water and Sewer