

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for approval) DOCKET NO. 930526-SU
of transfer of Certificate No.) ORDER NO. PSC-93-1163-FOF-SU
395-S in Lee County to Bonita) ISSUED: August 10, 1993
Springs Utilities by Forty-One)
Corporation.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
THOMAS M. BEARD
SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

ORDER MODIFYING NOTICING REQUIREMENTS

BY THE COMMISSION:

Forty-One Corporation (Forty-One or utility) is a Class C utility providing wastewater service in Lee County, Florida. The utility provides service to 36 commercial connections located at the Springs Plaza Shopping Center in Bonita Springs, Lee County, Florida. The utility's 1992 annual report provides for an annual operating revenue of \$66,754 and a net operating loss of \$113,753.

On June 1, 1993, the utility filed its application for approval of the transfer of its lines and service territory to Bonita Springs Utilities (Bonita). Bonita is an expanding non-profit water and wastewater company which is exempt from this Commission's jurisdiction. To accomplish the transfer, Forty-One has taken its treatment plant off line, and the customers have been connected to Bonita's regional wastewater facility as of April 8, 1993.

The utility's application has several deficiencies which it is working to correct. In its filing, the utility has requested a waiver of the noticing requirements contained in Rule 25-30.030, Florida Administrative Code. This rule requires a utility which files a transfer application to provide notice by certified mail or personal service to: the governing body of the county; any municipality within a four-mile radius of the proposed territory; the regional planning agency; Public Counsel; the Commission; and

DOCUMENT NO. 93-1163-FOF-SU-DATE

08617 AUG 10 93

any utilities within a four-mile radius of the proposed territory by certified mail. In addition, the notice is required to be published once each week for three consecutive weeks in a newspaper of general circulation in the territory proposed to be served. Further, the rule requires that each customer of the transferee must be noticed by regular mail or personal service.

The utility contends that noticing would serve no useful purpose in this particular case. Since taking the utility out of receivership in 1991, Forty-One Corporation has operated the utility under a consent order with the understanding that the facility would be taken off line as soon as Bonita had lines in place and had capacity to serve the area. We were aware in 1991, when processing the transfer of the utility to Forty-One Corporation, that Forty-One would only operate the utility until the interconnection was made available. Further, Lee County and Bonita have agreed as to which area of the county will be served by which utility with the former Forty-One customers included in the expansion plan. Further, additional customer growth in the area was forced to a standstill due to Forty-One's capacity limitations.

Portions of the noticing requirements Forty-One has requested to have waived are contained in Section 367.045, Florida Statutes. Those requirements may not be waived by this Commission. This statute requires notice of transfer applications to the county or municipality affected, the Public Counsel, the Commission, and to "such other persons and in such other manner as may be prescribed by commission rule".

We believe that it is reasonable to lessen the noticing requirements contained in the rule, while requiring compliance with the statute. Therefore, we find it appropriate that the utility notice the utilities in a four-mile radius and the governmental bodies, but by regular mail instead of certified mail. In addition, we find it reasonable to require one newspaper notice instead of requiring publication of three consecutive weekly notices. Since the rule currently requires that the transferee's customers shall be noticed by regular mail or hand delivery, we are not modifying this requirement. Hence, all of Forty-One's customers shall be noticed by regular mail or hand delivery.

Forty-One Corporation shall initiate the noticing required herein within 20 days of the issuance date of this Order. This docket shall remain open in order to allow the utility to complete the transfer application. Upon completion of all filing

ORDER NO. PSC-93-1163-FOF-SU
DOCKET NO. 930526-SU
PAGE 3

requirements, we will determine whether the transfer application may be approved.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the request of Forty-One Corporation to waive all noticing requirements is hereby denied. However, the application's noticing requirements are hereby modified as discussed in the body of this Order. It is further

ORDERED that Forty-One Corporation shall begin noticing as required within 20 days of the issuance date of this Order. It is further

ORDERED that this docket shall remain open in order to allow Forty-One Corporation to file a complete transfer application for our review and approval.

By ORDER of the Florida Public Service Commission this 10th day of August, 1993.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

LK

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.

ORDER NO. PSC-93-1163-FOF-SU
DOCKET NO. 930526-SU
PAGE 4

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 wastewater 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.