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LAW OFFICES
MARTIN, ADE, BIRCHFIELD & MICKLER, P.A.

ONE INDEPENDENT DRIVE - SUITE 3000
JACKSONVILLE, FLORIDA 32202

MAILING ADDRESS
POST OFFICE BOX 59
JACKSONVILLE, FLORIDA 32201
TELEPHONE (904) 354-2050
TELECOPIER (904) 354-5842

- SHARON ROBERTS HENDERSON
- BARBARA CHRISTIE JOHNSTON
- WILHELMINA F. KIGHTLINGER
- MYRA LOUGHRAN
- RALPH H. MARTIN
- ROBERT O. MICKLER
- JOHN D. MILTON, JR.
- DANIEL B. NUNN, JR.
- SCOTT G. SCHILDBERG
- GARY L. WILKINSON
- L. PETER JOHNSON (1942-1988)

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- LYNDA R. AYCOCK
- W. O. BIRCHFIELD
- TIMOTHY A. BURLEIGH
- CHARLES L. CRANFORD
- PHILLIP A. DELMONT
- STEPHEN H. DURANT
- T. WILLIAM GLOCKER
- MICHAEL E. GOODBREAD, JR.
- STEPHEN D. HALKER
- KOKO HEAD

August 2, 1996

Via Federal Express

Blanca Bayo, Director
Department of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Building, Room 110
Tallahassee, Florida 32399-0850

960695-WS

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Transfer of the certificates and facilities of South Broward Utility, Inc. ("South Broward Utility") from South Broward Utility to Clay Utility Company ("Clay Utility")

- ACK
- AFA
- APP
- CAF
- CMU
- CTR
- EAG
- LEG
- LIN
- OPC
- RCH
- SEC
- WAS
- OTH

Dear Ms. Bayo:

Enclosed for filing is an original and seven copies of a Motion to Dismiss or Strike City of Sunrise's Objection to Clay Utility Company's and South Broward Utility, Inc.'s Joint Application for Transfer of South Broward Utility's Water Certificate No. 359-W, Wastewater Certificate No. 290-S, and Utilities Facilities in the above-referenced matter. Please file the original in your docket and distribute the copies in accordance with your standard procedures.

If you have any questions or need any additional assistance concerning this matter, please do not hesitate to call me.

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AUG 5 1996
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Sincerely yours,
Scott G. Schildberg
Scott G. Schildberg

SGS/msa
Enclosure
cc: Susan Fleischner Kornspan, Esquire
John R. Marks, Esquire
Tim Vaccaro, Esquire

DOCUMENT NUMBER-DATE
08158 AUG-5 96
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Application by Clay Utility)
Company and South Broward Utility, Inc.,)
for Transfer of Water Certificate No. 359-)
W, Wastewater Certificate No. 290-S, and)
Utility Facilities from South Broward)
Utility, Inc., to Clay Utility Company)
_____)

DOCKET NO.: 960695-WS

Date Submitted for
Filing: August 2, 1996

**MOTION TO DISMISS OR STRIKE CITY OF SUNRISE'S OBJECTION TO
CLAY UTILITY COMPANY'S AND SOUTH BROWARD UTILITY,
INC.'S JOINT APPLICATION FOR TRANSFER OF SOUTH
BROWARD UTILITY'S WATER CERTIFICATE NO. 359-W,
WASTEWATER CERTIFICATE NO. 290-S, AND UTILITIES FACILITIES**

South Broward Utility, Inc. ("South Broward Utility"), and Clay Utility Company, by and through the following undersigned attorneys, hereby file this Motion to Dismiss or Strike City of Sunrise's Objection to Clay Utility Company's and South Broward Utility, Inc.'s Joint Application for Transfer of South Broward Utility's Water Certificate No. 359-W, Wastewater Certificate No. 290-S, and Utilities Facilities, and state as follows:

1. Clay Utility Company and South Broward Utility, Inc. filed a Joint Application by Clay Utility Company and South Broward Utility, Inc., for Transfer of Water Certificate No. 359-W, Wastewater Certificate No. 290-S, and Utility Facilities from South Broward Utility, Inc., to Clay Utility Company in this Docket No. 960695-WS ("Application for Transfer").
2. The City of Sunrise ("Sunrise") filed City of Sunrise's Objection to Clay Utility Company's and South Broward Utility, Inc.'s Joint Application for Transfer of South Broward Utility's Water Certificate No. 359-W, Wastewater Certificate No. 290-S, and Utilities Facilities ("Sunrise's Objection").

3. The test for whether the Florida Public Service Commission ("Commission") should grant an application for transfer is set forth in Section 367.071(1), Florida Statutes (1995).

The two prongs of the test are as follows:

- a. Whether the proposed transfer is in the public interest; and
- b. Whether the transferee will fulfill the commitments, obligations, and representations of the utility.

4. Sunrise's Objection inappropriately attempts to add an additional test and require Clay Utility Company to show that it has the financial and technical ability to serve the territory which South Broward Utility seeks to add to its PSC certificate in Docket No. 941121-WS ("Disputed Territory").

5. Objections to applications for transfer must request a hearing pursuant to Section 120.57, Florida Statutes, and set forth valid grounds for objecting to the transfer. See Sections 367.045(4) and 367.071(4), Florida Statutes (1995). Objections to applications for transfer also must state the grounds for the objection with particularity. See Rule 25-30.031, Florida Administrative Code ("FAC").

6. Contrary to the requirements of Section 367.045(4), Florida Statutes (1995), Sunrise's Objection did not request a Section 120.57 hearing in its objection to the transfer.

7. In fact, Sunrise did not request the Commission to do anything in this Docket No. 960695-WS in Sunrise's Objection. The relief requested by Sunrise in Sunrise's Objection to the Application for Transfer is for relief in Docket No. 941121-WS, the docket for South Broward Utility's application for additional service area. Sunrise's Objection requests:

[T]he Commission ... [to] determine and Clay Utility ...[to] show that it has the technical ability and financial ability to serve the

Encroachment Territory. If the Commission is inclined to grant Clay Utility's and SBU's Application [for Transfer], the issue that needs to be determined is whether Clay Utility is able to serve because if it cannot, the Amendment Application [in Docket No. 941121-WS] must be denied.

Sunrise's Objection, Paragraph 10.

Sunrise's Objection, requests no appropriate relief in this Docket No. 960695-WS and inappropriately seeks relief in another docket.

8. Sunrise's Objection does not set forth any grounds for objecting to the transfer. In fact, Sunrise's Objection does not even request that the Application for Transfer be denied. Sunrise's request for relief is based on the Commission granting the Application for Transfer (i.e., "[i]f the Commission is inclined to grant Clay Utility's and South Broward Utility's Application [for Transfer]", then the Commission must require Clay Utility Company to prove its ability to serve the Disputed Territory in the other docket, i.e., Docket 941121-WS on South Broward Utility's Application for Amendment of Territory, or else the Commission must deny South Broward Utility's Application for Transfer in Docket No. 941121-WS).

9. Rule 25-22.036(7)(a)(2) and (4), FAC, requires that Sunrise's Objection include (i) an explanation of how Sunrise's substantial interests will be or are affected by the Commission's determination in this Docket No. 960695-WS; and (ii) a concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle Sunrise to relief.

10. Sunrise's Objection makes the unsupported statement that it is "a party substantially affected by the Application [for Transfer]". Sunrise's Objection, Paragraph 1.

Sunrise's Objection does not explain how Sunrise or its interests are or will be substantially affected by the transfer of the water and wastewater certificates and utility facilities of South Broward Utility to Clay Utility Company.

11. Sunrise's Objection does not show how Sunrise is entitled to relief in a proceeding under Section 367.071, Florida Statutes (1995). Sunrise has failed to demonstrate that it is entitled to participate in this Docket No. 960695-WS as a matter of statutory right or pursuant to Commission rule, and Sunrise has failed to state a cause of action or set forth any ground for denying the Application for Transfer.

12. Sunrise's interests are not being substantially affected by the transfer of the water and wastewater assets of South Broward Utility to Clay Utility Company. Sunrise does not have any substantial interests subject to determination by or affected through the proceeding in this Docket No. 960695-WS.

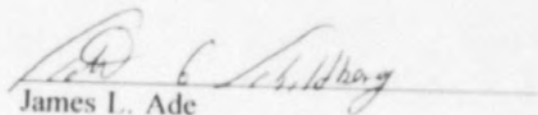
13. The issues of whether South Broward Utility has the financial ability, plant capacity and technical ability to serve the Disputed Territory in Docket No. 941121-WS is to be resolved in Docket No. 941121-WS.

14. Sunrise's Objection attempts to add an additional test to mandate that the Commission require Clay Utility Company to show that it has the financial and technical ability to serve the Disputed Territory. As set forth in paragraph 3, this is not the test for an Application for Transfer and, therefore, it is not relevant or material in this Docket No. 960695-WS. Pleadings which address immaterial matters should be stricken. See Rule 1.140(f), Florida Rules of Civil Procedure.

15. The issue of Clay Utility Company's financial ability, plant capacity, and technical ability to serve the Disputed Territory also is immaterial for other reasons. The Hugh F. Culverhouse Trust, dated February 4, 1993, ("Trust") is the sole owner of both South Broward Utility and Clay Utility Company. The ultimate owner of the utility company serving South Broward Utility's existing and proposed service area will not change as a result of a transfer of water and wastewater certificates and utility facilities from South Broward Utility to Clay Utility Company, nor will the transfer have any adverse effect on the financial ability, plant capacity, or technical ability of the Trust's company to serve the Disputed Territory or when the Trust's company can provide such service. The transfer will result in the Trust maintaining its interest in the water and wastewater certificates and utility facilities through its wholly owned Subchapter C corporation (Clay Utility Company) instead of its wholly owned Subchapter S corporation (South Broward Utility).

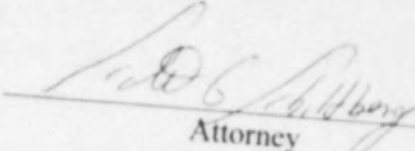
WHEREFORE, for the reasons set forth above, South Broward Utility, Inc., and Clay Utility Company respectfully move the Florida Public Service Commission to either dismiss or strike Sunrise's Objection.

MARTIN, ADE, BIRCHFIELD &
MICKLER, P.A.


James L. Ade
Florida Bar No. 000460
Scott G. Schildberg
Florida Bar No. 0613990
One Independent Drive, Suite 3000
Jacksonville, Florida 32202
Telephone: (904) 354-2050
Attorneys for Clay Utility Company and
South Broward Utility, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and seven copies of the Motion to Dismiss or Strike City of Sunrise's Objection to Clay Utility Company's and South Broward Utility, Inc.'s Joint Application for Transfer of South Broward Utility's Water Certificate No. 359-W, Wastewater Certificate No. 290-S, and Utilities Facilities have been furnished to Blanca Bayo, Director, Division of Records and Reporting, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Betty Easley Conference Center, Room 110, Tallahassee, Florida 32399-0850, by Federal Express this 2nd day of August, 1996, and copies of the foregoing Motion to Dismiss or Strike City of Sunrise's Objection to Clay Utility Company's and South Broward Utility, Inc.'s Joint Application for Transfer of South Broward Utility's Water Certificate No. 359-W, Wastewater Certificate No. 290-S, and Utilities Facilities have been furnished to Susan Fleischner Kornspan, Nason, Gildan, Yeager, Gerson & White, P.A., 1645 Palm Beach Lake Boulevard, Suite 1200, West Palm Beach, Florida 33401; John R. Marks, Katz, Kutter, Haigler, Alderman, Marks & Bryant, P.A., 106 East College Avenue, Suite 1200, Tallahassee, Florida, 32301; and Tim Vaccaro, Esquire, Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850; by Facsimile and U.S. mail this 2nd day of August, 1996.


Attorney