



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: April 10, 1997

TO: Division of Records & Reporting

FROM: Rosanne G. Capeless, Senior Attorney, Division of Legal Services *RLC*

RE: Docket No. ~~970429~~-WS - Joint application for authority to transfer Certificates Nos. 336-W and 291-S in Martin County from Radnor/Plantation Corporation d/b/a Plantation Utilities to IHC Realty Partnership, L.P. d/b/a Plantation Utilities.

Please file the attached letter from F. Marshall Deterding, Esquire, of Rose, Sundstrom & Bentley, LLP, dated April 1, 1997, in the above referenced docket.

RGC:mw

cc: Division of Water & Wastewater (Williams, Messer)

- ACK _____
- AFA _____
- APP _____
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April 1, 1997



John D. Williams, III
Water & Sewer Department
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Radnor/Plantation Corporation DBA Plantation Utilities
Transfer of Certificates
Our File No. 25067.02

Dear John:

As you will recall, you and JoAnn Chase of the Water and Wastewater Staff and Roseanne Capeless of the Commission's legal Staff agreed to meet with me representing the current owner and certificate holder for Plantation Utilities, along with a potential buyer's counsel, Mr. Bruce May, on Friday, March 14, 1997. The purpose of that meeting was to discuss the anticipated sale of the Utility assets of Plantation Utilities, the process for transfer, and the need to go forward with a conditional closing on the sale subject to subsequent Commission approval.

As Mr. May and I noted, conditional closings of this nature are not uncommon and appear to comply with the spirit, if not the letter, of Commission statutes and rules relating to utility transfers. In fact, a review of past Commission Orders dealing with similar circumstances where a utility, as part of a much larger real estate transaction, has been conditionally transferred subject to later Commission approval, shows that no fines have been levied, nor any other punitive measures taken against the Sellers, or transferee of the Utility. This is especially true where the utilities have attempted to cooperate by quickly filing the appropriate applications with the Commission and keeping the Commission Staff informed about the progress of the actual transfer.

John D. Williams, III
April 1, 1997
Page 2

You had indicated that if the public interest is ultimately determined to be served by such a transfer, you do not anticipate any proposal by the Staff to fine or otherwise penalize either entity involved in the transaction if we likewise file an application as quickly as possible and keep the Commission Staff informed of the progress of the transaction.

Not only is this case one that is especially likely to receive ultimate approval from the Commission as in the public interest, it is one that warrants conditional transfer procedures for the following reasons:

1. We have already talked to you and other members of the Staff concerning our plans and we will keep the Staff informed as the transaction progresses.

2. Because this is part of a large commercial real estate transaction of which the utility is only a very small part and time is of the essence in that transaction, it was not commercially practical to delay closing on the overall transaction until Commission's approval of the Utility component.

3. The Utility transfer is conditional. The Utility's agreement between Buyer and Seller will include a "unwind" or "transfer back" provision should the Commission ultimately determine that the transfer is not in the public interest.

Several additional factors lead to the conclusion that this case is one of the strongest I have seen for the transfer being considered in the public interest. First, while the Utility Seller had adequate financial support for the Utility, the Buyer will have substantially more financial resources at the parent company level. Second, because of the simultaneous purchase of the commercial real estate serviced by the Utility, the Buyer will own a substantial portion of the property within the service area. The Commission has noted in previous cases that ownership of this nature creates a desire on the part of the related party developer/parent to insure that the utility is well operated and maintained. Third, as is true with the selling entity, once the Buyer acquires the other commercial properties within the service territory, the Buyer owned commercial and residential facilities receiving service from the Utility constitute approximately 40% of the customer base. Once again, having the Utility ownership follow the ownership of the facilities receiving service gives an incentive for proper operation and maintenance of the Utility system and has been

John D. Williams, III
April 1, 1997
Page 3

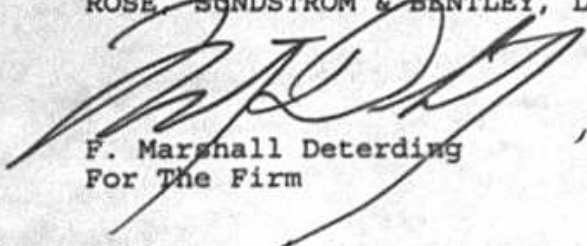
recognized as a factor in considering public interest by the Commission in the past.

Based upon the above facts as related to you and other members of the Staff in attendance at our meeting, it is my understanding that you do not anticipate any problems with either the approval of the transfer or any suggestion of fine or other penalty against the Buyer and/or the Seller.

We should be filing an application for transfer within the next two or three days and it is my understanding that the closing on the actual real estate transaction, including the utility, is currently scheduled for April 1st. I will keep you informed of matters as they progress in this regard, otherwise you can expect to receive the application within the next several days. If you disagree with my characterization of the Staff position as expressed at our meeting in any way, please let me know.

Sincerely,

ROSE, SUNDSTROM & BENTLEY, LLP



F. Marshall Deterding
For The Firm

FMD/bsr

cc: JoAnn Chase
Roseanne Capeless
Bruce May
Bill Dean
Mathew Comisky