

ORIGINAL
FILE COPY

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

RECEIVED
PUBLIC SERVICE COMMISSION
JUN 10 AM 10:45
MAIL ROOM

- JAMES L. ADE
- LYNDA R. AYCOCK
- W. G. 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

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

June 9, 1997

FEDERAL EXPRESS

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

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

Dear Ms. Bayo:

In connection with the above-referenced matter, please find enclosed for filing an original and seven copies of the Response of South Broward Utility, Inc., and Clay Utility Company to the City of Sunrise's Motion for Clarification of Order No. PSC-97-0579-FOF-WS. Please file the original and distribute the copies in accordance with your usual procedures.

- ACK
- AFA
- APP
- CAF
- CMU
- CTR
- EAG
- LEG SGS:dws
Enclosures
- LIN
- OPC cc: Susan Fleischner Kornspan, Esquire
John R. Marks, Esquire
Timothy Vaccaro, Esquire
Mr. Eugene F. Cassidy
Mr. Hugh F. Culverhouse, Jr.
- RCH
- SEC
- WSP

If you have any questions regarding this matter, please feel free to contact me.

Sincerely yours,

Scott G. Schildberg
Scott G. Schildberg

DOCUMENT NUMBER-DATE
05758 JUN 10 97
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,)
Utility Facilities from South)
Broward Utility, Inc., to Clay)
Utility Company)

DOCKET NO.: 960695-WS

Date Submitted for
Filing: June 9, 1997

RESPONSE OF SOUTH BROWARD UTILITY, INC.,
AND CLAY UTILITY COMPANY TO THE
CITY OF SUNRISE'S MOTION FOR CLARIFICATION
OF ORDER NO. PSC-97-0579-FOF-WS

South Broward Utility, Inc. ("South Broward Utility"), and Clay Utility Company ("Clay Utility"), by and through the following undersigned attorneys, hereby file with the Florida Public Service Commission ("Commission") this Response of South Broward Utility and Clay Utility to the City of Sunrise's Motion for Clarification of Order No. PSC-97-0579-FOF-WS, and state as follows:

History of
Joint Application for Transfer of
Certificate Nos. 359-W and 290-S

1. On May 31, 1996, South Broward Utility and Clay Utility filed a Joint Application for Transfer of water and wastewater certificates ("Application for Transfer").
2. On or about July 3, 1996, the City of Sunrise ("Sunrise") filed an objection to the Application for Transfer ("Sunrise's Objection").
3. On or about August 2, 1996, South Broward Utility and Clay Utility filed a motion to dismiss or strike Sunrise's Objection ("Motion to Dismiss or Strike").

DOCUMENT NUMBER-DATE

05758 JUN 10 97

FPSC-RECORDS/REPORTING

4. On December 5, 1996, the Staff of the Commission issued a recommendation that South Broward Utility's Motion to Dismiss or Strike be granted ("Staff Recommendation"), a copy of which is attached hereto as Exhibit A.

5. On December 30, 1996, Sunrise filed a Notice of Withdrawal of Sunrise's Objection.

6. On May 20, 1997, the Commission issued Order No. PSC-97-0579-FOF-WS which acknowledged Sunrise's withdrawal and approved the transfer ("Transfer Order").

7. On May 30, 1997, Sunrise filed a Motion for Clarification of Order No. PSC-0579-FOF-WS ("Motion for Clarification"). In its Motion for Clarification, Sunrise noted that on December 18, 1996, Sunrise had filed a Notice of Appeal of the Commission's orders in Docket No. 94-1121-WS which granted South Broward Utility's application to amend its certificates ("Amendment Application") to serve the areas requested in the Amendment Application ("Requested Area"), ("Amendment Order").

8. In its Motion for Clarification, Sunrise seeks to have the Commission amend the Transfer Order and include the following language in the amended Transfer Order:

- a. the Water and Wastewater Certificates transferred by South Broward Utility to Clay Utility, and specifically the Requested Territory portion of those Certificates, are the subject of a pending appeal; and
- b. the Amendment Order, pursuant to which the Requested Territory was added to the Water and Wastewater Certificates transferred from South Broward Utility to Clay Utility, is stayed.

Discussion

9. Motions for rehearings, reconsiderations, and clarification" are "merely to bring to the attention of the trial court ... or administrative agency ... some point which it overlooked or failed to consider when it reached its order in the first instance." Diamond Cab Co. Of Miami v. King, 146 So.2d 889, 891 (Fla. 1962); See also Rule 9.330(a), Florida Rules of Appellate Procedure. Such motions are not procedures for rearguing the case. Id.

10. Such motions can not be used to raise new issues. For example, in Fiesta Fashions, Inc. v. Capin, 450 So.2d 1128 (Fla. 1st DCA 1984), appellants sought in a motion for rehearing for the court to "clarify the issue." The court noted that "[s]ince this issue was not raised by appellant's briefs on the hearing of this case, it was not overlooked by this court and cannot be raised for the first time as a motion for rehearing." Id. at 1129. The Commission recently held:

[t]he Commission has stated on multiple occasions that a motion for reconsideration is not the appropriate vehicle for introducing new arguments and issues not previously raised by a party.

Order No. PSC-97-0552-FOF-WS, Docket No. 920199-WS. See also, Polyglycoat Corp. v. Hirsch Distributors, Inc., 442 So.2d 958, 960 (Fla. 4th DCA 1983), rev. den., 451 So. 2d 848 (Fla. 1984); Price Wise Buying Group v. Nuzum, 343 So.2d 115, 117 (Fla. 1st DCA 1977).

11. The Florida Supreme Court has also stated that the reweighing of evidence is not a sufficient basis for reconsideration

and that the "granting of a petition for reconsideration should not be based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315, 317 (Fla. 1974).

12. Sunrise is attempting to raise a new issue in the proceeding which is not appropriate in a motion for clarification. Sunrise knew on December 30, 1996, the date that it filed its notice of withdrawal of its objection, that on December 18, 1996, it had filed its Notice of Appeal of the Amendment Order, yet Sunrise made no mention of the notice of appeal in its pleading. The issue of a potential stay of the Transfer Order was not put before the Commission by Sunrise, and, therefore, the Commission could not overlook it because it was not raised before the Commission.

13. Rule 25-22.060, Florida Administrative ("FAC"), governs the type of post decision motion filed by Sunrise, and provides, in part, that:

[a]ny party to a proceeding who is adversely affected by an order of the Commission may file a motion for reconsideration of that order. (Emphasis added).

14. Sunrise is neither a party nor is it adversely affected by the order. Sunrise withdrew Sunrise's Objection and the withdrawal was acknowledged by the Commission.

15. Furthermore, even if Sunrise had not withdrawn its objection, Sunrise lacks standing to be a party in this proceeding. As discussed in Staff's Recommendation, p. 6:

Florida courts have set forth a specific standard for determining substantial interests. In Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981), the Court developed a two-prong test: before an individual can be considered to have a substantial interest in the outcome of a proceeding, he or she must demonstrate 1) injury in fact which is of sufficient immediacy to warrant a formal hearing, and 2) the injury is of a type which the proceeding is designed to protect. Sunrise's objection does not satisfy either prong.

For a more extensive and fact based discussion see Exhibit A.

16. Because Sunrise is not a party to this proceeding, it does not have a right to file a motion for reconsideration.

17. Pursuant to Rule 25-22.061(1)(a), FAC, the Commission is only required to grant a motion for stay pending judicial review of an order involving the refund of moneys to customers or a decrease in rates charged to the customers. The Transfer Order does not involve either circumstance. Rule 25-22.061(2), Florida Administrative Code, provides that in determining whether to grant a motion to stay a final order pending judicial review, the Commission may, among other things, consider:

- a. Whether the petitioner is likely to prevail on appeal;
- b. Whether the petitioner has determined that he is likely to suffer irreparable harm if the stay is not granted; and
- c. Whether the delay will cause substantial harm or be contrary to the public interest.

Sunrise has not even alleged that (1) it is likely to prevail on appeal, (2) it is likely to suffer irreparable harm if the stay is

not granted, or (3) the delay will not cause substantial harm or be contrary to public policy.

18. In a case involving an appeal of a Commission Order, the Florida Supreme Court noted:

A supersedeas on appeal from a final judgment stays the execution but does not undo the performance of the judgment. Crichlow v. Maryland Casualty Company, 116 Fla. 226, 156 So. 440 (1934). Being preventive in its effect the stay does not undo or set aside what the trial court has adjudicated, Henry v. Whitehurst, 66 Fla. 567, 64 So. 233 (1914), it merely suspends the order. El Prado Restaurant, Inc. v. Weaver, 259 So.2d 524 (Fla. 3d DCA 1972).

City of Plant City v. Mann, 400 So.2d 952, 953 (Fla. 1981)

19. Accordingly, any stay relating to Sunrise's appeal of the Amendment Order does not undo or set aside the Commission's decision in the Amendment Order.

20. For the reasons above stated, the Commission should deny Sunrise's Motion for Clarification.

Dated this 9th day of June, 1997.

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

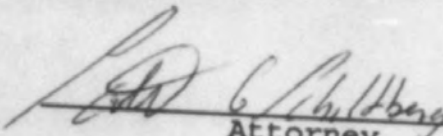
By: 

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 South Broward Utility,
Inc., and Clay Utility Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and seven copies of the foregoing Response of South Broward Utility, Inc., and Clay Utility Company to the City of Sunrise's Motion for Clarification of Order No. PSC-97-0579-FOF-WS 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 9th day of June, 1997; and copies of the foregoing Response of South Broward Utility, Inc., and Clay Utility Company to the City of Sunrise's Motion for Clarification of Order No. PSC-97-0579-FOF-WS have been furnished to Susan Fleischner Kornspan, Esquire, Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A., 777 S. Flagler Drive, Suite 310E, West Palm Beach, Florida 33401; John R. Marks, III, Katz, Kutter, Haigler, Alderman, Marks, Bryant & Yon, 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 U.S. mail this 9th day of June, 1997.



Attorney

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center @ 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

MEMORANDUM

DECEMBER 5, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (VACCARO)
DIVISION OF WATER & WASTEWATER (BRADY)

RE: DOCKET NO. 960695-WS - JOINT APPLICATION FOR APPROVAL OF
TRANSFER OF CERTIFICATES NOS. 359-W AND 290-S AND UTILITY
FACILITIES FROM SOUTH BROWARD UTILITY, INC. TO CLAY
UTILITY COMPANY
COUNTY: BROWARD

AGENDA: DECEMBER 17, 1996 - REGULAR AGENDA - INTERESTED PERSONS
MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\960695WS.RCM

CASE BACKGROUND

South Broward Utility, Inc., (SBU or utility) is a Class B utility which provides service to approximately 2,446 water and 2,023 wastewater customers in Broward County. The utility's 1995 income statement shows combined annual revenues of \$1,836,000 and a combined operating income of \$527,000. SBU was granted Certificates Nos. 359-W and 290-S by Order No. 9806 in February 18, 1981, with the first customers connected in 1986. SBU is currently 100% owned and operated by the Hugh F. Culverhouse Trust.

Clay Utility Company (Clay or utility) was a Class A water and wastewater utility in Clay County which was also owned 50% by the Hugh F. Culverhouse Trust. On June 3, 1996, Clay and SBU filed a joint application for transfer of water Certificate No. 359-W and Wastewater Certificate No. 290-S from SBU to Clay. On July 3, 1996, staff notified the applicants of deficiencies in the application which were corrected on August 28, 1996.

On July 3, 1996, the City of Sunrise (Sunrise or city) filed an objection to Clay Utility Company's and South Broward Utility, Inc.'s Joint Application for Transfer of South Broward Utility's Water and Wastewater Certificates Nos. 359-W and 290-S, and utilities facilities. On August 5, 1996, SBU and Clay filed a Motion to Dismiss or Strike City of Sunrise's Objection to Clay

EXHIBIT A

DOCKET NO. 960695-WS
DATE: DECEMBER 5, 1996

Utility Company's and South Broward Utility, Inc.'s Joint Application for Transfer of South Broward Utility's Water Certificate No. 359-W and Wastewater Certificate No. 290-S, and Utilities Facilities.

On August 12, 1996, Sunrise filed a response to SBU's and Clay's motion to dismiss or strike. This recommendation addresses SBU's and Clay's motion to dismiss or strike Sunrise's objection.

DOCKET NO. 960695-WS
DATE: DECEMBER 5, 1996

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant SBU's and Clay's 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 and Wastewater Certificate No. 290-S, and Utilities Facilities?

RECOMMENDATION: Yes. The Commission should grant SBU's and Clay's motion to dismiss Sunrise's objection to Clay's and SBU's joint application for transfer. (VACCARO, BRADY)

ANALYSIS: As stated in the case background, on July 3, 1996, Sunrise filed its notice of objection in this docket. In support thereof, Sunrise sets forth the following grounds:

1. Sunrise is a party substantially affected by SBU's and Clay's joint application for transfer;
2. SBU has an application before the Commission in Docket No. 941121-WS for an amendment of its certificates to add additional territory in Broward County. Sunrise objected to the amendment, and the Commission held a Section 120.57, Florida Statutes hearing on SBU's application on April 8-9, 1996;
3. Two of the issues before the Commission were SBU's financial and technical ability to serve the additional territory;
4. Pursuant to SBU's and Clay's joint application for transfer, Clay is the utility now seeking to serve additional territory; and
5. The Commission must now determine and Clay must show that it has the financial and technical ability to serve the additional territory. If the Commission is inclined to grant SBU's and Clay's joint application of transfer, it must determine if Clay is able to serve the additional territory because if Clay cannot serve, the Commission must deny the amendment application.

On August 5, 1996, SBU and Clay filed a motion to dismiss or strike Sunrise's objection. As grounds for its motion, SBU and Clay state the following:

1. Under Section 367.071(1), Florida Statutes, the test for whether the Commission should grant an application for

DOCKET NO. 960695-WS
DATE: DECEMBER 5, 1996

transfer is: 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. Sunrise inappropriately attempts to add an additional test requiring Clay to show that it has the financial and technical ability to serve the territory sought by SBU in its amendment application. Sunrise's additional test is not the test for a transfer application and, therefore, is irrelevant or immaterial in this docket.

2. In its objection to the transfer application, Sunrise did not request a Section 120.57, Florida Statutes hearing as required by Sections 367.045(4) and 367.071(4), Florida Statutes. Sunrise's objection inappropriately requested nothing other than that the Commission deny SBU's amendment application if it determines that Clay cannot serve the territory SBU seeks in its amendment application.
3. Rule 25-30.031, Florida Administrative Code, provides that objections to transfer applications must state the grounds for the objection with particularity. Sunrise set forth no grounds for objecting to the transfer and did not even request that the transfer be denied.
4. Sunrise's objection does not include an explanation of how Sunrise's substantial interests will be or are affected by the Commission's determination of this transfer docket as required by Rule 25-22.036(7)(a)(2), Florida Administrative Code. Sunrise's interests are not being substantially affected by the transfer of SBU's assets to Clay nor does Sunrise have any substantial interests subject to determination in this transfer docket.
5. Rule 25-22.036(7)(a)(4), Florida Administrative Code, requires that Sunrise's objection include a concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle Sunrise to relief. Sunrise's objection does not demonstrate that it is entitled to participate in this transfer docket as a matter of statutory right or pursuant to Commission rule, nor does it state a cause of action or set forth any ground for denying the transfer application.

DOCKET NO. 960695-WS
DATE: DECEMBER 5, 1996

6. SBU and Clay make assertions regarding the merits of the transfer docket which staff finds inappropriate to be considered by the Commission in this recommendation.

On August 12, 1996, Sunrise filed a timely response to SBU's and Clay's motion. In its response Sunrise asserts that the issue of Clay's financial and technical ability to serve the territory sought in SBU's amendment application is directly responsive to whether Clay will fulfill the commitments, obligations and representations of the utility as required under section 367.071(1), Florida Statutes. Sunrise also asserts that it is an interested party because the territory SBU seeks in its amendment application which would subsequently be transferred to Clay is inside Sunrise's established water and wastewater utility service area, and Sunrise is already providing service inside that territory. Finally, Sunrise asserts that Clay and SBU argue the merits of their transfer application and Clay's ability to serve the amendment territory in a motion to dismiss or strike, contrary to the Florida Rules of Civil Procedure and the Commission's practice and procedure.

When addressing a motion to dismiss, it is first appropriate to examine if, assuming that all allegations in the objection are facially valid, the objection fails to state a cause of action for which relief can be granted. Staff believes that even assuming that all allegations in the city's objection are facially valid, Sunrise seeks inappropriate relief. The Commission cannot grant Sunrise's request to deny the amendment application in Docket No. 941121-WS, in the present transfer proceeding. Additionally, Sunrise's concern over duplication of service addressed in its response to SBU's and Clay's motion is an issue which the Commission addresses in amendment applications, not transfer dockets. Therefore, staff recommends that the Commission grant SBU's and Clay's motion to dismiss.

Although staff believes that the foregoing analysis provides sufficient justification for dismissing Sunrise's objection, there are other reasons for dismissal. Staff has included the following analysis in the event that the Commission should require additional grounds for dismissal of Sunrise's objection.

Substantial Interests

Sunrise has failed to demonstrate a substantial interest in the outcome of the transfer application. Sunrise's only ground for objecting to the transfer is that the Commission must determine and Clay must show its financial and technical ability to serve the territory sought by SBU in the amendment docket.

DOCKET NO. 960695-WS
DATE: DECEMBER 5, 1996

Section 367.071(1), Florida Statutes, requires a showing that Clay can fulfill the commitments, obligations and representations of SBU. Rule 25-30.037(2)(j), Florida Administrative Code, requires a showing of Clay's experience in water and wastewater utility operations and its financial ability to provide service. Therefore, staff agrees that Clay's financial and technical ability are at issue in the transfer docket (although staff believes that these issues relate to SBU's entire service area, not just the specific area in the transfer docket).

However, Sunrise's objection does not challenge Clay's financial and technical ability, nor does it set forth how a determination of such will affect the City. Sunrise merely sets forth an issue which the Commission must determine regardless of Sunrise's objection.

Further, Florida courts have set forth a specific standard for determining substantial interests. In Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981), the Court developed a two-prong test: before an individual can be considered to have a substantial interest in the outcome of a proceeding, he or she must demonstrate 1) injury in fact which is of sufficient immediacy to warrant a formal hearing, and 2) the injury is of a type which the proceeding is designed to protect. Sunrise's objection does not satisfy either prong.

As stated earlier, Sunrise's objection made no supporting statements regarding its substantial interest. Sunrise did, however, state in its response to SBU's and Clay's motion that the territory sought by SBU in the amendment application would subsequently be served by Clay if the transfer is approved. Sunrise states that the city is already serving that territory.

By Order No. PSC-95-0417-POP-WS, issued March 27, 1995, in Docket No. 940050-WS, the Commission granted Colonies Water Company's (CWC) motion to dismiss an objection of the transfer of CWC to MHC-DeANZA Financing Limited Partnership d/b/a Colonies Water Company, filed by the City of Margate (Margate) and Colonies of Margate Homeowners Association. One of Margate's grounds for objection was its allegation that CWC was in violation of Margate's service area.

Regarding the first prong of the Agrico test the Commission stated:

in order to meet the Agrico test, a petitioner must demonstrate that it will suffer injury in fact which is of sufficient immediacy to

DOCKET NO. 960695-WS
DATE: DECEMBER 5, 1996

entitle it to an administrative proceeding and that the injury is of the type which the proceeding is designed to protect. Even assuming that this Commission approves the transfer, the objectors will be in the same position as they were before the transfer. Thus, they have not demonstrated that they will suffer injury in fact.

Such is the case in the present docket. Sunrise will be in the same position if the transfer is approved as it will be upon completion of Docket No. 941121-WS. By Order No. PSC-96-1137-POF-WS, issued September 10, 1996, the Commission granted SHU's amendment application. Sunrise filed a motion for reconsideration of the order. At the November 26, 1996 Agenda Conference, the Commission denied Sunrise's motion for reconsideration. Therefore, if the Commission approves the transfer in this docket, the only resulting change is that Clay will be authorized to provide service, not SHU. As for the territory Sunrise is already serving, staff notes that the service currently being provided by Sunrise is emergency service to a small portion of the disputed territory, which the Commission acknowledged in the amendment application order.

Regarding the second prong of the Agrico test the Commission stated:

Nevertheless, to the extent that there may be any duplication, which the City has not demonstrated, under Section 367.045(5)(a), Florida Statutes:

The commission may not grant a certificate of authorization for a proposed system, or an amendment to a certificate of authorization for the extension of an existing system which will be in competition with, or a duplication of, any other system or portion of a system, unless it first determines that such other system or portion thereof is inadequate to meet the reasonable needs of the public or that the person operating the system is unable, refuses, or neglects to provide reasonably adequate service. (Emphasis added.)

This case does not concern an original certificate for a proposed system, nor an amendment for the extension of an existing

DOCKET NO. 960695-WS
DATE: DECEMBER 5, 1996

system. Accordingly, the City's concerns are unfounded.

Likewise, the present docket does not concern an original certificate for a proposed system, nor an amendment for the extension of an existing system. Therefore, Sunrise's concerns about duplication of service are unfounded in the present docket. Sunrise's substantial interest, which included the issue of duplication of service, was established and resolved in Docket No. 941121-WS.

In summary, Sunrise has not met the two prong test of Agrico because Sunrise has failed to demonstrate that the transfer of SBU to Clay will cause Sunrise to suffer an injury in fact and that the potential injury resulting from Docket No. 941121-WS is not of a type which this transfer proceeding is designed to protect.

Compliance with Rule and Statutory Requirements

Sunrise's objection does not meet the requirements set forth in the Commission's rules. Rules 25-22.036(7)(a)(2) and (4), Florida Administrative Code, require that a party initiating formal proceedings (i) provide an explanation of how its substantial interests will be or are affected by the proceeding and (ii) provide a concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle it to relief.

Sunrise's objection sets forth no support for its statement that it is a party substantially affected by the transfer application. Additionally, Sunrise has set forth no statutory provision or Commission rule which entitles it to relief in this docket.

Further, SBU alleges that Sunrise has not requested a Section 120.57, Florida Statutes, hearing pursuant to Sections 367.045(4), and 367.071(4), Florida Statutes, nor has Sunrise even requested that the transfer even be denied. Arguably, the statute can be read as not requiring that a hearing be requested. Regardless, all that Sunrise requests is that if it is determined that Clay cannot serve the territory sought in SBU's amendment application, that the Commission deny SBU's amendment application.

Based on the foregoing, staff recommends that the Commission grant SBU's and Clay's Motion to Dismiss City of Sunrise's Objection to Clay Utility Company's and South Broward Utility's Inc.'s Joint Application for Transfer of South Broward Utility's Water Certificate No. 309-W and Wastewater Certificate No. 290-3, and Utilities Facilities.

DOCKET NO. 960695-WS
DATE: DECEMBER 5, 1996

ISSUM 2: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open pending the Commission's final decision on Clay's and SBU's joint application for transfer. (VACCARO, BRADY)

ANALYSIS: The Commission is scheduled to make a final decision on Clay's and SBU's joint application for transfer on February 4, 1997. This docket should remain open pending that decision.