

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

RECEIVED

DEC 23 1997

MEMORANDUM

FPSC - Records/Reporting

DECEMBER 23, 1997

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

FROM: DIVISION OF LEGAL SERVICES (JAEGER) *PPD*
DIVISION OF WATER & WASTEWATER (REDEMANN) *bsm gdw*

RE: DOCKET NO. 961343-WS - BONITA SPRINGS UTILITIES, INC. -
PETITION BY SOUTHERN PINES HOMEOWNERS OF BONITA SPRINGS
INC. TO RESCIND EXEMPTION GRANTED TO BONITA SPRINGS
UTILITIES, INC.
COUNTY: LEE

AGENDA: JANUARY 6, 1998 - REGULAR AGENDA - PARTIES MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\961343-3.RCM

CASE BACKGROUND

Bonita Springs Utilities, Inc. (Bonita Springs or utility), is a non-profit association which provides water and wastewater service in Lee County to approximately 19,542 water and 12,213 wastewater customers. The financial statement of Bonita Springs for 1994 shows that the annual operating revenue from water and wastewater is \$5,320,144. The utility had been considered exempt from Commission regulation pursuant to Section 367.022(7), Florida Statutes.

The Commission acknowledged Bonita Springs' exemption from regulation of its water system in Dockets Nos. 690404-W, 70337-W, 70145-W and 8188-W by Order No. 5223, dated June 7, 1971. Bonita Springs was granted a wastewater exemption in Docket No. 910604-SU, by Order No. 24921, issued August 16, 1991. These orders indicated that service would be provided only to members of the corporation.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

On November 12, 1996, the Southern Pines Homeowners of Bonita Springs, Inc. (Southern Pines or homeowners) filed a petition to rescind the exemption granted to Bonita Springs. The petition stated that the exemption from the Florida Public Service Commission regulation was based on the assumption that Bonita Springs was a non-profit cooperative providing service solely to members who own and control such cooperatives. Southern Pines alleged that Bonita Springs provided water and wastewater service to many individually metered and billed customers who were denied membership in the Corporation. Southern Pines has also alleged that Bonita Springs is collecting water and wastewater revenues in excess of the corporation expenses and that these excess revenues are dispensed in the form of capital credits to the corporate members, but that Southern Pines' members do not receive any share of these capital credits. The homeowners also requested that the Commission review Bonita Springs' operations, audit its books, and "reassign the already distributed capital credits to every customer on a fair and equitable basis."

After receiving information from the homeowners, including the utility's bylaws, its corporate structure, financial statements, newspaper articles, and documents relating to Bonita Springs' rate proceeding before Lee County, staff filed its recommendation on June 12, 1997. The Commission considered this recommendation at the June 24, 1997 Agenda Conference and issued Order No. PSC-97-0841-FOF-WS on July 14, 1997. That Order required as follows:

ORDERED by the Florida Public Service Commission that Bonita Springs Utilities, Inc., shall be given 60 days from the date of this Order to either revise its by-laws to comply with the requirement of Section 367.022(7), Florida Statutes, that it only provide service to its members, or apply for an original certificate with the Commission. It is further

ORDERED that, while we will not initiate show cause proceedings at this time, a show cause action shall be considered if Bonita Springs Utilities, Inc., fails to attain compliance with the statute, or fails to apply for an original certificate within the allotted 60 days.

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By letter dated September 5, 1997, the attorney for Bonita Springs advised staff that on September 2, 1997, the Board of Directors of Bonita Springs approved amending the company's by-laws. Also, the letter advised that the Board had directed its staff to provide a draft bylaw amendment for review and approval, and to advise the Commission of its intentions in this matter. However, by that same letter, Bonita Springs requested an additional sixty days in which to work out the mechanics of the by-law amendment. This request was granted by Order No. PSC-97-1348-PCO-WS, issued on October 27, 1997. By that Order, Bonita Springs was given until November 11, 1997, to either revise its bylaws to comply with the requirements of Section 367.022(7), Florida Statutes, or apply for an original certificate.

Subsequently, by letter dated October 23, 1997, the attorney for Bonita Springs advised staff that the company's Board of Directors had voted, on October 21, 1997, to amend Article V of the Bylaws to comply with Section 367.022(7), Florida Statutes. A copy of the letter and Article V, as amended is attached as Attachment 1.

This recommendation addresses whether Bonita Springs, with the amendment of Article V, has complied with Order No. PSC-97-0841-FOF-WS and what action should the Commission take on the Petition of Southern Pines requesting the Commission to rescind the exemption granted Bonita Springs.

DISCUSSION OF ISSUES

ISSUE 1: Has Bonita Springs, as required by Order No. PSC-97-0841-FOF-WS, revised its bylaws to comply with the requirements of Section 367.022(7), Florida Statutes?

RECOMMENDATION: Yes, the bylaws, as amended, exempt Bonita Springs from the regulation of this Commission pursuant to the provisions of Section 367.022(7), Florida Statutes. (JAEGER)

STAFF ANALYSIS: As stated in the Case Background, Bonita Springs was ordered by Order No. PSC-97-0841-FOF-WS (the Order) to either revise its bylaws to comply with the requirements of Section 367.022(7), Florida Statutes, or apply for an original certificate. The Board of Directors chose to amend the bylaws as shown in Attachment 1.

Section 1 of the amended Article V provides in pertinent part:

It is the intent of the Corporation to provide service solely to its members. The holders of membership certificates of, or accounts with, this Corporation are its members. . . . Service is first provided to a parcel of land based on proper application by the owner and admission to membership in the Corporation. Thereafter, persons not holding a direct ownership interest in the property including, but not limited to, tenants, lessees, sublessees, . . . and others who receive service as a result of the owner's membership status cannot also be considered members unless the person occupies an individually metered premises, and accepts responsibility for service and payment obligations, in which case they shall be substituted as a member for the period of occupancy. There shall be no membership fee as such, provided that the Corporation may charge initial connection and other fees upon the issuance or acquisition of each membership certificate or account.

Section 3 of Article V allows each member a vote at any meeting of the Corporation on items submitted to a vote, provided that the member (to include account holder) is in good standing for all accounts or certificates. Also, Section 4 of the amended Article V provides in pertinent part:

Termination of such membership shall result in a disconnection of water and sewer service to the member. Termination shall not result in forfeiture of a member's entitlement to any patronage refund resulting from status as a member pursuant to Article XII of these By-Laws.

By three letters dated November 19, 1997, two to staff counsel and one to the Division of Consumer Affairs, Jay Arend, President of the Southern Pines Homeowners of Bonita Springs, questions whether the amendments to Article V actually bring Bonita Springs into compliance. In the letter to the Division of Consumer Affairs (attached as Attachment 2), Mr. Arend raised various concerns and asked several questions. These concerns and some of the questions were reiterated in his letters to the staff counsel (attached as Attachments 3 and 4).

First, he asks what classes of customers are eligible for membership. The amended bylaws now state those customers who occupy individually metered premises, and accept responsibility for service and payment obligations, shall be substituted as a member. Staff believes that this provision is unambiguous.

Second, he asks why does the Board of Directors have to approve anyone for membership. Staff believes that this approval is just an acknowledgment that a person has complied with the requirements for being a member. Going back to question one above, the amendment states that, upon compliance, the person shall be substituted as a member.

Third, he asks what is the definition of an "account" and whether there are two classes of membership now. By the amended Article V, it appears that a person has an account by occupying an individually metered premises, and agreeing to accept responsibility for service and payment obligations. Once a person does that, they shall be a member for the period they have an account, with all rights to vote and entitlement to any patronage refund for the period they are a member. Therefore, as long as they are a member, they have the same rights and privileges of any other member.

Fourth, he asks does an account holder have the same rights as given all other members and can they transfer "Capital Credits" exactly the same as the other members. As stated above, Staff believes that the articles, as amended, treat an account holder

just like any other member, and protect their right to any patronage refund.

Fifth, he asks, "Why is it necessary 'to substitute the Member with the Occupant' where a person occupies an individually metered premises, and accepts responsibility for service and payment obligations. Why isn't the Membership just Transferred . . .?" Staff believes that this is merely a reasonable condition for obtaining service, and cannot discern any legal difference with "substituting the member with the occupant" and "transferring the membership".

Sixth, he asks, "shouldn't there be a written plan filed with the PSC which describes in detail and time frame which customers will not be added to BSU's Membership List, and how those added customers will be classified." As stated above, the amended articles state what a person must do to obtain an account, and, upon attaining an account, those persons shall be members with all rights and no fees required. Therefore, staff does not believe that such a plan is required.

Seventh, Mr. Arend argues that the memberships, along with the rights to the Capital Credits should be retroactive to January 1, 1997. However, Orders Nos. PSC-97-0841-FOF-WS and PSC-97-1348-PCO-WS gave Bonita Springs until November 11, 1997, to revise its bylaws to comply with the provisions of Section 367.022(7), Florida Statutes, and did not require any such amendments to be retroactive. Further, if the Commission agrees that the amendments meet the requirements of Section 367.022(7), Florida Statutes, then Bonita Springs is exempt from further regulation by this Commission.

Finally, in his first letter to staff counsel, Mr. Arend requests "legal assistance from your group to see that the 8,000 or 9,000 Non-Members are represented and that they receive Membership if they are qualified according to Florida State Statutes." Then, in a follow-up letter to staff counsel, also dated November 19, 1997, but not received until December 10, 1997, Mr. Arend questions the utility's calculation of the new members that will be added by these amendments. By notice dated November 11, 1997, to its utility customers, Bonita Springs refers to the requirement by the Commission for it to amend its bylaws to maintain its exempt status. In that notice, Bonita Springs states that it has had to expand its definition of membership, and estimates that

approximately 2,500 existing customers will join the current 14,000 member-customers. Mr. Arend believes that there is more like 8,000 to 9,000 customers who deserve to be examined closely to verify their qualifications for membership. He further argues that this is the last chance for examining the utility's customer lists and verifying the accuracy of Bonita Spring's adding each and every qualifying customer to its membership list.

In reviewing the notice to the utility customers, staff notes that Bonita Springs specifically states that as of October 21, 1997, the "Board of Directors voted to revise the Utility's by-laws to expand membership . . . to include customers who do not own their property but who 'occupy an individually metered premise and accept responsibility for service and payment obligations.' As of the November 1997 billing, any rental tenants who meet this criteria will be welcomed as members." Staff believes that the bylaws as amended and this notice demonstrate that Bonita Springs is now in compliance with Section 367.022(7), Florida Statutes.

Also, if Bonita Springs fails to follow its own bylaws and the pronouncements of this notice, then the people who believe they have wrongly been denied membership status may then file their petition or complaint. However, at this time, staff believes that the request of Mr. Arend is premature, and the Commission should first see if a problem develops before it takes any further action. Therefore, staff does not believe that the Commission needs to provide legal assistance for customers to apply for service. If, as stated above, Bonita Springs does not confer membership status, then Mr. Arend or the affected customers could either contact the Office of the Public Counsel, or again file a formal petition or complaint, and the Commission could then take whatever action it deemed necessary.

Having stated the above, staff believes that the Commission must only determine whether the amendments comply with the requirements of Section 367.022(7), Florida Statutes. That section exempts from Commission regulation any nonprofit association providing service solely to members who own and control such association. Staff believes that, with the provisions set forth above, Bonita Springs now conforms to the provisions of Section 367.022(7), Florida Statutes. Therefore, staff recommends that the Commission find that the utility has complied with the requirements of Order No. PSC-97-0841-FOF-WS and is now exempt from Commission regulation.

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ISSUE 2: What action should the Commission take on the Petition of Southern Pines Homeowners of Bonita Springs, Inc., requesting the Commission to rescind the exemption of Bonita Springs Utilities, Inc.?

RECOMMENDATION: The Petition should be dismissed. (JAEGER)

STAFF ANALYSIS: In response to the Petition of Southern Pines, the Commission issued Orders Nos. 97-0841-FOF-WS and 97-1348-PCO-WS. Those Orders gave Bonita Springs until November 11, 1997, to either revise its bylaws to comply with the requirements of Section 367.022(7), Florida Statutes, or apply for an original certificate. Bonita Springs has now complied with those Orders by revising its bylaws.

Staff believes that implicit in those Orders, and through the exempt status of Bonita Springs, there is no further action for the Commission to take on Southern Pines' Petition. Therefore, staff recommends that the Petition be dismissed.

DOCKET NO. 961343-WS
DECEMBER 23, 1997

ISSUE 3: Should this docket be closed?

RECOMMENDATION: This docket should be closed. (JAEGER)

STAFF ANALYSIS: If the Commission approves staff's recommendations set out above, there are no further actions to be taken in this docket. Therefore, this docket should be closed.

DOCKET NO. 961343-WS
DECEMBER 23, 1997
ATTACHMENT ONE

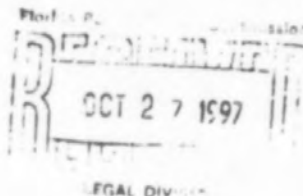
LAW OFFICES
ROSE, SUNDSTROM & BENTLEY, LLP
2548 BLAIRSTONE PINES DRIVE
TALLAHASSEE, FLORIDA 32301
(850) 877-6555

CHRIS H. BENTLEY, PA.
F. MARSHALL DETERONG
BRIAN L. DOSTER
MARTIN S. FRIEDMAN, PA.
JOHN R. JENKINS, PA.
STEVEN T. MINDLIN, PA.
ROBERT M. C. ROSE
DAREN L. SHIPPY
WILLIAM E. SUNDSTROM, PA.
DIANE D. TREMOR, PA.
JOHN L. WHARTON

MAILING ADDRESS
POST OFFICE BOX 1567
TALLAHASSEE, FLORIDA 32302-1567
TELESCOPE (850) 866-4225

October 23, 1997

Ralph Jaeger, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0873



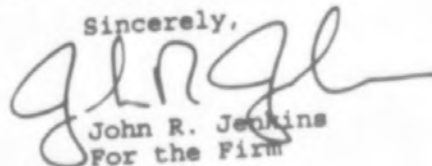
Re: Bonita Spring Utilities, Inc.
Our File No. 20989.13

Dear Ralph:

Enclosed please find a blacklined copy of changes to Article V of the By-Laws of Bonita Springs Utilities, Inc. which reflects the amendment approved by the Company's Board of Directors on October 21, 1997. The Company's staff has been instructed to take such actions as are necessary to ensure the rights of all members are consistent with this policy.

Once you have had a chance to review this, please give me a call to discuss Commission action on this matter.

Sincerely,


John R. Jenkins
For the Firm

JRJ:sn

Enclosure

cc: Mr. Fred Partin
Dan Batchelor, Esquire

BONITA SPRINGS UTILITIES, INC.
AMENDMENT TO BY-LAWS

ARTICLE V

MEMBERSHIP

SECTION 1: It is the intent of the Corporation to provide service solely to its members. The holders of membership certificates of, or accounts with, this Corporation are its members. Any person, as defined by Florida law, having reasonable access to the sources of and who is in need of water, sewer, or other services operated by the Corporation and who receives the approval of the Board of Directors, may be admitted to membership upon subscribing for or otherwise acquiring a membership certificate, or account, and by signing such agreements for service as may be provided or required by the Corporation; provided that no person otherwise eligible shall be permitted to subscribe for or acquire a membership certificate of, or account with, the Corporation if the capacity of the Corporation's water and/or sewer system is exhausted by the needs of its existing members. Service is first provided to a parcel of land based on proper application by the owner and admission to membership in the Corporation. Thereafter, persons not holding a direct ownership interest in the property including, but not limited to, tenants, lessees, sublessees, stockholders, members, parent or subsidiaries companies, limited partners, future interests not yet possessory, and others who receive service as a result of the owner's membership status cannot also be considered members unless the person occupies an individually metered premises, and accepts responsibility for service and payment obligations, in which case they shall be substituted as a member for the period of occupancy. There shall be no membership fee as such, provided that the Corporation may charge initial connection and other fees upon the issuance or acquisition of each membership certificate or account.

SECTION 3: At any meeting of the members of the Corporation, each member shall be entitled to only one vote upon each matter submitted to a vote, regardless of the number of certificates of membership held, or accounts in the name of the member, provided the member is in good standing for all accounts or certificates held.

SECTION 4: In case of the death of a member, or if a member ceases to be eligible for membership, or a member willfully fails to comply with the By-Laws, or Rules and Regulations of the Corporation, the Board of Directors may terminate his membership by resolution of the Board. A transfer by a member of all certificates held by, or accounts in the name of, such member shall terminate such member's membership. Any member whose membership is terminated for cause, other than ceasing to be eligible, may appeal the action of the Board of Directors to the members at their next regular or special meeting. Thereafter such member shall be reinstated by the issuance of a new membership certificate, or

[HIGHLIGHTED LANGUAGE IS TO BE ADDED;
STRICKEN LANGUAGE IS TO BE DELETED]

reactivation of an member account, only upon such conditions as the Board of Directors may deem necessary or appropriate. Termination of such membership shall result in a disconnection of water and sewer service to the member. Termination shall not result in forfeiture of a member's entitlement to any patronage refund resulting from status as a member pursuant to Article XII of these By-Laws. However, any such refund shall have deducted from it any debt or obligation owed the Corporation by the member.

ARTICLE XI

BENEFITS AND DUTIES OF MEMBERS

SECTION 1: The Corporation will install, maintain and operate a main distribution pipe line or lines from the source of water supply and service lines from the main distribution pipe line or lines to the property line of each member qualifying for water service from the Corporation for each membership certificate held by such member, or account in the name of such member, at which points, designated as delivery points, meters to be purchased, installed, owned and maintained by the Corporation shall be placed. The Corporation will further install, maintain and operate a wastewater transmission system and appurtenant facilities to its treatment plant from the property line of each member qualifying for wastewater service, from the Corporation for each membership certificate held by such member, or account in the name of such member. The cost of the service lines to or from its main distribution, or transmission, line or lines, shall be paid by the Corporation. The Corporation will also purchase and install a cut-off valve to be owned and maintained by the Corporation and to be installed on some portion of the service line owned by the Corporation. The Corporation shall have the sole and exclusive right to use such cut-off valve to turn it on and off.

SECTION 2: Each member shall be entitled to purchase from the Corporation pursuant to such agreements as may from time to time be provided and required by the Corporation, such water for domestic, commercial, agricultural, industrial or other purposes as a member may desire, subject, however, to the provisions of the By-Laws, the Corporation's tariffs, and to such rules and regulations as may be prescribed by the Board of Directors. Each member shall be entitled to have delivered to him through a single service line for each membership certificate, or account in the name of the member, only such water as may be necessary to supply the needs of such member, including his family, business, agricultural, or industrial requirements. The water delivered through each service line shall be metered and the charges for such water shall be determined separately, irrespective of the number of service lines owned or used by a member.

[HIGHLIGHTED LANGUAGE IS TO BE ADDED;
STRICKEN LANGUAGE IS TO BE DELETED]

Southern Pines Homeowners

of Bonita Springs

1997 ORIGINAL

Florida Public Service Commission
Department of Consumer Affairs
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0867

November 19, 1997

Re: Docket # 961343-WS, Bonita Springs Utilities, Inc. - Articles V Amendment to By-Laws and the need to have BSU spell out, in detail, the steps to be taken to bring BSU's Membership List into full compliance with Order No. PSC-97-0841-FOF-WS

Dear Commissioners,

We have reviewed the Amended Article V of the By-Laws of Bonita Springs Utilities, Inc. which were approved by the Company's Board of Directors on October 21, 1997. We find the legal verbiage extremely difficult to understand.

It is our belief, that a "Cooperative", such as BSU should not need complicated and difficult to understand By-Laws, especially, the By-Law Sections that deal with Membership. The average Customer, as well as, the average Member, should be able to read and understand their Co-Op's By-Laws. We believe Article V should be rewritten completely. The attempt to Amend the existing Article V has, in our opinion, created more problems than it has solved.

Our questions regarding Article V, Section 1, as Amended are as follows:

1. What classes of Customers are eligible for Membership? What classes of Customers are not eligible for Membership?

2. Why does the Board of Directors have to "Approve" anyone for Membership and then that person, "may" be admitted for Membership? If the Criteria for Membership is defined by Florida Law, isn't that enough to grant membership? Does not the fact that Water and/or Sewer service is available and there is no Moratorium on adding new Customers automatically grant that new Customer Membership in the Co-op based on Florida Law?

3. What is the definition of an "Account"? Are there two classes of Membership now? If so, why should there be any need to have two classes of Membership? If there is a meter, a customer responsible for paying the bill for that meter and who communicates with BSU regarding service to that meter, what other criteria is needed for Membership? The rest is just normal book keeping.

DOCUMENT 12200 DEC-16

DOCKET NO. 961343-WS
DECEMBER 23, 1997
ATTACHMENT TWO

4. Is "The Account Holder" given the same Certificate of Membership as is given to all other Members and can the "Account Holder" transfer his/her Capitol Credits exactly the same as the other Members can transfer theirs?

5. Why is it necessary "to substitute the Member with the Occupant" where a person occupies an individually metered premises, and accepts responsibility for service and payment obligations. Why isn't the Membership just Transferred as it would be in cases where the real property changed ownership?

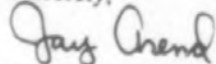
6. Amending the By-Laws, meets the PSC Order Requirement but does not ensure full compliance with the intent of the Public Service Commission. Under the circumstances that brought this matter before the PSC, shouldn't there be a written BSU plan filed with the PSC which describes in detail and time frame which Customers will now be added to BSU's Membership List, and how those added Customers will be classified. Also, whether those Customers added are added as equal Members compared with the existing Members.

7. BSU has stated to the Press, that 3500 Customers are involved and that the Capitol Credits will not be Retroactive.

8. It is our belief that Membership for those previously denied Membership, should be retroactive to January 1, 1997. Those Customers have already lost many thousands of dollars in Capitol Credits through no fault of their own. We believe BSU has had ample time to comply with the PSC Order to Amend their By-Laws and open up their Membership as required, further delay will put this problem into 1998.

9. To date, to our knowledge, BSU has not, in any way, notified the existing Membership of the facts surrounding our Petition to the PSC, or of the Order issued by the PSC to BSU.

Sincerely,



Jay Arend, President
Southern Pines Homeowners of Bonita Springs
11277 North Carolina Drive
Bonita Springs, Florida 34135
Tel - 941-947-6099

cc: Ralph Jaeger, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

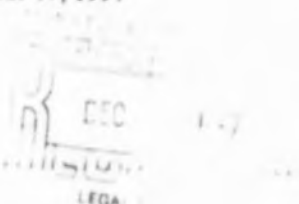
DOCKET NO. 961343-WS
DECEMBER 23, 1997
ATTACHMENT THREE

Southern Pines Homeowners

of Bonita Springs

Ralph Jaeger, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

November 19, 1997



Re: Docket # 961343-WS, Bonita Springs Utilities, Inc. - Articles V Amendment to By-Laws and the need to have BSU spell out, in detail, the steps to be taken to bring BSU's Membership List into full compliance with Order No. PSC-97-0841-FOF-WS

Dear Mr. Jaeger,

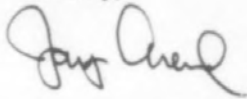
Southern Pines Homeowners of Bonita Springs petitioned the Florida Public Service Commission, Docket #961343-WS to rescind the Exemption from Regulation that was granted to Bonita Springs Utilities, Inc. on the basis that BSU was not operating as a Co-Op due to the fact that BSU denied our 400 Home Community, individual Memberships in BSU. We therefor had no voting rights and no access to the Capitol Credits distributed to "Members" of the Co-Op each year. We estimate, \$40,000,000.00 has accumulated in BSU's Capitol Credit Account. The Capitol Credits come from the money collected in excess of BSU's annual expenses. Our portion of these funds is allocated to the developer of our Community, who is a Member of BSU and holds our 400 Membership Certificates and therefor receives our share of the Capitol Credits which accrue each year.

The Florida Public Service Commission ordered BSU to amend their By-Laws which will now force BSU to grant us the Corporate Membership we have been denied. Our reason for contacting you is our belief that Amending their By-Laws is not the same thing as Compliance. There are no procedures or time requirements to actually spell out when we are to finally be granted our Memberships. The Capitol Credits for 1997 will probably once more be denied us

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ATTACHMENT THREE

When asked by a reporter for comments regarding the PSC's Order, BSU stated that 3500 Customers were to be added to their Membership. We have no way of knowing if this is accurate or not. We believe there are close to 20,000 Customers (now called ERC's) and approximately 11 or 12,000 Members. Since the core of our Petition was BSU's loose interpretation of what constitutes a Member, we believe, some Administrative Body should have an active roll in verifying Full Compliance. We are requesting Legal assistance from your group to see that the 8,000 or 9,000 Non-Members are represented and that they receive Membership if they are qualified according to Florida State Statues.

Sincerely,



Jay Arend, President
Southern Pines Homeowners of Bonita Springs
11277 North Carolina Drive
Bonita Springs, Florida 34135
Tel - 941-947-6099

DOCKET NO. 961343-WS*
DECEMBER 23, 1997
ATTACHMENT FOUR

Southern Pines Homeowners

of Bonita Springs

Ralph Jaeger, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

November 19, 1997

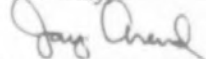
Re: Docket # 961343-WS, Bonita Springs Utilities, Inc. - Articles V Amendment to By-Laws and the need to have BSU spell out, in detail, the steps to be taken to bring BSU's Membership List into full compliance with Order No. PSC-97-0841-FOF-WS

Dear Mr. Jaeger,

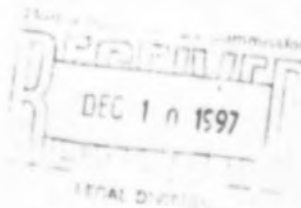
This is a follow up of our letter to you dated November 19, 1997. Some of the pertinent facts of that letter have been added to this letter. Also included is a copy of the letter mailed with the November BSU Billing Statement for our water and sewer services. This is the first indication from BSU to its Members that there was a "Membership" problem. We do not know if this letter went to all Customers, all Members, or only to Customers who are to become Members. The reason for our letter is our continued belief that BSU should be monitored to insure full compliance with the Order issued by the PSC.

Please note that now, BSU is talking about adding 2500 Customers to its Membership List. We believe there are 8,000 or 9,000 Customers who deserve to be examined closely to verify their qualifications for Membership. We have never had access to BSU's Customer and Membership Lists and doubt if those Lists will be made available for any independent and neutral group to verify compliance. This is our last chance to have such a review of those important Lists. Full Compliance hinges on someone being in position to verify the accuracy of BSU's adding each and every Qualifying Customer to its Membership List.

Sincerely,



Jay Arend, President
Southern Pines Homeowners of Bonita Springs
11277 North Carolina Drive
Bonita Springs, Florida 34135
Tel - 941-947-6099



DOCKET NO. 961343-WS
DECEMBER 23, 1997
ATTACHMENT FOUR



Bonita Springs Utilities, Inc.

November 11, 1997

Dear Utility Customer,

Bonita Springs Utilities is changing with the changing needs of our community. In line with our commitment to keep you informed of progress, we are notifying new and existing customers of a recent necessary change in the Utility's by-laws.

As of October 21, 1997, BSU's Board of Directors voted to revise the Utility's by-laws to expand membership beyond current property owners to also include customers who do not own their property but who "occupy an individually metered premise and accept responsibility for service and payment obligations." As of the November 1997 billing, any rental tenants who meet this criteria will be welcomed as members.

This change means that an estimated 2,500 existing customers will join the current 14,000 member-customers who exercise membership rights in the BSU cooperative. Members participate in electing the nine-member Board of Directors and may from time to time vote on other matters put to the general membership for a vote.

Also, members' utility payments are individually recorded annually as "patronage capital." These paper credits accrue over the years and reflect each member-customer's payments to the utility in relation to other members. They are used to calculate capital credit, or the monetary credit each co-op member would receive, once debts are paid, in the unlikely event that the utility is ever sold or dissolved. It is not a dollar for dollar calculation. It simply helps proportion what would go to each member.

Under the revised by-laws, landlords will no longer be liable for tenant utility deposits or payments. Tenants will assume legal responsibility for both paying their water and wastewater bill and making any required deposits when transferring an account to their name. Those who already have an account in their name will not be required to make a deposit, unless they default on payment.

BSU welcomes its new members and trusts these changes will pose no hardship to existing members. The change was made in response to an order by the Florida Public Service Commission (PSC) - the state's utility regulators - that BSU expand its definition of membership in order to retain its exempt, not-for-profit status. If BSU were to lose its exemption and fall within PSC jurisdiction, BSU customers would find themselves bearing the cost of additional PSC regulations in the form of higher utility rates.

Thus, at this time the Board has determined that it is in the best interests of the general membership to make the changes outlined. Please let us know if you have questions. Thank you.

Respectfully,

Fred Partin
General Manager

Hank Hochstetler
President, Board of Directors