



# Public Service Commission

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

RECORDS AND REPORTING

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DATE: SEPTEMBER 24, 1998

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

FROM: DIVISION OF WATER AND WASTEWATER (CLAPP) *SSM*  
DIVISION OF LEGAL SERVICES (CROSBY) *W* *R*

RE: DOCKET NO. 981067-WU - APPLICATION FOR TRANSFER OF WATER FACILITY OF HOBE SOUND WATER COMPANY IN MARTIN COUNTY TO TOWN OF JUPITER ISLAND, AND REQUEST FOR CANCELLATION OF CERTIFICATE NO. 341-W.  
COUNTY: MARTIN

AGENDA: OCTOBER 6, 1998 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\981067WU.RCM

### CASE BACKGROUND

Hobe Sound Water Company (Hobe Sound or utility) is a Class A utility serving approximately 1,278 water customers in Martin County. The utility's last annual report on file with the Commission for 1997 lists annual revenues of \$1,605,945 and net income of \$192,134.

Hobe Sound, which has been in existence since 1969, holds Water Certificate No. 341-W. The service area includes customers both in Hobe Sound and on Jupiter Island.

On August 25, 1998, this Commission received an Application for Transfer to Governmental Authority from Hobe Sound to transfer its facilities to the Town of Jupiter Island (Jupiter Island or the Town). The closing and actual transfer took place on September 2, 1998, prior to Commission approval, which is a violation of Section

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367.071, Florida Statutes. This recommendation addresses the application for transfer and Hobe Sound's apparent violation of Section 367.071, Florida Statutes.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should Hobe Sound Water Company be ordered to show cause, in writing within 21 days, why it should not be fined for violation of Section 367.071, Florida Statutes.

**RECOMMENDATION:** No. Show cause proceedings should not be initiated. (CROSBY)

**STAFF ANALYSIS:** As stated in the case background, Hobe Sound is in apparent violation of Section 367.071, Florida Statutes, which states, in part, "No utility shall sell, assign, or transfer its certificate of authorization, facilities, or any portion thereof . . . , without determination and approval of the Commission that the proposed sale, assignment, or transfer is in the public interest . . ." Hobe Sound's facilities were transferred to the Town of Jupiter Island on September 1, 1998. Such action is "willful" in the sense intended by Section 367.161, Florida Statutes.

Section 367.161, Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any provision of Chapter 367, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Hobe Sound's failure to obtain Commission approval prior to closing on the sale of its facilities to the Town of Jupiter Island is an apparent violation of Section 367.071(1), Florida Statutes.

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There are, however, circumstances which appear to mitigate the utility's apparent violation. On September 22, 1998, staff called Hobe Sound's counsel and confirmed that the Town of Jupiter Island scheduled the closing date of the sale for September 2, 1998. Hobe Sound's counsel stated that this closing date was chosen by the Town to take advantage of low interest rates on bonds used to finance the purchase of Hobe Sound.

Although regulated utilities are charged with knowledge of Chapter 367, Florida Statutes, staff does not believe that the violation of Section 367.071, Florida Statutes, rises in these circumstances to the level which warrants the initiation of a show cause proceeding. Therefore, staff recommends that the Commission not order Hobe Sound to show cause for failing to obtain Commission approval prior to transferring its facilities to the Town of Jupiter Island.

**ISSUE 2:** Should the Commission acknowledge the transfer of Hobe Sound Water Company to the Town of Jupiter Island as of September 2, 1998, and cancel Water Certificate No. 341-W?

**RECOMMENDATION:** Yes, the Commission should acknowledge the transfer of Hobe Sound Water Company to the Town of Jupiter Island as of September 2, 1998, and cancel Water Certificate No. 341-W. (CLAPP)

**STAFF ANALYSIS:** Hobe Sound Water Company (Hobe Sound) is a Class A utility located in Martin County which was granted Water Certificate No. 341-W. According to the most recent information available, Hobe Sound's 1997 annual report filed with this Commission, the utility had annual operating revenue of \$1,605,945 and a net income of \$192,134.

On August 25, 1998, Hobe Sound filed with this Commission an Application for Transfer to Governmental Authority to transfer the utility to the Town of Jupiter Island pursuant to Rule 25-30.037(4), Florida Administrative Code. Included with the application were Resolution No. 378 from the Town of Jupiter Island, which among other things approved the transfer agreement between the Town and Hobe Sound, and a copy of the transfer agreement between the two parties. The application gives the proposed closing date as September 1, 1998. The actual closing date for the transfer was September 2, 1998, according to a subsequent telephone conversation with Phillip Gildan, attorney for the Town of Jupiter Island.

Pursuant to Rule 25-30.037(4)(d), Florida Administrative Code, the application for transfer included a statement that Hobe Sound will retain no assets that would constitute a system providing or proposing to provide water service to the public for compensation. The application also contained a statement that Jupiter Island obtained Hobe Sound's most recently available income and expense statement, balance sheet, statement of rate base for regulatory purposes, and contributions-in-aid-of-construction pursuant to Rule 25-30.037(4)(e), Florida Administrative Code.

A statement that the customer deposits and interest thereon will be given to the Town of Jupiter Island as required in Rule 25-30.037(4)(g), Florida Administrative Code, was included in both the application and the transfer agreement.

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Additionally, pursuant to the requirements of Rule 25-30.037(4)(h), Florida Administrative Code, a statement was included that Hobe Sound will pay outstanding regulatory assessment fees (RAFs) and file the final Regulatory Assessment Fee Return within the time period required by the rules.

Staff recommends that the application is in compliance with all provisions of Rule 25-30.037, Florida Administrative Code. Pursuant to Section 367.071(4)(a), Florida Statutes, the transfer of facilities, in whole or part, to a governmental authority shall be approved as a matter of right. Therefore, staff recommends that the Commission acknowledge the transfer of Hobe Sound to the Town of Jupiter Island. Because Jupiter Island is now providing services, pursuant to Section 367.022(2), Florida Statutes (governmental authority exemption), Water Certificate No. 341-W should be canceled.

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**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** Yes, no further action is required and this docket should be closed. (CROSBY)

**STAFF ANALYSIS:** No further action is required and this docket should be closed.