

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of water and wastewater facilities of Hydratech Utilities, Inc. to Town of Jupiter Island in Martin County, and request for cancellation of Certificates Nos. 337-W and 292-S.

DOCKET NO. 980972-WS
ORDER NO. PSC-98-1432-FOF-WS
ISSUED: October 23, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

ORDER DECLINING TO INITIATE SHOW CAUSE PROCEEDINGS,
ACKNOWLEDGING TRANSFER, CANCELING
CERTIFICATES NOS. 337-W AND 292-S, AND CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

On July 31, 1998, Hydratech Utilities, Inc., (Hydratech or utility) filed an application, pursuant to Section 367.071(4)(a), Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code, to transfer its water and wastewater facilities to the Town of Jupiter Island (Jupiter Island) and requested cancellation of Water Certificate No. 337-W and Wastewater Certificate No. 292-S. The utility serves approximately 5,319 residential and 200 commercial water customers and approximately 4,454 residential and 240 commercial wastewater customers.

According to the application, the transfer of Hydratech's facilities to Jupiter Island was approved by the Town of Jupiter Island Commission on July 13, 1998, pursuant to Town of Jupiter Island Resolution No. 378. The closing and actual transfer took place on September 2, 1998, prior to Commission approval, which, as

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discussed below, is an apparent violation of Section 367.071, Florida Statutes.

SHOW CAUSE

Pursuant to Section 367.071(1), Florida Statutes, no utility shall sell, assign or transfer its certificate of authorization, facilities, or any portion thereof, without prior Commission approval. Section 367.161(1), Florida Statutes, authorizes us 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.

Hydratech appears to have violated Section 367.071(1), Florida Statutes, by failing to obtain our approval prior to selling its facilities to Jupiter Island. While we have no reason to believe that the utility intended to violate this statute, its act was "willful" in the sense intended by Section 367.161, Florida Statutes. See Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL. Utilities are charged with knowledge of Commission rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

Although Hydratech's failure to obtain our approval prior to the sale of its facilities is an apparent violation of Section 367.071(1), Florida Statutes, there are mitigating circumstances. Jupiter Island scheduled the sale closing date for September 2, 1998. This closing date was chosen by Jupiter Island to take advantage of low interest rates on the bonds used to finance the purchase of Hydratech.

Based on the foregoing, we do not find that the utility's apparent violation of Section 367.071(1), Florida Statutes, rises in these circumstances to the level which warrants the initiation of a show cause proceeding. Therefore, Hydratech shall not be required to show cause for failing to obtain Commission approval prior to closing on the sale of its facilities to Jupiter Island.

APPLICATION

Except as discussed previously, the application is in compliance with Section 367.071, Florida Statutes, and other

pertinent statutes and provisions of the Florida Administrative Code. The application included a copy of Resolution No. 378 from the Town of Jupiter Island, which approved the transfer agreement between Hydratech and the Town of Jupiter Island. Hydratech also provided a copy of the transfer agreement between the two parties.

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

A statement that the customer deposits and the accumulated interest thereon will be given to Jupiter Island, as required by Rule 25-30.037(4)(g), Florida Administrative Code, was included in both the application and the transfer agreement. Pursuant to Rule 25-30.037(4)(h), Florida Administrative Code, the application included a statement that Hydratech will pay all outstanding regulatory assessment fees.

Section 367.071(4)(a), Florida Statutes, states that the sale of facilities, in whole or part, to a governmental authority shall be approved as a matter of right. Jupiter Island is now providing service pursuant to Section 367.022(2), Florida Statutes. Based on the foregoing, we find it appropriate to acknowledge the transfer of Hydratech to Jupiter Island and to cancel Certificates Nos. 337-W and 292-S. No further action is required, and this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that a show cause proceeding shall not be initiated against Hydratech Utilities, Inc., for violating Section 367.071(1), Florida Statutes, by failing to obtain the Commission's approval prior to the sale of the utility's facilities to the Town of Jupiter Island. It is further

ORDERED that the application for transfer of facilities from Hydratech Utilities, Inc., 6570 S.E. Federal Highway, Stuart,

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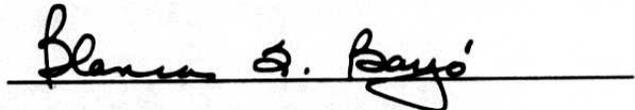
Florida 34997-8383, to the Town of Jupiter Island, 103 Bunker Hill Road, Hobe Sound, Florida 33475, is hereby acknowledged. It is further

ORDERED that Hydratech Utilities, Inc., shall pay all outstanding regulatory assessment fees. It is further

ORDERED that Water Certificate No. 337-W and Wastewater Certificate No. 292-S are hereby canceled, effective September 2, 1998. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 23rd day of October, 1998.

A handwritten signature in cursive script, reading "Blanca S. Bayó", is written over a horizontal line.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

SAM

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.