

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In Re: Application for transfer )  
of Certificate Nos. 469-W and )  
358-S in Bay County from Bayside )  
Utilities, Inc. to Bayside Utility )  
Services, Inc. )  
\_\_\_\_\_ )

DOCKET NO.  
FILED:

RECORDS AND REPORTING  
981403-WS  
February 8, 1999

**RESPONSE TO UTILITIES, INC. AND  
BAYSIDE UTILITIES, INC. MOTION TO DISMISS**

The undersigned customers of Bayside Utilities, Inc., (Bayside) hereby respond to the Motion to Dismiss the Objection and Protest filed on January 26, 1999, and state:

1. On November 12, 1998, Florida Public Service Commission (PSC or Commission) Records/Reporting received from the undersigned a document which objected to the proposed transfer of Certificates Nos. 469-W and 358-S. On November 24, Mr. Bill Lowe of the PSC, wrote to ask Mr. Kitchens whether he wished to pursue a hearing, and informing Mr. Kitchens that he had until January 7, to respond to the inquiry. On January 5, Mr. Kitchens responded to Mr. Lowe, reiterating the objection to the transfer and explicitly requesting a hearing.

2. The undersigned customers are consumers of Bayside Utilities and as ratepayers, are substantially affected by the outcome of this proposed transfer. These customers did file an objection

to the transfer in writing within thirty days of the notice of the proposed transfer. Further, these customers have complied with every request or instruction given by the Commission staff.

3. As laypeople, these customers have followed the procedure necessary to obtain their rights under Florida Statutes. Nevertheless, Utilities, Inc. and Bayside Utility Services now seek to deny these citizens an opportunity to be heard.

4. The grounds upon which Utilities Inc. and Bayside (referred to jointly as Petitioners)

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SEC 1  
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FPSC-RECORDS/REPORTING

rely are not valid reasons for dismissal, and each will be addressed in turn.

(a) In paragraph 1., Petitioners complain that the initial written objection was "signed by only one person, but had the names ... of three individuals at the bottom." Petitioners, however, cite no argument as to how that would invalidate the objection. The fact remains that the signatory and each of the other referenced objectors are customers of Bayside and thus have statutory standing for the objection.

(b) In paragraph 2., Petitioners complain that the initial objection does not explain the membership and voting process of Bayside Homeowners Association. Again, Petitioners ignore the fact that Florida Statutes grant standing to each customer to object to the transfer.

(c) In paragraph 3., Petitioners complain that the objection does not specify how the proposed purchaser lacks the expertise necessary to run the system. Nowhere, however, do Florida Statutes require the objection to provide any such allegations. There is no burden on the objectors to address the technical expertise of the proposed purchaser. This is not a valid ground for dismissal.

(d) In paragraph 4., Petitioners make the unsupported statement that the letter does not raise "grounds to protest the transfer." Our response is simply that the letter of objection does, in fact, meet the statutory requirements for an objection.

(e) Paragraph 5., cites a Utilities, Inc. "response to the Commission and to the protestants." This response by Utilities, Inc. does not eliminate the concerns of the objectors.

(f) In paragraphs 6. and 7., Petitioners cite the objectors' voluntary dismissal of their protest of the PAA. Objectors acknowledge their voluntary dismissal because of the cost of rate case litigation. The voluntary dismissal, however, does not eliminate the objection to the transfer. In fact, a hearing on the transfer is all the more important for the Commission to examine some of the issues that the undersigned previously had hoped would be raised in the PAA protest hearing.

(g) In paragraph 8., Petitioners recite the bald allegation that the transfer is in the public interest. This is merely a conclusory statement

of the Petitioners' position on the ultimate issue that will be decided by the Commission following a hearing. The Petitioners will be given ample opportunity to present actual evidence on this issue during a hearing.

5. Petitioners have given no valid reasons to support their motion to dismiss.

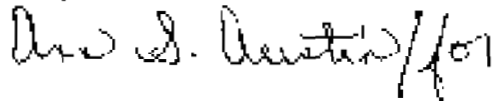
WHEREFORE, the undersigned objectors (or protesters) respectfully seek the Public Service Commission to deny the Motion to Dismiss filed by Utilities, Inc. and Bayside Utility Services, Inc.

Respectfully submitted,

  
Jarver Kitchens, President  
Bayside Homeowners Association

  
Jim Wharton

Jerry Austin

  
Dr. J. Austin/for

**CERTIFICATE OF SERVICE  
DOCKET NO. 981403-WS**

I HEREBY CERTIFY that a true and exact copy of the above Petitioners' Response to Utilities, Inc. and Bayside Utilities, Inc. Motion to Dismiss has been furnished by U.S. Mail and hand-delivery to the following parties this 8th day of February, 1999.

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Florida Public Service Commission  
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Mrs. Dorothy J. Burton  
Bayside Utilities, Inc.  
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\_\_\_\_\_  
TARVER K. GIGUENS, PRESIDENT  
BAYSIDE HOMEOWNERS ASS'N.