

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of)	DOCKET NO. 981403-WS
Certificate Nos 469-W and 358-S)	
from Bayside Utilities, Inc. to)	Submitted for Filing:
Bayside Utility Services, Inc. in)	April 16, 1999
Bay County.)	

BAYSIDE UTILITIES, INC.
MOTION FOR RECONSIDERATION
OF ORDER NO. PSC-99-0607-PCO-WS

COMES NOW, Bayside Utilities, Inc., seller in the above styled transfer, and in support of its Motion for Reconsideration states that:

1. By its Order No. PSC-99-0607-PCO-WS issued April 2, 1999, the Public Service Commission denied the Motion to Dismiss the Objection and Protest. That Motion was filed by Utilities, Inc. and Bayside Utility Services, Inc., buyer in the above styled transfer. A copy of that Order is attached as Exhibit #1.

2. Simultaneously with the filing of this Motion for reconsideration, Bayside Utilities, Inc. is filing a Motion to Intervene in this docket to assure that there is no question that it is a party to this proceeding, entitled to file this Motion for Reconsideration. Generally, it is understood that the standards for filing a motion for reconsideration before the Public Service Commission are that the Commission either failed to consider, or misapplied the law or facts to the case. In this instance, the facts were misrepresented to the Commission allegeding any local governmental interest in purchasing the system (See Exhibits #2 and

AFA _____
APP _____
CAF _____
CMU _____
CTR _____
EAG _____
LEG _____
MAS _____
OPC _____
RRR _____
SEC _____
WAW _____
OTH _____

Exhibit #4, specifically).

3. The basis for the decision of the Public Service Commission denying the buyer's Motion to Dismiss is set forth in the transcript of the Agenda Conference, and a copy of pages 1, 2, 19, 20 and 21 of the transcript are attached as Exhibit #2.

4. At the Agenda Conference on March 16, 1999, during which the decision was made, the attorney from the Office of public Counsel stated that,

. . . this is hearsay, but this is in the allegation, they tell me they have spoken with the city and the city has representatives that are interested in this and that will pursue this [city purchase of the Bayside Utilities]. [Emphasis added. Tr. page 20, lines 2-6.]

* * *

If, in fact, there is a purchaser which is a municipality that will, one, integrate this system which it is already providing service for into its overall municipal system, then that will be a better -- that will serve public policy with regard to the locality. If, in addition to that, it results in lower rates to these utility customers, then that provides a service. [Tr., page, 20, line 21 to page 21, line 3]

* * *

My understanding is that they have expressed an interest, but at this point they have not gone through the process. Just like this Commission has certain deliberate processes or it can send a representative saying our position is thus and so and they have gone through those processes at this point. [Tr. page 21, lines 8 - 14]

* * *

COMMISSIONER GARCIA: Okay. [Tr. page 21, line 15]

COMMISSIONER DEASON: Well, do we have a motion... [Tr. page 21, line 16.]

5. No representative of the City of Panama City Beach was at the Agenda Conference on March 16 at which the vote was taken to

deny the Motion to Dismiss. Not one of the four residents objecting to the transfer was at the Agenda Conference. Neither the City nor the four residents presented any written data for consideration at the Agenda Conference. The City had been provided timely notice of the application to transfer the utility system to Utilities, Inc.

6. The representations quoted above from the attorney from the Office of Public Counsel are, and were, factually untrue. He even acknowledged that "this is hearsay" regarding the alleged interest of the City in buying the utility system. The City Manager and the City Commissioners have not expressed such an interest, as shown by the affidavits of Richard Jackson and Dorothy Burton attached as Exhibit #3 and Exhibit #4, respectively. It appears rather than deliberately misrepresent the facts, the attorney merely passed on what he was told by one or more of the four customers.

7. Order No. PSC-99-0607-PC-O-WS, denying the buyer's Motion to Dismiss, states the following reasons for denying the motion:

. . . they [the four customers] state that the City of Panama City Beach has expressed an interest in purchasing the utility and that a transfer to the City is superior to a private transfer for several reasons. Bayside currently purchases all of its services from the City and thus acts merely as a middleman for the provision of utility services. A direct provision by the City would be more efficient and less costly. The customers state that an integrated countywide Municipal system would be of general benefit to all Bay County citizens. . . [Order, page 4.]

8. The Public Service Commission cannot force the City to buy the utility system. Just because four customers think that this might in some way be "superior", the City does not agree, which is shown by the attached affidavit from City Manager Richard Jackson of

Panama City Beach, Florida. The customers have misrepresented to the Public Service Commission that the City is interested in buying the system, or interested in the past or that they might be interested in the future. Therefore, the Public Service Commission did not base its decision on the true facts when it voted to deny the Motion to Dismiss, and the Order should be reconsidered and reversed. The affidavit of the City Manager Richard Jackson is attached as Exhibit #3.

9. There is no other factual or legal ground alleged as the basis for denying the Motion to Dismiss. Furthermore, it is evident that the general but unsubstantiated statement that the four customers want to "explore" subjects that they would have explored in the staff assisted rate case (which they voluntarily dismissed) apply to the their theory that a city owned, county wide utility system would somehow serve the customers better and be in the public interest simply ignores the fact that the Public Service Commission does not have jurisdiction to force a governmental entity to buy a private utility system, no matter how beneficial four customers feel it might be.

10. In addition, the four customers have not accurately represented what the City has said about what would happen to utility rates under City ownership. Besides not being interested in buying the utility system, City officials have indicated that the rates would not go down under City ownership, but in fact would stay at the current level approved in the recent staff assisted rate case, then would increase along with other rate increases by the

City. Furthermore, because the service territory is in the county, outside the City limits, the rates would always be 25% higher in the service area (in the county) than inside the City limits.

15. Finally, Bayside Utilities, Inc. objects to any attorney from the Office of Public Counsel representing the four customers, which is contrary to the interests of the vast majority of the utilities customers. We believe it is a conflict of interest and is unethical under the rules of The Florida Bar. Prior to the Agenda Conference, the seller provided to the Commission the signed petitions of 162 utility customers who want the sale to Utilities, Inc. and its subsidiary to be completed now. The position of those 162 customers is the opposite of the representations made by the attorney from the Office of Public Counsel at the Agenda Conference on March 16, 1999. He is supposed to represent those 162 customers but he argued against their position and in favor of the four dissenters. A copy of the petition containing the signatures of 162 customers is itself attached to the Affidavit of Dorothy Burton, Managing Partner of Bayside Partnership, and President of Bayside Utilities, Inc., all attached as Composite Exhibit #4. It appears that, pursuant to Section 350.0611, F.S., the Office of Public Counsel is supposed to represent the best interests of the customers, not the interests of just four dissenters. The Office of Public Counsel appears to have violated the code of ethics in two ways. First, the attorney presented legal arguments harmful and contrary to the desires of the 162 customers, which are supposedly his clients. Second, the Office of Public Counsel represents the

interests of the four customers and there is a conflict of interest between opposing legal positions of two factions. The entire group of all customers is his client, and it is a conflict of interest to represent the legal interests of some members of a group against the legal interests of other members of the same group. Therefore, an attorney for the Office of Public Counsel may not lawfully participate in this transfer proceeding.

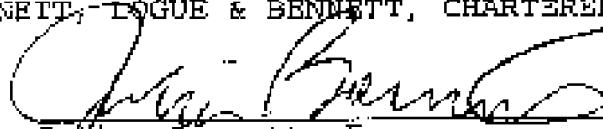
WHEREFORE, based upon the erroneous factual information provided directly to the Commission by the four customers and provided indirectly through the attorney for the Office of Public Counsel (which he admitted was hearsay), Bayside Utilities, Inc. requests that the Public Service Commission reconsider its decision in Order No. PSC-99-0607-PCO-WS, grant the seller's Motion to Dismiss, and enter its final order approving the transfer.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the foregoing has been furnished to Ben E. Girtman, Esq., Attorney for Buyer, at 1020 E. Lafayette St., Suite 207, Tallahassee, FL 32301; Mr. Traver A. Kitchens, Bayside Homeowners Ass'n., 1046 Bay Circle, Panama City Beach, FL 32407; Steve Burgess, Esq., Office of Public Counsel, 111 W. Madison St., Tallahassee, FL 32399-1400 and to Samantha McRae, Esq., Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, by U.S. Mail this 16th day of April 1999.

BENNETT, LOGUE & BENNETT, CHARTERED
Attorneys for Bayside Utilities
P.O. Box 2422
Panama City, Florida 32402-2422
Tel. (850) 763-4671

BENNETT, LOGUE & BENNETT, CHARTERED

BY: 
Julian Bennett, Esq.
FL BAR #0005222

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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. 981403-WS
ORDER NO. PSC-99-0607-PCO-WS
ISSUED: April 2, 1999

The following Commissioners participated in the disposition of this matter:

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

ORDER DENYING MOTION TO DISMISS THE OBJECTION AND PROTEST

BY THE COMMISSION:

BACKGROUND

On October 26, 1998, Utilities, Inc. (utility) filed an application for transfer of Certificates Nos. 469-W and 358-S in Bay County from Bayside Partnership a/k/a Bayside Utilities, Inc. (Bayside) to Bayside Utility Services, Inc., pursuant to Section 367.071, Florida Statutes. Bayside Utility Services, Inc. is in the process of incorporating as a Florida corporation. It will be a wholly-owned subsidiary of Utilities, Inc.

On November 12, 1998, three customers timely filed a letter objecting to the application. The customers have subsequently indicated that they request a hearing on the matter. Accordingly, this matter is set for an administrative hearing on February 2-3, 2000.

MOTION TO DISMISS

By their November 12, 1998, letter objecting to the application filed in this docket, the customers stated their reasons why they believed it would be improper for the utility to transfer ownership. The letter was signed by one of three

DOCUMENT NUMBER-DATE

04248 APR-28

EXHIBIT # 1

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customers, with Bayside Homeowners Association and the names and addresses of the three customers typed at the bottom of the letter.

Because the customers did not indicate in the letter whether they were seeking a hearing on the matter, by letter dated November 24, 1998, our staff requested the customer who signed the letter to advise us, in writing, by January 7, 1999, whether the customer(s) intended to pursue the objection through a hearing. By facsimile received on January 7, 1999, signed by all three customers, as well as by a fourth additional customer, the customers indicated that they object to the transfer application and that they do request that a hearing be scheduled.

On January 26, 1999, Utilities, Inc. filed a Motion to Dismiss the Objection and Protest. The utility argues that the letter of objection to the transfer is insufficient as a protest. The utility points out that the original letter of objection was signed by only one person, but had the names and addresses of three individuals at the bottom of the letter. The utility further points out that the letter of objection was purported to be made on behalf of Bayside Homeowners Association, although there is no indication that the Association or its Board of Directors represents all or even a majority of the residents in the area, whether the homeowners were notified of the decision of the individual(s) to file an objection or protest, whether the purported action was approved by a majority vote of the members of the Association, whether there was a vote of the Board of Directors, or whether the Association was lawfully created, if it even exists.

Moreover, the utility argues that the letter of objection does not allege that Utilities, Inc. lacks the technical expertise and the financial ability to provide the required utility services. According to the utility, the only thing the letter does is to pose several questions regarding the acquiring utility's plans for the service area, which are not grounds to protest the transfer. The utility responded to these questions by letter to the Commission and to the customers on November 25, 1998.

Further, the letter of objection recites that the customers believe it would be improper to transfer ownership at this time because the recently approved staff-assisted rate case for Bayside was currently under litigation in Docket No. 971401-WS. However, the customers subsequently filed a voluntary notice of dismissal of

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their protest of the proposed agency action (PAA) order filed in that case.

The utility argues that the letter of objection fails to allege appropriate or sufficient grounds to protest the transfer and is frivolous. The utility states that it reserves its right to seek the inclusion of any attorneys fees or costs incurred in relation to the objection as a recovery from its utility customers in this service area, as well as such other rights and remedies for damages, attorneys fees or other costs as may be available under the statutes and rules governing the Commission and the Circuit Courts or other tribunals of this State, including but not limited to claims under Section 57.105, Florida Statutes.

On February 8, 1999, three of the four customers who signed the faxed document indicating their intent to seek a hearing on the matter signed and filed a response to the utility's motion to dismiss. The customers argue that they are consumers of Bayside and, as ratepayers, are substantially affected by the outcome of this proposed transfer. They argue that they filed an objection to the transfer, in writing, within thirty days of the notice of the proposed transfer, and that as laypeople, they have followed the procedure necessary to obtain their rights under Florida Statutes.

Further, in response to the utility's complaint that the initial written objection was signed by only one person but had the names of three individuals at the bottom, as well as the name of the Homeowners Association, the customers argue that this does not invalidate the objection. The signatory of the original letter of objection and each of the other referenced objectors are customers of Bayside and thus have statutory standing to object to the transfer.

In response to the utility's argument that the objection does not specify how the proposed purchaser lacks the expertise necessary to run the system, the customers argue that the Florida Statutes do not require the objection to provide any such allegations, and that this is therefore not a valid ground for dismissal.

Moreover, the customers state that the utility's response to the questions raised by the protestors referenced by the utility does not eliminate the concerns of the customers. Neither does the customers' voluntary dismissal of their protest to the staff-assisted rate case eliminate their objection to the transfer

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application. The customers argue that a hearing on the transfer is all the more important in order for us to examine some of the issues that the customers previously hoped would have been raised in the staff-assisted rate case hearing.

Additionally, also on February 8, 1999, the three customers who signed the response to the motion to dismiss filed a letter to further clarify their objection. The customers state that the one customer who signed the original objection did so on behalf of all four of the customers who signed the faxed document clarifying their intent to seek a hearing. They again state that they do object to the proposed transfer and that they request a Section 120.569 and Section 120.57 hearing on the matter. Moreover, they state that the city of Panama City Beach (City) has expressed an interest in purchasing the utility and that a transfer to the City is superior to a private transfer for several reasons. Bayside currently purchases all of its services from the City and thus acts merely as a middleman for the provision of utility services. A direct provision by the City would be more efficient and less costly. The customers state that an integrated countywide municipal system would be of general benefit to all Bay County citizens. For these reasons, as well as others that require an expanded forum for full illumination, the customers believe that the proposed transfer is not in the public interest.

We note that the utility does not allege that the customers' protest does not conform to Rule 28-106.201, Florida Administrative Code, which provides in subsection (2), that any document that requests an evidentiary proceeding and asserts the existence of a disputed issue of material fact shall contain a statement of all disputed issues of material fact and a concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief.

Significantly, the rule further provides in subsection (4) that a petition may be dismissed if it is not in substantial compliance with subsection (2) or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured. Upon review of the letter of objection, and the subsequent documentation provided by the customers to clarify their intent for seeking a hearing in this matter, we find that taken together, these filings sufficiently explain how their substantial interests will be affected by our

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determination in this docket and sufficiently identify certain disputed issues and the ultimate facts alleged in accordance with Rule 28-106.201, Florida Administrative Code, including whether the proposed transfer is in the public interest. Therefore, the filings substantially comply with the rule, and we see no need for the customers to be required to file an amended petition to further clarify their request for a hearing on the matter.

Moreover, "[t]he function of a motion to dismiss is to raise as a question of law the sufficiency of the facts alleged to state a cause of action." Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993). "In determining the sufficiency of the complaint, the trial court may not look beyond the four corners of the complaint . . . nor consider any evidence likely to be produced by either side. . . . Significantly, all material factual allegations . . . must be taken as true." Id.

Section 367.071(1), Florida Statutes, requires us to, among other things, make a determination that the proposed transfer is in the public interest. Because the customers have alleged reasons why it would not be in the public interest for us to grant the proposed transfer, we find that the customers have alleged sufficient facts to state a cause of action.

Additionally, we agree with the customers that since each customer has standing to object to the transfer, the fact that the initial letter of objection was signed by only one customer does not invalidate the objection. Nor is there a legal requirement that the customers allege that the proposed purchaser lacks the expertise necessary to run the system. The customers have alleged that the proposed transfer is not in the public interest and they have requested a hearing on the matter.

For the foregoing reasons, we find it appropriate to deny Utilities, Inc.'s Motion to Dismiss the Objection and Protest.

Based on the foregoing, it is:

ORDERED by the Florida Public Service Commission that Utilities, Inc.'s Motion to Dismiss the Objection and Protest is hereby denied. It is further

ORDERED that this docket shall remain open pending final disposition of this case.

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By ORDER of the Florida Public Service Commission this 2nd day
of April, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

RG

DISSENT

Chairman Joe Garcia dissents from the Commission's decision.

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 120.58, 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial

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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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

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. 981403-WS

BEFORE:



CHAIRMAN JOE GARCIA
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER JULIA A. JOHNSON
COMMISSIONER E. LEON JACOBS

PROCEEDING:

AGENDA CONFERENCE

ITEM NUMBER:

69**

DATE:

March 16, 1999

PLACE:

4075 Esplanade Way, Room 148
Tallahassee, Florida

JANE FAUROT, RPR
P.O. BOX 10751
TALLAHASSEE, FLORIDA 32302
(850) 561-5598

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APPEARANCES:

BEN GIRIMAN, Esquire, representing Utilities, Inc.
STEVE BURGESS, Esquire, representing OPC

STAFF RECOMMENDATION

Issue 1: Should the Commission grant the Motion to Dismiss the Objection and Protest filed by Utilities, Inc. and Bayside Utility Services, Inc.?

Recommendation: No. Because the customers have substantially complied with Rule 28-106.201, Florida Administrative Code, and have alleged facts sufficient to state a cause of action, the Commission should deny the motion to dismiss.

Issue 2: Should this docket be closed?

Recommendation: No. If staff's recommendation is approved in Issue 1, this docket should remain open pending final disposition of this case.

1 conflict of interest representing anyone over there.

2 COMMISSIONER DEASON: So you object to him
3 participating?

4 MR. GIRTMAN: At all, yes, sir.

5 COMMISSIONER DEASON: Well, that objection is
6 overruled. If there is a conflict, that is for Mr.
7 Burgess to work out with his own clients, and I am not
8 ruling on whether there is or is not a conflict.

9 Mr. Burgess, do you have something to add?

10 MR. BURGESS: Commissioner Deason, it was asked
11 had anybody been in touch with the customers. We have
12 spoken, as Mr. Girtman indicates, we have spoken with
13 the people that have filed, and they have, I think,
14 made the allegation that it is against the public
15 interest. They have raised the concern it is against
16 the public interest because it is not -- it is going
17 to cost them more money if this is sold privately to
18 this particular enterprise for the purchase price
19 which is not going to effect a lower rate that would
20 be effected through the city. Because, in fact, if
21 the rate base stays where it is then what you will
22 have is a rate base that is \$100,000 higher than the
23 purchase price.

24 The customers are concerned that this is
25 something that can be or should be reflected in the

1 rates. And if, in fact, the city is given an
2 opportunity to purchase and they tell me -- this is
3 hearsay, but this is in the allegation, they tell me
4 they have spoken with the city and the city has
5 representatives that are interested in this and that
6 will purchase this. I agree with --

7 (Simultaneous conversation.)

8 COMMISSIONER DEASON: But do they understand --

9 MR. BURGESS: -- that this is the kind of thing
10 that can be dealt with as the case progresses.

11 COMMISSIONER DEASON: Do they understand that we
12 do not have the jurisdiction to order the city to buy
13 this system?

14 MR. BURGESS: Oh, absolutely. They understand
15 that you have the authority --

16 CHAIRMAN GARCIA: Let me ask a question. What
17 are we doing by holding this up? A better chance to
18 buy, so now these customers are expecting the city to
19 buy it. What exactly is holding this hearing, what
20 will it do for the customers?

21 MR. BURGESS: It, in fact, there is a purchaser
22 which is a municipality that will, one, integrate this
23 system which it is already providing service for into
24 its overall municipal system, then that will be a
25 better - that will serve public policy with regard to

1 the locality. If, in addition to that, it results in
2 lower rates to these utility customers, then that
3 provides a service --

4 CHAIRMAN GARCIA: Mr. Burgess, we know how
5 governments work and how cities work. They were
6 noticed. You know, if they would have been interested
7 don't you think that they would have stepped up?

8 MR. BURGESS: My understanding is that they have
9 expressed an interest, but at this point they have not
10 gone through the process. Just like this Commission
11 has certain deliberate processes or it can send a
12 representative saying our position is thus and so and
13 they have not gone through those processes at this
14 point.

15 CHAIRMAN GARCIA: Okay.

16 COMMISSIONER DEASON: Well, we do have a motion.
17 I have a motion and I'm going to ask for a second. Is
18 there a second to the motion?

19 COMMISSIONER JACOBS: I will second it.

20 COMMISSIONER DEASON: We have a motion and a
21 second. All in favor of the motion say aye.

22 CHAIRMAN GARCIA: Aye.

23 COMMISSIONER JACOBS: Aye.

24 COMMISSIONER DEASON: All opposed. Nay.

25 COMMISSIONER CLARK: Nay.

AFFIDAVIT

STATE OF FLORIDA
COUNTY OF BAY

Before me, the undersigned authority, a Notary Public, in and for said State and County, personally appeared the undersigned, who after being first duly sworn upon his oath deposes and says:

1. My name is Richard Jackson and as such is authorized to, and does make this Affidavit for and on its behalf.

2. I am presently holding the office of City Manager of the City of Panama City Beach. There are five council members including the mayor. I have been requested to make an Affidavit concerning a utility known as Bayside Utilities, Inc., which furnishes sewer and water service to customers at Bayside Mobile Home Park in Bay County, Florida. The question presented to me for consideration in this affidavit is the transfer of the utility from the owners to the City of Panama City Beach which I am the City Manager. I am unaware of any negotiations now or in the past between the City of Panama City Beach's authorized representative and the owners of Bayside Utilities for the purpose of possibly purchasing that system. I know that we do not have any money in the budget for the purchase of Bayside Utilities. I am opposed to the purchase of Bayside Utilities and would not recommend it to the Council. I would recommend to our Council the acquisition of the utility if it was given to us for no consideration and provided it met City standards. In summary, as far as the City of Panama City Beach is concerned, we are not interested in purchasing Bayside Utilities.

FURTHER AFFIANT SAYETH NOT.

Dated this 17th day of April, 1999.



Richard Jackson,
City Manager

The foregoing instrument was acknowledged before me this 17th day of April, 1999, by Richard Jackson, who: (Notary must check applicable line)

- is personally known to me.
- produced a current Florida driver's license as identification
- produced _____ as identification.



Notary Public

Commission # CC-611266

My Commission expires 1-2-01

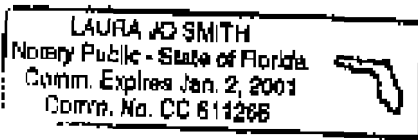


EXHIBIT #3
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer
of Certificate Nos. 469-W and
358-S in Bay County from Bayside
Utility Services, Inc.

DOCKET NO. 981403-WS
ORDER NO. PSC 990607-POO-WS
ISSUED: April 2, 1999

AFFIDAVIT

STATE OF FLORIDA,

COUNTY OF BAY.

Before me, the undersigned authority, a Notary Public, in and for said State and County, personally appeared the undersigned, who after being first duly sworn upon her oath deposes and says:

1. My name is **Dorothy Burton**, and I am over the age of 21 years, and my mailing address is 6325 Big Daddy Drive, Panama City Beach, Florida, and as such makes this affidavit upon personal knowledge, information and belief.

2. I am the managing partner for **Bayside Partnership**, and I am also President for **Bayside Utilities, Inc.**, a Florida Corporation. **Bayside Partnership a/k/a Bayside Utilities, Inc.** ("herein **Bayside**") is the applicant for transfer of Certificates Nos. 469-W and 358-S in Bay County, Florida to **Bayside Utility Services, Inc.**

3. I have attached to my Affidavit a letter from "customers of **Bayside Utilities, Inc.**" dated March 1, 1999 to Ms. Blanca Bayo,

Division of Records and Reporting, Florida Public Service Commission, and eight (8) pages of signatures of one hundred sixty two (162) customers who support the sale of the utility as being in the best interest of all the customers of Bayside Utilities, Inc. I have personally verified that each of the petitioners who signed the Petition attached to my Affidavit is a verified customer of the Bayside Utilities. Bayside Utilities, Inc. has two hundred eighty seven (287) connections and out of that number one hundred sixty two (162) customers have signed the attached Petition indicating their full support of the sale of the utility by Bayside Utilities, Inc. now pending before the Florida Public Service Commission.

4. Moreover, each of these persons stated that they strongly disagree with the protest filed by the three customers that have protested. In addition, the City of Panama City Beach represented by Mr. Richard Jackson, City Manager, met with your Affiant to determine the City's interest in buying the utility. I determined that the City was not interested in buying the utility. They stated to me that they absolutely would not take the utility even if it was given to them. I also contacted a representative of Bay County, Florida. I was personally told that Bay County was not interested in buying my utility by the County Manager, John Mantay. Three of the protesting customers that were in attendance at the meeting with Mr. Mantay, were then and still are well aware of the

County's position of non-interest in the purchasing of this utility.

FURTHER AFFIANT SAYETH NOT.

DATED this 14th day of April, 1999.

BAYSIDE PARTNERSHIP a/k/a BAYSIDE UTILITIES, INC., a Florida Corporation

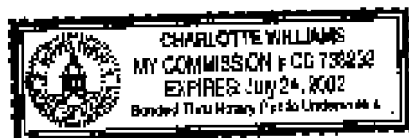
BY: Dorothy Burton
DOROTHY BURTON
Its President

BEFORE ME this date personally appeared DOROTHY BURTON, who:
(notary **must** check applicable box)

- is personally known to me.
- produced a current Florida driver's license as identification.
- produced _____ as identification.

on behalf of BAYSIDE PARTNERSHIP a/k/a BAYSIDE UTILITIES, INC., a Florida Corporation, upon being first duly sworn, acknowledged before me that she signed the foregoing affidavit and the facts therein are true and correct to the best of her knowledge and belief.

WITNESS my hand and official seal this 14th day of April, 1999.



Charlotte Williams
Notary Public
Commission # _____
My Commission Expires: _____

March 1, 1999

Ms. Blanca Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RE: Docket No. 981403-WS
Application for Transfer of Certificate Nos. 469-W and 358-S

Dear Ms. Bayo,

We are customers of Bayside Utilities, Inc. who have not spoken out before. We do NOT object to the proposed sale of Bayside Utilities, Inc., and we strongly disagree with the protest filed by the three customers who do. They do not speak for us.

We believe that the sale of the utility is in the best interests of all of the customers of Bayside Utilities, Inc. Eleven of us met with Mr. Don Rasmussen, a Vice President of the purchasing company. He answered our questions about billing and service, and we believe that Utilities, Inc. can provide a level of service and cost savings through economies of scale that Bayside Utilities, Inc. cannot, because of it's small customer base.

The fees for the lawyers who will fight the protest could ultimately be passed on to the customers in the form of higher rates. The three protesting customers are placing an unfair burden on all of the other customers who are not objecting to the transfer.

Sincerely,

CUSTOMERS of BAYSIDE UTILITIES, INC.

NAME

ADDRESS

Judi Brown 800 Linda Lane

Barrow Thompson 842 Linda Lane

Art [unclear] 7014 Sunrise

Robert P. Rastby 1047 Bay Circle

John W. [unclear] 6823 Big Daddy Dr.

~~John W. [unclear]~~ ~~6823 Big Daddy Dr.~~

~~John W. [unclear]~~ 7104 Big Daddy Dr. Box 3 POB A

Russ Williams 846 Linda Lane

[unclear] 6723 Big Daddy

[unclear] 1055 Bay Circle

[unclear] 7104 BIG DADDY DR C-1

Riley Lockup 1047 Bay Circle

Barbara [unclear] 1025 Bay Circle

A. F. Peritt 829 Linda Lane

William B. Howard 1013 Bay Circle

Doretha B. Howard 1013 Bay Circle

Pauline Williams 6502 Sunrise Dr.

Theresa King 6819 Sunrise Dr.

[unclear] 12919 Sunrise Drive

Lance Nicholson 7104 Big Daddy Dr. Lot B6

Paul F. Allmaras 7103 Sunrise Dr.

Laura Frayser 7103 Sunrise Dr.

NAME

ADDRESS

NAME	ADDRESS
Alfred [unclear]	6720 Sunrise Dr PCB 32407
Richard [unclear]	6420 Sunrise Dr PCB 32407
Martin [unclear] III	7104 Big Daddy Dr Lot E-9 PCB 32407
Frank [unclear]	6503 Sunrise Dr P.C. Sch. 32407
Kim Perkins	6527 Sunrise Dr PCB 32407
Art [unclear]	7005 Big Daddy Dr.
Joe Bartall	6725 Big Daddy Dr.
Paul [unclear]	917 Marina Dr
Joe [unclear] Lot D-9	Lot D-9
Joseph [unclear]	6723 BIG DADDY DR
William [unclear]	6428 Sunrise Dr
Balinda Gotcher	6802 Sunrise Dr
David [unclear]	6806 Sunrise Dr.
Lytham [unclear]	6413 Big Daddy Dr PCB E10
Madison [unclear]	6723 Big Daddy Dr
Steve [unclear]	7104 Big Daddy Dr A-1
Mae [unclear]	7104 Big Daddy A-3
Lana [unclear]	7104 Big Daddy - A-5
Joe [unclear]	7104 Big Daddy A-7
Thelma Lopez	7104 Big Daddy A-7
James Murphy	7104 Big Daddy Dr. # I-1
Shannon Murphy	7104 Big Daddy Dr. # I-1

NAME

ADDRESS

NAME	ADDRESS
Alroya Burton	6325 Big Daddy Dr.
John Haupt	7104 Big Daddy Dr. Lot I-5, Panama City, Bch. 32407
Dolma Land	7104 Big Daddy Dr - I 1 Panama City Bch 32407
John Haupt	7104 Big Daddy Dr. LAEG Panama City Bch 32407
Leo Chavez	7104 Big Daddy Dr I 8 PC 32400
Pam THOMPSON	7104 Big Daddy Dr I 8 PC 32400
Karen Park	7104 Big Daddy Dr PC 32407
DAVE TUCKER	7104 Big Daddy Dr. P.C. 32407
Jim Bazzell	6724 Sunrise Dr.
Nona Bazzell	6724 Sunrise Dr.
Betty Grimes	6521 Sunrise Dr.
William Dalton	6811 Sunrise Dr.
Doree Dalton	6811 Sunrise Dr.
R.W. Caswell	7104 Big Daddy Dr #17
Dennis Upton	C-6 Big Daddy
Cynthia Locke	6800 Sunrise Dr.
Bill Grimes	#6501 SUNRISE
Phil Hanes	7104 Big Daddy G2
Joe Anderson	G-2 Big Daddy
Ray Durston	6725 Big Daddy Dr
Nancy Hoag	6801 Big Daddy
Jim Porter	6813 Big Daddy Dr.

NAME

ADDRESS

NAME	ADDRESS
Judith Kelsey	6819 Sunrise Drive
Angela Burt	6802 Sunriseda.
Theresa Sanders	6611 Sunrise Dr.
Raymond Bates	6611 Sunrise Dr.
garry Cook	6721 Sunrise Dr.
Sharon Erdman	6711 Sunrise Dr.
Paula Wilson	6629 Sunrise Dr.
Anne Jaworski	6618 Sunrise Dr.
Dai Black	6608 Sunrise Dr.
Judy Z. Black	6608 Sunrise Dr.
Angela Depner	6532 Sunrise Dr.
Lynn Depner	6532 Sunrise Dr.
Brian Jewett	6532 Sunrise Dr.
Betty Johnson	6515 Sunrise Dr.
Patricia Bredel	6510 Sunrise Dr.
Carl Black	838 Linda Lane
Barbara Wolvater	812 Linda Lane
Dr. Walter Jeffrey	6400a Sunrise Dr. - P.O.
Steve Johnson	6518 Sunrise Dr.
J. H. Jones	6518 Sunrise Dr.
John Johnson	6711 Highway 111
Robert Woodard	6931 Sunrise Dr.

NAME

ADDRESS

NAME	ADDRESS
Mandy E. Carroll	6605 Big Daddy Dr 32407
Raymond B. B	6611 Sunrise Dr. 32407
Cheryl Lewis	4513 Big Daddy Dr 32407
Linda L. Farrell	6423 Sunrise Dr 32407
Laine Deary	6423 Sunrise Dr. 32407
Shirley Clark	7101 Big Daddy Dr 32407
Mandy E. Carroll	7104 BIG DADDY DR 32407 A & B
Pat K.	7104 Big Daddy Dr Bt B
Beri Collins	7104 Big daddy dr. Bt
John F. L	7104 B-5 Big Daddy Dr.
J. C. W	7104 B-9 Big Daddy Dr
Tracy B. L	6919 Big Daddy Dr.
Ken C	6901 Big Daddy Dr
B	6901 Big Daddy Dr.
Georgia Luck	7104 Big DADDY DR. D-4
Terry Mc H	808 Linda Ln.
Margaret Bradford	7104 Big Daddy Lot A-6
John M	925 Marina Dr.
Joseph D	6630 Sunrise Dr.
Dorothy LaBlanc	6824 Sunrise Drive 32407
D.S. McElyh	6924 Sunrise Drive 32408
John A. Zumbly	7011 Sunrise Dr

(5)

NAME

ADDRESS

NAME	ADDRESS
Tracid L. Wiles	6527 Big Daddy Dr PCB 32407
Jeff Goffe	6411 " " " " " " 52407
Willie Eggs	7124 Bz Daddy Dr Lot D4
Lain P. Remog	6713 Sunrise Dr. PCB 32407
W. M. M.	6822 Sunrise Dr. PCB. 32407
Diane Humphries	7104 Big Daddy Dr. PCB 32407 E-5
Dorothy Burton	7017 Big Daddy Dr.
Dorothy Burton	7009 Big Daddy Dr.
Dorothy Burton	6805 Big Daddy Dr.
Dorothy Burton	6719 Big Daddy Dr.
Dorothy Burton	6701 Big Daddy Dr.
Dorothy Burton	6517 Big Daddy Dr.
Dorothy Burton	6528 Sunrise Dr.
Dorothy Burton	6614 Sunrise Dr.
Dorothy Burton	6812 Sunrise Dr.
Dorothy Burton	7006 Sunrise Dr.
Dorothy Burton	7024 Sunrise Dr.
Dorothy Burton	7015 Sunrise Dr.
Dorothy Burton	6707 Sunrise Dr.
Dorothy Burton	6701 Sunrise Dr.
Dorothy Burton	6607 Sunrise Dr.
Dorothy Burton	843 Linda Lane

(6)

NAME

ADDRESS

NAME	ADDRESS
Frank W. Smith 5009 W. Smith	6611 Big Daddy Dr.
Bill Sommerville	6427 BIG DADDY 8
Bill Sommerville	6501 BIG DADDY 8
Steen Hoff	6417 BIG DADDY 5
Steen Hoff	7104 BIG DADDY 5
Edna Farris	6505 Big Daddy
Edna Farris	7104 Big Daddy H-8
Hal F.	7104 Big Daddy G-1
Key Rickbourg	6612 Sunrise Dr.
W. W. Rose	6828 Sunrise Dr.
W. W. Rose	6820 Sunrise Dr.
W. W. Rose	6826 Sunrise Dr.
W. W. Rose	7104 Big Daddy I-2
W. W. Rose	6705 Sunrise Dr.
Bobby + Bobby Rose	6706 Sunrise Dr.
W. W. Rose	6906 Sunrise Dr.
George Smith	7104 Big Daddy Dr. 09 C7
Billington	7104 Big Daddy Dr. PUB F/ D5
Luna B. Emerson	7104 Big Daddy Dr. D3
Alvin A. Burns	7104 Big Daddy Dr. F-0
Debra B. McQueen	7104 Big Daddy Dr. I-3
Dellie Paris	7104 Big Daddy I-6

(7)

NAME

ADDRESS

Dorothy Burton	6519 Sunrise Dr.
Dorothy Burton	6325 Big Daddy Dr. (Marina)
Dorothy Burton	6325 Big Daddy Dr. (R.V. lots by pond)
Dorothy Burton	7028 Sunrise Dr.
Dorothy Burton	7104 Big Daddy Dr., B-1
Dorothy Burton	7104 Big Daddy Dr., B-0
Dorothy Burton	7104 Big Daddy Dr., D-1
Dorothy Burton	7104 Big Daddy Dr., H-4