



Public Service Commission

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

DATE: May 14, 1999
TO: Division of Records and Reporting
FROM: Division of Water and Wastewater (Brady) *pb bsm gwl*
RE: Docket No. 990397-WS, Application for transfer of water and wastewater facilities of Mangonia Park Utility Company, Inc. to the Town of Mangonia Park in Palm Beach County and request for cancellation of Certificate Nos. 078-W and 067-S.

Please add the attached correspondence package to the docket file. The correspondence package is a record of application history. Thank you.

Attachment: Correspondence totaling 10 pages.
cc: Division of Legal Services (Clemons, Crosby)

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

DOCUMENT NUMBER-DATE

~~000000~~ MAY 17 99

FPSC-RECORDS/REPORTING

BEN E. GIRTMAN

Attorney at Law

1020 East Lafayette Street
Suite 207
Tallahassee, Florida 32301-4552

Telephone: (850) 656-3232
(850) 656-3233
Facsimile: (850) 656-3233

RECEIVED
FLORIDA PUBLIC
SERVICE COMMISSION
99 FEB -1 AM 9:52

MAIL ROOM

January 29, 1999

VIA FACSIMILE

Herbert L. Gildan
Greenberg Traurig, P.A.
Attorneys at Law
P.O. Box 20629
West Palm Beach, FL 33416-33401

RECEIVED

FEB 1 1999

Florida Public Service Commission
Division of Water and Wastewater

Re: Mangonia Park Utilities, Inc.

Dear Mr. Gildan:

On January 21, a letter was faxed to you requesting your client's assistance in providing data to finalize the Application for Transfer to be filed with the Florida Public Service Commission. There was no response, so on January 28, I telephoned your office. Another Mr. Gildan took my call and indicated that he would have your client call the buyer's representative, Mr. Carl Wenz, and provide the information.

Both written and verbal efforts by Mr. Wenz to acquire the needed information from the utility's owner have been unsuccessful. In fact, Mr. Wenz was told that the owner referred all request to you because she did not understand these matters.

The asset purchase agreement was executed on December 29, 1998, and calls for Utilities, Inc. to file the application within 10 days following execution of the agreement (Article III), which would make the required filing date Friday, January 8, 1999.

Please also note that Article I, paragraph 4) requires that:

Seller will cooperate fully, at no expense to Seller, with Purchaser in any and all applications or petitions to public authorities deemed necessary or desirable by Purchaser in connection with the purchase of the Facilities from Seller as contemplated herein.

Although the "cooperation" is "at no expense to Seller", the failure to cooperate is not. Additional costs and delays are being incurred due to your client's failure to provide the required information and assistance.

Mr. Herbert L. Gildan
January 29, 1999
Page 2

It is my understanding that Mr. Philip Gildan attempted to reach Mr. Wenz by telephone today, and that he will be contacting Mr. Wenz on Monday to set up a schedule to provide the information.

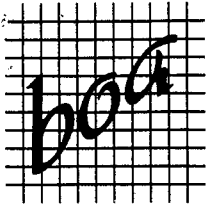
Thank you for your prompt attention to this matter.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Ben E. Girtman". The signature is written in dark ink and is positioned to the right of the typed name.

Ben E. Girtman

cc: Mr. Carl Wenz, Vice President, Utilities, Inc.
Mr. Charles Hill, Director, PSC Water and Wastewater
Philip Gildan, Esq., Greenberg Traurig, P.A.



A WCG, Inc. Company

RECEIVED
FLORIDA PUBLIC
SERVICE COMMISSION

99 FEB -5 PM 1:34

MAIL ROOM

February 3, 1999

BARKER, OSHA & ANDERSON, INC.

Consulting Engineers
860 U.S. Highway One, Suite 202
North Palm Beach, Florida 33408
561/626-4653 • Fax 561/626-4658

Florida Public Service Commission
Division of Water and Sewer
101 East Gaines Street
Tallahassee, FL 32399-0873

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RE: Mangonia Park Utility Company, Inc.
PSC Certificate Nos. 078-W and 067-S
BOA Project No. 99-1005-1

RECEIVED

FEB 05 1999

Florida Public Service Commission
Division of Water and Wastewater

Dear Sir or Madam:

Our client, the Town of Mangonia Park, Palm Beach County, Florida is considering the acquisition of the above referenced utility company. Pursuant to Section 180.301, F.S. you are requested to forward to this office the following information:

1. The most recent available income and expense statement for the Mangonia Park Utility Company, Inc. ("the Utility")
2. The most recent available balance sheet for the utility, listing assets and liabilities and clearly showing the amount of contributions-in-aid-of-construction and the accumulated depreciation thereon.
3. A statement of the existing rate base of the utility for regulatory purposes.

Because the town of Mangonia Park is operating on a fixed and extremely short time frame, you are respectfully requested to furnish the aforementioned data by February 12, 1999. Please forward the data to this office.

Your assistance and cooperation is sincerely appreciated.

Sincerely,

BARKER, OSHA & ANDERSON, INC.

C. Henry Glaus, P.E.

CHG:mjr

c: Ms. Dara Levy, Town Administrator
Ms. Trela J. White, Corbett & White

STATE OF FLORIDA

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



DIVISION OF WATER & WASTEWATER
CHARLES H. HILL
DIRECTOR
(850) 413-6900

Public Service Commission

February 25, 1999

Mr. C. Henry Glaus, P.E.
Barker, Osha & Anderson, Inc.
Consulting Engineers
860 U.S. Highway One, Suite 202
North Palm Beach, Florida 33408

RE: Transfer of Mangonia Park Utility to the Town of Mangonia Park in Palm Beach County.

Dear Mr. Glaus:

Pursuant to your letter and our conversation, I am attaching a copy of the income statement, balance sheet and statement of rate base for Mangonia Park Utility Company, Inc. in Palm Beach county. This information is from the utility's most recent 1997 Annual Report filed with the Commission. The utility has never had a rate case, therefore there has never been an official audited rate base established by the Commission.

I am also attaching the application for the transfer of a regulated utility to a governmental entity. This application must be filed with the Commission to insure the formal recognition of the transfer and the termination of any further responsibility for annual reports and regulatory assessment fees. If you have any questions or require additional information, please feel free to contact me at (850) 413-6990.

Sincerely,

A handwritten signature in cursive script that reads "Billie Messer".

Billie Messer
Supervisor

Enclosure

cc: Division of Water and Wastewater (Lowe, Williams, Chase)
Division of Legal Services (Jaber)

STATE OF FLORIDA

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



DIVISION OF WATER & WASTEWATER
CHARLES H. HILL
DIRECTOR
(850) 413-6900

Public Service Commission

February 26, 1999

Mr. C. Henry Glaus, P.E.
Barker, Osha & Anderson, Inc.
860 U.S. Highway One, Suite 202
North Palm Beach, FL 33408

RE: Application for Transfer of Water Certificate No. 078-W and Wastewater Certificate No. 067-S from Mangonia Park Utility Company in Palm Beach County.

Dear Mr. Glaus:

Forwarded with this letter is an application package for the transfer of the certificate of authorization for a regulated water or wastewater utility to a governmental authority.

Please be advised that Section 367.071(4)(a), Florida Statutes, requires that the governmental authority obtain from the utility or the Commission certain financial information about the utility prior to the sale. A copy of this section of Chapter 367, Florida Statutes, and Rule 25-30.037, Florida Administrative Code, is included in the application package. The information to be provided is contained in the annual report the utility files with the Commission. If you have any questions about what is required by this section of the statute, please contact the undersigned.

In addition, while the sale to a government authority is approved as a matter of right, **regulatory assessment fees up to the date the governmental entity takes over the utility must be paid by the transferor to the Commission.** If the fees are not timely paid, penalty and interest will accrue until they are paid. Attached at the back of the application package are the water and wastewater Regulatory Assessment Fee Return (RAF) forms to calculate the amount due.

The completed RAF form(s) and a check payable to the Florida Public Service Commission in the amount due should be mailed to the address for Records and Reporting given below. Please mark "Final Payment for (year)" on the form and check. If you have any questions concerning the amount owed, you may contact the Division of Water and Wastewater at the telephone number given below.

Mr. C. Henry Glaus
February 26, 1999
Page two

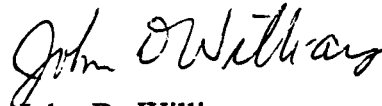
The **original and five copies** of the completed application and supporting documentation, **one copy** of the maps (if applicable), the **original and two copies** of the revised tariff sheets (if applicable) and the appropriate RAF form(s) and fee(s) must be filed with:

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

Also, please ensure that Water Certificate No. 078-W and Wastewater Certificate No. 067-S are returned with the filing.

If you have any questions concerning this material, please feel free to contact Billie Messer, a member of my staff, at (850) 413-6990.

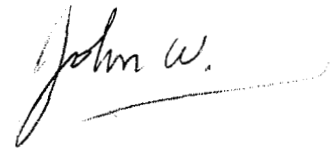
Sincerely,



John D. Williams
Chief, Bureau of Policy Development
and Industry Structure

JDW/BBM/jn
Enclosures

BEN E. GIRTMAN
Attorney at Law



1020 East Layfayette Street
Suite 207
Tallahassee, Florida 32301-4552

Telephone: (850) 656-3232
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Facsimile: (850) 656-3233

March 2, 1999

VIA FACSIMILE

Herbert L. Gildan
Greenberg Traurig, P.A.
Attorneys at Law
P.O. Box 20629
West Palm Beach, FL 33416-33401

RECEIVED

MAR - 4 1999

Florida Public Service Commission
Division of Water and Wastewater

Re: Mangonia Park Utilities, Inc.

Dear Mr. Gildan:

Thank you for your recent letter asserting that the Asset Purchase Agreement between Mangonia Park Utility Company and Utilities, Inc., is "terminated".

After consultation with my client, I have made several efforts to reach you by telephone to discuss the matter, but have been unsuccessful.

Contrary to your letter, the Asset Purchase Agreement with Utilities, Inc. remains valid and binding. If the Town of Mangonia Park does not close on the transfer within 90 days, Utilities, Inc. will enforce its rights under its agreement with Mangonia Park Utility Company.

Sincerely yours,



Ben E. Girtman

cc: Mr. Carl Wenz, Vice President, Utilities, Inc.
Mr. Charles Hill, Director, PSC Water and Wastewater

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MAR 4 8 50 AM '99
ADMINISTRATION
MAIL ROOM

BEN E. GIRTMAN

Attorney at Law

1020 East Lafayette Street
Suite 207
Tallahassee, Florida 32301-4552

Telephone: (850) 656-3232
(850) 656-3233
Facsimile: (850) 656-3233

March 25, 1999

VIA FACSIMILE

Herbert L. Gildan
Greenberg Traurig, P.A.
Attorneys at Law
P.O. Box 20629
West Palm Beach, FL 33416-33401

Re: Mangonia Park Utilities, Inc.

Dear Mr. Gildan:

RECEIVED

MAR 29 1999

Florida Public Service Commission
Division of Water and Wastewater

Pursuant to the validly executed purchase agreement dated December 29, 1998, a binding contract was created whereby Mangonia Park Utility was to be transferred to Utilities, Inc. On December 30, 1998, Mangonia Park Utility provided notice of, and an executed copy of, that contract to the Town of Mangonia Park. On February 17, 1999, the Town provided written notice to Mangonia Park Utility that it claimed a right of first refusal pursuant to the Town's "utility franchise ordinance" which was issued in March, 1972.

In July, 1959, jurisdiction over Mangonia Park Utility and other privately owned utilities in Palm Beach County was transferred to, and accepted by, the Florida Public Service Commission. Pursuant to Section 367.011, Florida Statutes, the Florida Public Service Commission (and not the Town of Mangonia Park) has exclusive jurisdiction to regulate Mangonia Park Utility, including certification and the setting of rates, charges and service conditions.

The Public Service Commission granted water certificate 078-W and sewer certificate 067-S to Mangonia Park Utility, certificates which the utility still holds. Therefore, the Town's utility franchise ordinance is null and void, ab initio. Notwithstanding the alleged right of first refusal, the purchase agreement entered into with Utilities, Inc. acknowledges that,

Seller [Mangonia Park Utility] has obtained from the Florida Public Service Commission . . . a Certificate of Public Convenience and Necessity, and authorization and approval of rates, rules and regulations for water and sewer service within the Property.

Mr. Herbert L. Gildan
March 25, 1999
Page 2

Even if it were successfully argued that some right of first refusal exists for the Town pursuant to the "utility franchise ordinance", the Utility and the Town of Mangonia Park have failed to comply with even the requirements of that "ordinance". Section 14 of the ordinance (on pages 15 and 16) suggests that the Town could exercise a right of first refusal to purchase the utility for which another purchaser had already signed a purchase contract and made a bona fide offer. However, even under the terms of that "ordinance", the Town must exercise that alleged right of first refusal ". . . upon the same terms and conditions and for the purchase price as contained within such bona fide offer made to the [Mangonia Park] Utility by the Town's giving notice in writing to [the] Utility." [Emphasis added.]

The Mangonia Park Utility Asset Purchase Agreement, Palm Beach County, Florida was entered into by Mangonia Park Utility and by Utilities, Inc. on December 29, 1998. Paragraph 2) of Article II on page 4 of that Agreement provides that the purchase price shall be \$835,000. Paragraph 1) of Article III on page 5 requires that,

Within ten (10) days following the execution of the Agreement [on December 29, 1998], Purchaser will file a petition with the [Florida Public Service] Commission requesting approval of this Agreement; transfer of the Public Utility Franchise [granted by the Public Florida Service Commission]; and approval of the existing rates, fees, and charges [approved by order of the Florida Public Service Commission and] applicable to water and sewer utility customers in the Property.

Utilities, Inc. could not file its application with the Public Service Commission because Mangonia Park Utility failed to cooperate and failed to provide information necessary for completing the application. Repeated efforts were made by and on behalf of Utilities, Inc. to Mangonia Park Utility, and to you as their attorney, to acquire that information. All those efforts were unsuccessful.

The Town has failed to meet the requirements of its own "ordinance" by failing to file an application with the Florida Public Service Commission seeking approval of the transfer within the 10-day time period provided in the contract with Utilities, Inc. The application must have been filed within ten days after February 17, 1999, when the Town issued a written notice of its exercise of its alleged "right of first refusal".

Furthermore, the Utility's notification to the Town required that the closing occur within ninety (90) days after the Town's receipt of the Utility's notice of the bona fide offer on December 30, 1998. That ninety-day period expires on March 30, 1999.

Mr. Herbert L. Gildan
March 25, 1999
Page 3

If the transfer to the Town is not completely closed and the full purchase price paid by March 30, 1999, on exactly the same terms and conditions as in the contract with Utilities, Inc., this will be additional failure to meet the Town's own claimed requirements for exercising a right of first refusal. If closing with the Town does not occur on exactly the same terms and conditions as in the contract with Utilities, Inc., even the Town's ordinance would require that the utility be transferred to Utilities, Inc.

Mangonia Park Utility and the Town of Mangonia Park both have failed to comply with the required terms, even if the ordinance is the source of a valid right of first refusal. If there is no valid right of first refusal, then the contract with Utilities, Inc. must be honored and the utility must be transferred to Utilities, Inc. pursuant to the contract.

Utilities, Inc. has expended significant time, energy, expertise, and money in pursuing the purchase of Mangonia Park Utility. Therefore, because of the failure of Mangonia Park Utility and the Town of Mangonia Park to comply with even the requirements of the alleged "utility franchise ordinance", Utilities, Inc. expects to be compensated by your client, Mangonia Park Utility, for its expenses incurred in this effort. Utilities, Inc. further reserves its rights to seek such damages, costs and attorney fees from the Utility, from the Town of Mangonia Park, and from such other entities or individuals as may be appropriate.

Utilities, Inc. has requested that you and your client, Mangonia Park Utility, communicate immediately and directly with Mr. Carl Wenz, Vice President of Utilities, Inc. at 2335 Sanders Road, Northbrook, IL 60062-6196, telephone (847)498-6440 regarding this matter.

Sincerely yours,



Ben E. Girtman
Attorney for Utilities, Inc.

cc: Mr. Carl Wenz, Vice President, Utilities, Inc.
Darla M. Levy, CMC, Town Administrator for the Town of Mangonia Park
Mr. Charles Hill, Director, PSC Water and Wastewater