



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: JULY 15, 1999

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

FROM: DIVISION OF LEGAL SERVICES (CIBULA) *SMC*
DIVISION OF WATER AND WASTEWATER (BRADY, REDEMAN) *AS*

RE: DOCKET NO. 981403-WS - APPLICATION FOR TRANSFER OF
CERTIFICATE NOS. 469-W AND 358-S IN BAY COUNTY FROM
BAYSIDE UTILITIES, INC. TO BAYSIDE UTILITY SERVICES, INC.

AGENDA: JULY 27, 1999 - REGULAR AGENDA - DECISION PRIOR TO
HEARING - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\REG\WP\981403R2.RCM

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 DIVISION OF RECORDS AND REPORTING
 BRADY

CASE BACKGROUND

On October 26, 1998, Utilities, Inc., 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 Utilities) to Bayside Utility Services, Inc. (Bayside Utility Services) pursuant to Section 367.071, Florida Statutes. Bayside Utility Services is a wholly-owned subsidiary of Utilities, Inc.

On November 12, 1998, three customers timely filed a letter objecting to the application. Because the customers did not indicate in the letter whether they were seeking a hearing on the matter, by letter dated November 24, 1998, staff requested the customer who signed the letter to advise staff, 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: Mr. Tarver Kitchens, Mr. Jerry Acosta, and Mr. James Wharton, as well as by a fourth additional

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customer, Mr. Bobby Patullo, the customers indicated that they objected to the transfer application and that they wanted a hearing to be scheduled. Accordingly, a hearing was scheduled for February 2 and 3, 2000.

On January 26, 1999, Utilities, Inc. filed a Motion to Dismiss the Objection and Protest of the four customers. By Order No. PSC-99-0607-PCO-W3, issued April 2, 1999, the Commission denied Utilities, Inc.'s motion. On April 16, 1999, Bayside Utilities timely filed a Motion to Intervene and a Motion for Reconsideration of Order No. PSC-99-0607-PCO-W3. Also, on April 16, 1999, Utilities, Inc., and Bayside Utility Services timely filed a joint Motion for Reconsideration of Order No. PSC-99-0607-PCO-W3, in which they adopted the exhibits and legal arguments set out in Bayside Utilities' Motion for Reconsideration.

On June 15, 1999, the objectors filed a letter withdrawing their protest of the transfer application. This recommendation addresses whether the Commission should acknowledge the withdrawal of the protest. Staff will bring a separate recommendation to a subsequent agenda conference addressing whether the Commission should approve Utilities, Inc.'s application to transfer Certificates Nos. 469-W and 358-S from Bayside Utilities to Bayside Utility Services.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission acknowledge the withdrawal of the protest to Utilities, Inc.'s transfer application?

RECOMMENDATION: Yes. The Commission should acknowledge the withdrawal of the protest to Utilities, Inc.'s transfer application. If the protest is acknowledged as withdrawn, the Commission should also find it unnecessary to rule upon Utilities, Inc., and Bayside Utility Services, Inc.'s joint Motion for Reconsideration of PSC-99-0607-PCO-WS and Bayside Utilities, Inc.'s Motion to Intervene and Motion for Reconsideration of Order No. PSC-99-0607-PCO-WS, as the motions are rendered moot by virtue of the protest withdrawals. (CITE/DA)

STAFF ANALYSIS: As stated in the case background, four customers timely filed an objection to Bayside Utilities' transfer application. Accordingly, a hearing was scheduled for February 2 and 3, 2000. On January 26, 1999, Utilities, Inc., filed a Motion to Dismiss the Objection and Protest of the four customers; however, by Order No. PSC-99-0607-PCO-WS, issued April 2, 1999, the Commission denied Utilities, Inc.'s motion. On April 16, 1999, Bayside Utilities timely filed a Motion to Intervene and a Motion for Reconsideration of Order No. PSC-99-0607-PCO-WS. Also, on April 16, 1999, Utilities, Inc., and Bayside Utility Services timely filed a joint Motion for Reconsideration of Order No. PSC-99-0607-PCO-WS, in which they adopted the exhibits and legal arguments set out in Bayside Utilities' Motion for Reconsideration.

On June 15, 1999, Mr. Austin, Mr. Kitchens, and Mr. Pallillo filed a letter withdrawing their protest of the transfer application. The letter stated that the fourth protestor, Mr. Wharton, is no longer a resident of Florida. Because Mr. Wharton is no longer a customer, he no longer has standing to protest the transfer application.

Thus, staff recommends that the Commission should acknowledge the withdrawal of the protest of Utilities, Inc.'s transfer application. As a consequence of acknowledging the withdrawal of the protest, staff also recommends that the Commission should find it unnecessary to rule upon Utilities, Inc., and Bayside Utility Services' joint Motion for Reconsideration of Order No. PSC-99-0607-PCO-WS and Bayside Utilities' Motion to Intervene and Motion for Reconsideration of Order No. PSC-99-0607-PCO-WS, as the motions are rendered moot by virtue of the protest withdrawals.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open pending Commission action on Utilities, Inc.'s application to transfer Certificates Nos. 469-W and 358-S from Bayside Utilities, Inc., to Bayside Utility Services, Inc. (CIBOLA)

STAFF ANALYSIS: This docket should remain open pending Commission action on Utilities, Inc.'s application to transfer Certificates Nos. 469-W and 358-S from Bayside Utilities to Bayside Utility Services.