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Via Facsimile and Federal Express

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

ORIGINAL

Re: **City of Altamonte Springs/Assignment from Utilities, Inc./
F.F. South & Co. Docket #991288**

Dear Ms. Bayo:

This letter serves to object, on behalf of our client, F.F. South & Co., to the transfer of service in Docket #991288 regarding the Application for transfer of a portion of Certificates 278-W and 225-S in Seminole County from Utilities, Inc., of Florida to the City of Altamonte Springs.

F.F. South has ownership rights to the property (the "Property") serviced by Utilities, Inc., to which this transfer applies and is directly affected by the proposed transfer. Altamonte Springs wishes to build a road through the Property, thus cutting it in two and severely diminishing its value. The Property is not located within the city limits of Altamonte Springs and as such it is not properly subject to condemnation by the City.

In order to achieve its goal, Altamonte Springs seeks to find a way to condemn the land.

Because F.F. South does not wish to have Altamonte Springs put a road through its property, and does not wish Altamonte Springs to provide water and wastewater services to its property, F.F. South objects to the transfer of service from Utilities, Inc., to Altamonte Springs. The transfer of water and wastewater services from Utilities, Inc., to Altamonte Springs is not in the public interest and therefore should not be approved.

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FPSC-RECORDS/REPORTING

Altamonte Springs is using the transfer of water and wastewater services to accomplish its goal of building a road that will cut the Property into two pieces. It is not in the public interest for the City to use the transfer of wastewater services as a means to take F.F. South's Property. It is also not in the public interest for the City to acquire water and wastewater service rights to property located outside the city limits with no legitimate reason for doing so.

Altamonte Springs' wrongful intent in acquiring the wastewater service is evidenced by the purchase price. Altamonte Springs is paying Utilities, Inc., \$427,000 for "one water faucet and one manhole." (Staff Recommendation Report) The Staff Recommendation Report points out that "the purchase price for Green Acres Campground is about 26% of the combined ratebases in Seminole County. Seminole County consists of eleven water systems and five wastewater systems." Obviously, and as the Public Service Commission staff recognized, \$427,000 is an excessive price for one water faucet and one manhole. Altamonte Springs is willing to pay such an exorbitant price in order to accomplish its goal of building a road, outside its city limits, through F. F. South's Property without F.F. South's permission or approval. Therefore, the transfer agreement does not meet the statutory requirement that it be in the public interest.

Altamonte Springs' bad faith is further evidenced by its continued refusal to act in permitting F.F. South to have the service promised it by Utilities, Inc. Such refusal constitutes a breach of contract by the City, as assignee of Utilities, Inc.

Under § 367.071(1), no utility shall sell or transfer its facilities or any portion thereof without determination or approval of the commission that the sale or transfer is in the public interest. § 367.071(1), *Florida Statutes*. Although "The sale of facilities, in whole or part, to a governmental authority shall be approved as a matter of right," the transfer still must be in the public interest. § 367.071(4), *Florida Statutes*. Nothing in Subsection 4 of § 367.071 limits the applicability of Subsection 1; and the Florida Constitution requires that any such transfer be in good faith and in the public interest. Therefore, even if the transfer is to a governmental authority, it still must be in the public interest. In addition, "in the final analysis, the public interest is the ultimate measuring stick to guide the PSC in its decisions." *Gulf Coast Electric Cooperative, Inc. v. Johnson*, 727 So. 2d 259, 264 (Fla. 1999); citing *City of Homestead v. Beard*, 600 So. 2d 450, 453 (Fla. 1992); *Lee county Electric Cooperative v. Marks*, 501 So. 2d 585, 587 (Fla. 1987); and *Utilities Commission of New Smyrna Beach v. Florida Public Service Commission*, 469 So. 2d 731, 732 (Fla. 1985).

In *City of Homestead v. Beard*, 600 So. 2d 450 (Fla. 1992), the Court recognized the dangers inherent in a city extending utility service beyond its borders. The Court stated "Unlike the residents of the City, the customers residing outside the municipality lack a voice in the City's political process." *Id.* at 452.

F.F. South, since its Property is not within the city limits of Altamonte Springs, has no voice in Altamonte Springs' political process. F.F. South is limited to challenging Altamonte Springs' action in this forum. The Commission should recognize the inherent dangers in municipalities controlling utilities service beyond their borders. Parties who are not residents of the city can not object to this exercise of power. Non-resident parties can be ignored at the whim of the acting city.

In *Utilities Commission of New Smyrna Beach v. Florida Public Service Commission*, 469 So. 2d 731 (Fla. 1985), the Florida Supreme Court reversed the Public Service Commission's decision denying approval of an extra-territorial agreement between a city and an electric company. The Court noted that the Commission should base its approval decision on the effect of the agreement on all affected customers, not just the customers in the transferred area. See *id.* at 732. The Court went on to state that for PSC approval, the agreement "must not harm the public." *Id.* at 733.

The Commission should take into account the harm to all affected customers if the transfer agreement between Utilities, Inc., and Altamonte Springs is approved. Approval of this agreement will harm F.F. South as is already shown. In addition, the agreement harms other customers, in that if it is approved, it will give cities the green light to take private property without a legitimate purpose and without a legitimate procedure. Therefore, the agreement, if approved, will harm all affected customers, not just F.F. South.

For the reasons stated above, F.F. South, the customer directly affected by the agreement, objects to the transfer of water and wastewater services from Utilities, Inc., to Altamonte Springs. The Commission should not approve the transfer agreement.

F.F. South's phone number is (407) 370-9300. The fax number is (407) 370-9400. The address is 7600 Dr. Phillips Boulevard, Orlando, Florida 32813. All communications should be through this law firm.

Sincerely,



DAVID H. SIMMONS
(signed in his absence to avoid delay)

DHS/mhl
cc: Robert Kling