

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Bayside Mobile Home Park)
against Bayside Utility Services, Inc. regarding)
water and sewer service in an area within a)
territory assigned by the Commission)

DOCKET NO. 010726-WS

SEPTEMBER 12, 2001

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK AND
ADMINISTRATIVE SERVICES

FROM: BAYSIDE PARTNERSHIP d/b/a BAYSIDE MOBILE HOME PARK

BAYSIDE THIRD RESPONSE TO STAFF'S FIRST DATA REQUEST

As to the document dated today, addressed to Mr. Ralph Jaeger, Esq., from Utilities, Inc., signed by Mr. Carl Wenz, presented in the form of a letter, and not delivered to Ms. Bayo, the Director, Division Clerk, Bayside Mobile Home park responds as follows;

Bayside Park takes great offense to Utilities, Inc.s continued assertion that Rule 25-30.585 applies. Rule 25-30.585 does not apply and Mr. Wenz's letter defines why in the first paragraph of the second page when he states ".....should bear the cost and risk of installing lines in a NEW DEVELOPMENT". Staff is adamantly aware that Bayside Mobile Home Park is NOT a new development. Bayside Mobile Home Park has existed since 1972 and has been regulated by the Commission since 1984.

Staff is also aware that Rule 25-30.585 clearly states that it is "Subject to the limitation in Rule 25-30.580" and establishes the criteria for Utility Companies and the Commission to set Service

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availability charges for New Developments. **It in no way addresses expansion of existing systems.**

Bayside Mobile Home Park reminds Staff again that Rule 25-30.520 clearly states; **“IT IS THE RESPONSIBILITY OF THE UTILITY TO PROVIDE SERVICE WITHIN IT’S CERTIFICATED TERRITORY IN ACCORDANCE WITH TERMS AND CONDITIONS ON FILE WITH THE COMMISSION.”** The terms and conditions on file, recommended by Staff, and approved by the Commissioners states that a **\$300. service availability fee will be charged for service where “where service did not exist previously”** The requested expansion is clearly covered by the approved and existing Tariff on file with the Commission.

Mr. James Camaren, Chairman and Chief Executive Officer of Utilities, Inc. on the 7th day of October, 1998 signed the **ASSET PURCHASE AGREEMENT** alluded to by Mr. Jaeger in past writings of his. I again direct Staff’s attention to **ARTICLE IV , GENERAL, (1).** **“Upon purchase of the Facilities of Seller, Purchaser agrees to supply all customers within the Property with adequate and customary sewer utility service, and to operate, maintain and repair all Facilities acquired herein.** By signing this agreement and ultimately purchasing Bayside Utilities, Inc.’s complete system, he has committed his Company to supply sewer and water service to ALL customers within the PROPERTY. This would clearly mean any customer who request service within the Property(Territory) will be supplied service.

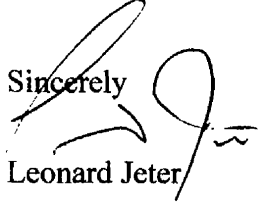
As to Staff’s indication that the cost of hooking into the City Of Panama City Beach, would be prohibitive, I would remind Staff that there is a Bay County Ordinance, passed several years ago, that gives title to any lines laid on County Right Of Way to the County. Therefore, in reality, the lines laid along Big Daddy Drive belong to the County and by virtue of the fact that the County, years ago, gave to the City of Panama City Beach an exclusive territory west of Hathaway Bridge to all sewer and water service, the City of Panama City Beach actually owns the lines laid on County Right of Way and therefore would have the right to allow a connection to those lines.

Bayside Mobile Home Park will show Utilities, Inc. the courtesy of forwarding a copy of this document to them even though Bayside Mobile Home Park has not been shown that same courtesy in the past.

The document **“BAYSIDE SECOND RESPONSE TO STAFF’S FIRST DATA REQUEST”**, clearly indicates on the cover page 1 that it is from Bayside Partnership d/b/a Bayside Mobile Home Park and we request that the signature on this document be accepted as the signature for that document if a signature is so required. Mr. Wenz has never supplied a “certificate of

service” with any document that he has presented.

Bayside Mobile Home Park again request that Staff recommend that the Commissioners Order Utilities, Inc, through their wholly owned subsidiary, Bayside Utility Services, Inc. to immediately begin laying the necessary lines to expand their system to supply service to the 76 lots where customers are going to be requesting service. Those lines need to be laid before Bayside Park puts in the storm water drainage system and paves the Roads. Both are ready to begin and have been for several years.

Sincerely

Leonard Jeter
General Manager

CC Faxed to; Ms. Blanca Bayo, Director Division Of Commission Clerk and Adm. Services
Mr Carl Wenz
Mr. Ralph Jaeger, Esq.
Mr. Charles Walker, Staff

BAYSIDE UTILITIES, INC. ASSET PURCHASE AGREEMENT

BAY COUNTY, FLORIDA

This Agreement is entered into on this 7 day of October, 1998 by and between Bayside Utilities, Inc., a Florida corporation, (hereinafter referred to as "Seller") and Utilities, Inc., an Illinois corporation (hereinafter referred to as "Purchaser").

WITNESSETH

WHEREAS the Seller is the owner of a water supply and distribution system, as well as a sewage collection system which has been installed to provide central water and sewer service to approximately 280 customer each in Bay County, Florida, and more fully described on Exhibit 1, attached, (hereinafter referred to as the "Property"); and

WHEREAS Purchaser is engaged through its operating subsidiaries in the business of furnishing water and sewer service to the public in various communities throughout the United States. Purchaser desires to acquire, and Seller desires to sell the water distribution facilities, as well as the sewage collection facilities (collectively the "Facilities") installed to provide water and sewer service to the Property, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants as hereinafter set forth, the parties hereto agree as follows:

ARTICLE I

REPRESENTATIONS BY SELLER

Seller represents and warrants that:

- 1) Seller is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Florida. Seller's Certificate of Incorporation contains charter powers authorizing it to construct, operate and maintain a public water distribution, as well as a sewage collection system.
- 2) Seller is, and at the Closing (the "Closing" as hereinafter defined) will be, the owner of the Facilities with good and marketable title, free and clear of all liens and encumbrances.
- 3) Seller has obtained from the Florida Public Service Commission (hereinafter referred to as the "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.
- 4) Seller will cooperate fully 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.
- 5) Attached hereto as Exhibit 2 is a detailed list of the Facilities of Seller to be acquired by Purchaser, pursuant to this Agreement, showing both their respective installation or

good and marketable title to the Facilities, free and clear of all liens and encumbrances.

(c) At the Closing and from time to time thereafter, Seller shall execute and deliver such further instruments of sale, conveyance, transfer and assignment, and take such other action as Purchaser may request, in order more effectively to sell, convey, transfer and assign to Purchaser any of the Seller's Facilities, to confirm the title of Purchaser thereto and to assist Purchaser in exercising rights with respect thereto.

2) **Purchase Consideration**

At the Closing Purchaser shall, upon due performance by Seller of its obligations under the Agreement, deliver to the Seller, the Purchase Price (the "Purchase Price") in the amount of \$190,000.00 (ONE HUNDRED NINETY THOUSAND DOLLARS), increased by the amount of any cash and current customer accounts receivable (which Seller represents and warrants will be collected at their face amount) transferred by Seller, to Purchaser and decreased by any and all liabilities (current, accrued, long-term or other) assumed by Purchaser.

ARTICLE III

COMMISSION APPROVAL

1) **Commission Approval**

Within ten (10) days following the execution of the Agreement, Purchaser will file a petition with the Commission requesting approval of this Agreement; transfer of the Public Utility Franchise; and approval of the rates, fees, and charges applicable to water and sewer utility customers in the Property.

ARTICLE IV
GENERAL

1) Upon purchase of the Facilities of Seller, Purchaser agrees to supply all customers within the Property with adequate and customary sewer utility service, and to operate, maintain and repair all Facilities acquired herein.

2) The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof in any instance by either party shall not be construed as a general waiver or relinquishment on its part of any such provisions, but the same shall, nevertheless, be and remain in full force and effect.

3) Any notice of delivery required to be made hereunder may be made by mailing a copy thereof addressed to the appropriate party as follows:

If to Purchaser:

Utilities, Inc.
2335 Sanders Road
Northbrook, IL 60062
Attn: Jim Camaren
Chairman & Chief Executive Officer

If to Seller:

Bayside Utilities, Inc.
6325 Big Daddy Drive
Panama City Beach, FL
Attn: Dorothy Burton
President

Delivery when made by registered or certified mail, shall be deemed complete upon mailing.

- 4) The Exhibits to this Agreement are a part hereof and are hereby incorporated in full by reference.
- 5) This Agreement shall be governed by the laws of the State of Florida.
- 6) The representations and warranties contained herein shall survive, and continue in effect, after the Closing. Purchaser agrees to indemnify Seller, its successors and assigns, and hold it harmless against any loss, damage, liability, expense or cost accruing or resulting from any misrepresentation or breach of any representation, warranty or agreement on the part of Purchaser under this Agreement or from any misrepresentation in or material omission from any certificate or other document furnished or to be furnished to Seller by Purchaser; Seller agrees to indemnify Purchaser, its successors and assigns, and hold it harmless against any loss, damage, liability, expense or cost, accruing or resulting from any misrepresentation or breach of any representation, or warranty or agreement made or to be performed by Seller under this Agreement or from any misrepresentation in or material omission from any certificate or other documents furnished or to be furnished to Purchaser by Seller.
- 7) If this Agreement is not executed by Seller prior to October 30, 1998, then the terms and conditions herein are waived with no further obligations or responsibility to either party.
- 8) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. It is specifically understood that Purchaser intends to transfer its rights and obligations under this Agreement to a separate wholly-owned subsidiary of Utilities, Inc.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year above first written.

UTILITIES, INC.

By

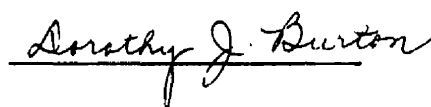

Chairman & Chief Executive Officer

ATTEST:



BAYSIDE UTILITIES, INC.

By



ATTEST:

