

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Notice of abandonment of  
water services in Marion County  
by Silver City Utilities.

DOCKET NO. 011402-WU  
ORDER NO. PSC-01-2510-PCO-WU  
ISSUED: December 21, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman  
J. TERRY DEASON  
LILA A. JABER  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI

ORDER ACKNOWLEDGING NOTICE OF ABANDONMENT  
OF SILVER CITY UTILITIES

BY THE COMMISSION:

BACKGROUND

Silver City Utilities (Silver City or utility) is a Class C water utility currently serving approximately 46 unmetered mobile home lots in a remote area of Marion County (County). This area is in the St. Johns River Water Management District (SJRWMD) but is not considered a water use caution area. Wastewater is provided by septic system. On its 2000 annual report, the utility reported no revenues and a net operating loss of \$3,958.

Order No. 13160, issued April 2, 1984, in Docket No. 830254-W, granted Certificate No. 413-W to Silver City and established initial rates and charges using a base facility/gallonage charge rate structure. However, meters have never been installed and customers have never been billed. In addition, the utility has never filed a petition for an index, rate proceeding, or for any type of rate relief.

On October 30, 2001, one of the utility owners, Mr. David L. Small, noticed us of the owners' intent to abandon the utility as of December 31, 2001.

DOCUMENT NUMBER-DATE

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FPCD-COMMISSION CLERK

We have jurisdiction pursuant to Section 367.165, Florida Statutes.

ACKNOWLEDGMENT OF NOTICE OF ABANDONMENT

Section 367.165, Florida Statutes, requires 60 days' notice be given to us and to the County or Counties in which the utility is located prior to the abandonment of a utility. By letter dated October 24, 2001, and filed with us on October 30, 2001, Mr. Small gave the County, the Florida Department of Environmental Protection (FDEP), and this Commission 60 days' notice of the owners' intent to abandon the utility water facilities as of December 31, 2001. Mr. Small also indicated the intent of the owners to cooperate should an extension of the notice beyond December 31, 2001, be warranted.

The Silver City Subdivision is a mobile home community located in a remote area of Marion County. Originally it was exclusively a seasonal development. Currently there are a few residents living there all year. Approximately 200 lots in the Silver City Subdivision and the water facilities which serve those lots were jointly owned by Mr. Small and two other members of the Small family. Of the 200 lots, about 100 have been sold. However, only 46 are currently receiving service. The remaining unsold lots and water facilities are still owned jointly by the Smalls.

We have been aware for some time of the potential for the utility facilities to be abandoned. As a history of the events leading up to the notice of abandonment, Mr. Small attached copies of letters to us dated July 27, 1999, and February 28, 2001. Mr. Small's July 27, 1999, letter explains that the owners' initial objective was to sell lots in the subdivision. As such, free water was offered as an incentive and no revenues were collected by the utility.

Sometime in 1997, the owners decided they could no longer afford to offer free water and approached the informal association formed by the mobile home owners (HOA) regarding the option of owning the water system. In May of 1998, the HOA began assuming the expenses of the water system but has never completed the legal steps necessary to assume ownership. In the Spring of 2000, Mr. Small made inquiries of our staff regarding procedures for

abandonment. Our staff followed up by speaking with representatives of the HOA to explain the potential ramifications of abandonment.

In January of 2001, we were contacted by the HOA. Since the HOA was paying the expenses for the utility, Mr. Small had sent the HOA the forms to file the utility's 2000 annual report. According to a representative for the HOA, there had been discussions in December of 2000 regarding acquisition of the utility facilities but the matter was not resolved. Meanwhile, the HOA was concerned about its responsibility with respect to the 2000 annual report and also about a potential abandonment. Our staff indicated that the responsibility for the annual report still resided with the utility and that the owners could not abandon the utility without first giving notice.

Mr. Small's February 28, 2001, letter confirmed that the HOA was still considering the acquisition of the utility facilities. Meanwhile, the utility owners agreed to file the utility's 2000 annual report. Such report was timely filed on March 7, 2001. In October of 2001, our staff was we were again contacted by Mr. Small for the procedures for abandonment. Believing that the HOA had been given ample time to assume full responsibility for the water system, Mr. Small formally noticed the owners' intent to abandon the utility as of December 31, 2001. However, Mr. Small also indicated the owners' willingness to cooperate regarding an extension beyond December 31st, if warranted.

Since receiving the notice of abandonment, our staff has been in contact with legal counsel for the County, the FDEP, the SJRWMD, Mr. Small, and representatives for the HOA. In addition, our staff has been in contact with the current contract operator for the water system. As such, we find that all entities involved with the utility facilities are fully apprised of the situation and working as expeditiously as possible towards a mutually acceptable resolution of the matter.

At this time, it does not appear that the utility will become abandoned on December 31, 2001. However, should the utility become abandoned, Section 367.165(2), Florida Statutes, requires the County to petition the circuit court for the appointment of a receiver. Such receiver can be the County or any other person or

entity such as the HOA. The responsibility of the receiver is to operate the utility efficiently and effectively from the date of abandonment until disposition of the property.

The FDEP has indicated that the water system currently meets all FDEP standards and regulations and there do not appear to be any environmental issues for the foreseeable future. The plant is designed to pump a maximum of 180,000 gallons per day (gpd). However, as noted earlier, only 46 lots are currently being served from the well. As such, average daily use is approximately 5,000 to 6,000 gpd. In addition, due to the number of current connections, the FDEP considers the Silver City facilities a non-community system. This means that reporting requirements and tests are minimal.

The SJRWMD did not know of the utility's existence until contacted by our staff. As a result, the utility does not have a consumptive use permit (CUP). This appears to be due to some confusion about the size of the system. In most respects, the well falls below the threshold size in which a water management district would issue a CUP. However, some specific aspects of the well design could trigger the need for a CUP. We have advised Mr. Small of the potential problem and he is in the process of sending the engineering information on the well to the SJRWMD for a determination of the need for a CUP. We will continue to monitor the situation.

The County has indicated that it intends to cooperate with this Commission in every way possible to bring this matter to a successful conclusion. The Silver City Subdivision is nearly 10 miles from the County's nearest service area. The County has also indicated that the only basis upon which it would provide service to the mobile home park would be by extension of a water line from its nearest facility.

Meanwhile, the HOA is in the process of obtaining the paperwork from the Florida Department of State, Division of Corporations, in the event it decides to form a non-profit corporation for ownership of the utility. We have verified that the HOA is paying all the operating costs for the system. According to the contract operator, which is the biggest portion of the operating costs, the HOA has been very responsible with respect

to its accounts. The operator is willing to continue to operate the system as long as it is on behalf of Mr. Small and the HOA. We will continue to work with the County, the utility, and representatives for the HOA towards a permanent resolution for the utility facilities.

Rule 25-30.110, Florida Administrative Code, requires each utility which is subject to this Commission's jurisdiction as of December 31st of that year, to file an annual report. Since Silver City is expected to be subject to our jurisdiction on December 31, 2001, the utility will be required to file a 2001 annual report and remit the 2001 regulatory assessment fees.

Based on all the above, we acknowledge the potential for the utility to be abandoned as of, or subsequent to, December 31, 2001. We further place the utility on notice that it will be required to file a 2001 annual report and to remit the 2001 regulatory assessment fees within the time frame and manner prescribed by Commission rules. As there has been no final resolution of this matter, this docket shall remain open pending resolution of the status of Silver City Utilities.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Notice of Abandonment of Silver City Utilities is acknowledged. It is further

ORDERED that Silver City Utilities is put on notice of its responsibility to file a 2001 annual report and remit 2001 regulatory assessment fees. It is further

ORDERED that this docket shall remain open pending resolution of the status of Silver City Utilities.

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By ORDER of the Florida Public Service Commission this 21st  
day of December, 2001.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records and Hearing  
Services

( S E A L )

LDH

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 120.68, 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.

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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 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 the Commission Clerk and Administrative Services, 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.