

ORIGINAL

State of Florida



Public Service Commission

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

DATE: August 13, 2002
TO: Division of the Commission Clerk and Administrative Services
FROM: Patricia Brady, Division of Economic Regulation *pb*
RE: Docket No. ~~020746-WU~~ ^{020403-SU} - Application for transfer of wastewater facilities of Country Run Wastewater Utility in Orange County to Orange County Utilities, and request for cancellation of Certificate No. 490-S.

Please add to the docket file the attached August 9, 2002, letter from Michael Jack Haney, Esquire, Federal Deposit Insurance Corporation (FDIC), to Ms. Lorena Holley, Commission staff. The letter indicates the extent to which the FDIC is attempting to respond to staff's July 3, 2002, inquiries.

Attachment

- cc: Division of Economic Regulation (Brinkley)
- Office of the General Counsel (Holley)
- Division of the Commission Clerk and Administrative Services (Security File)

- AUS _____
- CAF _____
- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- MMS _____
- SEC I
- OTH _____

DOCUMENT NUMBER-DATE

08500 AUG 13 2002

FPSC-COMMISSION CLERK

FDIC

Federal Deposit Insurance Corporation
1910 Pacific Avenue, 13th Floor
Dallas, Texas 75201
Dallas Field Operations Branch



Legal Division
Office of Michael Jack Haney
(972) 761-8150

02 AUG 13 AM 10:14
REGULATION

August 9, 2002

Lorena A. Holley, Esq.
Senior Attorney
State of Florida
Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Via Facsimile @ (850) 413-6186,
and U.S. Mail.

Re: Country Run Wastewater Utility Company, Orange County, FL, Certificate No. 490-S.

Dear Ms. Holley:

By your letter dated July 3, 2002, together with the enclosures therewith, you have advised the Federal Deposit Insurance Corporation (the "FDIC"), as Receiver for Numerica Savings Bank FSB, Manchester, NH (the "Receiver"), that the Receiver violated FLA. STAT. ANN. § 367.071(1) (West 2002) by selling the former ORE asset known as "Country Run, Phase 3" (comprised of approximately 15 acres of land evidently improved with a sewer treatment plant, located in Orange County, Florida) without first obtaining the approval of the Public Service Commission of the State of Florida (the "PSC").

Specifically, said Section 367.071(1) provides in part that "[n]o utility shall sell, assign, or transfer its certificate of authorization [which it appears the Receiver made no attempt to do], facilities [the Receiver did sell the Country Run, Phase 3 real property and any improvements thereto, which evidently include a sanitary sewer treatment plant] or any portion thereof . . . **without** determination and **approval of the commission** that the proposed sale, assignment, or transfer is in the public interest and that the buyer, assignee, or transferee will fulfill the commitments, obligations, and representations of the utility [emphasis added]."

In response to your aforesaid letter of July 3rd, requesting that the Receiver provide the PSC with an explanation of the Receiver's apparent failure to comply with Section 367.071(1) of the Florida statutes, the Receiver has caused its files on this asset to be retrieved and examined for documentation evidencing and information surrounding the sale of that asset by the Receiver to Mr. James E. Guildi on or about August 10, 1998.

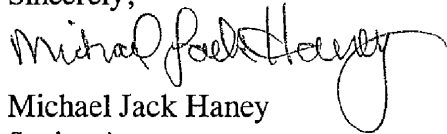
Lorena A. Holley, Esq.
August 9, 2002
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I have personally examined such files, both my own general files from the 1998 "Florida Auction" marketing event out of which this asset was sold (which files reflect that I prepared the FDIC forms of sales contracts and deeds to be used by the FDIC's local Florida counsel in closing the asset-specific sales that ultimately occurred, thus my name was on the form of special warranty deed used in the Country Run, Phase 3 sale), and the historic asset-specific files of the Division of Receiverships and Resolutions of the FDIC (the business client) in the Dallas Regional Office (who conducted the 1998 Florida Auction). Unfortunately that examination has revealed nothing helpful to me in providing the PSC with the requested explanation of the circumstances surrounding the sale of the subject asset to Mr. Guildi, with regard to the Receiver's apparent failure to seek or obtain the PSC's approval of such sale.

I have this date made a written request of Carlton, Fields, Ward, Emmanuel, Smith & Cutler (Mr. Edgel C. Lester, Jr., the partner in the firm's Tampa, FL, office that oversaw this project), the Florida law firm engaged by the FDIC to provide it with local counsel in the sales that arose out of the 1998 Florida Auction, that they provide me with a copy of the firm's asset-specific file on the sale of Country Run, Phase 3, to Mr. Guildi, along with any recollection he or his staff may have as to the circumstances surrounding such sale that might enable me to more appropriately respond to the PSC's request, including whether the firm made the Receiver aware of the requirements of said Section 367.071(1). While I have made this request of Mr. Lester, it is not the intent of the Receiver to lay this matter at his firm's feet. I am, like you, simply trying to find out what happened.

As soon as I hear from the Carlton/Fields firm (as it is my last possible resource for information in this matter), I will provide the PSC with an explanation of what I have been able to learn regarding the Receiver's sale of the Country Run, Phase 3 asset, and its apparent lack of compliance with Section 367.071(1) of the Florida statutes. I anticipate being able to provide such final response within the next two weeks. If you need anything from me in the mean time, please do not hesitate to telephone me at the above number, or e-mail me at mhaney@fdic.gov.

Sincerely,



Michael Jack Haney
Senior Attorney

cc: Patricia Brady
Victor M. Robert
John M. Urquhart
Jerry D. Bumbalough