

State of Florida



Public Service Commission  
-M-E-M-O-R-A-N-D-U-M-

---

**DATE:** September 20, 2002  
**TO:** Division of the Commission Clerk and Administrative Services  
**FROM:** Office of the General Counsel (Holley) *JAM*  
**RE:** Docket No. 020403-SU - Application for transfer of wastewater facilities of Country Run Wastewater Utility Company in Orange County to Orange County Utilities, and request for cancellation of Certificate No. 490-S.

---

Please file the attached letter dated September 18, 2002, in the docket file for the above-referenced docket.

LAH/dm

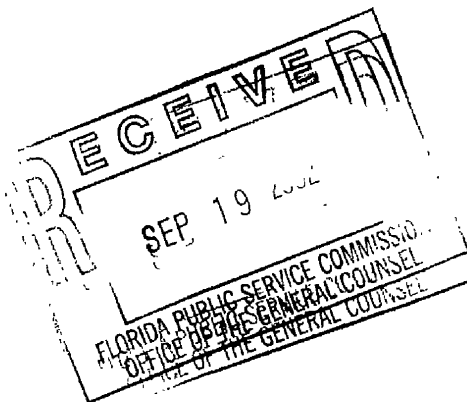
cc: Division of Economic Regulation (Brady, Brinkley)

I:\020403fm lah

DOCUMENT NUMBER DATE  
10130 SEP 20 02  
FPSC-COMMISSION CLERK

# FDIC

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



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

September 18, 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 Certified Mail, Return Receipt  
No. 7001 1940 0005 7034 7905.

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 3<sup>rd</sup>, 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.  
September 18, 2002  
Page 2

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 ("DRR") 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.

In addition, and as I advised you I had done in my letter to you of August 9, 2002, I made a written request of Carlton, Fields, Ward, Emmanuel, Smith & Cutler (specifically, 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). As I also advised you in said letter of August 9, having made that request of Mr. Lester, it was and is not the intent of the Receiver to lay this matter at his firm's feet, but rather to simply try to find out what happened. Regrettably, Mr. Lester's review of the pertinent files in the possession of his firm caused him to respond that "we have not found any information that would be helpful in this inquiry." He went on to say that "[n]either I nor my legal assistant recall any discussions regarding the operation of a utility on this particular parcel."

Lastly, at my request the DRR business client in the Dallas Regional Office retrieved and reviewed twelve banker's boxes of files related to the 1998 Florida Auction, with, to our regret, the same unsuccessful result.

I am left with only one possible explanation to offer the PSC in this matter, i.e., that in the Receiver's sale of the Country Run, Phase 3 asset to Mr. Guildi, it (the Receiver) inadvertently failed to comply with Section 367.071(1) of the Florida statutes, as to the sanitary sewer treatment plant located thereon.

I might add that the review of my files did produce, among other things, a list of the assets sold in the 1998 Florida Auction and the respective sales prices for those assets. Country Run, Phase 3, was sold for \$35,000.00, and the Receiver had to remit all of the net proceeds of that sale to a judgment lien holder of the failed bank out of which this asset arose, just to clear title to the real property and facilitate the sale. The former borrower/developer of the Country Run subdivision defaulted on, among other things, a \$2.8 million loan made by the failed bank, which monies were of course never recovered. The recoveries from these sorts of assets are meager. That is not to say that the FDIC believes that it should not be required, or that it does not attempt in every instance, to

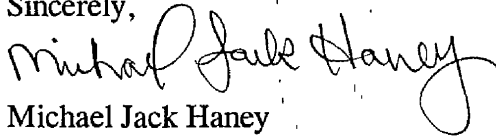
Lorena A. Holley, Esq.  
September 18, 2002  
Page 3

comply with the laws of the situs of the real property assets acquired by its respective failed financial institution receiverships (e.g., the hiring of local counsel). It is a statement that the FDIC isn't blowing into town and making fast, big bucks and then disappearing, while running roughshod over local laws. We regret the present oversight.

Enclosed herewith is the Receiver's check in the amount of \$1,271.94, together with a copy of the PSC's Invoice No. SU710-94-S-P dated September 10, 2002, in that amount, representing the Receiver's payment of the penalties and interest deemed by the PSC to be payable for late-filed regulatory assessment fees owed by the Country Run Wastewater Utility Company for the years 1994, 1995, and 1996.

It is my understanding that with the payment of the above Invoice, the Receiver has satisfied any obligations it may have had to the PSC arising out of the Country Run Wastewater Utility Company. If indeed that is not the case, please notify the undersigned immediately. Thank you for your patience and professional assistance in this matter.

Sincerely,



Michael Jack Haney  
Senior Attorney

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

THIS IS A WATERMARKED PAPER-PRINTED WITH BLUE INK-DO NOT ACCEPT WITHOUT VERIFYING WATERMARK-HOLD TO LIGHT TO VERIFY

FEDERAL DEPOSIT INSURANCE CORPORATION  
Field Finance Center PO Box 130476  
Dallas, Texas 75313

Bank One - 0710  
Chicago, IL  
Payable Through First USA Bank, NA

62-28/311



09-24720

SEPTEMBER 13, 2002  
CHECK NO. 450001625

PAY \*\*\*\*\*1,271 DOLLARS AND 94 CENTS

PAY TO THE ORDER OF

FLORIDA PUBLIC SERVICE COMMISSION  
2540 SHUMARD OAK BLVD  
TALLAHASSEE FLORIDA 323990850  
UNITED STATES

\*\*\*\*\*\$1,271.94

VOID SIX MONTHS FROM DATE OF ISSUE

*A Susan Brown*

AUTHORIZED SIGNATURE

II

FEDERAL DEPOSIT INSURANCE CORPORATION  
Field Finance Center PO Box 130476  
Dallas, Texas 75313

CHECK NO. 450001625

RECORD OF PAYMENT TO VENDOR

LOC	BANK	CK DATE	VENDOR #			
450	R01	09/13/02				
INVOICE#	GROSS	DISCOUNT	INTEREST	PENALTY	NET	
SU71094SP	1,271.94	0.00	0.00	0.00	1,271.94	
INV DESC ==> COUNTRY RUN PHASE 3: PENALTIES/INTEREST OWED BY						

ATTACHMENT

\*\*\*\*\*1,271.94

NOT NEGOTIABLE  
DO NOT CASH

PLEASE DIRECT ALL QUESTIONS REGARDING THIS PAYMENT TO:  
(972) 761-8098

25857  
00000  
003998