

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of water facility of Hobe Sound Water Company in Martin County to Town of Jupiter Island, and request for cancellation of Certificate No. 341-W.

DOCKET NO. 981067-WU
ORDER NO. PSC-98-1394-FOF-WU
ISSUED: October 16, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

ORDER DECLINING TO INITIATE SHOW CAUSE PROCEEDINGS,
ACKNOWLEDGING TRANSFER, CANCELING CERTIFICATE NO. 341-W,
AND CLOSING DOCKET

BY THE COMMISSION:

Background

On August 25, 1998, this Commission received an application for acknowledgment of the transfer of Hobe Sound Water Company (Hobe Sound or utility) to the Town of Jupiter Island in Martin County. Hobe Sound, which is a Class A utility, holds Certificate No. 341-W. The utility, which has been in existence since 1969, currently serves approximately 1,278 customers. The service area includes customers both in Hobe Sound and Jupiter Island.

According to the application, the transfer of the facilities to Jupiter Island was approved by the Town of Jupiter Island Commission on July 13, 1998, pursuant to Resolution No. 278. The closing and actual transfer took place on September 2, 1998, prior to Commission approval, which, as discussed below, is an apparent violation of Section 367.071, Florida Statutes.

DOCUMENT NUMBER-DATE

11573 OCT 16 98

FPSC-RECORDS/REPORTING

Show Cause

As stated previously, Hobe Sound closed on the sale of its facilities to Jupiter Island on September 2, 1998, prior to obtaining Commission approval for the sale. Section 367.071, Florida Statutes, states, in part,

No utility shall sell, assign, or transfer its certificate of authorization, facilities, or any portion thereof . . . , without determination and approval of the Commission that the proposed sale, assignment, or transfer is in the public interest. . .

Section 367.161(1), Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or have willfully violated, any provision of Chapter 367, Florida Statutes.

Hobe Sound appears to have violated Section 367.071(1), Florida Statutes, by failing to obtain our approval prior to selling its facilities to Jupiter Island. While we have no reason to believe that the utility intended to violate this statute, its act was "willful" in the sense intended by Section 367.161, Florida Statutes. See Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL. Utilities are charged with knowledge of Commission rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

Hobe Sound's failure to obtain our approval prior to the sale of its facilities is an apparent violation of Section 367.071(1), Florida Statutes. There are, however, circumstances which appear to mitigate the utility's apparent violation. Jupiter Island scheduled the closing date for September 2, 1998. This date was chosen by Jupiter Island to take advantage of low interest rates on the bonds used to finance the purchase of Hobe Sound.

Based on the foregoing, we do not find that the utility's apparent violation of Section 367.071(1), Florida Statutes, rises in these circumstances to the level which warrants the initiation of a show cause proceeding. Therefore, we find that Hobe Sound shall not be required to show cause why it should not be fined for failing to obtain the Commission's approval prior to closing on the sale of its facilities to Jupiter Island.

Application

Except as discussed previously, the application is in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code. The application included a copy of Resolution No. 378 from the Town of Jupiter Island, which approved the transfer agreement between Hobe Sound and the Town of Jupiter Island. Hobe Sound also provided a copy of the transfer agreement between the two parties. Although the application gives the closing date as September 1, 1998. The actual closing date for the transfer was September 2, 1998.

The application included a statement that Hobe Sound will retain no assets that would constitute a system providing or proposed to provide water service to the public for compensation, pursuant to Rule 25-30.037(4)(d), Florida Administrative Code. The application also contained a statement that Jupiter Island obtained Hobe Sound's most recent income and expense statement, balance sheet, statement of rate base for regulatory purposes, and contributions-in-aid-of-construction pursuant to Rule 25-30.037(4)(e), Florida Administrative Code.

According to the application and transfer agreement, customer deposits and interest will be given to the Town of Jupiter Island at the time of closing, pursuant to Rule 25-30.037(4)(g), Florida Administrative Code. In addition, the application included a statement that, pursuant to Rule 25-30.037(4)(h), Florida Administrative Code, Hobe Sound will pay outstanding regulatory assessment fees and file the final Regulatory Assessment Fee Return within the time period required.

In view of the foregoing, we find it appropriate to acknowledge the transfer of Hobe Sound to the Town of Jupiter Island, pursuant to Section 367.071, Florida Statutes. We further find it appropriate to cancel Certificate No. 341-W.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of Hobe Sound Water Company, 11844 Southeast Dixie Highway, Hobe Sound, Florida 33455, to the Town of Jupiter Island, 103 Bunker Hill Road, Hobe Sound, Florida 33475, is hereby acknowledged. It is further

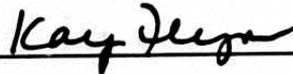
ORDER NO. PSC-98-1394-FOF-WU
DOCKET NO. 981067-WU
PAGE 4

ORDERED that Certificate No. 341-W is hereby canceled effective September 2, 1998. It is further

ORDERED that Hobe Sound Water Company shall pay all outstanding regulatory assessment fees. It is further

ORDERED that Docket No. 981067-WU is hereby closed.

By ORDER of the Florida Public Service Commission this 16th day of October, 1998.



KAY FLYNN, Chief
Bureau of Records

(S E A L)

ALC

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee,

ORDER NO. PSC-98-1394-FOF-WU
DOCKET NO. 981067-WU
PAGE 5

Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.