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DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(904) 413-6199

Public Service Commission

April 15, 1997

F. Marshall Deterding, Esquire
Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, FL 32301

Re: Docket No. 970429-WS - Joint application for authority to transfer Certificates Nos. 336-W and 291-S in Martin County from Radnor/Plantation Corporation d/b/a Plantation Utilities to IHC Realty Partnership, L.P. d/b/a Plantation Utilities.

Dear Mr. Deterding:

We are in receipt of the above-referenced application, to which Docket No. 970429-WS has been assigned. The application reflects that the transfer of the utility's facilities occurred on April 2, 1997, in advance of the Commission's decision in this docket, and that the transfer is conditioned upon the Commission's approval thereof.

We are also in receipt of your letter dated April 1, 1997, to Mr. John Williams, in which you state your understanding of the staff's position as expressed at our March 14, 1997, meeting on this matter. You state that your understanding is that staff does not anticipate any problems with either the approval of the transfer or any suggestion of fine or other penalty against the Buyer and/or the Seller. You also requested that we advise you if we disagree with that characterization. This letter is in response to that request.

Please be advised that the Legal Services Division does not give binding legal opinions. This opinion is informal and in no way binds the Commission. As you know, pursuant to Section 367.071(1), Florida Statutes:

[n]o utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof . . . without determination and approval of the [C]ommission 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.

- ACK _____
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- CAF _____
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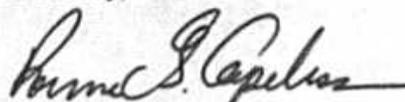
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The legal staff's opinion is as I expressed it at our March 14th meeting. Although the statute speaks for itself, your statement is correct that the Commission has approved transfers after closing without imposing a penalty when they were conditioned upon later Commission approval, particularly when the parties have endeavored to keep staff informed about the progress thereof. However, pursuant to Section 367.071(2), the Commission may impose a penalty pursuant to Section 367.161 when a transfer occurs prior to approval by the Commission, and the transferor remains liable for any outstanding regulatory assessment fees, fines, or refunds of the utility.

We are unable to advise you in advance of processing the transfer application whether legal staff will recommend to the Commission that the utility should be required to show cause in writing as to why it should not be fined for apparently violating the statute. We will base our recommendation upon all of the information filed in the transfer docket. As I am sure you are aware, the Commission may or may not approve staff's recommendation as filed.

Again, this is an informal opinion which in no way binds the Commission. If you have any further questions, please feel free to contact me at (904) 413-6224.

Sincerely,


Rosanne G. Capeless
Senior Attorney

RGC:mw

cc: D. Bruce May, Esquire
Division of Records & Reporting ✓
Division of Water & Wastewater (Williams, Messer)