



# Public Service Commission

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

RECEIVED  
PUBLIC SERVICE COMMISSION  
AUG 19 1999

**DATE:** AUGUST 19, 1999

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAY6)

**FROM:** DIVISION OF WATER AND WASTEWATER (BRADY, REDEMANN)  
DIVISION OF REGAL SERVICES (CIBULA, CROSBY)

*WMA pb PRR gow  
S.M.C. [signature] [signature]*

**RE:** DOCKET NO. 981403-WS - APPLICATION FOR TRANSFER OF  
CERTIFICATES NOS. 469-W AND 358-S FROM BAYSIDE UTILITIES,  
INC. TO BAYSIDE UTILITY SERVICES, INC.  
COUNTY: BAY

**AGENDA:** AUGUST 31, 1999 - PROPOSED AGENCY ACTION FOR ISSUES 2 AND  
3 - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\WAW\WF\981403WS.RCM

### CASE BACKGROUND

Bayside Utilities, Inc. (Bayside, utility or seller) is a Class C water and wastewater utility serving Bayside Mobile Home Park in Bay County. The utility purchases water and wastewater services from the City of Panama Beach and, as such, is considered non-jurisdictional by the Northwest Florida Water Management District. According to the utility's 1998 Annual Report, it has approximately 304 water and 287 wastewater active connections. The utility reported combined 1998 revenues of \$124,135 with a combined net operating loss of \$16,835.

On October 26, 1998, Utilities, Inc. (UI or utility), filed an application for transfer of Certificates Nos. 469-W and 358-S from

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PSC-RECORDS/REPORTING

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Bayside Partnership d/b/a Bayside Utilities, Inc., to Bayside Utility Services, Inc. (BUSI or buyer). BUSI was incorporated on November 6, 1998, as a Florida corporation and is a wholly-owned subsidiary of UI, a corporation based in Illinois. The application was completed on December 21, 1998. However, on November 12, 1998, three customers of the utility timely filed a letter objecting to the application for transfer. The objection was later joined by a fourth customer. Accordingly, the matter was set for hearing on February 2 and 3, 2000.

On January 26, 1999, UI filed a Motion to Dismiss the Objection and Protest of the four customers. By Order No. PSC-99-0607-PCO-WS, issued April 2, 1999, the Commission denied the motion. On April 16, 1999, Bayside timely filed a Motion to Intervene and a Motion for Reconsideration of Order No. PSC-99-0607-PCO-WS. Also on April 16, 1999, UI and its utility subsidiary, BUSI, timely filed a joint Motion for Reconsideration of Order No. PSC-99-0607-PCO-WS in which they adopted the exhibits and legal arguments set out in Bayside's Motion for Reconsideration.

The customers filed a letter withdrawing their protest of the transfer application on June 15, 1999. By Order No. PSC-99-1597-FOF WS, issued August 16, 1999, the Commission acknowledged the withdrawal of the customers' protest and found it unnecessary to rule upon the outstanding motions, as the motions were rendered moot by the protest withdrawal.

On June 17, 1999, the buyer and seller closed on the transfer. Section 367.071 (1999), Florida Statutes, which became effective June 11, 1999, states that a utility shall not sell or transfer its facilities without Commission approval. However, a sale or transfer may occur prior to Commission approval if the contract is made contingent upon Commission approval. The contract between Bayside and BUSI has a provision which makes the sale contingent upon Commission approval.

This recommendation addresses whether the transfer of Certificates Nos. 469-W and 358-S from Bayside to BUSI should be approved.

DISCUSSION OF ISSUES

**ISSUE 1:** Should the transfer of Certificates Nos. 469-W and 358-S from Bayside Utilities, Inc., to Hayside Utility Services, Inc., be approved?

**RECOMMENDATION:** Yes, the transfer should be approved. The territory being transferred is described in Attachment A. (BRADY, REDEMANN, SIBULA, CROSEY)

**STAFF ANALYSIS:** On October 26, 1998, an application was filed for approval of the transfer of Certificates Nos. 469-W and 358-S from Bayside Utilities, Inc. to Bayside Utility Services, Inc. The application was completed on December 31, 1998. The closing occurred on June 17, 1999.

The application as filed and amended is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules pertaining to an application for the sale, assignment, or transfer of a certificate of authorization. The application contained the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. And, pursuant to Rule 25-30.037(2)(t), Florida Administrative Code, the utility's original certificates were returned. As for the other requirements for authority to transfer facilities, the application contained the following information.

**Noticing.** The application contained proof of compliance with the noticing requirements pursuant to Rule 25-30.030, Florida Administrative Code. As noted in the Case Background, a timely protest to the transfer was filed by three customers of the utility. A fourth customer later joined the protest. The matter was set for hearing on February 2 and 3, 2000. By letter filed June 15, 1999, the protest was withdrawn. By Order No. PSC-99-1597-POF-WS, issued on August 16, 1999, the Commission acknowledged the withdrawal of the customers' protest and the hearing was canceled. No other objections to the notice of transfer were filed with the Commission and the time for filing such has expired.

**Sales Contract, Financing, and Land Ownership.** As required by Rules 25-30.037(2)(g), (h), (i), (k) and (q), Florida

Administrative Code, the application was accompanied by the Asset Purchase Agreement (sales contract) executed October 7, 1998. However, the closing did not occur until June 17, 1999. The agreed upon purchase price was \$190,000. This was a cash transaction. Therefore, there are no entities upon which BUSI has relied, or will rely, for funding.

Since the utility is a reseller of water and wastewater service, there are no developer agreements. The only contractual obligation conveyed in the sales contract was the 1987 agreement between the utility and the City of Panama City Beach regarding the interconnection. Also, since the utility no longer owns any plant, no real property was transferred and, therefore, the evidence of ownership required by Rule 25-30.037(2)(g), Florida Administrative Code, does not apply. Pursuant to the Memorandum of Closing (closing document), customer deposits totaling \$4,227.30 were transferred from the seller to the buyer.

**Regulatory Assessment Fees (RAFs).** Staff has confirmed that the utility is current on Annual Reports and RAFs through 1998 and there are no penalties, interest or refunds due. In the closing document, the parties agreed that the seller would be responsible for 1999 RAFs on and before June 16, 1999 and that the seller would pay those fees directly to the Commission as soon as they could be computed. Staff has confirmed that the Commission has received pre-payment of 1999 RAFs from the seller up to the date of closing.

**Financial and Technical Ability.** Pursuant to Rule 25-30.037(2)(j), Florida Administrative Code, the application states that BUSI's financial and technical ability is evidenced through its parent, UI, which has approximately 33 years experience in the water and wastewater utility industry. At the present time, UI provides water and wastewater service to approximately 200,000 customers in 15 states. UI has successfully operated water and wastewater utilities in Florida under the Commission's jurisdiction since 1976.

**Environmental Compliance.** Pursuant to Rule 25-30.037(2)(p), Florida Administrative Code, the utility provided a statement that the buyer is not aware of any outstanding environmental violations. Staff has confirmed with the Florida Department of Environmental

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Protection (FDRP) that the utility's water distribution and wastewater collection systems are currently in satisfactory operating order.

**Public Interest.** As also required by Rule 25-30.037(2)(f), Florida Administrative Code, the buyer provided a statement indicating how the transfer is in the public interest. In addition to the extensive experience cited above, UI was formed in 1965 with the objective of acquiring small water and wastewater companies commonly built by developers. These companies are typically troubled and undercapitalized. By centralizing the management, accounting, billing and data processing functions, these companies can achieve economies of scale that would be unattainable on a stand-alone basis. In addition, the buyer indicates that its regulatory experience and financial resources enable its subsidiaries to provide environmentally sound day-to-day operations as well as to address unexpected emergencies. The buyer stated its intention to fulfill the commitments, obligations and representations of the seller with regard to utility matters.

Based on all the above, staff recommends that the transfer of Certificates Nos. 469-W and 358-S from Bayside Utilities, Inc., to Bayside Utility Services, Inc., is in the public interest and should be approved. The territory to be transferred is described in Attachment A.

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**ISSUE 2:** What is the rate base of Bayside Utilities, Inc. at the time of transfer?

**RECOMMENDATION:** The combined rate base for the water and wastewater systems at the time of the transfer should be \$282,274 which is the net book value previously established by Order No. PSC-98-1269-FOF-SU. (BRADY)

**STAFF ANALYSIS:** Rate base for the utility systems, as of December 31, 1997, was established pursuant to the staff assisted rate case processed in Docket No. 971401-WS. The resulting Order No. PSC-98-1269-FOF-SU was issued September 24, 1998. Since the sales contract for the transfer was executed less than two weeks later, on October 7, 1998, staff recommends that the net book value established by the rate case order be the same value used for purposes of setting rate base at the time of the transfer.

The rate base calculations approved in Order No. PSC-98-1269-FOF-SU for the water and wastewater systems are attached as Schedules Nos. 1 and 2, respectively. Based on these schedules, as of December 31, 1997, rate base for Bayside was established as \$67,380 for water and \$214,694 for wastewater for a combined rate base of \$282,274. These are full rate base calculations which include the normal ratemaking adjustments of working capital calculations and used and useful adjustments. In this case the water distribution and wastewater collection systems are considered 100% used and useful. Therefore, the combined rate base for the water and wastewater systems at the time of the transfer should be \$282,274 which is the net book value previously established by Order No. PSC-98-1269-FOF-SU.

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SCHEDULE NO. 1

HAYSIDE UTILITIES, INC.  
SCHEDULE OF WATER RATE BASE  
AS OF DECEMBER 31, 1997

	BALANCE PER ORDER NO. <u>PSC-99-0485-FOF-WS</u>
UTILITY PLANT IN SERVICE	\$181,352
LAND/NON-DEPRECIABLE ASSETS	0
NON-USED AND USEFUL PLANT	0
CIAC	(52,911)
ACCUMULATED DEPRECIATION	(103,492)
AMORTIZATION OF CIAC	26,715
WORKING CAPITAL ALLOWANCE	<u>3,916</u>
WATER RATE BASE	<u>\$ 67,580</u>

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SCHEDULE NO. 2

BAYSIDE UTILITIES, INC.  
SCHEDULE OF WASTEWATER RATE BASE  
AS OF DECEMBER 31, 1997

BALANCE PER ORDER NO.  
PSC-99-0485-FOF-WS —

UTILITY PLANT IN SERVICE	\$349,712
LAND/NON DEPRECIABLE ASSETS	0
NON-USED AND USEFUL PLANT	0
CIAC	0
ACCUMULATED DEPRECIATION	(140,804)
AMORTIZATION OF CIAC	0
WORKING CAPITAL ALLOWANCE	<u>5,786</u>
WASTEWATER RATE BASE	<u>\$214,694</u>



**Issue 3:** Should a negative acquisition adjustment be approved?

**RECOMMENDATION:** No, the \$92,274 negative acquisition adjustment should not be included in the calculation of rate base for transfer purposes. (BRADY)

**STAFF ANALYSIS:** An acquisition adjustment results when the purchase price differs from the original cost calculation adjusted to the time of the acquisition. The acquisition adjustment resulting from the transfer of Bayside is calculated as follows:

Purchase Price	\$190,000
Commission Established Rate Base	<u>\$282,274</u>
Negative Acquisition Adjustment	(\$ 92,274)

In the absence of extraordinary circumstances, it is the practice of this Commission that the purchase of a utility at a premium or discount shall not affect the rate base calculation. The buyer is not requesting an acquisition adjustment and the circumstances in this case do not appear to be extraordinary.

According to the application, UI was aware of, and relied on, the Commission's practice on acquisition adjustments in deciding whether to purchase Bayside. UI believes granting a negative acquisition adjustment in this case would be inconsistent with prior Commission practice and prior Commission orders, upon which UI relied in its decision to purchase this utility.

The application goes on to state that the purchase was the result of an arms-length transaction in which a wholly owned subsidiary of UI will own and operate the purchased systems. Neither UI nor its utility subsidiary, BUSI, are developers nor are they developer-related.

In terms of additional benefits that accrue to customers as a result of the acquisition, the application cites the economies of scale that will be available to BUSI through its parent's management and vendor resources. Specifically, the application states that BUSI has: 1) the ability to attract capital at a

reasonable cost; 2) the financial ability to commit funds necessary to operate the purchased utility; 3) a professional staff experienced in the managerial, technical and financial aspects of utility operations; 4) the ability to make necessary capital improvements; and 5) the ability to comply with FDEP and other environmental agency requirements.

Staff would note that these benefits are the types of factors which the Commission has considered in prior orders when approving a positive acquisition adjustment. See Order No. PSC-92-0895-POP-WS, issued August 27, 1992, in Docket No. 920177-WS. While the purchase price in this case does not exceed rate base, to be consistent, such factors should serve to mitigate a negative acquisition adjustment, as well.

Staff would also note that in Docket No. 891309-WS, the Commission reviewed its policy concerning acquisition adjustments. In the resulting Order No. 25729, issued February 17, 1992, the Commission acknowledged that the ability of the buyer to earn a return on an acquired utility's rate base provides an incentive for larger utilities to look for and acquire smaller, troubled systems.

With approximately 300 active connections for each service, Bayside is considered a small utility. While the Commission determined in the utility's recent rate case that Bayside is currently providing satisfactory quality of service, there has been a long history of discord between utility management and some of the utility customers. In addition, Bayside's rates are somewhat high due to the fact that it is small, stand alone system. In its November 25, 1998, response to the customers' protest of the transfer, UI pledged to use its experience and resources to improve utility efficiency, mitigate the need for additional rate cases and provide access to lower cost capital funds over time.

For all the above reasons, staff recommends that a \$92,274 negative acquisition adjustment should not be included in the calculation of rate base.

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**ISSUE 4:** Should the rates and charges approved for Bayside Utilities, Inc., be continued?

**RECOMMENDATION:** Yes, the rates and charges approved by the Commission for the utility should be continued. The tariff reflecting the change in ownership should be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets. (BRADY)

**STAFF ANALYSIS:** The utility's current rates and charges became effective October 21, 1998, pursuant to the staff-assisted rate case processed in Docket No. 870093-WS, as approved by Order No. PSC 98-1269-FOF-WS. These rates have been subject to a 1998 inflation index approved effective June 21, 1998.

Rule 25-9.044(1), Florida Administrative Code, provides that:

*In case of change of ownership or control of a utility which places the operation under a different or new utility, or when its name is changed, the company which will thereafter operate the utility business must adopt and use the rates, classification and regulations of the former operating company (unless authorized to change by the commission).*

The Buyer has not requested a change in the rates and charges of the utility nor is staff aware of any reason to change them at this time. Accordingly, staff recommends that the utility continue operations under the existing tariff and apply the approved rates and charges. The utility has filed a revised tariff reflecting the change in ownership. The tariff reflecting the change in ownership should be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets.

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ISSUE 5: Should this docket be closed?

RECOMMENDATION: Yes, if no timely protest is received to the proposed agency action issues, upon the expiration of the protest period, the order should become final and effective upon the issuance of a consummating order and the docket should be closed.  
(CIBULA)

STAFF ANALYSIS: If no timely protest is received to the proposed agency action issues, upon the expiration of the protest period, the order should become final and effective upon the issuance of a consummating order and the docket should be closed.

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ATTACHMENT A

BAYSIDE UTILITIES, INC.

TERRITORY DESCRIPTION

IN BAY COUNTY

PER ORDER NO. 16414

Township 3 South, Range 15 East  
Section 28

Commence at the NW corner of the SW 1/4 of the NW 1/4 of said Section 28, and run East 33 feet to the East R/W line of Wildwood Road for the Point of Beginning, thence South along said R/W line 621 feet to the intersection of a center line of a canal extended a distance of 2,710 feet, more or less, to the intersection of the Northeastly shore line of a canal and lagoon, thence run Southeastly, Northeastly along the shore line and/or bulkhead line of said canal and lagoon to where it intersects the mean high water line of West Bay, thence run Northeastly along said mean high water line a distance of 900 feet, more or less, to the intersection with the North boundary line of the SW 1/4 of the NW 1/4 of said Section 28, thence run West along said line 5,029.31 feet to the Point of Beginning.