

Byaside Utilities, Inc.
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March 9, 1999

Ms. Blanca Bayo Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Dear Ms. Bayo,

Please make the attached documents a part of the record of Docket# 981403-WS. Thank you.

Sincerely,



Leonard Jeter
General Manager

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FPSC-RECORDS/REPORTING

UTILITY: Homeowners association pleased that it seems to have

From Page 1B

Currently, Bayside customers pay \$81.61 per month for 5,000 gallons of water and sewer use.

Other private systems that have hooked up to Panama City Beach's system pay considerably less. Bay Point customers, for example, pay \$34.01 a month for 5,000 gallons. Harbor Town, a community just down the road from Bayside, pays \$23.53 a month.

The homeowner's association believes Bayside Utility's rates are especially offensive in light of the fact that Bayside Utilities is simply a "pass-through" system. The utility buys its water from Panama City Beach and sends its sewage along to the Beach's treatment system.

A Panama City Beach takeover would be relatively simple.

"They don't have to build anything out here," Wharton said. "The system's in the ground."

If the city or county bought

"We presented a petition to Richard Jackson signed by 192 customers. If that's just a small number, I don't know what their definition of small is."

- Jim Wharton, Bayside Homeowners Association

the system, the homeowners association said customers would be willing to pay higher rates for a few years, until the debt on the utility system was paid off. Then, they believe, rates could go down.

"We're trying to not have anybody take anything away from Mrs. Burton. That was the objective," Wharton said.

Bay County Commissioner Marc Nolen, whose district includes Bayside, has been talking with some of the homeowners.

"Certainly, I wish that the county could do something," he said.

But the county's ability to help is limited.

The city of Panama City

Beach holds an exclusive franchise to supply water and sewer service between Hathaway Bridge and Phillips Inlet.

"The best solution would be for Panama City Beach to buy that system," Nolen said. "But I don't know that (Beach City Manager) Richard Jackson is willing to do that."

Jackson said the potential for a city takeover of the system was put to rest when Bayside Utilities entered into a contract with Utilities Inc., a company based in Northbrook, Ill., that has made a custom of buying out small, struggling utility systems.

"The owner of (Bayside Utilities) has indicated that she's not interested in selling to

the city," Jackson said.

Burton said she signed a contract with Utilities Inc. in October and believes the transfer of the water and sewer system to that company is the best available solution to Bayside's problems.

"The best thing for me and the customers was to sell it to professionals with this kind of ability," she said.

Burton doesn't believe the homeowners association can prevail in their protest.

The PSC, in its decision whether to approve a transfer, considers the purchasing company's financial and technical qualifications to take over a utility. She said Utilities Inc. would meet the PSC's standards.

"They're well-known to the PSC," she said. "They have many utilities in the state of Florida that they have bought."

Utilities Inc. operates 54 water and wastewater systems in the state, and has 63,000 customers in nine Florida counties.

"A large company can take

gotten the county's attention

advantage of economies of scale," Burton said.

Bayside Utilities does not enjoy such an advantage. With about 285 customers, the utility has struggled to pay its bills and pay off its debt, which is several hundred thousand dollars.

Bayside Utilities opened in the early 1970s to serve the residents of Bayside Park and surrounding homes off U.S. 98 just west of the Hathaway Bridge. At that time, water and sewer service was not as widely available as now. Developers customarily built small sewer and water systems to serve their communities.

Most of those small utilities have closed or been taken over by municipal systems.

Last summer, Bayside Utilities applied to the Florida Public Service Commission for a rate increase. The PSC approved an increase, but a smaller one than the company sought.

The Bayside Homeowners Association filed a protest against the increase, but later withdrew it upon discovering that the utility's attorney's fees would be passed along to its customers.

Burton said the cost of Bayside's defense against the protest of the sale to Utilities Inc. likewise would be passed along.

"The worst thing of all, when you go to a hearing, it's like a trial and you have to hire attorneys," she said.

The customers can turn to the state's Office of Public Counsel to represent them, but the utility does not have that privilege.

The utility's legal costs would be tallied up and divided among customers over a period of several years.

"Maybe when they find out they'll drop this protest, too," Burton said.

But Wharton said that's just one of the disadvantages the homeowners association has to contend with.

"It would be passed on to us whether they prevailed or not," he said. "So you can see that the deck is kind of stacked."

Burton said a representative of Utilities Inc. traveled to Bay County recently and held two meetings — one with the three protesting customers and another with other customers.

She said the company discussed its operating plans and logistics such as billing procedures.

Burton said rates couldn't go

up for two years after Utilities Inc. bought the system.

"This utility will have to take over the same rates existing now," she said.

But after two years, Utilities Inc. could petition for a change in rates. And Wharton said that as long as a private company owns the system, there's nowhere for rates to go but up.

The PSC, when it considers petitions for rate increases from private utility owners, figures in a 10 percent return. Private companies are in the business to earn a profit.

"It doesn't matter what you do with it. It makes money," Wharton said. "It's another cash flow."

Burton believes the sale of the utility is being held up by a few Bayside customers who don't necessarily represent the wishes of other customers.

But the homeowners' association points out that last summer, nearly 300 customers signed a petition supporting a takeover of the utility system by Panama City Beach.

"We presented a petition to Richard Jackson signed by 192 customers," Wharton said. "If that's just a small number, I don't know what their definition of small is."

The homeowners' association is pleased that it seems to have gotten the county's attention.

Nolan is looking for ways to help the Bayside customers. He hopes the delay of the sale will buy time to look at other options.

"Basically what I'm trying to do right now is try to hold it up to see if we can come up with some solution," he said.

He has discovered a county ordinance that could give the county some say in the transfer.

That ordinance, adopted in 1982, grants the county ownership of utility lines that run under county roads and rights-of-way.

County attorney Maria Zimmerman is not sure whether the county could apply that ordinance to the Bayside case, or whether the County Commission as a whole would even want to get involved.

"I don't know what the relevance of that ordinance is to whether the county has standing," Zimmerman said.

But the possibility alone is a ray of hope for the homeowners' association.

"We feel that the county's listening to us now," Wharton said. "Of course, we'll keep reminding them."

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March 1, 1999

Kendall Middlemas
Steve Bornhoft, Editor
News Herald
501 W. 11th Street
Panama City, FL 32401

Dear Ms. Middlemas and Mr. Bornhoft,

I feel a compelling need to write to you to correct the errors contained in an article Ms. Middlemas wrote concerning Bayside Utilities, Inc. First, to make you both aware of who I am, my name is Leonard Jeter and I have been associated with the Bayside companies since development began in 1970. I was associated with the company for a short period of time in 1972 and have operated, as General Manager, all of the Bayside companies for the last twenty years.

Beginning with the headline of your article "Bayside Sinking", nothing is further from the truth. With the completion and implementation of the most recent rates authorized by the Florida Public Service Commission, Bayside continues to operate prudently, efficiently and pays its bills. It is able to affect repairs to the system as needed. It is able to maintain a stock of the necessary parts and equipment to insure that the system can be brought quickly back into an operating status after an interruption of service due to a break down. The use of the word "sinking" in your headline is unfortunate and gives the wrong impression.

As regards the body of your article, concerning the selling of Bayside Utilities, Inc. to Utilities, Inc., please be informed that over the years, Bayside Utilities, Inc. has approached the County and the City of Panama City Beach several times about purchasing this utility and we were flatly turned down. You quote, and I quote you, "The owner of (Bayside Utilities) has indicated that she's not interested in selling to the City" Jackson said." This must be a misunderstanding on your part of what Mr. Jackson actually said, because it is a misrepresentation of the actual facts. The actual fact is, that had the City of Panama City Beach ever showed an interest in purchasing Bayside Utilities, Inc., Ms. Burton would have immediately, without hesitation, entered into an agreement to sell to them.

On several instances, you quote Mr. Wharton and make statements concerning an association known as the Bayside Homeowner's Association as if there were really such an association. I have checked with every state, county, city and federal agency on more than one occasion and have yet

to find any proof that such an association actually exists. I have even walked the streets of Bayside, asking my customers about the association, and the only ones that seem to know anything about it are the four people on Bay Circle, Mr. Wharton, Mr. Patillo, Mr. Austin and Mr. Kitchens. It would seem that if such an association actually did exist, that as the developer of the property, we certainly should have knowledge of it and would have been instrumental in forming the association.

You quote Mr. Wharton as indicating that most of our customers are elderly people on fixed incomes. However, most of our customers are working people with families. You also state that the City of Panama City Beach holds an exclusive franchise to supply water and sewer service between Hathaway Bridge and Phillips Inlet and that is not entirely true. They were granted a franchise by the Bay County Commission from bridge to bridge but that franchise does not include the exclusive franchise held by Bayside Utilities, Inc. Many years ago the Bay County Commissioners voted and passed a resolution giving the authority and rights to regulate private utilities in Bay County, to the Florida Public Service Commission. The Florida Public Service Commission subsequently passed a resolution accepting the Bay County resolution and taking control of all jurisdictional utilities in Bay County. Within the authority of the Florida Public Service Commission, allowed by State statute, is the right for the Florida Public Service Commission to grant to a utility company a territory to be served. Throughout the years, there have been many attempts by other companies and municipalities, across the state of Florida, to infringe upon those protected territories granted by the Florida Public Service Commission. The courts have always upheld the right of the utility company holding the franchised territory that had been granted to them by the Florida Public Service Commission and protected them from any municipality or private utility entering into their territory to service customers.

In a recent discussion, with Mr. Jackson of the City of Panama City Beach, concerning rates, he indicated to me that he had himself conducted a survey of several utility companies in the area, based on 6,000 gallons of usage, and that we, Bayside, were in fact not the highest. In fact, I believe that Mr. Jackson indicated that we were either number three or four on the list of the companies he did the comparative study of.

The delusion of the "discovered County ordinance that could give the County some say in the transfer" should be cleared up immediately. The County attorney, Nevin Zimmerman, is correct and in my opinion, the ordinance does not apply. The mere wording of the ordinance exempts Bayside Utilities, Inc.

In addition, I would like to address with you the situation concerning our rate structure. Several months ago, when Mr. Wharton purchased his new mobile home and the lot on Bay Circle in Bayside Mobile Home Park, placed the mobile home on the lot, hooked it to our water and sewer connections, he did not pay one dime to Bayside Utilities, Inc. in any fees whatsoever. There were no impact fees, there were no hook-up fees, there simply were no fees. That is the problem that exists with Bayside Utilities Inc. No customer of Bayside Utilities, Inc. has ever paid a dime in impact fees. A comparison would be, if you go to the North Lagoon Oaks subdivision and purchase a lot and put a mobile home on that lot, you will pay to the City of Panama City Beach several thousand dollars in impact fees to get water and sewer service. I am told, by a City of Panama City Beach official, that it will range between \$2500 - \$3500 for the average to more

elaborate mobile homes with two or more bathrooms to be set up on a lot and hooked into sewer and water service from the City of Panama City Beach. The problem with the rate structure of Bayside Utilities, Inc. is that from 1972 to 1986 Bayside Utilities, Inc. operated its own sewage treatment plant. It became economically unfeasible for Bayside Utilities, Inc. to continue to operate the sewage treatment plant because of the environmental issues and requirements being raised at the time by the Department of Environmental Regulations. It would have cost, in 1986, over one-half million dollars to meet the requirements set forth by the DER and bring the sewage treatment plant into compliance with the new rules and regulations at that time. I began negotiations with the City of Panama City Beach, the Department of Environmental Regulations and the Florida Public Service Commission concerning the possibilities and cost of shutting down the sewage treatment plant and hooking into the City of Panama City Beach. DER was in agreement that hooking into the City of Panama City Beach was the best possible solution to the problems and the Florida Public Service Commission agreed to conduct a staff assisted rate case and place the cost of the change-over into the rates of the customers. By far, the largest part of the cost of the proposed change-over was the impact fees for each customer of Bayside Utilities, Inc. having to be paid to the City of Panama City Beach. I negotiated with the City of Panama City Beach, an impact fee for each of our customers based on flow. We concluded, and the Florida Public Service Commission concurred, that it would be impossible to get each existing customer to come up with a large sum of money, all of a sudden, to pay these impact fees to the City of Panama City Beach. The Florida Public Service Commission also wanted each customer to be metered and back-flow preventers and valves installed at each location. The total cost to accomplish the metering and paying of impact fees totaled \$250,000. The Florida Public Service Commission proposed and subsequently ordered Bayside Utilities, Inc. to go borrow the \$250,000 and pay the City of Panama City Beach the impact fees for each customer. They then established a Base Facility Charge in our rates, which is a flat fee each month of \$27.41, for the purpose of paying back, over an extended number of years, the \$250,000 borrowed. For example, Mr. Wharton's average bill for the last year is \$47.71 per month. If he had paid an impact fee on his lot and it was not built into the rate structure, he would not be paying the Base Facility Charge of \$27.41. If you deduct the \$27.41 Base Facility Charge for the impact fee, from the average bill of \$47.71, Mr. Wharton's real monthly water and sewer bill is only \$20.30, which you can see is far below any of our neighbors' bills. The average gallons used per customer of Bayside Utilities, Inc., established by the Florida Public Service Commission during the recent test year, is approximately 4,185 gallons per month per customer and not 6,000 gallons as indicated in your article.

I would say to you that over the years, by far, Bayside Utilities, Inc. has had a good relationship with its customers. In fact, most of the customers of Bayside Utilities, Inc. do not agree with or are not represented by the so-called "Bayside Homeowner's Association", Mr. Wharton, Mr. Patillo, Mr. Austin or Mr. Kitchens, either jointly or severly.

Frankly, I am hard pressed, after meeting with Mr. Nolan and Mr. Sparks and being told by them that the County was not interested in purchasing our system, that Mr. Nolan now seems to be intent on "holding up" our sale or delaying our sale while he looks for some method to destroy it. After all, Mr. Nolan and the County and the City of Panama City Beach were given first option to purchase this utility and declined to take the opportunity to do so. It was only after we signed the contract with Utilities, Inc., that Mr. Nolan seemed to become so interested in getting involved. I

would like to hear how Mr. Nolan proposes to present to the rest of the Commissioners of Bay County his recommendation for the County to pay impact fees for the customers of Bayside Utilities, Inc. from tax payer dollars while all other residents of Bay County, who purchase a lot and apply for water and sewer service, have to pay the sewer and water impact fees out of their own pockets. I can just imagine the deluge of tax payers from all over the County, that would approach the Commission immediately, objecting in the strongest terms, to any such recommendation.

In closing, I thank you very much for your interest and your words concerning our business and for the opportunity to set the record straight. I just hope that you will seize upon the opportunity and re-print the article or print another article stating the correct facts.

Sincerely,



Leonard Jeter
General Manager

cc: Mark Nolan
Nevin Zimmerman
Carol Atkinson

Bayside sinking under weight of utility rates

KENDALL MIDDLEMAS

The News Herald

For many months, some customers of Bayside Utilities Inc. have lobbied for a buyout of the struggling private utility. Now they know they should be careful what they wish for.

The owner of the water and sewer system has signed a contract to sell the utility to another private company.

With that sale pending, the customers worry that they'll never feel any relief from the high rates they pay.

Jim Wharton, of the Bayside Homeowners Association, said the group would fight the sale "all the way to the end."

"A lot of these people up in the park are elderly people, on a fixed income. They're really upset about this," he said. "That more than anything has made us hang in all this time."

The Florida Public Service Commission, which must approve the transfer, has scheduled a hearing on the protest for Feb. 2, 2000. The sale cannot go through until after that hearing almost a year away.

"Frankly, I'm appalled," Dorothy Burton, owner of Bayside Utilities and Bayside Park, said of the long wait for a hearing.

She said the protest would serve only to delay the utility system's rescue, and that won't do customers any good.

"I don't really understand why they're protesting," she said. "It doesn't seem to me to be of advantage to anyone."

But the customers who are protesting the transfer believe it's their only chance to see their rates drop to a level more consistent with rates around the county. And they believe logic is on their side.

The want to create "a win-win situation for everybody including Mrs. Burton," Wharton said.

Please see UTILITY, 2B

CINDY FERRARI / 22 1999

THE NEWS HERALD