

ORIGINAL



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October 14, 1997

Blanca S. Bayo, Director
Division of Records and Reporting
FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RE: Docket No. 97-0381-SU
Order No. PSC97-1150-POF-SU

Dear Ms. Bayo:

Please find enclosed the original and fifteen (15) copies of a Motion for Reconsideration which we would appreciate you filing in the above captioned matter.

Copies have been forwarded to Jennifer Brubaker with the Public Service Commission, Sandalhaven Utility, Inc., and CHP Utility, Inc., c/o Robert Spade, 6800 Placida Road, Englewood, FL 34224.

Thanking you for your courteous assistance in this matter, I am

Sincerely,

WELLBAUM & McLENNON, P.A.

Thomas P. McLennon

- ACK _____
- AFA _____
- AFB _____
- CAP _____
- CMR _____
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- EAG _____ Enclosures
- LEW _____ 1
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- ROB _____

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FPSC-RECORDS/REPORTING

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application for Transfer
of Certificate No. 495-6
from Sandalhaven Utility,
Inc. to CHP Utility, Inc.
in Charlotte County,
Cancellation of Certificate
No. 495-S and Exemption
from Florida Public Com-
mission Regulation.

Docket No. 97-0381-SU
Order #PSC97-1150-POF-SU
issued September 30, 1997

MOTION FOR RECONSIDERATION
AND IN THE ALTERNATIVE TO CONDUCT AN ADMINISTRATIVE HEARING
PURSUANT TO CHAPTER 120.57, FLORIDA STATUTES

FIDDLER'S GREEN CONDOMINIUM ASSOCIATION I, FIDDLER'S GREEN CONDOMINIUM ASSOCIATION II, SHAMROCK SHORES PROPERTY ASSOCIATION, INC., WILDFLOWER PROPERTY ASSOCIATION, INC., SANDALHAVEN CONDOMINIUM ASSOCIATION I, SANDALHAVEN CONDOMINIUM ASSOCIATION II, and CAPE HAZE MARINA VILLAGE, INC., on behalf of themselves and their respective lot owners, unit owners and association members (hereinafter referred to as "CUSTOMERS"), move the Commission to reconsider its Order issued September 30, 1997 DECLINING TO INITIATE SHOW-CAUSE PROCEEDINGS, APPROVING TRANSFER, CANCELLING CERTIFICATE, AND CLOSING DOCKET (Order No. PSC97-1150-SOF-SU, Docket No. 97-0381-SU, attached as "Exhibit A") and in the alternative to conduct an administrative hearing pursuant to Chapter 120.57, Florida Statutes, premised on the following:

1. "CUSTOMERS" own property served by Sandalhaven Utility, Inc. (hereinafter referred to as "UTILITY").
2. On April 10, 1996, FIDDLER'S GREEN UTILITY, INC., was issued a Certificate of Incorporation from the State of Florida. The Articles of FIDDLER'S GREEN UTILITY, INC. were amended on

December 30, 1996 changing the name of the corporation to CHP Utility, Inc.

3. CHP UTILITY, INC. (hereinafter referred to as "CHP") was organized pursuant to Chapter 617, Florida Statutes, as a non-for-profit corporation. The members of CHP consist of the subscribers of UTILITY.

4. Customers became members of CHP without their knowledge or consent.

5. The first annual meeting of members was not held in September, 1996 as provided in Article VII, Section I of the By-Laws of CHP.

6. The Utility System Asset and Purchase & Sale Agreement was executed on December 27, 1996 and the transfer was completed on December 30, 1996.

7. Robert Spade executed the agreement both as President of UTILITY and as President of CHP.

8. CUSTOMERS were not notified of the agreement prior to or at the time of execution, nor did CUSTOMERS have an opportunity to review the terms and conditions of the agreement prior to its closing.

9. The agreement provides for a purchase price of \$895,000.00 of which \$733,000 is to be paid through operating revenue from CHP secured by a first mortgage on the assets.

10. The agreement further provided that CHP is committed and willing to make the necessary repairs to the system.

11. On March 26, 1997, CHP filed an application requesting transfer (retroactively) of Sandalhaven's assets and customer

service area and seeking exempt status from the Commission as an exempt, non-for-profit corporation.

12. On June 14, 1997, notice of the application for transfer was published. The notice stated that there was an application for transfer of a Certificate from Sandalhaven Utility to CHP Utility, Inc. The Notice did not inform CUSTOMERS that they would now own a wastewater treatment utility. The Notice did not inform CUSTOMERS that they were indebted to UTILITY in the amount of \$733,000.00 and that \$162,000.00 of capital reserves had been used as a down payment for the transfer. Many CUSTOMERS did not receive the notice by mail.

13. CUSTOMERS first became aware of their membership in CHP by letter dated September 15, 1997 from Robert W. Spade indicating that the utility had been transferred to CHP, retroactive to January 1, 1997 and that CUSTOMERS now owned and were responsible for operating and maintaining the wastewater collection and treatment facility previously owned by UTILITY.

14. In a Memorandum dated August 28, 1997, Commission staff indicated there was financial and technical ability to provide quality utility service and that CHP was capable of fulfilling the commitments, obligations, and representations of the utilities. CUSTOMERS had no input into the public interest issues regarding the transfer. CUSTOMERS were not properly informed of the interest they were acquiring and the liabilities they were assuming in CHP.

15. By letter dated September 15, 1997 (copy attached), Robert Spade, for CHP, notified CUSTOMERS of the transfer of the UTILITY to them and of the annual meeting scheduled for September

25, 1997. The second annual meeting of members/CUSTOMERS was cancelled by Robert Spade due to the large turnout of interested CUSTOMERS.

16. On September 30, 1997, the Commission entered its Order declining to initiate show-cause proceedings, approving transfer, cancelling Certificate, and closing docket, from which Order the CUSTOMERS seek reconsideration.

17. CUSTOMERS' interest has not been presented to the Commission because CUSTOMERS have not been adequately informed and have not been afforded the opportunity.

18. The public interest and policy of the State will better be served by allowing CUSTOMERS the opportunity to investigate and provide input regarding the transfer of a wastewater utility for which they will bear the burden of payment, either through a special assessment or through an increase in their rates.

19. The public interest will best be served by allowing CUSTOMERS the opportunity to investigate and comment on the following:

- (a) the reasonableness of the purchase price;
- (b) the physical condition of the plant;
- (c) whether the plant will have to be expanded to meet the existing and future needs of the service area;
- (d) if an expansion is not feasible, whether the system should interconnect with a larger existing system, either government owned or publicly regulated;
- (e) the permitted and committed capacity of the system;

(f) whether the transfer to a non-for-profit corporation is in their best interest, or if the customers would be better served by the utility being transferred to a government entity or other publicly regulated investor group;

(g) the impacts of the purchase on utility customers, both negative and positive;

(h) any additional capital investments which may be required and whether customers are willing to make such investment;

(i) any alternatives to the transfer as proposed.

20. By letter dated October 3, 1997 (copy attached), Robert Spade indicated CUSTOMERS will have the opportunity to voice their opinions at a meeting to be held in mid January, 1998, and determine if the utility users are prepared to purchase the utility.

21. The "public interest" issue should be reconsidered; to not reconsider, CUSTOMERS will have acquired a utility through membership in a corporation to which they did not consent to joining and further be obligated to pay debt and to assume liabilities without notice, without opportunity, without consent.

22. CHP Utility, Inc. and Sandalhaven Utility, Inc. have no objection to the Commission retaining jurisdiction over this matter, to reconsider the transfer and allow CUSTOMERS sufficient time to investigate and provide comment.

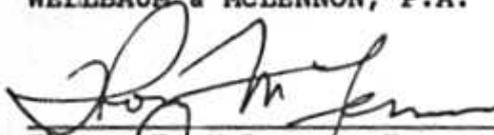
WHEREFORE, CUSTOMERS request this Commission to reconsider its order entered on September 30, 1997 allowing CUSTOMERS sufficient time to review the above stated matters and to comment and provide

input to the Commission on all issues and in the alternative to conduct an administrative hearing pursuant to Chapter 120.57.

REQUEST FOR ORAL ARGUMENT

CUSTOMERS respectfully request oral argument on this Motion.

WELLBAUM & McLENNON, P.A.



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