BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for approval of transfer of wastewater facilities of Pioneer Woodlawn Utilities, Inc. to City of Panama City Beach and cancellation of Certificate No. 128-S in Bay County.	DOCKET NO. 970474-SU ORDER NO. PSC-98-0996-FOF-SU ISSUED: July 21, 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 ACKNOWLEDGING TRANSFER, CANCELING CERTIFICATE, DECLINING TO INITIATE SHOW CAUSE PROCEEDINGS, AND CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

Pioneer Woodlawn Utilities, Inc., (Pioneer Woodlawn or utility) is a Class C utility serving 193 residential and 20 general service wastewater customers in or near the Woodlawn subdivision in Bay County. The utility's 1991 annual report on file with the Commission lists annual revenues of $52,364 and net operating loss of $20,311.

The utility was authorized by the Department of Environmental Protection (DEP) to dispose of its effluent by discharging it into West Bay. However, DEP changed the class status of West Bay, which prohibited any further discharge into the bay. The utility was afforded the opportunity to continue discharging its effluent into the bay, provided certain improvements to its wastewater treatment system were made. In June 1988, the utility entered into a Consent Order with DEP, whereby the utility agreed in part to install a dechlorination system and to apply for a renewal of its operating permit.

As of early 1992, the utility had failed to comply with the Consent Order. Therefore, DEP filed civil action against the utility. As a result of that suit, in April 1992, an Order issued by the Circuit Court for the Fourteenth Judicial Circuit gave Pioneer Woodlawn 120 days to cease operation of the wastewater treatment plant. Because the utility had been unable to connect the sewage flows from its collection system to a regional wastewater treatment facility, the utility was effectively ordered to interconnect with the City of Panama City Beach (City). By letter dated May 8, 1992, the utility advised this Commission that discussions had begun with the City Manager concerning the transfer of its facilities and customers to the City for wastewater service. By letter dated September 8, 1992, this Commission sent the utility an application for transfer to government authority. The letter also put the utility on notice of its obligation to remit regulatory assessment fees for 1992, as well as its obligation to keep the Commission informed of the transfer efforts. We were assured by both the utility and the City that written confirmation regarding the interconnection and the City's acquisition of the utility would be timely submitted.

On January 5, 1993, we received verbal confirmation from the City Manager that the City has taken over the utility's collection system and lift stations. The physical interconnection was made on November 6, 1992, and the City had been pumping the utility's effluent to the City's treatment facility as of that date. However, we received no written confirmation from either the utility or the City regarding this matter until April 14, 1997, with the receipt of the application requesting approval of the transfer of Pioneer Woodlawn Utilities, Inc., to the City of Panama City Beach.

SHOW CAUSE

As discussed previously, Pioneer Woodlawn's facilities were interconnected with the City on November 6, 1992. However, the application for transfer was not filed with the Commission until April 14, 1997. Section 367.071 (1), Florida Statutes, requires that:

> 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.

Pioneer Woodlawn appears to have violated Section 367.071(1), Florida Statutes, by failing to obtain the approval of the Commission before transferring its facilities to the City of Panama City Beach. 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 the knowledge of the Commission's 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).

Pioneer Woodlawn's failure to obtain our approval prior to completing a transfer of a utility's 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. As discussed previously, Pioneer Woodlawn was operating without a DEP operational permit, was subject to a Consent Order, and was discharging wastewater in violation of environmental regulations. Because the utility had been unable to connect the sewage flows from its collection system to a regional wastewater treatment facility, the only viable option which would allow the utility to timely comply with the Fourteenth Judicial Circuit Court's Order would be interconnection with the City of Panama City Beach. Because time was of the essence with regard to the interconnection, the City took over the utility's wastewater service in 1992, prior to obtaining Commission approval. It does appear that the City and the utility worked together to quickly address the requirements of DEP and needs of the customers. Although the Commission is the proper authority to approve the transfer of a utility, we believe that it was in the public interest to provide adequate quality of service by way of interconnection, even though the interconnection took place prior to filing the transfer application.

In addition, the City, which filed the transfer application on behalf of the utility, had considerable difficulty obtaining the records and information necessary to prepare the transfer application. Once all such information had been obtained to the

best of the City's ability, the transfer application was prepared and filed with the Commission.

Based upon the foregoing, we do not find that the utility's apparent violation of Section 367.071(1), Florida Statutes, rises to the level of warranting that show cause proceedings be initiated. Therefore, we find that Pioneer Woodlawn shall not be required to show cause why it should not be fined for failing to obtain the Commission's approval of the transfer of the utility's facilities prior to the date of the transfer.

TRANSFER AND CLOSURE OF DOCKET

Rule 25-30.037(4)(g), Florida Administrative Code, requires a utility to submit a statement regarding disposition of customer deposits when its facilities are transferred to a governmental authority. Supplemental application information indicated that Pioneer Woodlawn returned all of the customer deposits and donated the system to the City of Panama City Beach in November 1992.

Rule 25-30.037(4)(e) requires that the governmental authority obtain the most recent available income and expense statement, balance sheet, statement of rates base for regulatory purposes, and contributions-in-aid-of-construction. This information was provided in a letter to the City Manager by the Commission on September 8, 1992.

Pursuant to Rule 25-30.037(4)(h), Florida Administrative Code, the utility paid all regulatory assessment fees through 1992. There are no outstanding fines or refunds due. Because the City has been providing service since 1992, pursuant to Section 367.022(2), Florida Statutes (governmental authority exemption), no additional regulatory assessment fees or annual reports are required.

Pursuant to Section 367.071(4)(a), Florida Statutes, the transfer of facilities, in whole or part, to a governmental authority shall be approved as a matter of right. Based upon the foregoing, we find it appropriate to acknowledge the transfer of Pioneer Woodlawn to the City of Panama City Beach and to cancel Certificate No. 128-S, effective as of the date of interconnection, November 6, 1992. No further action is required and this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that show cause proceedings shall not be initiated against Pioneer Woodlawn Utilities, Inc., for failing to obtain the Commission's approval of the transfer of the utility's facilities prior to the date of the transfer. It is further

ORDERED that the application for transfer of facilities from Pioneer Woodlawn Utilities, Inc., 328 Greenwood Circle, Panama City Beach, FL 32407-5417, to the City of Panama City Beach, 110 South Arnold Road, Panama City, Florida 32413, is hereby acknowledged. It is further

ORDERED that Certificate No. 128-S is hereby canceled, effective November 6, 1992. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 21st Day of July, 1998.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

Kay Flynn

Kay Flynn, Chief
Bureau of Records

(S E A L)

JSB

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, 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.