



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: OCTOBER 22, 1998

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER AND WASTEWATER (ALAPP) *BSM*
DIVISION OF LEGAL SERVICES (JACOBSON, CROSBY) *BJ*

RE: DOCKET NO. 980846-WS - APPLICATION FOR TRANSFER OF FACILITIES OF GARDEN GROVE WATER COMPANY, INC. TO THE CITY OF WINTER HAVEN AND CANCELLATION OF CERTIFICATES NOS. 597-W AND 512-S IN POLK COUNTY.
COUNTY: POLK

AGENDA: NOVEMBER 3, 1998 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\980846WS.RCM

CASE BACKGROUND

Garden Grove Water Company, Inc. (Garden Grove or utility) is a Class A utility serving approximately 6211 water and 3149 wastewater customers in Polk County. The utility's last annual report on file with the Commission for 1997 lists annual revenues of \$2,298,723 and net income of \$115,300.

Garden Grove has provided water and wastewater services since July 1965. The utility was under the jurisdiction of Polk County until May 14, 1996, when the Board of County Commissioners adopted a resolution, pursuant to Section 367.171, Florida Statutes, declaring the water and wastewater utilities in Polk County subject to the provisions of Chapter 367, Florida Statutes. The Commission acknowledged this resolution on July 11, 1996, by Order No. PSC-96-0896-FOF-WS. Garden Grove submitted an application for certification on October 29, 1996. The utility was granted Water

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granted Water Certificate No. 597-W and Wastewater Certificate No. 513-S pursuant to Order No. PSC-98-0929-FOF-WS issued July 8, 1998.

On July 9, 1998, this Commission received an Application for Transfer to Governmental Authority from Garden Grove to transfer its facilities to the City of Winter Haven (the City). The closing and actual transfer took place on July 15, 1998.

DISCUSSION OF ISSUES

ISSUE 1: Should Garden Grove Water Company, Inc., be ordered to show cause, in writing within 21 days, why it should not be fined for violation of Section 367.071, Florida Statutes.

RECOMMENDATION: No. A show cause proceeding should not be initiated. (JAEGER)

STAFF ANALYSIS: As discussed previously in the case background, the application for transfer was filed with the Commission on July 9, 1998. Garden Grove's facilities were transferred to the City of Winter Haven on July 15, 1998. 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 and that the buyer, assignee, or transferee will fulfill the commitments, obligations, and representations of the utility.

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.

Garden Grove 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 Winter Haven. While staff has 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. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that, "in our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6. 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).

Garden Grove's failure to obtain Commission approval prior to closing on the sale of its facilities to the City of Winter Haven, is an apparent violation of Section 367.071(1), Florida Statutes. There are, however, circumstances which appear to mitigate the utility's apparent violation. The City was anxious to expedite the closing to take advantage of favorable financial terms in the bond issue to purchase the utility, merge it into the City's existing system, and to upgrade both the existing system and the Garden Grove system. The closing of the sale occurred on July 15, 1998.

Staff does not believe that the violation of Section 367.071, Florida Statutes, rises in these circumstances to the level which warrants the initiation of a show cause proceeding. Therefore, staff recommends that the Commission not order Garden Grove to show cause for failing to obtain Commission approval prior to transferring its facilities to the City of Winter Haven.

ISSUE 2: Should the Commission acknowledge the transfer of Garden Grove to the City of Winter Haven as of July 15, 1998, and cancel Water Certificate No. 597-W and Wastewater Certificate No. 512-S?

RECOMMENDATION: Yes, the Commission should acknowledge the transfer of Garden Grove to the City of Winter Haven as of July 15, 1998, and cancel Water Certificate No. 597-W and Wastewater Certificate No. 512-S. (CLAPP)

STAFF ANALYSIS: Garden Grove has provided water and wastewater services since July 1965. The utility was under the jurisdiction of Polk County until May 14, 1996, when the Board of County Commissioners adopted a resolution, transferring jurisdiction to the Public Service Commission. On October 29, 1996, Garden Grove submitted an application for certification which was granted by Order No. PSC-98-0929-FOF-WS issued on July 8, 1998.

On July 9, 1998, this Commission received from Garden Grove an Application for Transfer to Governmental Authority to transfer the utility to The City of Winter Haven pursuant to Section 367.071, Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code. Included with the application is a copy of the transfer agreement between the two parties. The actual closing date for the transfer was July 15, 1998.

Pursuant to Rule 25-30.037(4)(d), Florida Administrative Code, the application for transfer referred to a list of assets that Garden Grove will retain, but the list was not included with the application. The agent was asked about the list and immediately sent it and a cover letter which stated that Garden Grove no longer owns, operates, maintains or controls any system providing water or wastewater service. The application contained a statement that pursuant to Rule 25-30.037(4)(e), Florida Administrative Code, the City obtained Garden Grove's most recently available income and expense statement, balance sheet, statement of rate base for regulatory purposes, and contributions-in-aid-of-construction.

A statement that the customer deposits will be given to the City as required in Rule 25-30.037(4)(g), Florida Administrative Code, was included in both the application and the transfer agreement. Staff questioned the utility's agent about the lack of reference to interest on the deposits. Under Polk County, the utility did not pay interest on customer deposits. This issue was raised when the utility applied for certification, but the utility was advised not to change any rates until after certification took place. Since the transfer took place about a week after the

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utility was certificated, no modification for interest payments on customer deposits was requested.

Pursuant to the requirements of Rule 25-30.037(4)(h), Florida Administrative Code, a statement was included that Garden Grove will pay outstanding regulatory assessment fees. Garden Grove has paid regulatory assessment fees for 1996 and 1997.

The application for transfer to a governmental authority was received prior to the issuance of water and wastewater certificates to the utility. Consequently, the original certificates were never mailed and are in the possession of the Commission.

Garden Grove has submitted an application for transfer to a governmental authority which meets the requirements of Section 367.071(4)(a), Florida Statutes. Staff recommends that the Commission acknowledge the transfer of Garden Grove to The City of Winter Haven as of July 15, 1998. The utility has paid regulatory assessment fees through 1997 and has agreed to pay the fees for January through July 15, 1998, on or before the due date. Therefore, staff also recommends the cancellation of Water Certificate No. 597-W and Wastewater Certificate No. 512-S effective July 15, 1998.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes, no further action is required and this docket should be closed. (JAEGER)

STAFF ANALYSIS: No further action is required and this docket should be closed.