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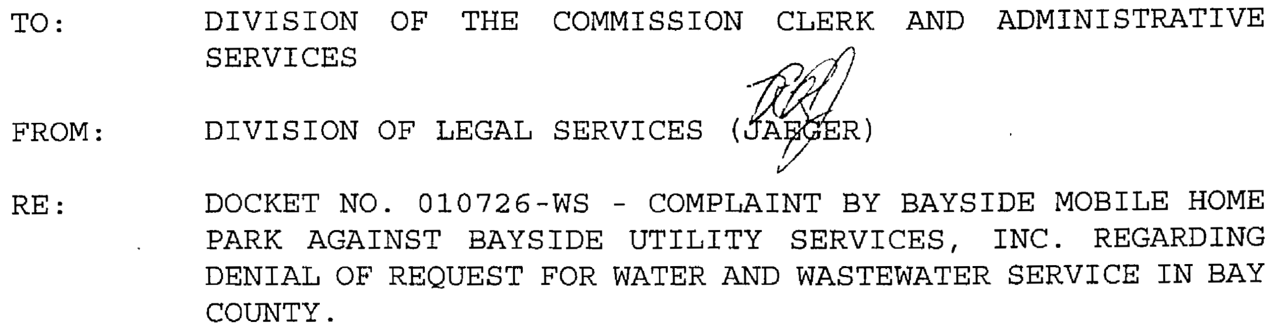
M E M O R A N D U M

September 18, 2001



TO: DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES

FROM: DIVISION OF LEGAL SERVICES (JAEGER)

RE: DOCKET NO. 010726-WS - COMPLAINT BY BAYSIDE MOBILE HOME PARK AGAINST BAYSIDE UTILITY SERVICES, INC. REGARDING DENIAL OF REQUEST FOR WATER AND WASTEWATER SERVICE IN BAY COUNTY.

Please place the attached September 12, 2001 letter from Bayside Utility Services, Inc., in the docket file. This letter responds to Bayside Mobile Home Park's Second Response to Staff's First Data Request.

RRJ/lw
Attachment
cc: Division of Economic Regulation (Walker)
Ben Girtman, Esquire
Mr. Leonard Jeter

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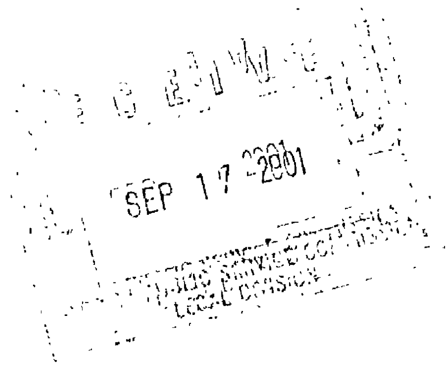
UTILITIES, INC.

2335 Sanders Road
Northbrook, Illinois 60062-6196
Telephone 847 498-6440
Facsimile 847 498-2066



September 12, 2001

Ralph Jaeger, Esq.
Florida Pubic Service Commission
Division of Legal Services
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 010726-WS. Complaint by Bayside Mobile Home Park against Bayside Utility Services, Inc. regarding denial of request for water and wastewater service in Bay County.

Dear Mr. Jaeger:

The following is submitted in response to the document titled "Bayside Second Response to Staff's First Data Request" submitted by Bayside Mobile Home Park under date of August 30, 2001. A copy was never served on Bayside Utility Services, Inc. or on its attorney. A copy had to be acquired from the Commission Staff. The document is unsigned, not verified, and there was no certificate of service.

Even if everything in the "Second Response" were accepted as correct and accurate (much of which the utility disputes), it is evident that there is nothing therein which would change the result of the Staff Recommendation dated August 23, 2001, and originally scheduled for agenda conference on September 4, 2001.

The analysis in the Staff Recommendation carefully considered the matters at issue and the applicable criteria and determined that the complaint is without merit. The new assertions submitted in the Second Response do not change that fact, and they are not relevant, much less controlling, in the matter.

Since the CIAC rule proceeding in 1983, Rule 25-30.585, F.A.C., has set forth the service availability charges which must be paid by a developer. The rule states that:

> .... service availability charges for real estate developments shall not be less than the cost of installing the water transmission and distribution facilities and sewer collection system and not more than the developer's hydraulic share of the total cost or the utility's facilities and the cost of installing the water transmission and distribution facilities and sewage collection system.

The purchasing utility never agreed to install lines in a new development. It was never asked to do so before the sale was complete. Only well after the sale did the developer bring up this matter and seek to have the utility assume the cost and risk. And it doesn't matter if the developer/former utility owner's intent to expand its mobile home park was written in documents somewhere. The seller was never asked to install those lines as a part of the sale of the utility or otherwise, until the matter was raised by the developer well after the sale. The utility purchaser has expressed a willingness to serve the new development, but only on terms consistent with the policies of the Public Service Commission. To do otherwise would place undue rate burdens on the current utility customers (if the extension of lines were considered 100% used and useful) or would place an unreasonable burden on the utility and could place it at financial risk if the extension were not considered 100% used and useful. Apparently, the developer would not object either to higher rates for customers in its existing development or to cross-subsidization from customers in one of the parent company's other utility systems.

If the developer decided to expand its mobile home park before selling its utility system, it may have expected to shift the cost burden of part of that development (installing the water and wastewater lines) to the utility purchaser. However, that is not how the relevant and controlling laws and rules allow the game to be played.

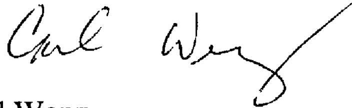
The reference in the Second Response to the sewer treatment plant at Sandy Creek Utility misses the relevant point. Even if the plant were sold by Bayside Utility to Sandy Creek Utility, the Sandy Creek system has been operating satisfactorily, according to Commission standards, and one can only assume that whatever repairs or upgrades to the plant were done by the purchaser of that system. Otherwise, the Commission would not have allowed the plant to continue in operation at Sandy Creek.

The agreement reached by the seller and the buyer of Bayside Utility did not in any way call for the purchaser to install new lines - either for an expansion by the existing developer, by another developer, or for an expansion of the existing territory. It was not part of the negotiations. The developer apparently ignores the portion of the Commission rules that deal with developers and wants to have their development construed under the provisions relating only to individual customers. In an effort to avoid the some of the risks and costs associated with its new development, the developer incorrectly wants each purchaser of its lots to construed as the "new customer" of the utility. However, expansion to serve a new development is treated differently. It is not known whether the developer knew about the Commission rules and practice on this subject before selling the Bayside utility.

Although there may be a difference of opinion between the parties as to which entity should bear the cost and risk of installing lines in a new development Rule 25-30.585, F.A.C., is unequivocal. It is the developer and not the utility that bears that cost and risk.

In conclusion, there is nothing in the developer's Second Response which would change the result of the Staff Recommendation dated August 23, 2001 and originally scheduled for agenda conference on September 4, 2001. The complainant's request should be denied, and the complaint should be dismissed.

Sincerely,



Carl Wenz
Vice President
Regulatory Matters

cc: Ms. Burton
Mr. Girtman