

ORIGINAL

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November 1, 2002

VIA FEDERAL EXPRESS

Agency Clerk
Florida Public Service Commission
C/O Harold McLean, Esquire, General Counsel
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: **Petition For Rulemaking**

Dear Public Service Commission Agency Clerk:

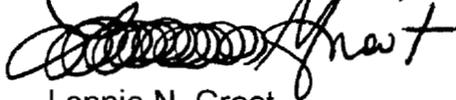
Please find enclosed the Petition for Rulemaking filed on behalf of the City of Palm Coast, Florida.

We will appreciate your office and the Commission taking appropriate action relative to the rulemaking proposed in the Petition.

Please feel free to call with questions and to let me know if I can be of assistance in this matter or in any other way. Thank you for your attention to this matter.

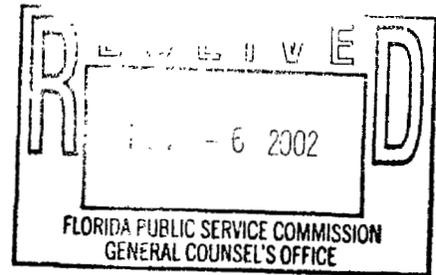
Sincerely,

STENSTROM, McINTOSH, COLBERT,
WHIGHAM & SIMMONS, P.A.

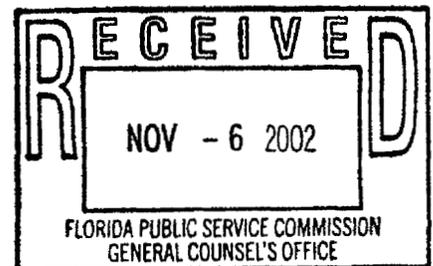

Lonnie N. Groot

cc: Richard Kelton, City Manager
Ms. Clare Hoeni, Deputy Clerk
William L. Colbert, Esquire, City Attorney
Virginia Cassady, Esquire

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FPSC-COMMISSION CLERK

ORIGINAL

**BEFORE THE FLORIDA PUBLIC SERVICE
COMMISSION**

DOCKET NUMBER: 021128-WS

CITY OF PALM COAST'S PETITION TO INITIATE RULEMAKING

COMES NOW the Petitioner, CITY OF PALM COAST, FLORIDA (the "City"), a Florida municipality and files this Petition to Initiate Rulemaking under the provisions of Section 120.54, *Florida Statutes*, Rule 28-103.006, *Florida Administrative Code* (Uniform Rules of Procedure), and Chapter 25-40.001, *Florida Administrative Code* (Rules of the Florida Public Service Commission).

A. Name, Address and Telephone Number of the Petitioner:

The name, address and telephone number Petitioner's legal representative is:

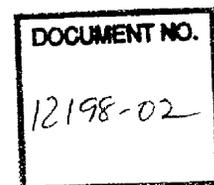
William L. Colbert, Esquire
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200 W. First Street, Suite 22
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Attorneys for Petitioner

The name, address and telephone number Petitioner is:

Mr. Richard Kelton
City Manager
City of Palm Coast
Post Office Box 354610
264 Palm Coast Parkway
Palm Coast, Florida 32135-5610
(386) 447-4255

B. The Specific Rule or Action Requested:

25- 30-041 **Transfer of Water or Wastewater Utility to Specified Entities Created**



Under Section 163.01 (7)(g)1, Florida Statutes:

- a. This Rule is adopted under the exclusive jurisdiction of the Commission over the authority of water or wastewater utilities and to ensure that the rates of water and wastewater utilities are not raised indirectly without Commission action when rates could not be raised directly without Commission action. This Rule is also appropriate to exercise the police power of the State, as vested in the Commission, to protect the public interest by ensuring that water and wastewater utility rates are not raised and transfers of water and wastewater utilities do not occur in such a manner that would result in a detriment to the public without appropriate Commission action and oversight.
- b. As used in this Rule, the term “Entity” means a legal entity created under the authority of Section 163.01(7)(g)1., *Florida Statutes*, which, except for populations included under the authority in Section 180.02(3), *Florida Statutes* server populations outside of the county or counties of the members of the legal entity.
- c. The sale, assignment or transfer of a non-exempt water or wastewater utility to an Entity can be used as a means of raising rates that could not otherwise be raised and circumventing the regulatory authority of the Commission which is implemented to protect the public interest.
- d. The provisions of Section 367.071, *Florida Statutes*, are intended to protect the public from sales, assignments or transfers of water and wastewater utilities that are contrary to or inconsistent with the public interest.
- e. Prior to a water or wastewater utility selling, assigning or transferring its certificate of authorization, facilities, or any portion thereof, or major organizational control to any Entity, the Commission shall docket and evaluate the proposed sale, assignment or transfer. This requirement relates to utilities that are under the regulation of the Commission and those that have systems that are both under the regulation of the Commission and regulated by other governmental entities.
- f. The evaluation by the Commission of any proposed sale, assignment or transfer of a water or wastewater utility to an Entity shall include, but not be limited to, the following:
 - (1) Whether the proposed sale, assignment or transfer will result in the commitments of the regulated utility being fulfilled.
 - (2) Whether the proposed sale, assignment or transfer will result in the obligations of the

regulated utility being fulfilled.

- (3) Whether the proposed sale, assignment or transfer will result in the representations of the regulated utility being fulfilled.

- g. An Entity shall not be deemed to be a governmental authority and shall not be deemed to be a district as set forth in Section 1.01(8), *Florida Statutes*.
- h. Any privately owned water or wastewater utility that sells, transfers or assigns its certificate of authorization, facilities, or any portion thereof, or major organizational control to an Entity, shall first submit an application to the Commission, or to the applicable regulator in conjunction with the Commission, to fix and change its rates.
- i. Notwithstanding the provisions of Section 367.171, *Florida Statutes*, any water or wastewater utility that owns or operates water or wastewater systems that propose to sell, transfer or assign said systems to an Entity shall be subject to Commission evaluation as provided in Section 367.171 (5), *Florida Statutes*.

Specific Authority: 120.54, F.S.

Law Implemented: 367.011, 367.071, 367.121, and 367.171, F.S.

C. The Reasons for the Rule or Action Requested:

The Petitioner hereby refers to and incorporates herein by this reference thereto the materials and documents included in Florida Public Service Commission Docket Number 11472-02 and Docket Number 11148-02. The Petitioner has a substantial interest in the proposed rule in that the acquisition of the water and wastewater systems owned and operated by Florida Water Services Corp. ("FWSC") could have a major impact on the quality and level of water and wastewater service provided to the citizens of the City of Palm Coast. Additionally, the Petitioner has a substantial interest in the proposed rule in that the citizens of the City of Palm Coast could be substantially impacted by the acquisition of the water and wastewater systems owned and operated by FWSC. In that acquisition of the said systems by an Entity exercising authority under the provisions of Section 163.01(7)(g)1, *Florida Statutes*, could result in substantial rate changes adversely impacting the citizens of the City of Palm Coast. Notwithstanding the fact that Flagler County, pursuant to the provisions of Section 367.171, *Florida Statutes*, is a county that has water and wastewater utility regulatory authority, the rules and policies of the Florida Public Service Commission have significant and material impact on the regulatory actions and activities of Flagler County and the rate setting policies of Flagler County. About 26,000 persons are served by FWSC in the City of Palm Coast.

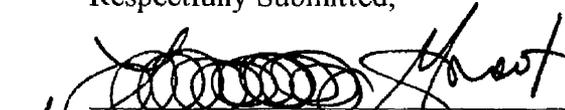
D. Facts Showing that the Petitioner is Regulated by the Public Service Commission or

has a Substantial Interest in the Rule or Action Requested:

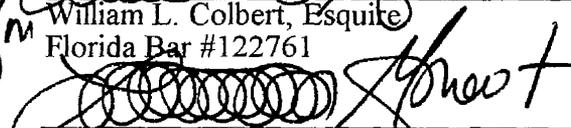
The Petitioner hereby refers to and incorporates herein by this reference thereto the materials and documents included in Florida Public Service Commission Docket Number 11472-02 and Docket Number 11148-02. Florida Water Services Corp. ("FWSC") proposes to sell, assign and transfer its water and wastewater utility systems to a purported entity known as the Florida Water Services Authority ("FWSA") that was purportedly created by the cities of Gulf Breeze and Milton. The purported FWSA was purportedly created under the provisions of, and purports to have authority relative to water and wastewater systems under, Section 163.01(7)(g)1, *Florida Statutes*. FWSC owns water and wastewater systems in twenty-six (26) counties. None are located within the jurisdictional boundary of Santa Rosa County in which the cities of Gulf Breeze and Milton lie much less within the city limits of those cities. The purported FWSA and the cities of Gulf Breeze and Milton are not proximate to the many jurisdictions which would be served by the purported new entity (FWSA). Indeed, the FWSA/Cities of Gulf Breeze and Milton and the jurisdictions to be served by water and water services are located in totally different areas of the State and hundreds of miles from one another. The Petitioner will benefit from the Commission having the maximum lawful and practicable participation in terms of the sale, assignment or transfer of the FWSC systems to the purported FWSA. The Commission is the governmental entity within the construct of Florida State Government that has the jurisdiction, organization, professional staff, and expertise to protect the public interest when the acquisition of water and wastewater systems under a proposal which would result in regulated actions being indirectly accomplished when such actions could not be directly accomplished.

DATED this 15th day of November, 2002.

Respectfully Submitted,



William L. Colbert, Esquire
Florida Bar #122761



Lonnie N. Groot, Esquire
Florida Bar #266094

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