



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-

RECEIVED-FPSC
OCT -9 AM 11:49
COMMISSION CLERK

DATE: OCTOBER 9, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF ECONOMIC REGULATION (CLAPP, KAPROTH, WILLIS) *APK* *JS*
OFFICE OF THE GENERAL COUNSEL (HOLLEY) *JAM* *MS*

RE: DOCKET NO. 030932-WS - JOINT APPLICATION FOR ACKNOWLEDGMENT OF SALE OF LAND AND FACILITIES OF FLORIDA WATER SERVICES CORPORATION IN LEE COUNTY TO FLORIDA GOVERNMENTAL UTILITY AUTHORITY, AND FOR CANCELLATION OF CERTIFICATE NOS. 306-W AND 255-S.
COUNTY: LEE

AGENDA: 10/21/03 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: THE FIVE FLORIDA WATER SERVICES CORPORATION DOCKETS (030541-WU, 030542-WS, 030920-WS, 030971-WS, AND 030932-WS) SHOULD BE PLACED IN ORDER.

FILE NAME AND LOCATION: S:\PSC\ECR\WP\030932WS.RCM

CASE BACKGROUND

Florida Water Services Corporation (FWSC or utility) is a Class A utility providing water and wastewater service throughout Florida. Most of its systems are under Commission jurisdiction. FWSC's Lehigh system serves approximately 10,280 water and 7,944 wastewater customers in Lee County. The system is in a priority water resource caution area of the South Florida Water Management District. The utility's 2002 annual report indicates that the Lehigh system had gross revenue of \$3,771,161 and \$4,127,916 and net operating income of \$557,864 and \$839,773 for water and wastewater, respectively.

DOCUMENT NUMBER-DATE
09823 OCT-98
FPSC-COMMISSION CLERK

DOCKET NO. 030932-WS
DATE: OCTOBER 9, 2003

The water and wastewater systems of Lehigh Utilities were originally issued Certificate Nos. 9-W and 7-S pursuant to Order No. 4937, issued September 8, 1970, in Docket Nos. 70164-W and 70165-S, In Re: Application of Lehigh Utilities, Inc., for certificate to operate a water system and a sewer system in Lee County, Florida. As a result of a corporate reorganization, these certificates were cancelled and Certificate Nos. 306-W and 255-S were amended to include the Lehigh systems pursuant to Order No. PSC-93-0500-FOF-WS, issued April 5, 1993, in Docket No. 930086-WS,, In Re: Petition for acknowledgment of corporate reorganization by merger, cancellation of Certificates Nos. 9-W and 7-S in Lee County issued to Lehigh Utilities, Inc. and amendment of Certificates Nos. 306-W and 255-S in Lee/Charlotte Counties by Southern States Utilities, Inc.

On or about August 25, 2003, FWSC entered into a First Amended and Restated Utility System Asset Acquisition Agreement (Agreement) with Hernando County, The City of Marco Island, The City of Palm Coast, Osceola County, Florida Governmental Utility Authority, and The City of Deltona. FWSC filed four separate applications seeking acknowledgment for the transfers contemplated by this Agreement.¹

At issue in this docket is FWSC's application for acknowledgment of the proposed sale of FWSC's Lehigh water and wastewater land and facilities located in Lee County to the Florida Governmental Utility Association (FGUA) and for the amendment of Certificate Nos. 306-W and 255-S, which was filed on September 24, 2003. This recommendation also addresses whether the Commission

¹ Docket No. 030920-WS - Joint application for acknowledgment of sale of portion of land and facilities of Florida Water Services Corporation in Volusia County to City of Deltona and for amendment of Certificate Nos. 238-W and 182-S; Docket No. 030921-WS - Joint application for acknowledgment of sale of land and facilities in Osceola County to Osceola County by Florida Water Services Corporation and for cancellation of Certificate Nos. 66-W and 289-S; Docket No. 030931-WS - Joint application for acknowledgment of sale and land and facilities of Florida Water Services Corporation in Charlotte County to Florida Governmental Utility Authority and for cancellation of Certificate Nos. 570-W and 496-S.

should open a docket to examine whether FWSC's sale involves a gain that should be shared with FWSC's remaining customers. The Commission has jurisdiction pursuant to Sections 367.045, 367.071, and 367.081, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the transfer of a portion of Florida Water Services Corporation's Lee County water and wastewater facilities to FGUA be approved?

RECOMMENDATION: Yes. The transfer of FWSC's Lehigh system located in Lee County to the FGUA should be approved, as a matter of right, pursuant to Section 367.071(4)(a), Florida Statutes. Certificate Nos. 306-W and 255-S should be amended to reflect the deleted territory described in Attachment A, effective upon the closing date of the sale. FWSC should provide the Commission with proof of transfer to the FGUA within 30 days of closing for purposes of establishing an effective closing date. Regulatory assessment fees should be submitted within 60 days from the closing date. (CLAPP, KAPROTH, HOLLEY)

STAFF ANALYSIS: On September 24, 2003, the Commission received an application to transfer FWSC's Lehigh facilities to FGUA pursuant to Section 367.071(4)(a), Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code. Included with the application is a copy of the First Amended and Restated Utility System Asset Acquisition Agreement, which states the proposed closing date for all of the parties to the agreement is on or before December 8, 2003. Therefore, December 8, 2003, is the anticipated effective date of the acquisition.

The FGUA is an interlocal entity created pursuant to Chapter 163, Florida Statutes, by political subdivisions of the State. Its members include Citrus County, Osceola County, Polk County, and Nassau County. In its application, FWSC states that with the acquiescence and consent of the Board of County Commissioners of Lee County, the FGUA had been negotiating with FWSC toward the acquisition of the Lehigh system located in Lee County since

DOCKET NO. 030932-WS
DATE: OCTOBER 9, 2003

September of 2001. The application further states that Section 163.01(9)(c), Florida Statutes, confirms that an entity such as the FGUA is entitled to all of the privileges and exemptions from laws and ordinances that apply to the local government or governments that created it. Thus, because political subdivisions of the State such as the County members of the FGUA are governmental authorities as defined by Section 367.021(8), Florida Statutes, the FGUA should likewise be treated as such.

The Commission has previously determined that the FGUA is a governmental authority for purposes of Section 367.071(4), Florida Statutes, in Order No. PSC-00-2351-FOF-WS, issued December 7, 200, in Docket No. 990489-WS, In re: Application by Florida Cities Water Company, holder of Certificate Nos. 027-W and 024-S in Lee County and 007-W and 003-S in Brevard County, and Poinciana Utilities, Inc., holder of Certificate Nos. 146-W and 103-S in Polk and Osceola Counties for transfer of facilities to Florida Governmental Utility Authority and cancellation of Certificate Nos. 027-W, 024-S, 007-W, 003-S, 146-W and 103-S. In that Order, the Commission specifically held:

[W]e find that the application as amended is in compliance with Section 367.071(4), Florida Statutes and Rule 25-30.037(4), Florida Administrative Code. Pursuant to Section 367.071(4)(a), Florida Statutes, the sale or transfer of facilities to a governmental authority is approved as a matter of right. Accordingly, we hereby approve the transfer of facilities from FCWS and PUI to the GUA. (Order, pages 4-5).

Staff believes that it is consistent with the above-noted Order that the FGUA in the present case be treated as a governmental authority for the purposes of the proposed transfer. Furthermore, staff sees no public policy reason to deviate from the Commission's prior decision.

Pursuant to Section 367.071(4)(a), Florida Statutes, the transfer of facilities to a governmental authority shall be approved as a matter of right. As such, no notice of the transfer is required and no filing fees apply. The application had no deficiencies and is in compliance with Section 367.071(4)(a), Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code.

The application contains a statement that FGUA obtained FWSC's most recent income and expense statement, balance sheet, statement of rate base for regulatory purposes, and contributions-in-aid-of-construction pursuant to Rule 25-30.037(4)(e), Florida Administrative Code. A statement that the customer deposits and interest earned, less any unpaid balances, will be transferred to the City for the benefit of the customers as required by Rule 25-30.037(4)(g), Florida Administrative Code, was also included in the application.

Pursuant to Rule 25-30.037(4)(f), Florida Administrative Code, the application is to contain the date on which the governmental authority proposes to take official action to acquire the utility. According to the agreement, the closing will take place on or before December 8, 2003. Since a firm date is not provided, FWSC should provide the Commission with proof of the transfer, including the actual closing date, within 30 days of closing in order to establish the effective date of the transfer.

Additionally, pursuant to the requirements of Rule 25-30.037(4)(h), Florida Administrative Code, a statement was included that FWSC has no outstanding regulatory assessment fees (RAFs) and no fines or refunds are owed. Staff has verified that the utility has filed its 2002 annual report and paid its 2002 RAFs and that there are no outstanding penalties and interest. For the period of January 1, 2003 through the closing date, FWSC has agreed to file a RAF return and remit RAF payment for the Lehigh system within 60 days of the closing date.

Staff recommends that the Commission find that the application is in compliance with the provisions of Rule 25-30.037, Florida Administrative Code. Pursuant to Section 367.071(4)(a), Florida Statutes, the transfer of facilities to a governmental authority shall be approved as a matter of right. As indicated previously, staff believes that the FGUA should be treated as a governmental authority as defined in Section 367.021(7), Florida Statutes, for the purposes of this transfer. Therefore, staff recommends that the transfer to the FGUA of the portion of FWSC's Lee County land and facilities that serve the Lehigh system should be approved, as a matter of right. Certificate Nos. 306-W and 255-S should be amended to reflect the deleted territory described in Attachment A, effective upon the closing date of the sale. FWSC should provide the Commission with proof of the transfer within 30 days of closing in order to establish an effective date. RAFs for the period of

DOCKET NO. 030932-WS
DATE: OCTOBER 9, 2003

January 1, 2003 through the date of closing, should be submitted within 60 days of the closing dated.

ISSUE 2: Should the Commission open a docket to examine whether FWSC's sale of its Lehigh facilities in Lee County to FGUA involves a gain that should be shared with FWSC's remaining customers?

RECOMMENDATION: Yes. The Commission should open a docket to examine whether FWSC's sale of its Lehigh facilities involves a gain that should be shared with FWSC's remaining customers. (WILLIS, CLAPP, HOLLEY)

STAFF ANALYSIS: Per the acquisition agreement entered into on August 25, 2003, FWSC receives a total of \$34,503,538 from FGUA for the Lehigh water and wastewater facilities. That sum appears to exceed the rate base values that the Commission has approved for those facilities. In Order No. PSC-96-1320-FOF-WS, issued October 30, 1996, in Docket No. 950495-WS, In Re: Application for rate increase and increase in service availability charges in Southern States Utilities, Inc. for Orange-Osceola Utilities, Inc. in Osceola County, and in Bradford, Brevard, Charlotte, Citrus, Clay, Collier, Duval, Highlands, Lake, Lee, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, St. Johns, St. Lucie, Volusia, and Washington Counties, the most recent rate proceeding for FWSC, the approved rate base value for the combined Lehigh water and wastewater facilities was \$12,434,943 for the projected test year ending December 31, 1996. Restoring used and useful adjustments, the aggregate rate base balance was \$13,702,353. In its 2002 Annual Report, FWSC reported a rate base of \$29,194,027 for its Lehigh facilities. As the sale is planned to occur in 2003, an updated rate base calculation will be needed to determine the gain, if any, due to sale of these facilities. Initial review indicates that FWSC will record a gain on this transaction. Therefore, staff recommends that the Commission should decide whether to open a separate docket to determine if the gain should be allocated among the remaining water and wastewater customers.

Utility's Position

By letter to staff dated August 29, 2003, the attorney for FWSC provided the utility's position with respect to whether the Commission should initiate a gain on sale issue in this docket. In that letter, FWSC cites the Commission's decision concerning gain on sale in Order No. PSC-93-0423-FOF-WS, issued March 22, 1993, in Docket No. 920199-WS, In Re: Application for rate increase in Brevard, Charlotte/Lee, Citrus, Clay, Duval, Highlands, Lake, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole,

Volusia, and Washington Counties by Southern States Utilities, Inc.; Collier County by Marco Shores Utilities (Deltona); Hernando County by Spring Hill Utilities (Deltona); and Volusia County by Deltona Lakes Utilities (Deltona) (SSU Order). In the SSU Order, FWSC argues that the Commission concluded that there should be no sharing in the gain arising from the condemnation of water and wastewater systems previously operated by FWSC. Because that decision concerning gain on sale was affirmed by the First District Court of Appeal in Citrus County v. Southern States Utilities, Inc., 656 So. 2d 1307 (Fla. 1st DCA 1995), FWSC argues that the Commission is bound by the "Citrus County precedent."

Moreover, FWSC notes that "the Citrus County appellate court decision is consistent with" Order Nos. PSC-93-1821-FOF-WS, issued December 22, 1993, in Docket No. 930373-WS, In Re: Application for amendment of Certificate No. 247-S by North Fort Myers Utility, Inc., and cancellation of Certificate No. 240-S issued to Lake Arrowhead Village, Inc., in Lee County, and 930379-SU, In Re: Application for a limited proceeding concerning the rates and charges for customers of Lake Arrowhead Village, Inc., in Lee County, by North Fort Myers Utility (North Fort Myers Order). In the North Fort Myers Order, FWSC points to the paragraph where the Commission stated:

[C]ustomers of utilities do not have any proprietary claim to utility assets. Although customers pay a return on utility investment through rates for service, they do not have any ownership rights to the assets, whether contributed or paid for by utility investment.

Staff's Position

Staff notes that the sale to FGUA does not involve a condemnation proceeding. Moreover, staff believes that FWSC has misinterpreted each of the above-noted Orders and court decision. In the SSU Order, the Commission, in addressing whether a sharing of the gain on sale was appropriate, specifically said, "Since SSU's remaining customers never subsidized the investment in the SAS [St. Augustine Shores] system, they are no more entitled to share in the gain from that sale than they would be required to absorb a loss from it." Therefore, the Commission's determination that a sharing of the gain on sale was not appropriate was limited to the specific facts of that case and was not a "blanket" legal

determination that a gain on sale would never be appropriate. The Citrus County case merely confirmed this factual interpretation.

As to the North Fort Myers Order, the language quoted by FWSC was merely addressing whether there should be a refund to the customers of the former utility, Lake Arrowhead Village, Inc. (LAVI). As to consideration of the gain on sale, the Commission said:

We first examined whether any gain on sale should be passed on to the customers. The costs to dismantle the plant would range from \$20,000 to \$50,000, depending on the public health and other sanitary requirements for the intended use of the land where the treatment and disposal facilities are located. Therefore, even if the few lots which might be created by clearing the former plant site were sold, a significant portion of the gain would be greatly offset by the cost of clearing the site and preparing the lots for sale.

Therefore, the Commission again, on a factual basis, determined that a gain on sale adjustment was not appropriate. Staff believes that a review of the appropriate disposition of any gain on sale is appropriate, and to do so, the Commission is merely carrying out its jurisdictional duty to "fix rates which are just, reasonable, compensatory, and not unfairly discriminatory" to the remaining customers of FWSC, as required by Section 367.081(2)(a)1., Florida Statutes.

Before FWSC's Lehigh facilities are purchased by FGUA, the facilities are subject to this Commission's jurisdiction. Their service rates were established in FWSC's 1995 rate proceedings in Docket No. 950495-WS. According to FWSC's 2002 annual report the Lehigh systems had net operating income of \$557,864 and \$839,773 for water and wastewater, respectively. Whether the Lehigh facilities were subsidized by other systems has yet to be determined.

Further study to examine sharing considerations for the Lehigh utility systems gain on sale is recommended to permit timely examination of this topic. Staff recommends that the Commission open a docket to examine whether FWSC's sale of its Lehigh utility facilities involves a gain that should be shared with FWSC's remaining customers. This is consistent with prior Commission

DOCKET NO. 030932-WS
DATE: OCTOBER 9, 2003

decisions in the following Orders: Order No. PSC-98-0688-FOF-WS, issued May 19, 1998, in Docket No. 971667-WS, In Re: Application for approval of transfer of facilities of Florida Water Services Corporation to Orange County and cancellation of Certificate Nos. 84-W and 73-S in Orange County; Order No. PSC-99-2171-FOF-WU, issued November 8, 1999, in Docket No. 981589-WU, In re: Application for approval of transfer of a portion of the facilities operated under Certificate No. 40-W in Orange County from Utilities, Inc. of Florida to the City of Maitland; and Order No. PSC-99-2373-FOF-WS, issued December 6, 1999, in Docket No. 991288-WS, In re: Application for transfer of a portion of Certificates Nos. 278-W and 225-S in Seminole County from Utilities, Inc. of Florida to the City of Altamonte Springs. In each of the above-three Orders, the Commission acknowledged the transfer to the respective governmental authority and opened another docket to evaluate the gain on sale.

DOCKET NO. 030932-WS
DATE: OCTOBER 9, 2003

ISSUE 3: Should this docket be closed?

RECOMMENDATION: This docket should remain open until the conclusion of any pending dockets concerning the Lehigh facilities, and until Certificate Nos. 306-W and 255-S are amended to reflect the deleted territory described in Attachment A. (HOLLEY)

STAFF ANALYSIS: This docket should remain open until the conclusion of any pending dockets concerning the Lehigh County facilities, and until Certificate Nos. 306-W and 255-S are amended to reflect the deleted territory described in Attachment A.

Florida Water Services Corporation

LEE COUNTY - LEHIGH SYSTEM
Water and Wastewater
Description Of Territory Served

Township 44 South, Range 26 East:

All of Section 1, all of Section 2; the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 10; all of Section 11, all of Section 12; all of Section 13; the East $\frac{1}{2}$ of Section 14; the East $\frac{1}{2}$ of Section 23; all of Section 24; all of Section 25; the NE $\frac{1}{4}$ and the South $\frac{1}{2}$ of Section 26; the South $\frac{1}{2}$ of Section 27; the South $\frac{1}{2}$ of Section 28; the South $\frac{1}{2}$ of Section 29; and that part lying East of the R/W of existing U.S. Government road in Section 33; all of Section 34; all of Section 35; and all of Section 36.

Township 45 South, Range 26 East:

All of Section 1; all of Section 2; all of Section 3; that part lying East of R/W of existing U.S. Government road Section 4; that part lying East of R/W of the existing U.S. Government road and North of State Road 82 in Section 9; that part lying North of State Road in Section 10; that party lying North of State Road 82 in Section 11; all except the R/W of the County Road in Section 12; all that part lying North of the State Road 82 less the R/W of the County Road in Section 13; all that part lying North of State Road 82 in Section 14.

Township 43 South, Range 27 East:

The SE $\frac{1}{4}$, and the West $\frac{1}{2}$ of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$, and the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 36.

Township 44 South, Range 27 East:

The South $\frac{1}{2}$ and the North $\frac{1}{2}$ of the North $\frac{1}{2}$ of Section 1; the East $\frac{1}{2}$ and the East $\frac{1}{2}$ of the NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 2; SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ and the West $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Section 3; all the Section 4 except the South $\frac{1}{2}$ of the SW $\frac{1}{4}$; the East $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 5; all of Section 6, the South $\frac{1}{2}$

DOCKET NO. 030932-WS
DATE: OCTOBER 9, 2003

and the North $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 7, the South $\frac{1}{2}$, and the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 8; South $\frac{1}{2}$ and East $\frac{1}{2}$ of the NE $\frac{1}{4}$ of Section 9; the West $\frac{1}{2}$ and the East $\frac{1}{2}$ less NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 10; all of Sections 11, 12, 13, 14, 15, 16, , 17, 18, 19, . 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, and 36, in Township 44 South, Range 27 East.

Township 45 South, Range 27 East:

The SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the East $\frac{3}{4}$ of the North $\frac{1}{2}$ of the SW $\frac{1}{4}$ and the North $\frac{1}{2}$ of the SW $\frac{1}{4}$, of the SW $\frac{1}{4}$, and the East $\frac{3}{4}$ of the South $\frac{1}{2}$ of the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$, and the West $\frac{1}{2}$ of the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$, and the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 5; and the East $\frac{1}{2}$ of the NE $\frac{1}{4}$ of Section 6.

Township 44 South, Range 26 East:

Lots 1 and 3, Block 38, and also that tract known as "E" of that certain subdivision known as Buckingham Park, recorded in Plat Book 9 at Pages 99-101, Public Records of Lee County, Florida, said land all being in Section 21, Township 44 South, Range 26 East, Lee County Florida. Subject, however, to an easement for a drainage canal recorded in Miscellaneous Book 32 at Page 335 of the Public Records of Lee County, Florida.

All that part of Section 22. Township 44 South, Range 26 East, lying South of Homestead Road as shown on plat of Buckingham Park Entrance Roads recorded in Plat Book 9 at Pages 97 and 98 of the Public Records of Lee County, and lying South and East of Block 37 Buckingham Park South section according to plat recorded in Public Records, Plat Book 9, Pages 99-101 inclusive, subject however to an easement for drainage canal recorded in Miscellaneous Book 32 at Page 335 of said Public Records.

1. All that part of the East $\frac{1}{2}$ of Section 20, Township 44 South, Range 26 East, Lee County, Florida, lying South of South R/W of Buckingham Road, less an except that tract or parcel lying NE of the center line of the existing drainage canal, also,

2. That part of Section 21, Township 44 South, Range 26 East, Lee County, Florida, Southwesterly of the center line of the existing drainage canal, also,
3. The NE $\frac{1}{4}$ of Section 29, Township 44 South, Range 26 East, Lee County, Florida, less the Southerly 100 feet thereof.

All of the above containing 412.50 acres, more or less, together with all improvements located thereon.

Parcel D and Lot 28, and Northerly 40 feet of Lot 29, Block 39, Buckingham Park, according to Plat Book 9, Pages 99-101, of the Public Records of Lee County, Florida; together with that portion of the East $\frac{1}{2}$ of Section 20, Township 44 South, Range 26 East lying South of R/W of Buckingham Road and NE of the center line of the existing drainage canal, containing 129.30 acres more or less.

Tract "B" and Lots 8-A, 9 and 16, Block 36, Buckingham Park in Section 16 Township 44 South, Range 26 East according to Plat Book 9, Pages 92 and 93 of the Public Records of Lee County, Florida, containing 214.29 acres, more or less.

Lot 3, Block 40, Buckingham Park Subdivision, South Section as shown in Plat Book 9, Pages 99-101, inclusive, of the Public Records of Lee County, Florida, containing 1.8 acres, more or less.

Lot 4, Block 40, Buckingham Park Subdivision, South Section as shown in Plat Book 9, Pages 99-101, inclusive, of the Public Records of Lee County, Florida, containing 1.6 acres, more or less.

Lot 5, Block 40, Buckingham Park Subdivision, South Section as shown in Plat Book 9, Pages 99-101, inclusive, of the Public Records of Lee County, Florida, containing 1.5 acres, more or less, together with all improvements located thereon.

Lot 6, Block 40, Buckingham Park Subdivision, South Section as shown in Plat Book 9, Pages 99-101, inclusive, of the Public Records of Lee County, Florida, containing 1.55 acres, more or less.

Lot 7, Block 40, Buckingham Park Subdivision, South Section, as shown in Plat Book 9, Pages 99-101, inclusive, of the Public Records of Lee County, Florida, containing 1.55 acres, more or less.

Lot 8, Block 40, Buckingham Park Subdivision, South Section as shown in Plat Book 9, Pages 99-101, inclusive, of the Public Records of Lee County, Florida, containing 1.55 acres, more or less.

Lot 9, Block 40, Buckingham Park Subdivision, South Section as shown in Plat Book 9, Pages 99-101, inclusive, of the Public Records of Lee County, Florida, containing 1.53 acres, more or less, together with all improvements located thereon.

Lot 10, Block 40, Buckingham Park Subdivision, South Section as shown in Plat Book 9, Pages 99-101, inclusive, of the Public Records of Lee County, Florida, containing 1.55 acres, more or less.

The NW $\frac{1}{4}$ of Section 29, the NE $\frac{1}{4}$ of Section 30, and that part of the East $\frac{1}{2}$ of Section 19, and the West $\frac{1}{2}$ of Section 20, lying South of Buckingham Road, all in Township 44 South, Range 26 East, Lee County, Florida, containing 664.09 acres, more or less.

West $\frac{1}{2}$ of Section 23, containing 324.82 acres, more or less.

NW $\frac{1}{4}$ of Section 26 containing 161.22 acres, more or less.

North $\frac{1}{2}$ of Section 28 East of Buckingham Government Road and the South 100 feet of the North $\frac{1}{2}$ of Section 28 West of Buckingham County Road, containing 88.74 acres, more or less.

The South 100 feet of the North $\frac{1}{2}$ of Section 29, containing 12.12 acres, more or less.

The South $\frac{1}{2}$ and the South 100 feet of the North $\frac{1}{2}$ of Section 30, containing 319.74 acres, more or less.

All of Section 31 North of Highway 82, containing 393.58 acres, more or less.

All of Section 32, containing 637.87 acres, more or less.

DOCKET NO. 030932-WS
DATE: OCTOBER 9, 2003

All of Section 33, lying West of Buckingham County Road, containing 508.88 acres, more or less.

Township 45 South, Range 26 East:

All of Section 4 North of Highway 82, and West of Buckingham County Road, containing 520.04 acres, more or less.

All of Section 5 North of Highway 82, containing 318.83 acres, more or less.

All of Section 6 North of Highway 82, containing 3.92 acres, more or less.

All of Section 9, North Highway 82, and West of Buckingham County Road, containing 25.86 acres, more or less.

Township 44 South, Range 27 East:

The SW $\frac{1}{4}$ of Section 2, containing 159.67 acres, more or less.

The North 854 feet of the East 466 feet of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 7, containing 9.14 acres, more or less.

The NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 10, containing 10 acres, more or less.

South $\frac{1}{2}$ of the NW $\frac{1}{4}$ and South $\frac{1}{2}$ of NE $\frac{1}{4}$ and SE $\frac{1}{4}$ of Section 31 containing 320 acres, more or less.

The NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the East $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Section 9, containing 140 acres, more or less.

The NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the North $\frac{1}{2}$ of the NE $\frac{1}{4}$ and NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of Section 31, containing 326.10 acres, more or less.

Township 45 South, Range 27 East:

The West $\frac{1}{2}$ of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ and the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 6, containing 229.98 acres, more or less.

DOCKET NO. 030932-WS
DATE: OCTOBER 9, 2003

East $\frac{1}{2}$ and the SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 7, containing 520 acres, more or less.

West $\frac{1}{2}$ and the West $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 8, containing 440 acres, more or less.

All of Section 2 containing 640 acres, more or less.

All of Section 11, containing 640 acres, more or less.

All of Section 14, containing 640 acres, more or less.

Township 43, South, Range 27 East:

The NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$, of Section 36 containing 90 acres, more or less.

West $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 31.

The SW $\frac{1}{4}$ of the NE $\frac{1}{4}$, the NW $\frac{1}{4}$, the East $\frac{1}{2}$ of the SW $\frac{1}{4}$ and the West $\frac{1}{2}$ of the SE $\frac{1}{4}$, the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 31.

Township 44 South, Range 27 East:

West $\frac{3}{8}$ of NW $\frac{1}{4}$ of Section 9.

NW $\frac{1}{4}$ of Section 5.

South $\frac{1}{2}$ of SW $\frac{1}{4}$ of Section 4.

West $\frac{1}{2}$ of NW $\frac{1}{4}$ and SE $\frac{1}{4}$ of NW $\frac{1}{4}$ and SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 7.

The North $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of Section 31.

Township 45 South, Range 27 East:

All of Section 3 except the West $\frac{1}{2}$ of the NW $\frac{1}{4}$; all of Sections 10, 15 and 22; that part of Sections 27 and 34 lying North of State Highway 82.

The South $\frac{1}{2}$ of the South $\frac{1}{2}$ of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 4.

The East $\frac{1}{2}$ of the NW $\frac{1}{4}$; the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$; the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$; the East $\frac{1}{2}$ of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$; the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$; the East $\frac{1}{2}$ of the NE $\frac{1}{4}$; the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ all in Section 4.

The NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 4, less the South $\frac{1}{2}$ of the South $\frac{1}{2}$ of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$.

The NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 6.

The NE $\frac{1}{4}$ of the SW $\frac{1}{4}$; the East $\frac{1}{2}$ of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$; and the South $\frac{1}{2}$ of the NW $\frac{1}{4}$, excepting therefrom the following described parcel: Beginning at the SW corner of Government Lot 5, thence running North 466.7 feet to a point; thence East 466.7 feet to a point, thence South 466.7 feet to a point; thence West 466.7 feet to the Point of Beginning, all in Section 6.

The North $\frac{1}{2}$ of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 6.

The North $\frac{1}{2}$ of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 6.

All of Sections 1, 12, 13, 24 and 25; and all of Section 36, except that portion thereof constituting the R/W for State Road 82.

The SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ of Section 9; all of Sections 16 and 21; and all of Sections 28 and 29 lying North of State Road 82.

The SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ and NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 25, Township 43 South, Range 26 East.

The NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ in Section 25, Township 43 South, Range 26 East.

From the SE corner of Government Lot 5, Section 19, Township 43 South, Range 27 East, which is also the South $\frac{1}{4}$ corner of said Section 19, go North $89^{\circ}32'09''$ West 941.16 feet along the South boundary of said section 19 to the Point of Beginning of the lands hereinafter described. From said Point of beginning go

DOCKET NO. 030932-WS
DATE: OCTOBER 9, 2003

North 00°33'49" West 961.01 feet to the Southerly U.S. Government easement line of the Caloosahatchee River; thence North 00°33'48" West 90 feet, more or less, to the actual South shore of the Caloosahatchee River; thence Southerly and Westerly along the meanders of said river to a point which lies North 00°33'48" West of a point on the South Boundary of said Section 19, said latter point being 623.7 feet from the Point of beginning as measured along the South Boundary of Section 19; thence South 00°33'48" East 50 feet to the Southerly U.S. Government easement line of the Caloosahatchee River; thence South 00°33'48" East 578.75 feet to the South line of Section 19; thence South 89°32'09" East along the South line of Section 19 to the Point of Beginning.

West ½ of: Beginning at the NW corner of Section 30, Township 43 South, Range 27 East; thence running South 654 feet to center of State Road 25 (now known as State Road 80) thence Southerly 82°15' East 3,342 feet; thence Southerly 84°15' East 694 feet; thence North 1,239 feet to the NW corner of the NE ¼ of the NE ¼ of said Section 30; thence West to the Point of Beginning.

LESS: The East 35.8 feet of the parcel in Section 19, Township 43 South, Range 27 East and the West 118.4 feet of the parcel in Section 30, Township 43 South, Range 27 East, said parcels as described in Deed recorded in Official Record Book 95, Pages 135-136, of the Public Records of Lee County, Florida.

A tract or parcel of land lying in the West ½ of Section 30, Township 43 South, Range 27 East, in Lee County, Florida, described as follows: From a concrete monument marking the SE corner of Lot 5 of Unit No. 2 Pine Creek Acres as recorded in Plat Book 10 at Page 74 of the Public Records of Lee County, run South 00°56' East parallel to and 2,418 feet, measured on a perpendicular, from the West line of said Section 30 for 2,531.80 feet to the Point of Beginning. Said Point of Beginning being 710 feet, measured on a perpendicular from the center line of the former Seaboard Airline Railroad. From said Point of Beginning run North 00°56' West for 468.7 feet; thence run West parallel to said center line for 678 feet more or less to the Waters of Hickey's Creek; thence run Southerly and Easterly along the meanders of said creek to an intersection with a line parallel to and 710 feet, measured on a perpendicular, from said center line of said railroad; thence

run East on said parallel line 567 feet more or less to a Point of Beginning.

The NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$, and the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 31, Township 43 South, Range 27 East.

The following described lands in the West $\frac{1}{2}$ of Section 30, Township 43 South, Range 27 East; From a concrete monument marking the SE corner of Lot 5, Unit 2, Pine Creek Acres, according to plat thereof as recorded in Plat Book 10 at Page 74, Public Records of Lee County, Florida, run West along the South line of said Lot 5 to the SW corner of said lot; thence North along the West line of said Lot 5 to the South line of Pine Boulevard, as shown on aforesaid plat of Pine Creek Acres; thence Northwesterly along the South line of said Pine Boulevard to a concrete monument marking the NE corner of Lot 92 of said Unit 2, Pine Creek Acres; thence Southerly along the East line of said Pine Creek Acres Unit 2 to the center line of Hickey's Creek; thence Southeasterly following the center line of said Hickey's Creek to a point which is 1178.7 feet North of the center line of the former SAL Railway and said point begin the NW corner of lands conveyed to Paul W. Grubbs and wife, Naomi G. Grubbs, by deed recorded in Deed Book 274 at Page 463, Public Records of Lee County, Florida; thence East parallel to the center line of SAL Railway 678 feet, more or less, to a point which is 2,418 feet East, measured on a perpendicular, from the West line of said Section 30; thence North 00°56' West 2063.10 feet to the Point of Beginning.

Begin at the SW corner of Section 30, Township 43 South, Range 27 East, for a Point of Beginning and run North 00°53'00" West along the West line of said Section 30 to its intersection with the center line of Hickey's Creek; thence Easterly and Southerly along the center line of said Creek to its intersection with the Northerly R/W line of the old SAL Railroad (100 foot R/W); thence Easterly along said Northerly R/W line, 660.00 feet thence Northerly 660.00 feet; thence Westerly and parallel to the said Railroad R/W line to the intersection with a line parallel to and 2,418.00 feet away from the West line of the NW $\frac{1}{4}$ of the said Section 30; thence North 00°56'00" West along the said line parallel to West line of the NW $\frac{1}{4}$ of Section 30 to a point that is South 00°56'00" East, 223.86 feet from the Southerly R/W line of State Road 80; thence North 89°35'20" East 166.20 feet, thence North 00°24'40"

West, 203.00 feet to the Southerly R/W line of said State Road 80; thence South 82°54'00" East, along said R/W line 137.61 feet; thence South 00°24'40" East 237.58 feet; thence North 89°35'20" East 209.19 feet; thence South 00°24'40" East 918.16 feet; thence North 89°35'20" East 420.00 feet; thence North 00°40" West, 1,069.39 feet to the Southerly R/W line of State Road 80; thence Southeasterly along the arc of a curve to the right, having a radius of 17,113.74 feet and a delta angle of 01°46'00"; and arc distance of 188.21 feet to the end of said curve; thence continue along said R/W line South 81°08'00" East, 456.59 feet to its intersection with the East line of the NW ¼ of the NE ¼ of said Section 30; thence South 00°24'40" east along the East line of the West ½ of the NE ¼ of said Section 30 to a point 129.00 feet South 00°24'40" East from the NW corner of the SE ¼ of the NE ¼; thence South 89°41'55" East, and parallel to the North line of the said SE ¼ of the NE ¼ of the Section 30, 337.00 feet; thence North 00°24'40" West to the R/W line of State Road 80; thence South 81°08'00" East along said R/W line to its intersection with the East line of said Section 30; thence South 00°08'33" East, along the East line of said Section 30 to the SE corner of the NE ¼; thence continue South 00°32'10" East 2,643.68 feet to the SE corner of said Section; thence South 89°58'04" West, along the South line of Section 30, 2,637.54 feet to the SW corner of the SE ¼; thence continue North 89°55'20" West, 2,643.03 feet to the SW corner of said section 30 and the Point of Beginning, less a strip of land 100.00 feet wide and lying in the South ½ of said Section 30, and being the old SAL Railroad R/W, less the West 200.00 feet of said Section 30 lying South of Hickey's Creek, plus the following described parcel: In section 30, Township 43 South, Range 27 East, begin at the intersection of the center line of Hickey's Creek with the North line of the SAL Railroad R/W; thence Easterly 660.00 feet along the North line of said R/W; thence Northerly 660.00 feet; thence Westerly and parallel to the said Railroad R/W line to the intersection with a line parallel to and 2,418.00 feet from the West line of the NW ¼ of said Section 30; thence South 00°56'00" East, along said line parallel to the West line of the NW ¼ of Section 30 to its intersection with the center line of Hickey's Creek; thence Southeasterly along said center line to the Point of Beginning.

Lots 9, 10, 11, 12, 13, 14, 15, 16, 17, 29, 30, 33, 34, 35, 36, 39 and 40, Unit No. 1, Pine Creek Acres, according to the map

DOCKET NO. 030932-WS
DATE: OCTOBER 9, 2003

or plat thereof on file and recorded in the office of the Clerk of the Circuit Court of Lee County, Florida, in Plat Book 10 at Page 13.

Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 29, 30, 31, 32, 33 and 34, Unit No. 2, Pine Creek Acres, according to the map or plat thereof on file and recorded in the office of the Clerk of the Circuit Court of Lee County, Florida, in Plat Book 10 at Page 74.

Commencing at the NE Corner of Government Lot 4 of Section 3, Township 45 South, Range 27 East in Lee County, Florida, thence run South 631.6 feet to the Point of Beginning of the tract herein described, thence continue South 315.9 feet, thence West 660 feet, thence run North 315.9 feet, thence East 660 feet to the Point of Beginning.

Commencing at the NW corner of Government Lot 4 of Section 3, Township 45 South, Range 27 East in Lee County, Florida, thence run South 631.6 Feet to the Point of Beginning of tract hereby described, thence continue East 660 feet, thence South 315.9 feet, thence West 660, thence North 315.9 feet to the Point of Beginning.

Starting at the NE corner of Government Lot 4 of Section 3, Township 45, Range 27 East, in Lee County, Florida, thence run South 157.9 feet to the Point of Beginning of the tract herein described, thence continue South 315.8 feet, thence West 330 feet, thence North 315.8 feet, thence East 330 feet to the Point of Beginning.

The North $\frac{1}{2}$ of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 4, Township 45 South, Range 27 East.

The NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ in Section 6, Township 45 South, Range 27 East.

The NW $\frac{1}{4}$ of the NW $\frac{1}{4}$; and the South $\frac{1}{2}$ of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 6, Township 45 South, Range 27 East.

The North $\frac{1}{2}$ of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 6, Township 45 South, Range 27 East.

DOCKET NO. 030932-WS
DATE: OCTOBER 9, 2003

The East $\frac{1}{2}$ of the NE $\frac{1}{4}$ of Section 8, Township 45 South, Range 27 East.

All of Section 23 and 26 and all of Section 35 lying North of a line 100 feet North of and parallel to the survey line of State Road 82 in Township 45 South, Range 27 East.

Township 44 South, Range 26 East:

Section 3

All of said Section 3.

Section 28

The North $\frac{1}{2}$ of said Section 28, lying West of Gunnery Road.

Township 44 South, Range 27 East:

Section 8

The West $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the East $\frac{3}{4}$ of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of said Section 8.

Township 45 South, Range 27 East:

Section 3

The West $\frac{1}{2}$ of the NW $\frac{1}{4}$ of said Section 3.

Section 4

The SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the South $\frac{1}{2}$ of the SW $\frac{1}{4}$, and the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ and the West $\frac{1}{2}$ of the SE $\frac{1}{4}$, all of said Section 4.

Section 5

The NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$, and the West $\frac{1}{2}$ of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$, all of said Section 5.

Section 6

The West $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$, and the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$, all of said Section 6.

Section 7

The West $\frac{1}{2}$ of the NW $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$, all of said Section 7.

Section 8

The East $\frac{1}{2}$ of the SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$, all of said Section 8.

Section 9

The West $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$, and the NW $\frac{1}{4}$, and the SW $\frac{1}{4}$, all of said Section 9.

Section 17

All of said Section 17.

Section 18

All of said Section 18.

Section 19

All of said Section 19, less the following parcel:

Beginning at the NE corner of said Section 19, thence South 00°39'42" East, along the East section line of said Section 19, a distance of 2,647.45 feet to the quarter section corner; thence South 89°47'58" West, a distance of 1,479.38 feet; thence North 00°45'02" West, a distance of 2,243.18 feet to the Northerly R/W line of State Road 82; thence North 64°11'45" West, along the Northerly R/W of State Road 82, a distance of 225.74 feet; thence North 49°25'17" East, a distance of 466.04 feet to the North section line of said Section 19; thence North 89°49'27" East along the North section line, a distance of 1,327.50 feet to the NE corner of said Section 19, and the Point of Beginning.

Section 20

All of Section 20, less the following parcel:

Beginning at the NW corner of said Section 20; thence North 89°10'03" East, a distance of 227.46 feet; thence South 00°39'42" East, a distance of 1,516.86 feet to the Northerly R/W line of State Road 82; thence North 49°58'02" West, along said State Road 82, a distance of 300.00 feet to the West section line of said Section 20; thence North 00°39'42" West, along the West section line of said Section 20; a distance of 1,321.96 feet to the NW corner of said Section 20 and the Point of Beginning.