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November 26, 2003

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COMMISSION
CLERK
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Re: Lee County's Memorandum in Opposition, FPSC Docket No. 031020-WS, In Re: Petition for Declaratory Statement by Forest Utilities, Inc.

Dear Ms. Bayo:

Enclosed for filing are the original and fifteen copies of Lee County's Memorandum in Opposition to Petition for Declaratory Statement in the above-styled docket. I have also enclosed a 3.5" diskette containing this pleading in WordPerfect format. I will appreciate your confirming receipt of this pleading by stamping the attached filing copy thereof and returning same to my attention.

As always, my thanks to you and to your professional Staff for their kind and courteous assistance. If you have any questions, please give me a call at (850)681-0311.

Cordially yours,

Robert Scheffel Wright
Robert Scheffel Wright

Enclosures

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Declaratory)
Statement Before the Florida Public)
Service Commission for Forest) DOCKET NO. 031020-WS
Utilities, Inc. and Jamaica Bay) FILED: November 26, 2003
West Associates, Ltd. in Lee County,)
Florida)
_____)

LEE COUNTY'S MEMORANDUM OF LAW IN OPPOSITION
TO PETITION FOR DECLARATORY STATEMENT

Lee County, Florida ("Lee County"), by and through its undersigned counsel and pursuant to applicable Florida administrative law, hereby files its Memorandum of Law in opposition to the Petition for Declaratory Statement (hereinafter, the "Petition") filed by Forest Utilities, Inc. ("Forest") and Jamaica Bay West Associates, Ltd. ("Jamaica Bay") that initiated this proceeding. In summary, the Commission lacks the statutory authority to grant the requested declaratory statement because such statement would violate the plain language of Chapter 367, Florida Statutes,¹ by declaring non-jurisdictional a transaction that is clearly jurisdictional within the plain meaning of the applicable statutes. The requested declaratory statement would, moreover, contravene the express intent of the Legislature regarding the extension of service areas pursuant to Section 367.045(2), Florida Statutes, as well as frustrate the fundamental purpose of the statutes, namely to prevent duplication of facilities and to ensure that customers are protected either by the Commission or by their

¹ All references herein to the Florida Statutes are to the 2003 edition thereof.

elected representatives. Accordingly, the Commission should issue the requested declaratory statement in the negative and declare that Florida law requires Forest to obtain the Commission's approval of an extension of Forest's certificated service area before Forest may lawfully serve Jamaica Bay. In further support of its position, Lee County states the following.

BACKGROUND

This docket was initiated by Forest and Jamaica Bay by their filing of the Petition on October 29, 2003. Although Lee County was not served with the Petition, Lee County obtained a copy of the Petition from the Commission on November 3 and petitioned to intervene on November 14, 2003. Lee County's petition to intervene is pending.

Forest is a utility subject to the Commission's regulatory jurisdiction under Chapter 367, Florida Statutes. Jamaica Bay owns and operates a 1,400 unit mobile home park located in Lee County; Jamaica Bay provides water and wastewater service to the occupants of the mobile home park without specific compensation therefor, and is thus exempt from the Commission's jurisdiction pursuant to the specific exemption provided for such entities by Section 367.022(5), Florida Statutes. Jamaica Bay is neither a governmental authority nor a utility regulated by the Commission or by Lee County pursuant to Chapter 367.

Lee County is a political subdivision and charter county of the State of Florida. Lee County owns and operates a comprehensive, regional potable water and wastewater utility

serving approximately 70,000 customers throughout Lee County. Both Forest and Jamaica Bay lie within Lee County Utilities Service Area and are both existing water customers of Lee County Utilities and have been so for approximately twenty years. Lee County has operational wastewater main lines located proximate to Jamaica Bay and is already providing wastewater treatment service to Jamaica Bay by contract. Lee County has wastewater treatment capacity available to serve the immediate and future needs of the entire Jamaica Bay development.

In a related proceeding, on August 1, 2003, Forest filed an application for approval of a new class of service (the "Application"), thereby initiating PSC Docket No. 030748-SU, In Re: Application of Forest Utilities, Inc. For Approval of a New Class of Service for Bulk Wastewater Service. In the Application, Forest requested, inter alia, (i) Commission approval of a new class of service in order to provide wholesale wastewater treatment services to Jamaica Bay's mobile home park; and (ii) that the Commission state in an order approving the new class of service for Forest, that no extension of Forest's existing service territory is necessary, because the only proposed customer (Jamaica Bay) would allegedly connect to the Forest system inside a portion of Forest's currently certificated area. Lee County intervened and moved to dismiss the Application. On September 18, 2003, the Commission Staff issued a recommendation (the "September 18 Recommendation") in which the Staff recommended that Lee County's motion to dismiss be denied

and the Application approved. However, following the execution by Lee County and Jamaica Bay of the agreement by which Lee County now provides bulk wastewater service to Jamaica Bay, the Staff orally modified their position to a recommendation that the Commission suspend the tariff and defer ruling on the motion to dismiss. Following the Commission's vote to adopt the Staff's revised recommendation at its September 30 agenda conference, Forest voluntarily withdrew its Application. In Re: Application of Forest Utilities, Inc. For Approval of a New Class of Service for Bulk Wastewater Service, Order No. PSC-03-1286-FOF-SU (Fla. Pub. Serv. Comm'n, November 12, 2003).

The key facts relevant to the question posed by the Petition are as set forth in Lee County's Petition to Intervene. The most important facts with regard to the question of law at issue here are: (1) that Jamaica Bay is neither a governmental entity nor a utility regulated by the Commission or by Lee County pursuant to Chapter 367, and (2) that Jamaica Bay is not located within Forest's certificated service area.²

² Another critical fact is that Lee County Utilities' wastewater treatment system is "adequate to meet the reasonable needs of the public," including Jamaica Bay and all of Jamaica Bay's occupants, and Lee County Utilities is fully able to "provide reasonably adequate service" to all of those whom it serves. This fact is more important to establishing Lee County's rights to the Commission's protection pursuant to Section 367.045(5), Florida Statutes, which would be implicated in a future proceeding regarding any request by Forest to extend its service area to include Jamaica Bay.

QUESTION PRESENTED

The Petition requests that the Commission declare

that no rule, statute, or Commission precedent requires Forest to seek an extension pursuant to Section 367.045(2), F.S. as a prerequisite to providing the intended bulk service to Jamaica Bay [where] . . . Jamaica Bay will connect to Forest's facilities within Forest's certificated territory.

See Petition at 5, 3.

APPLICABLE LAW

The statutory provisions that are relevant to the question posed by the Petition are Sections 367.045(2)&(5) and 367.022(12), Florida Statutes. Section 367.045(2) provides in pertinent part as follows:

(2) A utility may not delete or extend its service outside the area described in its certificate of authorization until it has obtained an amended certificate of authorization from the commission.

Section 367.045(5) provides in pertinent part as follows:

(5) (a) The commission may grant or amend a certificate of authorization, in whole or in part or with modifications in the public interest The commission may not grant a certificate of authorization for a proposed system or an amendment to a certificate of authorization for the extension of an existing system, which will be in competition with, or a duplication of, any other system or portion of a system, unless it first determines that such other system or portion thereof is inadequate to meet the reasonable needs of the public or that the person operating the system is unable, refuses, or neglects to provide reasonably adequate service.

Section 367.022 provides in pertinent part as follows:

367.022 Exemptions.-- The following are not subject to regulation by the commission as a utility nor are they subject to the provisions of this chapter, except as expressly provided:

* * *

(12) The . . . sale or resale of wastewater services to a governmental authority or to a utility regulated pursuant to this chapter either by the commission or the county.

(Emphasis supplied.) The exemption for the sale or resale of wastewater services was only added to Section 367.022(12), Florida Statutes in 1999. See Ch. 99-319, 1999 Fla. Laws 3410, 3412.

SUMMARY OF ARGUMENT

In this proceeding, the Commission is being requested by Forest and Jamaica Bay to declare "that no rule, statute, or Commission precedent requires Forest to seek an extension pursuant to Section 367.045(2), F.S. as a prerequisite to providing the intended bulk service to Jamaica Bay." Petition at 5. It is clear that at least part of Forest's and Jamaica Bay's argument is that the transaction, characterized in the Petition as a bulk service transaction, is not jurisdictional. See Petition at 5-6. However, it is not completely clear whether Forest and Jamaica Bay are still attempting to assert, as they did in their withdrawn Application, that the fact that the connection will be made inside Forest's service area somehow operates to exempt the transaction from the Commission's statutory requirements, including the requirements of Section

367.045, Florida Statutes. Accordingly, Lee County's Memorandum in Opposition addresses both points.

With regard to the basic jurisdictional question, the Commission is simply without statutory authority to grant the requested declaratory statement in the affirmative. This is because the requested statement would directly render as non-jurisdictional a transaction that is, by operation of the plain language of the statutes, jurisdictional. By operation of Sections 367.045 and 367.022, Forest, as a utility subject to the Commission's jurisdiction must obtain an amendment to its certificate to provide service outside its service area, unless that service is otherwise exempt from the requirements of Chapter 367. While Jamaica Bay is itself exempt from Commission regulation pursuant to Section 367.022(5) as a landlord providing service to the occupants of the mobile home park without specific compensation therefor, the proposed "bulk" service that Forest seeks to provide to Jamaica Bay is clearly outside the scope of exemptions set forth in Section 367.022, and therefore subject to all requirements of Chapter 367, including the service area provisions of Section 367.045. The basic law of exemptions requires that any exemptions be narrowly construed, not stretched beyond their limits as sought by Forest and Jamaica Bay here. See Heburn v. Department of Children & Families, 772 So. 2d 561, 563 (Fla. 1st DCA 2000) ("Exemption from a statute enacted to protect the public welfare is strictly construed against the person claiming the exemption."); see also State v. Nourse, 340 So. 2d

966, 969 (Fla. 3rd DCA 1976). Moreover, Forest's and Jamaica Bay's position is logically inconsistent with the plain language of Section 367.022, Florida Statutes.

The possible argument that Forest and Jamaica Bay can escape the Commission's jurisdiction by having Jamaica Bay extend a sewer pipe into Forest's service area fails by the plain language of the statutes and also by violating the clear intent of the Legislature as well as the policy considerations underlying Chapter 367. Accordingly, this argument, if made, would provide no basis for the requested declaratory statement.

ARGUMENT

The plain language of the applicable Florida Statutes requires Forest to obtain the Commission's approval of an amendment to its certificate before it may provide service outside its service area. The intended service is to a non-exempt purchaser/consumer located outside Forest's certificated service area, and is therefore jurisdictional, and no provision of Chapter 367, nor any provision of any Commission rule, nor any Commission precedent cited by either Forest or Jamaica Bay, or by the Commission Staff in their September 18 Recommendation, provides any basis for the Commission to declare the proposed service non-jurisdictional and issue the requested declaratory statement. In short, the Commission lacks the statutory authority to do so.

Moreover, the requested declaratory statement would contravene the Legislature's express intent with respect to

service area extensions and would violate the policy considerations expressly articulated in Chapter 367, namely, the prevention of competition and duplication of wastewater utility facilities where another system is ready, willing, and able to provide needed services, and, Lee County believes, also the protection of consumers by responsible regulatory authorities, governmental authorities, or corporate entities controlled by consumers.

I. The Plain Language Of The Statutes Confirms That The Proposed Service Is Within The Commission's Jurisdiction, And Accordingly, The Commission Lacks The Statutory Authority To Issue The Requested Declaratory Statement.

A. The Contemplated Transaction Is Not Exempt From The Requirements Of Chapter 367.

As set forth above, Section 367.022 provides for numerous exemptions, both of specific types of entities and of specific types of transactions, from the requirements of Chapter 367. None of these exemptions, however, encompasses the intended sale of wastewater service by a Commission-regulated utility, Forest, to an entity that is not a governmental authority or another utility regulated pursuant to Chapter 367 by either the Commission or the respective county. Jamaica Bay is neither a governmental authority nor a utility regulated by either the Commission or by Lee County, and accordingly, the sale or resale of wastewater services to Jamaica Bay is a jurisdictional transaction -- jurisdictional service -- subject to all of the requirements of Chapter 367.

B. Forest's And Jamaica Bay's Proposal Clearly Involves Service Outside Forest's Certificated Service Area And Therefore Requires Compliance With The Application and Approval Requirements Of Section 367.045, Florida Statutes.

Forest and Jamaica Bay have effectively asked the Commission for its blessing for the provision of "service outside the area described in [Forest's] certificate of authorization" without Forest's having to comply with the requirements of Section 367.045. See Petition at 5, 3. It is uncontroverted that Jamaica Bay, the non-exempt purchaser of the contemplated service, is located outside Forest's certificated service area, and that the geographic area where the wastewater to be treated under the contemplated deal between Forest and Jamaica Bay, i.e., the Jamaica Bay West Mobile Home Park, is also located outside Forest's certificated service area. Accordingly, the contemplated service, because it is not exempt from the provisions of Chapter 367, must be approved in all respects, including the extension of Forest's service area to include the customer (Jamaica Bay) and the area to be serviced, by the Commission.

The substance of the transaction proposed by Forest and Jamaica Bay is that Jamaica Bay will build a line into Forest's certificated service area and, using that line, deliver wastewater generated in the mobile home park, which is entirely outside Forest's certificated service area, to Forest's system for treatment. Forest and Jamaica Bay have attempted to characterize this artifice as providing service within Forest's

existing service area.

Logically, under any reasonable interpretation of the statutes, this fails because Jamaica Bay, the purchaser of the service, is located outside Forest's service area, and because all of the wastewater to be treated will be generated outside Forest's service area.

C. The Basic Law Of Exemptions Requires That Exemptions Be Narrowly Construed, And Thus, No Exemption For Jamaica Bay Can Be Read Into Section 367.022(12).

The fundamental law of exemptions and their construction requires that an exemption from a statute enacted to protect the public welfare³ be narrowly construed against a person claiming the exemption. See Heburn, 772 So. 2d at 563. Forest and Jamaica Bay are attempting to stretch the specific exemptions afforded by Section 367.022(12), i.e., of "governmental authorities" and of "utilit[ies] regulated pursuant to [Chapter 367]," to include a general exemption for all entities that are not subject to the Commission's jurisdiction. See Petition at 5-6 (where the petitioners attempt to characterize "bulk service arrangements between entities regulated by the Commission and by retail providers such as Jamaica Bay" as falling within the scope of the specific exemptions -- of "governmental authorities" and of "utilit[ies] regulated pursuant to [Chapter 367]" -- set forth in the statute). This is simply contrary to law, and the Commission

³ Section 367.011, Florida Statutes, declares that Chapter 367 is "an exercise of the police power of the State for the protection of the public health, safety, and welfare."

must accordingly deny the Petition.

D. Forest's and Jamaica Bay's Positions Are Logically Inconsistent When Viewed In Light Of Section 367.022, Florida Statutes.

Section 367.022, Florida Statutes, states plainly that the entities and types of transactions enumerated in its twelve specific subsections are not "subject to the provisions of this chapter, except as expressly provided." The statute does not say that "rates involving such entities, or the rates involved in such transactions, are subject to the commission's jurisdiction while service area matters are not," it plainly states that the entities and transactions enumerated therein are not "subject to the provisions" of Chapter 367 unless expressly provided otherwise. Thus, by operation of this clear language and that of Section 367.022(12), which includes within the exemption "the sale or resale of wastewater services to a governmental authority or to a utility regulated pursuant to this chapter either by the commission or the county," either a transaction is subject to the provisions of Chapter 367 or it is not. If it is, it is subject to all provisions of the Chapter; if not, then it is exempt from all provisions of the chapter.

Forest and Jamaica Bay, however, have taken a logically inconsistent position. They first sought the Commission's approval of the rates to be charged, and of the agreement that included those rates, but now (and then) they have attempted to characterize the transaction as being outside the scope of the Commission's service area extension jurisdiction under Section

367.045, Florida Statutes. They simply cannot have it both ways. The exempting language of Section 367.022 is clear: the entities and transactions specifically enumerated therein are not "subject to the provisions of this chapter, except as expressly provided." Here, of course, the exemption of Section 367.022(12) does not reach to Jamaica Bay because Jamaica Bay is neither a "governmental authority" nor a "utility regulated pursuant to [Chapter 367] either by the commission or the county."

E. No Rule Of The Commission Exempts The Contemplated Transaction, And Accordingly, No Commission Rule Affords Any Basis For Granting The Requested Declaratory Statement.

The Commission's rules implementing Section 367.022 and 367.045 are found at Rules 25-30.020, .030-.034, .036, and .055, Florida Administrative Code ("F.A.C."). No provision of these rules purports to exempt the sale of wastewater service to an entity other than a governmental authority or a utility regulated pursuant to Chapter 367. Indeed, any such rule would be invalid as an improper exercise of delegated legislative authority by exceeding the specific provisions of the statute. Accordingly, there is no basis in any Commission rule for granting the requested declaratory statement, and the Petition must be denied.

II. No Case Precedent Cited By Either Forest Or Jamaica Bay, Or By The Commission Staff Provides A Basis For The Requested Declaratory Statement.

In their Petition, Forest and Jamaica Bay cited exactly one

case -- and even that case was cited incorrectly⁴ -- that they assert supports their position. This reliance is misplaced because in that case, as the Petition itself notes, the entity to which the bulk, wholesale water and wastewater service was to be provided by Southlake Utilities (a Commission-jurisdictional utility) was a governmental authority, such that the transaction was exempt from Commission jurisdiction by operation of Section 367.022(12).

Forest and Jamaica Bay are playing fast and loose with statutory interpretation by attempting to stretch a specific transaction that is expressly exempt from Chapter 367 into a general exemption for all unregulated entities. See Petition at 5-6 (where the petitioners attempt to characterize "bulk service arrangements between entities regulated by the Commission and by retail providers such as Jamaica Bay" as being in the same category as "an agreement between the regulated utility and . . . an unregulated governmental entity . . ."). Southlake simply cannot carry that water, because the purchasing utility system therein was in fact a governmental authority, namely Orange County, and thus the sale by Southlake Utilities to Orange County was a specifically exempted transaction pursuant to Section 367.022(12), Florida Statutes.

⁴ At page 5, the Petition cites to In Re: Application for Amendment of Certificates by Lake Utilities, Inc., 98 FPSC 6:86. The case found at that citation is, in fact, In Re: Application for Amendment of Certificates Nos. 533-W and 464-S to Add Territory in Lake and Orange Counties by Southlake Utilities, Inc.

The Commission Staff cited four other cases in their September 18 Recommendation: In Re: Joint Application by Kingsley Service Company and Du-Lay Utility Company, Inc. for Approval of a Bulk Wastewater Treatment, Transmission, and Disposal Rate, 83 FPSC 2:119; In Re: Application for Approval of Agreement for Treatment and Disposal of Reclaimed Water with Lee County and for Approval of Rate-making Treatment for Revenues Received, by Florida Cities Water Company - Lee County Division, PSC Docket No. 961231-WS, Order No. PSC-97-0019-FOF-WS (Fla. Pub. Serv. Comm'n, January 6, 1997); In Re: Petition of St. Johns Service Company for Declaratory Statement on Applicability and Effect of 367.171(7), F.S., PSC Docket No. 982002-WS, Order No. PSC-99-2034-DS-WS (Fla. Pub. Serv. Comm'n, October 18, 1999); and Town of Jupiter v. Village of Tequesta, 713 So. 2d 429 (Fla. 4th DCA 1998).

None of these cases supports Forest's and Jamaica Bay's requested declaratory statement. In Kingsley/Du-Lay, the Commission actually took jurisdiction and approved a rate for the sale of bulk wastewater services by one utility to another. Thus, if anything, this case would indicate that the Commission has jurisdiction over the transaction at issue here. Second, in Kingsley/Du-Lay, both of the entities involved were "utilities subject to this Commission's jurisdiction providing service respectively in Duval and Clay Counties, Florida."⁵ Similarly,

⁵ Thus it would appear that the specific transaction in that case was exempt from the Commission's jurisdiction by operation

in the Florida Cities-Lee County case, the Commission took jurisdiction and approved an agreement between a Commission-regulated utility, Florida Cities Water Company, and Lee County, apparently because Florida Cities desired approval of the ratemaking treatment of the transaction. See Order No. PSC-97-0019-FOF-WS at 1. As in Southlake, the purchasing entity being served by the Commission-regulated utility was a governmental authority, namely Lee County.

St. Johns Service Company turned solely on interpretation of Section 367.171, Florida Statutes, relating to utility systems that transverse county boundaries, and is thus inapposite to the question presented here. Moreover, the Commission's order therein noted that the St. Johns County Water and Sewer Authority had approved the bulk rate to the homeowners associations in neighboring Duval County, Order No. PSC-99-2034-DS-WS at 3, but also noted that the St. Johns Authority's attorney had recommended that that body refrain from actively regulating St. Johns Service Company until the PSC resolved the issue regarding its jurisdiction as it might have been triggered by the cross-county-line service. While St. Johns Service Company might have gone either way, it further makes sense that the Commission determined that its jurisdiction was not invoked where St. Johns County was itself already regulating the transaction. Moreover,

of Section 367.022(12), Florida Statutes. Perhaps the utilities involved there wanted the Commission's advance approval to ensure cost recovery.

nothing in the Commission's order indicates that there was any territorial or service area issue raised therein relating to Section 367.045.

Town of Jupiter involved the sale of service by one governmental authority to another, under a different statute (Section 180.06), and therefore does not stand for the proposition that the sale of bulk service to a non-exempt entity is outside the Commission's jurisdiction. Moreover, the operative statutory language in Town of Jupiter turned on whether "a system, work, project or utility of a similar character is being actually operated by a municipality . . . in the municipality or territory immediately adjacent thereto." This triggering factor is clearly different from the provision of service. In summary, not one of the five cases cited by Forest or Jamaica Bay, or by the Commission Staff in the September 18 Recommendation, supports the requested declaratory statement.

**III. Forest's Proposal Violates The Policies
Articulated By The Florida Legislature In Chapter
367, As Well As The Florida Supreme Court's
Specific Interpretations Of Those Policies.**

In Section 367.045(5)(a), Florida Statutes, the Florida Legislature has declared the policy that the PSC must follow in evaluating requests for service area extensions, as follows.

The commission may not grant . . . an amendment to a certificate of authorization for the extension of an existing system, which will be in competition with, or a duplication of, any other system or portion of a system, unless it first determines that such other system or portion thereof is inadequate to meet the reasonable needs of

the public, or that the person operating the system is unable, refuses, or neglects to provide reasonably adequate service.

Thus, the Legislature's policy is that the Commission shall not grant extensions that would be in competition with, or duplicative of, any other existing system unless the Commission first finds or determines that the existing system is unable to serve or refuses to serve.

This policy requires the Commission to evaluate and scrutinize all proposed extensions in accordance with the criteria of Section 367.045(2), Florida Statutes, and Rule 25-30-036, F.A.C.

Any suggestion that Forest and Jamaica Bay may accomplish their goal by means of "the transparent device of constructing a line into another utility's service area," see Lee County Electric Co-op, Inc. v. Marks, 501 So. 2d 585, 587 (Fla. 1987), is no more than a form-over-substance artifice by which Forest and Jamaica Bay appear to be seeking to escape the Legislature's specific mandate that the Commission, and not individual customers, shall decide which utilities provide service in defined, certificated geographic areas. Id. (citing Storey v. Mayo, 217 So. 2d 304, 307-08 (Fla. 1968), cert. denied, 395 U.S. 909 (1969)).

Allowing such an argument to prevail would violate not only the black-letter requirements of Section 367.045, Florida Statutes, but also the policies -- to prevent waste and duplication of facilities, and to ensure the orderly, Commission-

supervised determination of service areas -- that the Legislature has implemented thereby. Allowing Forest's scheme to succeed would plainly and directly conflict with, and violate, these policies by allowing the statutorily required evaluation and scrutiny to be evaded. Allowing this scheme to succeed would allow competition with existing systems and duplication of facilities without the legislatively mandated Commission involvement simply by use of the "transparent device of constructing a line into another utility's service area" that was struck down in Lee County Electric Co-op. Allowing this scheme to succeed would allow any customer -- at least any customer having the technical capability to do so -- to choose its own utility, in clear contravention of Section 367.045(2), Florida Statutes, and in clear contravention of the policies and principles recognized by the Florida Supreme Court in Lee County Electric Co-op v. Marks, simply by running a line into an adjacent utility's service area. The Commission cannot allow this to occur.

The Commission cannot permit this to occur. The scheme suggested by Forest and Jamaica Bay -- building a line from an area outside a utility's certificated service area into such utility's service area and thereby attempting to evade the Commission's jurisdiction and the Legislature's mandates -- flies directly in the face of the Legislature's policies and specific statutory mandates to the Commission, as well as directly in the face of the Florida Supreme Court's recognition that such efforts

are a "transparent device" that contravene "larger policies [that] must be enforced and safeguarded by the PSC." Lee County Electric Co-op, 501 So. 2d at 587. As the Florida Supreme Court stated there,

This Court has repeatedly approved the PSC's efforts to end the economic waste and inefficiency resulting from utilities' "racing to serve," and we cannot find that the transparent device of constructing a line into another utility's service area may suffice to avoid the effect of a territorial agreement.

Had FPL and not FMM constructed the line into FPL's territory, the PSC would unquestionably have found a flagrant violation of the territorial agreement to exist. We find that no different result follows from the customer's construction of the line. As noted in Storey v. Mayo, "[a]n individual has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself." Larger policies are at stake than one customer's self-interest, and those policies must be enforced and safeguarded by the PSC.

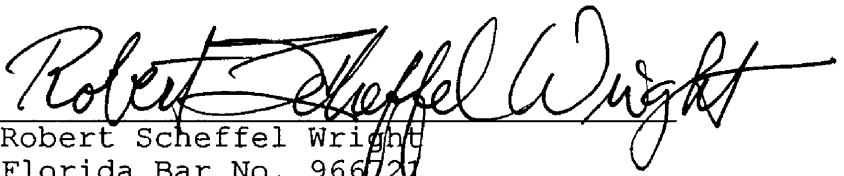
Id. (Emphasis supplied.) In addition, the Petition's request for the Commission's declaration that no service territory extension is required, contravenes the concepts of franchises, service areas, and non-duplication of facilities for both public and private utilities. The Commission must accordingly deny the Petition.

CONCLUSION

WHEREFORE, based on the foregoing, the Florida Public Service Commission must enter its order DENYING the Petition for Declaratory Statement filed herein by Forest and Jamaica Bay and should also ISSUE an order answering the Petition in the negative by stating that, before Forest may provide the contemplated bulk service to Jamaica Bay, it must obtain an amendment to its certificate of authorization as required by Section 367.045(2), Florida Statutes.

Respectfully submitted this 26th day of November, 2003.

James G. Yaeger
Lee County Attorney

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CERTIFICATE OF SERVICE
DOCKET NO. 031020-WS

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Hand-delivery (*), or U.S. Mail, on this 26th day of November, 2003, to the following:

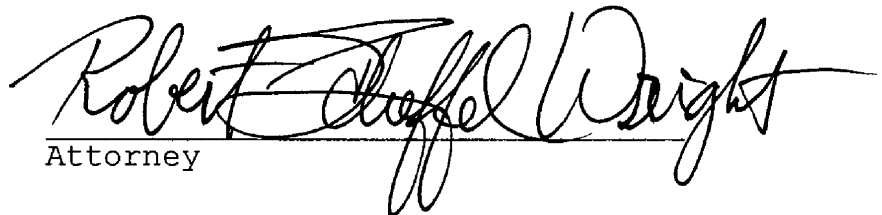
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