

1 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

2 FARMTON WATER RESOURCES, LLC

3 DOCKET NO. 021256-WU

4 APPLICATION FOR ORIGINAL WATER CERTIFICATE

5 IN VOLUSIA AND BREVARD COUNTIES

6 REBUTTAL TESTIMONY OF EARL M. UNDERHILL

7 Q. Please state your name and business address.

8 A. My name is Earl M. Underhill. My business address is
9 1625 Maytown Road, Osteen, Florida 32764.

10 Q. Have you previously provided testimony in this
11 proceeding?

12 A. Yes. I provided Direct Testimony.

13 Q. What is the purpose of your testimony here today?

14 A. To provide responsive testimony to several of the
15 witnesses for the protestants as contained within their
16 direct testimony.

17 Q. What is the first area you wish to address?

18 A. In response to Mr. Scott's comments concerning sprawl and
19 agricultural designation of land, Mr. Landers provided
20 rebuttal testimony that includes discussion of the
21 ability to have large lot subdivisions in areas
22 identified as agricultural in nature. I wanted simply to
23 note that I am aware of several examples of large lot
24 agricultural subdivisions, some of which are immediately
25 adjacent to the proposed territory for Farmton. The

DOCUMENT NUMBER-DATE

04594 APR 16 8

FPSC-COMMISSION CLERK

1 first is on the West side of Powell Road (just west of
2 our proposed territory), West of Section 6, in Township
3 19 South, Range 33 East and a second one is on the North
4 side of Prideaux Road which separates Section 31,
5 Township 18 South, Range 33 East and Section 6 in
6 Township 19 South, Range 33 East. These are
7 approximately 5 and 10 acre lots created by subdividing
8 agricultural land, both of which have been undertaken in
9 the last 10 years.

10 Q. What is your next area of discussion?

11 A. Mr. Thomson on Page 3 of his testimony makes a statement
12 about the fact that Farmton's "proposal to establish the
13 utility has not been included in the water supply
14 planning efforts within the region..." Both the
15 Comprehensive Plan and Water Supply Plan are documents
16 that are regularly reviewed to reflect changes to growth
17 patterns and demand as part of responsible planning and
18 since water is an essential prerequisite to development
19 it would seem that planning for water resources prior to
20 anyone requesting a PUD, DRI, or other change, would be
21 a logical step to ensure availability of water as and
22 when needed. This is not to say that there are any plans
23 for immediate development, but rather to note that
24 planning for water is something that needs to be done
25 before any changes in land use are even considered. That

1 is why we have made this application before the PSC. The
2 Water Supply Plan dated March 2002 stated that public
3 "...water utilities represent the only user group with
4 significant need for increased water use between 1995 and
5 2020." However, it further states that "The Plan must be
6 flexible enough to accommodate future modeling
7 improvements, changes in future demands, changes in
8 environmental constraints." The Plan is intended to be
9 reviewed every 5 years along with the District Water
10 Supply Plan. In fact, there was originally projected a
11 6 MGD need for a new microchip plant anticipated for
12 Southwest Volusia County which never materialized. As
13 such, the next time the Plan is updated that anticipated
14 need will be removed and other water demands will likely
15 replace it.

16 A Farmton representative participated in all the efforts
17 toward developing the Plan as the County's agricultural
18 representative. The Plan also states that "new, fresh
19 groundwater is the most preferred public water supply
20 source because it is generally safe, reliable, and
21 inexpensive." The related party to Farmton owns 57,000
22 acres of land without any current CUPs and that provides
23 an excellent opportunity for new, fresh groundwater
24 sources. Farmton Water Resources, LLC, who is the
25 Applicant in this PSC proceeding, is in the best position

1 to work with that landowner to utilize and obtain those
2 resources at the best possible location and with the
3 least environmental impact or impact on the resource
4 itself.

5 Q. Mr. Burklew noted that Farmton has not applied for a
6 Water Use Permit at this time for any of the proposed
7 services within its territory.

8 A. Yes, that is true. While there are some withdrawals
9 within our territory that do not require an application
10 for a Consumptive Use Permit or Water Use Permit, there
11 are some other proposed services such as bulk raw water
12 service that will require such a request to the Water
13 Management District. However, until such time as there
14 are customers for whom the construction of such
15 facilities would be needed, there is no reason for
16 Farmton to apply for such permits. We certainly will do
17 so as soon as such a request for service presents itself,
18 but it does not change the fact that we need to plan for
19 the provision of such services and for the appropriate,
20 efficient, and effective management with the least
21 environmental and resource impacts and Farmton is in the
22 best position to do so. Florida Statutes Section 367.031
23 specifically provides that a utility should obtain a PSC
24 certificate before it obtains a Consumptive Use Permit.
25 Mr. Dwight Jenkins recently spoke at a Florida Water Law

1 conference in Orlando and noted that a rule is currently
2 proposed that would make it clear that PSC certification
3 is for the Water Management District Director of the
4 Division of Water Resource Regulation.

5 It should be noted that the Water Authority of Volusia,
6 which is the successor to the Volusian Water Alliance,
7 includes only public entities and has agreed only to
8 develop new sources for their members. They also will
9 not be involved in any local distribution of water. The
10 predecessor to this entity, the Volusian Water Alliance,
11 included private entities and I served as the
12 agricultural representative on this board. Therefore,
13 while the WAV may be a good local government organization
14 to coordinate local government resource planning, it
15 has by its nature, excluded private property owners and
16 private utilities which in many instances, and especially
17 this one, excludes substantial water resources that may
18 be available for planning. As such, it cannot be relied
19 on to determine overall resource planning for the area,
20 because of this exclusion of not only interested parties,
21 but substantial resources.

22 Q. On Page 4 of Mr. Thomson's testimony he discusses the
23 land designation in Volusia County's Natural Resource
24 Management Area (NRMA). Do you have any concerns with
25 the comments made by Mr. Thomson there?

1 A. Yes I do. Mr. Thomson's characterization of the NRMA and
2 the Environmental Systems Corridor (ESC), Forestry
3 Resource (FR), and Agricultural Resource (AR) all suggest
4 that the function of the government and the planners is
5 to tell landowners what land they should develop and in
6 what ways. I take issue with this implication. In fact,
7 landowners should be given the opportunity to show that
8 whatever development proposals they may have meet the
9 reasonable requirements within the Comprehensive Plan and
10 other regulatory constraints. By following Mr. Thomson's
11 logic, landowners must only grow cattle or timber in the
12 NRMA, even if they are losing money in those operations
13 and even if times and circumstances change. I would
14 certainly agree that any public or private supplier
15 withdrawing water from the NRMA would be regulated by the
16 Water Management District and as part of the process of
17 well drilling and water treatment and/or distribution,
18 they would be required to comply with the legally binding
19 environmental requirements and functions of the NRMA.
20 However, I believe that is different than suggesting that
21 the creation of a utility itself somehow violates those
22 designations.

23 Q. Ms. Marwick who provided testimony on behalf of Volusia
24 County on Page 2 of her testimony talks about the primary
25 aim of the "Vision 2020" long range plan. Would you

1 comment on that?

2 A. Yes. In her Direct Testimony, Ms. Marwick states that
3 the "primary aim of this long range plan is to minimize
4 the construction of new systems through the management of
5 current assets and resources." This is an inaccurate
6 statement. I served on this Board when this Plan was
7 adopted. The Plan's executive summary says the "purpose
8 of the Plan is to present a strategy that will meet the
9 needs of the Volusia County area with particular emphasis
10 on public supply." The Plan makes conclusions and
11 recommendations after examining demand, numerous water
12 source alternatives, and management options. It
13 specifically states that 20 to 33 MGD of the projected
14 demands can be met with existing groundwater sources and
15 will be able to meet the needs through 2009 to 2017.
16 Never did it say that a primary objective was to
17 "minimize the construction of new systems." As
18 previously discussed in that document, "new fresh
19 groundwater sources" are one of the preferred
20 alternatives for future water supply. Ms. Marwick's
21 statement at the top of Page 4 of her testimony that
22 "this can only be done by members of the WAV...therefore,
23 Farmton could not be a part of such a regional planning
24 practice" is not a statement about the value of Farmton
25 or about the value of appropriate regional planning, but

1 merely a statement about the lack of value of WAV to
2 oversee all water resource planning in the area. This is
3 because it fails to include not only private utilities
4 but private landowners who may be in the best position to
5 manage resources and protect the environment in many
6 instances. This is certainly true in this instance where
7 Farmton is by far in the best position to manage the
8 water resource within the boundaries of the property
9 owned by its related party, in the most environmentally
10 efficient and effective manner, with the least impact on
11 the resource. Nowhere in the interlocal agreement does
12 WAV assume that it has the overall authority to manage
13 the resource or that the private utilities should not
14 participate in resource planning. It only takes the
15 position that a private utility cannot join the WAV
16 because it would lose its immunity as a governmental
17 entity. At the present time, there are no County or
18 local city utilities near the areas in Farmton where
19 service is currently needed and to ignore Farmton as the
20 provider of service where not only the need exists, but
21 also where the facilities already exist, is irrational.
22 Ms. Marwick also makes the statement that "Volusia County
23 requires developers to provide and dedicate to the County
24 the potable water distribution and treatment facilities
25 (and wastewater systems) within any new development."

1 While this may be a true statement with regard to what is
2 required of developers proposing to develop land and
3 receive service from the County system, it certainly is
4 not applicable to requirement of the developers tying
5 into systems other than that owned by the County.
6 Clearly to the extent that a developer constructs
7 facilities within the areas served by other utilities,
8 that provision is wholly inapplicable.

9 Q. Both Ms. Grant and Ms. Marwick suggest that either
10 Brevard County, Volusia County or the City of Titusville
11 can provide service to the area proposed for service by
12 Farmton Water Resources, LLC if and when the need there
13 arises. Do you agree with this statement?

14 A. No. Obviously, they have no facilities anywhere near
15 Farmton property to begin with. Secondly and probably
16 more importantly, there is a need for service currently
17 within the territory. That need cannot be met from those
18 entities for several reasons. The first is that the
19 facilities are in place in many of these areas currently
20 in need of service owned by Miami Corporation. Any
21 attempt to construct facilities by any of these
22 governmental entity protestants would be a complete
23 duplication of the facilities already owned and operated
24 by Farmton and in addition, would obviously be more
25 costly than utilizing existing facilities. Secondly, as

1 the needs arise within the territory they will not be
2 going from very small to very large overnight.
3 Therefore, any proposal by these entities to provide that
4 service by extension of an existing line, is wholly
5 impractical because the areas needing service are not
6 only spread out, but several miles from existing
7 facilities owned by these entities. As those demands
8 increase, they will also likely increase throughout the
9 territory proposed for service by Farmton and Farmton is
10 in the best position to provide that service, not only
11 because of the existence of the facilities throughout the
12 territory, which can either be expanded or extended, but
13 also because the location of the need may have little
14 relation to the location most convenient for these
15 governmental entities and their existing infrastructure.
16 Therefore, their statements that the service is not
17 currently needed are clearly wrong in that there is
18 demand for several types of service within the territory,
19 but their statements that they can provide the service
20 when needed not only ignores the current need, but
21 illogically suggests that there is some ability by them
22 to provide service to the relatively small needs that
23 currently exist and to efficiently provide that service
24 to larger needs as they grow. Not only can they not do
25 so efficiently, but they cannot do so without duplicating

1 the existing facilities of Farmton.

2 Q. Do you have any further testimony at this time?

3 A. No. I do not.

4

5

6

7

8

9

10

11

--- 12

13

14

15

16

17

18

19

20

21

22

23

24

25