

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for amendment
of Certificates Nos. 306-W and
255-S in Charlotte/Lee Counties
by Florida Water Services
Corporation

DOCKET NO. 960907-WS
ORDER NO. PSC-97-0932-S-WS
ISSUED: August 5, 1997

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
DIANE K. KIESLING
JOE GARCIA

NOTICE OF PROPOSED AGENCY ACTION ORDER
DISAPPROVING THAT PORTION OF THE AGREEMENT WAIVING PLANT CAPACITY
CHARGES FOR FORTY-FIVE UNOCCUPIED LOTS

AND

FINAL ORDER APPROVING STIPULATION, TRANSFER, AMENDMENT
OF WATER AND WASTEWATER CERTIFICATES, AND RATES AND CHARGES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action concerning the disapproval of the waiver of the service availability charges for the forty-five unoccupied lots is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

Florida Water Services Corporation (formerly Southern States Utilities, Inc., and hereinafter, Florida Water or utility) provides water and wastewater service to approximately 83,286 water customers and 43,527 wastewater customers in 28 counties in Florida. The utility's 1995 annual report shows an annual operating revenue of \$52,077,478 and a net operating income of \$2,356,915. The utility is a Class A utility company under our jurisdiction.

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FPSC-RECORDS/REPORTING

On August 12, 1996, Florida Water filed an application for amendment of Certificates Nos. 306-W and 255-S to add territory in Charlotte and Lee Counties. The utility proposed to provide service to two separate areas. The first area is known as Burnt Store Colony R.O. Association (the Colony), a mobile home park with approximately 190 current residents and the potential for an additional 45 residents. This mobile home park was granted exempt status as a non-profit entity, in Order No. PSC-97-0035-FOF-WS, issued January 7, 1997. The Colony area would be added to the utility's water territory only. The second area is the Burnt Store Marina Hotel (the Marina Hotel), a planned hotel development of 100 units. Florida Water would provide both water and wastewater service to the Marina Hotel.

On September 9, 1996, the City of Cape Coral (the City or Cape Coral), a municipality located within Lee County, filed a timely objection to Florida Water's application. On September 30, 1996, the utility filed a Motion to Dismiss the City's objection. A Stipulation (Attachment C) to resolve the dispute between the parties was received in our Division of Legal Services on March 4, 1997.

During the processing of this case, the Colony's reverse osmosis plant deteriorated to the point where emergency action was required, and the transfer and interconnect with Florida Water was considered as an emergency item at the July 15, 1997 Agenda Conference.

STIPULATION

In the Stipulation, the parties state that on January 17, 1997, the utility sent a letter to the City, wherein it provided evidence and assurances that any extension of its service into the City's jurisdictional boundaries would not violate any section of the City's comprehensive plan. The parties further provide that the City accepts the contents of the letter as true and that its concerns are satisfied with regard to its comprehensive plan. Accordingly, the City withdraws its objection to the utility's application and the utility withdraws its Motion to Dismiss the City's objection.

The parties further state that the City, in withdrawing its objection, has not waived any right it may have, now or in the future, to raise the issue of regulation of the utility pursuant to Chapter 71-585, Laws of Florida, Chapter 180, Florida Statutes, and

the City ordinances adopted pursuant to those laws. The parties request that we incorporate the Stipulation into our final order acknowledging the City's withdrawal of its objection and the utility's withdrawal of its Motion to Dismiss.

Having reviewed the Stipulation, we find that it is reasonable. We therefore acknowledge and approve the Stipulation and it is attached (Attachment C) to and made a part of this final order.

TRANSFER OF THE COLONY AND AMENDMENT OF
CERTIFICATES NOS. 306-W AND 255-S

This portion of the Order deals with the transfer of customers of the Burnt Store Colony system as specified in the Purchase and Sale Agreement, and also the overall request for amended territory including the future hotel.

Purchase and Sale Agreement

On April 9, 1997, Florida Water entered into a Purchase and Sale Agreement with the Colony, currently an exempt utility under Section 367.022, Florida Statutes (nonprofit exemption). The agreement states that the Colony will pay the entire costs of interconnecting to Florida Water for water service. The Colony will also pay the meter installation and initial connection charges (\$90 and \$15, respectively) for the current 190 occupied lots. With regard to the 45 unoccupied lots, the contract states that the Colony will also pay the meter installation and initial connection charges, at the time the lots become occupied, to Florida Water. Finally, the contract states that no other service availability charges will apply to current or future customers within the park.

Florida Water will acquire the subject distribution facilities as donated properties in exchange for a \$10 nominal payment by Florida Water. Thus, the distribution system will be essentially fully contributed, and will have no effect on the rate base of the existing Florida Water Burnt Store system. In processing the application, our staff questioned Florida Water about the provisions in the Purchase and Sale Agreement for the nonpayment of any service availability charges. Florida Water gave three reasons why it thought there should be no service availability charges for the Colony. First, Florida Water thought that this proceeding is essentially a transfer of one customer base to another utility. As such, the customers of the Colony should be viewed the same as

other transfers, where payment of service availability charges for service by the new or acquiring utility is not required. Second, the rate base of the Florida Water Burnt Store system is \$5.1 million, and would not be significantly impacted by not obtaining this revenue. And third, Florida Water attempted to make the interconnection portion as reasonable as possible, since the Colony had no other viable options except to interconnect with Florida Water. Also, Florida Water replied that the rapidly declining condition of the Colony's reverse osmosis plant presented special circumstances in this case.

However, we note that in recent dockets involving North Fort Myers Utility, Inc. (NFMU), we required the newly interconnected mobile home communities to pay service availability charges. See, Dockets Nos. 931164-SU, 940963-SU, and 930373-SU. In each case, NFMU had specifically requested the charges, and we issued our orders requiring the homeowners in the acquired utility system to pay the service availability charge of NFMU. However, the petitions by NFMU in each case stated that the charges would be used to pay for the costs of interconnection including main extensions and lift station upgrades, which was estimated to be approximately the same as the total contributions-in-aid-of-construction (CIAC) collected. In this case, the current customers of the Colony agreed to pay for all costs of interconnection.

Our staff also questioned Florida Water about the potential impact that acquiring this system might have on its existing customers. The utility responded that the contract did not include the treatment plant because of the environmental issues and curative costs associated with it. The remaining portions of the system being transferred are being donated to Florida Water. Also, because the Florida Water system has sufficient capacity to add these new customers, the general body of Burnt Store customers are benefited by allowing the new customers to assume a portion of allocated costs which current customers now bear.

Section 367.091(3), Florida Statutes, provides that a utility must implement its lawful rates and charges. Florida Water's service availability tariff requires a \$700 service availability charge. Because of the discrepancy between Florida Water's currently tariffed service availability charges for Burnt Store and the provisions of the agreement, we considered whether it would be appropriate to impute the difference between the plant capacity fees Florida Water could have collected and the cost of interconnection. Upon consideration, we believe that such

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imputation would "penalize" the utility for negotiating a creative solution to a difficult situation.

We believe that these types of situations may continue to be faced by Florida Water, and that both the existing customers of the Colony and some future customers of a system requiring to connect will be benefited by a revised tariff to reflect these conditions. Therefore, we shall approve the Purchase and Sale Agreement with respect to the existing 190 connected customers.

Further, Florida Water shall amend its current service availability policy to address the special circumstances of this case and future similar cases, by filing a revised tariff within 30 days of the date of this Order. If there is no disagreement, the tariff filings may be approved administratively. Otherwise, the matter shall be brought back to us for our resolution.

While we find that the above action is appropriate for the current customers, we shall not approve the portion of the contract addressing the 45 unoccupied lots. This part states that at such time as they become occupied, the Colony will pay to Florida Water the meter installation and service initiation charges. However, no plant capacity charges are to be paid at that time.

This provision is inconsistent with our prior decisions involving the payment of service availability charges. Pursuant to H. Miller & Sons v. Hawkins, 373 So. 2d 913 (Fla. 1979), future customers must pay the applicable service availability charges at the time of connection for service. The contract clearly extends the nonpayment of charges from the current customers to future customers as well. Therefore, we shall not approve the waiver of plant capacity charges to the remaining 45 unoccupied lots in the Colony. This part of our decision is issued as proposed agency action.

Territory Amendment

As stated earlier, on August 12, 1996, the utility filed an application for amendment of Certificates Nos. 306-W and 255-S to add territory in Charlotte and Lee Counties. The application contains a check in the amount of \$600, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The utility has provided a copy of a warranty deed which provides for the continued use of the land as required by Rule 25-30.036(3)(d), Florida Administrative Code.

Adequate service territory and system maps and a territory description have been provided as prescribed by Rule 25-30.036(3)(e), (f) and (i), Florida Administrative Code. Descriptions of the water and wastewater territory are appended to this Order as Attachments A and B, respectively. Attachment A includes the additional area. Attachment B includes a complete rewrite of the utility's existing territory. The rewrite includes the area granted in Order No. 21632, issued July 31, 1989 in Docket No. 881340-WS and Order No. 24411, issued April 22, 1991 in Docket No. 900969-WS, and the new area in this docket. Additional angles and distances were added to this description to make the description clear and concise. The utility has submitted an affidavit consistent with Section 367.045(2)(d), Florida Statutes, that it has tariffs and annual reports on file with the Commission.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. As stated earlier, an objection to the application was filed by the City of Cape Coral and we have approved the Stipulation of the parties resolving their dispute. The local planning agency was provided notice of the application and did not file a protest to the amendment. Our staff has contacted the Department of Environmental Protection and learned that there are no outstanding notices of violation regarding this utility.

The reverse osmosis water treatment plant that will serve the Colony and the Marina Hotel is currently permitted at 567,000 gallons per day (gpd). Average daily flows are about 226,000 gpd. Added water flows from the Colony property will be approximately 40,000 gpd, and from the Marina Hotel site will be approximately

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35,000 gpd. Water lines will be extended to serve these customers. The reverse osmosis water plant may be expanded to 853,000 gpd in 1998, or as the need arises. This expansion would involve the addition of filtering units versus new construction.

The wastewater treatment plant that will serve the Marina Hotel site is currently permitted at 250,000 gpd. Average daily flows are about 120,000 gpd. Added flows from the property will be approximately 27,500 gpd. The utility will extend wastewater lines to serve this customer. The Burnt Store wastewater system uses rapid rate land application through a dual cell percolation and evaporation pond. The utility does not utilize public access level reuse at this time since the current effluent disposal method is adequate. Based on the above information, we find that the utility has the capacity and the technical expertise to serve these customers now and in the future.

Based on all the above, we find that it is in the public interest to grant the application of Florida Water for the transfer of the Burnt Store Colony system and the amendment of Certificates Nos. 306-W and 255-S, to add the additional territory described in Attachment A and the revised descriptions of the utility's existing territory in Attachment B. The utility has returned the certificate for entry of the additional territory and filed revised tariff sheets which reflect the amended territory description.

RATES AND CHARGES

By Order No. PSC-97-0035-FOF-WS, issued January 7, 1997, we recognized that the Colony was a non-profit association and exempt from our regulation. Because the Colony was exempt and included water service as a part of the rent, no water meters were required, and the Colony had no installed water meters.

With our approval of the amendment and transfer, the rates for customers of the Colony and the amended area will be the applicable rates and charges of Florida Water, as approved in Order No. PSC-96-1320-FOF-WS, issued October 30, 1996, in Docket No. 950495-WS. The monthly service rates for water and wastewater are as follows:

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Water -- Residential and General Service

Base Facility Charge

<u>Meter Size</u>	<u>Charge</u>
5/8" x 3/4"	\$ 13.80
3/4"	20.70
1"	34.50
1 1/2"	69.00
2"	110.40
3"	220.80
4"	345.00
6"	690.00
8"	1,104.00
10"	1,587.00

Gallonge Charge \$3.82 per 1,000 gallons

Wastewater

Base Facility Charge

<u>Meter Size</u>	<u>Residential</u>	<u>General Service</u>
	<u>Charge</u>	<u>Charge</u>
5/8" x 3/4"	\$ 7.90	\$ 7.90
3/4"	same	11.85
1"	same	19.75
1 1/2"	same	39.50
2"	same	63.20
3"	same	126.40
4"	same	197.50
6"	same	395.00
8"	same	632.00
10"	same	908.50

Gallonge Charge

0 - 6,000 \$ 2.79 per 1,000
All excess gallons No Charge

All gallons \$ 3.35 per 1,000

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Florida Water shall charge the customers in the territory added herein the rates and charges contained in its tariff until authorized to change by this Commission in a subsequent proceeding.

CLOSING OF DOCKET

If there is no timely protest filed by a substantially affected person to the proposed agency action portion of this Order, no further action will be required and the docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Stipulation between Florida Water Services Corporation, 1000 Color Place, Apopka, Florida 32703, and the City of Cape Coral, Post Office Box 150027, Cape Coral, Florida 33915-0027, whereby the City withdrew its objection and the utility withdrew its Motion to Dismiss, is acknowledged and approved. It is further

ORDERED that the above-noted Stipulation is attached to this Order as Attachment C and is specifically made a part of this Order. It is further

ORDERED that the transfer and amendment shall be approved and Certificates Nos. 306-W and 255-S shall be amended to reflect the additional territory shown on Attachment A of this Order. It is further

ORDERED that, with the addition of this territory, the legal description of Florida Water Services Corporation for these certificates shall be as set forth on Attachment B. It is further

ORDERED that Florida Water Services Corporation shall be required to amend its current service availability policy to address the special circumstances of this case and future similar cases, by filing a revised tariff within 30 days of the date of this Order. It is further

ORDERED that, if there is no disagreement, the revised tariff sheets shall be approved administratively. It is further

ORDERED that the portion of the Purchase and Sale Agreement proposing to waive the plant capacity charges for the 45 currently unoccupied lots shall not be approved. It is further

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ORDERED that the provision of this Order regarding the disapproval of the portion of the Purchase and Sale Agreement proposing to waive the plant capacity charges for the 45 currently unoccupied lots is issued as proposed agency action and shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that Florida Water Services Corporation shall charge the rates and charges contained in its tariff to the customers in the amended territory until authorized by the Commission to change. It is further

ORDERED that this docket shall be closed if there is no timely protest to the proposed agency action portion of this Order.

By ORDER of the Florida Public Service Commission, this 5th day of August, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By:

Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

As identified in the body of this order, the action concerning the disapproval of the waiver of the service availability charges for the forty-five unoccupied lots is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 26, 1997. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this order shall become effective on the date subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If the relevant portion of this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate

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Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

Any party adversely affected by the Commission's final action in this matter may request: (1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

SOUTHERN STATES UTILITIES, INC

CHARLOTTE AND LEE COUNTIES

THE BURNT STORE UTILITY SYSTEM

CHARLOTTE COUNTY

BURNT STORE - PROPOSED BURNT STORE COLONY WATER ONLY SERVICE TERRITORY:

In a portion of the South half of the Southwest quarter of Section 20 of Township 42 South, Range 23 East in Charlotte County, Florida

Point of Commencement at the Southwest corner of Section 20 of Township 42 South, Range 23 East; thence North $88^{\circ}02'44''$ East 9.72 feet East along the South line of the Southwest quarter of Section 20, Township 42 South, Range 23 East in Charlotte County to a point 9.72' East of the Southwest corner of Section 20, the intersection with the Northwest right of way of Burnt Store Road (County Road 765) and the Point of Beginning; thence North $44^{\circ}34'25''$ East 1,940.89 feet Northeasterly along the Northwestern right of way line of Burnt Store Road to the intersection with the North line of the South half of the Southwest quarter of Section 20; thence North $88^{\circ}25'38''$ East 1,291.47 feet East along the North line of the South half of the Southwest quarter of Section 20 to the East line of the South half of the Southwest quarter of Section 20; thence South $00^{\circ}45'58''$ West 1,345.81 feet South along the East line of the South half of the Southwest quarter of Section 20 to the Southeast corner of the South half of the Southwest quarter of Section 20; thence South $88^{\circ}25'38''$ West 2,636.15 feet West along the South line of the South half of the Southeast quarter of Section 20 to the point of intersection with the Northeasterly right of way line of Burnt Store Road and the Point of Beginning, this point being 9.72' East of the Southwest corner of Section 20.

SOUTHERN STATES UTILITIES, INC

CHARLOTTE AND LEE COUNTIES

THE BURNT STORE UTILITY SYSTEM

LEE COUNTY

BURNT STORE - PROPOSED BURNT STORE MARINA HOTEL SITE WATER AND WASTEWATER SERVICE TERRITORY:

In portions of Section 1 of Township 43 South, Range 22 East and Section 6 of Township 43 South, Range 23 East in Lee County, Florida:

Point of Commencement at the Northeast corner of Section 6 of Township 43 South, Range 23 East; thence South 00°40'50" West 3,398.89 feet South along the East line of Section 6, Township 43 South, Range 23 East in Lee County to a point approximately 1,661' North of the South line of Section 6 and the Point of Beginning; thence South 00°41'28" West 482.27 feet South along the East line of Section 6 to a point approximately 1,179' North of the South line of Section 6; thence South 88°22'02" West 4,170.63 feet West along a line approximately 1,179' North of the South line of Section 6 to a point approximately 1,132' East of the West line of Section 6; thence South 00°46'37" West 345.11 feet South along a line approximately 1,132' East of the West line of Section 6 to a point approximately 834' North of the South line of Section 6; thence South 88°22'02" West 1,131.86 feet West along a line approximately 834' North of the South line of Section 6 to a point on the West line of Section 6 approximately 830' North of the Southwest corner of Section 6 and the Southeast corner of Section 1, Township 43 South, Range 22 East; thence South 00°33'37" West 829.96 feet South along the East line of Section 1 to the Southeast corner of Section 1; thence North 89°35'44" West 2,931.20± feet West along the South line of Section 1 to the point of intersection with the Charlotte Harbor shoreline; thence Northerly 1,314± feet Meander Northerly along the shoreline of Charlotte Harbor to a point approximately 1,057' North of the South line of Section 1;

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ATTACHMENT A
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SOUTHERN STATES UTILITIES, INC

CHARLOTTE AND LEE COUNTIES

THE BURNT STORE UTILITY SYSTEM

LEE COUNTY

thence South 89°35'58" East 2,866.16± feet East along a line approximately 1,057' North of the South line of Section 1 to a point on the East line of Section 1 and the West line of Section 6, Township 43 South, Range 23 East; thence North 00°35'48" East 602.92 feet North along the West line of Section 6 to a point approximately 1,661' North of the South line of Section 6; thence North 88°22'02" East 5,236.85 feet East along a line approximately 1,661' North of the South line of Section 6 to a point approximately 68' West of the East line of Section 6; thence South 89°18'32" East 68.00 feet East along a line approximately 1,660' North of the South line of Section 6 to a point on the East line of Section 6 approximately 1,661' North of the South line of Section 6 and the Point of Beginning.

Southern States Utilities, Inc.

Charlotte and Lee Counties

The Burnt Store Composite Water Description

In all or portions of Sections 25 and 36 of Township 42 South, Range 22 East, Sections 19, 20, 24, 29, 30, 31, 32 and 33 of Township 42 South, Range 23 East, Section 19 of Township 42 South, Range 24 East in Charlotte County, Florida and in Section 1 of Township 43 South, Range 22 East and Section 6 of Township 43 South, Range 23 East in Lee County, Florida:

Point of Beginning at the Northeast corner of Section 29 of Township 42 South, Range 23 East; Thence 1. South 00°42'42" West 5,529.56 feet South along the East line of Section 29, Township 42 South, Range 23 East in Charlotte County to the Southeast corner of Section 29 and the Northwest corner of Section 33; Thence 2. South 89°24'30" East 2,661.50 feet East along the North line of the Northwest quarter of Section 33 to the Northeast corner of the Northwest quarter of Section 33; Thence 3. South 00°27'17" West 2,686.85 feet South along the East line of the Northwest quarter of Section 33 to the Southeast corner of the Northwest quarter of Section 33; Thence 4. North 89°21'44" West 2,650.75 feet West along the South line of the Northwest quarter of Section 33 to the Southwest corner of the Northwest quarter of Section 33; Thence 5. North 00°13'31" East 1,320.04 feet North along the West line of the Northwest quarter of Section 33 and the East line of the Northeast quarter of Section 32 to the Southeast corner of the North half of the Northeast quarter of Section 32; Thence 6. North 89°19'12" West 2,602.81 feet West along the South line of the North half of the Northeast quarter of Section 32, thus excluding the South half of the Northeast quarter of Section 32, to the Southwest corner of the North half of the Northeast quarter of Section 32; Thence 7. North 00°45'26" East 1,360.69 feet North along the West line of the North half of the Northeast quarter of Section 32 to the Northwest corner of the North half of the Northeast quarter of Section 32; Thence 8. North 89°14'30" West 2,654.92 feet West along the North line of Section 32 and the South line of Section 29 to the Southwest corner of Section 29 and the Northeast corner of Section 31; Thence 9. South 00°35'53" West 4,004.33 feet South along the East line of Section 31 and the West line of Section 32, thus excluding the Northwest quarter of Section 32, to the North line of the South half of the Southwest quarter of Section 32; Thence 10. South 89°19'12" East 2,643.79 feet East along the North line of the South

Southern States Utilities, Inc.

Charlotte and Lee Counties

The Burnt Store Composite Water Description

half of the Southwest quarter of Section 32, thus excluding the North half of the Southwest quarter of Section 32, to the Northeast corner of the South half of the Southwest quarter of Section 32; Thence 11. North 00°45'26" East 1,320.00 feet North along the West line of the Northwest quarter of the Southeast quarter of Section 32 to the Northwest corner of the Southeast quarter of Section 32; Thence 12. South 89°19'12" East 2,615.07 feet East along the North line of the Southeast quarter of Section 32 to the Northeast corner of the Southeast quarter of Section 32; Thence 13. South 00°13'31" West 2,684.77 feet South along the East line of the Southeast quarter of Section 32 to the Southeast corner of the Southeast quarter of Section 32; Thence 14. North 89°18'58" West 1,320.00 feet West along the South line of the East half of the Southeast quarter of Section 32 to the Southwest corner of the East half of the Southeast quarter of Section 32; Thence 15. North 00°45'26" East 1,364.60 feet North along the West line of the East half of the Southeast quarter of Section 32 to the Southeast corner of the Northwest quarter of the Southeast quarter of Section 32; Thence 16. North 89°19'12" West 1,320.00 feet West along the South line of the Northwest quarter of the Southeast quarter of Section 32 to the Southwest corner of the Northwest quarter of the Southeast quarter of Section 32 and the Northeast corner of the South half of the Southwest quarter of Section 32; Thence 17. South 00°45'26" West 1,364.50 feet South along the East line of the South half of the Southwest quarter of Section 32 to the Southeast corner of the South half of the Southwest quarter of Section 32; Thence 18. North 89°18'58" West 2,640.00 feet West along the South line of the South half of the Southwest quarter of Section 32 to the Southwest corner of Section 32 and the Northeast corner of Section 6, Township 43 South, Range 23 East in Lee County; Thence 19. South 00°40'50" West 3,398.89 feet South along the East line of Section 6 to a point approximately 1,661' North of the South line of Section 6; Thence 20. South 00°41'28" West 482.27 feet South along the East line of Section 6 to a point approximately 1,179' North of the South line of Section 6; Thence 21. South 88°22'02" West 4,170.63 feet West along a line approximately 1,179' North of the South line of Section 6 to a point approximately 1,132' East of the West line of Section 6; Thence 22. South 00°46'37" West 345.11 feet South along a line approximately 1,132' East of the West line of Section 6 to

Southern States Utilities, Inc.

Charlotte and Lee Counties

The Burnt Store Composite Water Description

a point approximately 833' North of the South line of Section 6; Thence 23. South 88°22'02" West 1,131.86 feet West along a line approximately 833' North of the South line of Section 6 to a point on the West line of Section 6 approximately 830' North of the Southwest corner of Section 6 and the Southeast corner of Section 1, Township 43 South, Range 22 East; Thence 24. South 00°33'37" West 829.96 feet South along the East line of Section 1 to the Southeast corner of Section 1; Thence 25. North 89°35'44" West 2,931.20± feet West along the South line of Section 1 to the point of intersection with the Charlotte Harbor shoreline; Thence 26. Northerly 61,359 ± feet Meander Northerly along the shoreline of Charlotte Harbor approximately 11.6 miles through Section 1 of Township 43 South, Range 22 East in Lee County and Sections 36 and 25 of Township 42 South, Range 22 East and Sections 30 and 19 of Township 42 South, Range 23 East in Charlotte County to a point on the North line of the South half of Section 19, Township 42 South, Range 23 East in Charlotte County approximately 4,771' West of the East line of Section 19; Thence 27. North 89°01'11" East 3,292.16± feet East along the North line of the South half of Section 19 to a point 1,479' West of the East line of Section 19; Thence 28. South 02°58'13" East 645.61 feet South along a line approximately 1,479' West of the East line of Section 19 to a point 2,046' North of the South line of Section 19; Thence 29. South 70°17'08" East 2,593.43 feet Southeasterly along a line through Sections 19 and 20 to a point approximately 1,095' North of the South line of Section 20; Thence 30. South 49°27'23" East 85.16 feet Southeasterly along a line to the intersection with the Northwestern right of way line of Burnt Store Road (County Road 765); Thence 31. North 44°34'25" East 444.09 feet Northeasterly along the Northwestern right of way line of Burnt Store Road to the intersection with the North line of the South half of the Southwest quarter of Section 20; Thence 32. North 88°25'38" East 1,291.47 feet East along the North line of the South half of the Southwest quarter of Section 20 to the East line of the South half of the Southwest quarter of Section 20; Thence 33. South 00°45'58" West 1,345.81 feet South along the East line of the South half of the Southwest quarter of Section 20 to the Southeast corner of the Southwest quarter of Section 20 and the North quarter corner of Section 29; Thence 34. North 88°25'38" East

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2,636.13 feet East along the North line of Section 29 to the Northeast corner of Section 29 and the Point of Beginning.

Also an area to the East of the previously described area but not contiguous, located in Section 24, Township 42 South, Range 23 East and Section 19, Township 42 South, Range 24 East more particularly described as follows:

Section 24, Township 42 South, Range 23 East:

All of that portion of said Section 24 lying Westerly of the Western right of way of US Highway 41, less the North 967 feet of said Section 24.

Section 19, Township 42 South, Range 24 East:

All that portion of said Section 19 lying Westerly of the Westerly right of way of US Highway 41.

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In all or portions of Sections 25 and 36 of Township 42 South, Range 22 East, Sections 29, 30, 31, 32 and 33 of Township 42 South, Range 23 East in Charlotte County, Florida and in Section 1 of Township 43 South, Range 22 East and Section 6 of Township 43 South, Range 23 East in Lee County, Florida:

Point of Beginning at the Northeast corner of Section 29 of Township 42 South, Range 23 East Thence 1. South 00°42'42" West 5,529.56 feet South along the East line of Section 29, Township 42 South, Range 23 East in Charlotte County to the Southeast corner of Section 29 and the Northwest corner of Section 33; Thence 2. South 89°24'30" East 2,661.50 feet East along the North line of the Northwest quarter of Section 33 to the Northeast corner of the Northwest quarter of Section 33; Thence 3. South 00°27'17" West 2,686.85 feet South along the East line of the Northwest quarter of Section 33 to the Southeast corner of the Northwest quarter of Section 33; Thence 4. North 89°21'44" West 2,650.75 feet West along the South line of the Northwest quarter of Section 33 to the Southwest corner of the Northwest quarter of Section 33; Thence 5. North 00°13'31" East 1,320.04 feet North along the West line of the Northwest quarter of Section 33 and the East line of the Northeast quarter of Section 32 to the Southeast corner of the North half of the Northeast quarter of Section 32; Thence 6. North 89°19'12" West 2,602.81 feet West along the South line of the North half of the Northeast quarter of Section 32, thus excluding the South half of the Northeast quarter of Section 32, to the Southwest corner of the North half of the Northeast quarter of Section 32; Thence 7. North 00°45'26" East 1,360.69 feet North along the west line of the North half of the Northeast quarter of Section 32 to the Northwest corner of the North half of the Northeast quarter of Section 32; Thence 8. North 89°14'30" West 2,654.92 feet West along the North line of Section 32 and the South line of Section 29 to the Southwest corner of Section 29 and the Northeast corner of Section 31; Thence 9. South 00°35'53" West 4,004.33 feet South along the East line of Section 31 and the West line of Section 32, thus excluding the Northwest quarter of Section 32, to the North line of the South half of the Southwest quarter of Section 32;

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Thence 10. South 89°19'12" East 2,643.79 feet East along the North line of the South half of the Southwest quarter of Section 32, thus excluding the North half of the Southwest quarter of Section 32, to the Northeast corner of the South half of the Southwest quarter of Section 32; **Thence 11.** North 00°45'26" East 1,320.00 feet North along the West line of the Northwest quarter of the Southeast quarter of Section 32 to the Northwest corner of the Southeast quarter of Section 32; **Thence 12.** South 89°19'12" East 2,615.07 feet East along the North line of the Southeast quarter of Section 32 to the Northeast corner of the Southeast quarter of Section 32; **Thence 13.** South 00°13'31" West 2,684.77 feet South along the East line of the Southeast quarter of Section 32 to the Southeast corner of the Southeast quarter of Section 32; **Thence 14.** North 89°18'58" West 1,320.00 feet West along the South line of the East half of the Southeast quarter of Section 32 to the Southwest corner of the East half of the Southeast quarter of Section 32; **Thence 15.** North 00°45'26" East 1,364.60 feet North along the West line of the East half of the Southeast quarter of Section 32 to the Southeast corner of the Northwest quarter of the Southeast quarter of Section 32; **Thence 16.** North 89°19'12" West 1,320.00 feet West along the South line of the Northwest quarter of the Southeast quarter of Section 32 to the Southwest corner of the Northwest quarter of the Southeast quarter of Section 32 and the Northeast corner of the South half of the Southwest quarter of Section 32; **Thence 17.** South 00°45'26" West 1,364.50 feet South along the East line of the South half of the Southwest quarter of Section 32 to the Southeast corner of the South half of the Southwest quarter of Section 32; **Thence 18.** North 89°18'58" West 2,640.00 feet West along the South line of the South half of the Southwest quarter of Section 32 to the Southwest corner of Section 32 and the Northeast corner of Section 6, Township 43 South, Range 23 East in Lee County; **Thence 19.** South 00°40'50" West 3,398.89 feet South along the East line of Section 6 to a point approximately 1,661' North of the South line of Section 6; **Thence 20.** South 00°41'28" West 482.27 feet South along the East line of Section 6 to a point approximately 1,179' North of the South line of Section 6; **Thence 21.** South 88°22'02" West 4,170.63 feet West along a line approximately 1,179' North of the South line of Section 6 to a point 1,132' East of the West line of

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Section 6; Thence 22. South 00°46'37" West 345.11 feet South along a line approximately 1,132' East of the West line of Section 6 to a point approximately 833' North of the South line of Section 6; Thence 23. South 88°22'02" West 1,131.86 feet West along a line approximately 833' North of the South line of Section 6 to a point on the West line of Section 6 approximately 830' North of the Southwest corner of Section 6 and the Southeast corner of Section 1, Township 43 South, Range 22 East; Thence 24. South 00°33'37" West 829.96 feet South along the East line of Section 1 to the Southeast corner of Section 1; Thence 25. North 89°35'44" West 2,931.20± feet West along the South line of Section 1 to the point of intersection with the Charlotte Harbor shoreline; Thence 26. Northerly 54,658 ± feet Meander Northerly along the shoreline of Charlotte Harbor approximately 10.4 miles through Section 1 of Township 43 South, Range 22 East in Lee County and Sections 36 and 25 of Township 42 South, Range 22 East and Section 30 of Township 42 South, Range 23 East in Charlotte County to a point of intersection with the North line of Section 30 approximately 4,312' West of the East line of Section 30; Thence 27. North 88°02'44" East 4,315.59± feet East along the North line of Section 30 to the Northeast corner of Section 30 and the Northwest corner of Section 29; Thence 28. North 88°02'44" East 9.72 feet East along the North line of Section 29, Township 42 South, Range 23 East in Charlotte County to a point 9.72' East of the Northwest corner of Section 29; Thence 29. North 88°25'38" East 5,272.26 feet East along the North line of Section 29 to the Northeast corner of Section 29 and the Point of Beginning.

BEFORE THE PUBLIC SERVICE COMMISSION

In Re: Application for Amendment]
of Certificates Nos. 306-W and] Docket No. 960907-WS
255-S in Charlotte/Lee Counties by]
Southern States Utilities, Inc.]

Stipulation

COME NOW The City of Cape Coral, Florida (hereinafter "Cape Coral"), and Florida Water Services (formerly Southern States Utilities, Inc., hereinafter "Applicant"), and hereby stipulate and agree to the following:

1. On August 12, 1996, Applicant filed an Application with The Florida Public Service Commission for the Amendment of Water and Wastewater Certificates Nos. 306-W and 255-S in Charlotte/Lee Counties (hereinafter "Application"). The Application requests that two distinct areas be added to the Applicant's Burnt Store territories in Charlotte and Lee Counties.

2. Upon receiving legal notice of the Application and determining that a grant of such would permit expansion of the Applicant's utility service within its municipal boundaries, Cape Coral timely filed a Written Objection to the Application pursuant to Rule 25-30.031, Florida Administrative Code, and Sec. 367.045, Florida Statutes, on September 9, 1996. Cape Coral's Written Objection argues that granting the Applicant's request conflicts with Cape Coral's Comprehensive Plan and that Cape Coral solely possesses the right to regulate and franchise water and wastewater utilities within its municipal limits pursuant to Chapter 71-585, Laws of Florida, a special act of the Legislature, Sec. 180.14, Florida Statutes, and Cape Coral Ordinances authorized by and

adopted pursuant to said laws.

3. The Applicant filed a Motion to Dismiss Cape Coral's Written Objection on September 28, 1996. The Applicant's Motion argues that Cape Coral does not have standing to object to the Application both generally and pursuant to Cape Coral's Comprehensive Plan. Additionally, the Motion disputes Cape Coral's claim that it has the right to regulate and argues that any law granting such a right has been superseded and repealed. Finally, the Motion argues that the Public Service Commission has no authority to interpret or enforce any law Cape Coral may invoke beyond Chapter 367.

4. Cape Coral filed a Memorandum in Opposition to the Applicant's Motion to Dismiss on October 10, 1996. The Memorandum argues that the Applicant may not file a Motion to Dismiss Cape Coral's Written Objection, that the Public Service Commission is mandated to hear Cape Coral's Objection in a Sec. 120.57, F.S., proceeding, and that Cape Coral does have standing both generally and pursuant to its Comprehensive Plan.

5. The Public Service Commission issued a Staff Recommendation on December 5, 1996, which was amended and reissued on January 9, 1997. The Amended Recommendation advises that the Applicant's Motion to Dismiss should be granted where Cape Coral's Written Objection argues that a grant of the Application would violate Chapter 71-585, Laws of Florida, Chapter 180, Florida Statutes, and Cape Coral Ordinances authorized by and adopted pursuant to said laws. However, the Recommendation advises that

the Applicant's Motion to Dismiss should be denied where Cape Coral's Objection argues that a grant of the Application would violate its local Comprehensive Plan.

6. The Applicant sent a letter to Cape Coral dated January 15, 1997, which addressed Cape Coral's Objection with respect to its Comprehensive Plan. The letter provided evidence and assurances that any extension of the Applicant's service into Cape Coral's jurisdictional boundaries would not violate any section of Cape Coral's Comprehensive Plan.

7. Cape Coral accepts the contents of the applicant's letter as true and agrees that the evidence and assurances provided satisfy its concerns with respect to its Comprehensive Plan.

8. Both parties agree that since the Applicant has satisfied all of Cape Coral's Comprehensive Plan concerns, a grant of the application would not violate said plan. Accordingly, Cape Coral hereby withdraws its Written Objection to the Application, and the Applicant hereby withdraws its Motion to Dismiss the Written Objection. The parties further agree, however, that in withdrawing its Written Objection, Cape Coral has not waived any right it may have, now or in the future, to raise the issue of regulation of the Applicant by Cape Coral pursuant to Chapter 71-585, Laws of Florida, Chapter 180, Florida Statutes, Cape Coral Ordinances authorized by and adopted pursuant to said laws, or any other authority, in an appropriate jurisdiction, should Cape Coral, in its sole discretion, deem such action to be necessary.

9. Both parties request that the Public Service Commission

incorporate this stipulation into a final order acknowledging withdrawal of Cape Coral's Written Objection and the Applicant's Motion to Dismiss. The parties agree that the grant of such an order would eliminate the need for a Sec. 120.57 proceeding, as requested by Cape Coral, and would represent a resolution of this matter between the parties.

10. Both parties agree that they shall bear their own costs and fees related to these proceedings, including but not limited to attorney's fees.

Florida Water Services



Charles L. Seat - Vice President

Florida Water Services



MATTHEW FEIL

STAFF COUNCIL
FLORIDA WATER SERVICES
1000 Color Place
Apopka, FL 32703
(407) 880-0058
Florida Bar # 0522744

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Terms of the above Stipulation ADOPTED AT A REGULAR COUNCIL
MEETING THIS 24th DAY OF February, 1997.

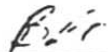


ROGER G. BUTLER, MAYOR

ATTESTED TO AND FILED IN MY OFFICE THIS 26th DAY OF February,
1997.



BONNIE J. VENT, CITY CLERK



BRUCE R. CONROY
CITY ATTORNEY
CITY OF CAPE CORAL
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