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OF COUNSEL:
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July 30, 1991

**Mr. Steve Tribble, Director
Division of Records and Reporting
Florida Public Service Commission
Room 107 Fletcher Building
Tallahassee, Florida 32399-0850**

910 813-WS

**RE: City of Kissimmee/Kings Point Utilities, Inc./Petition for Exemption
WS 373**

Dear Mr. Tribble:

**Enclosed please find the original and twelve (12) copies of the Petition for
Exemption with the City of Kissimmee/Kings Point Utilities, Inc.**

If additional information is needed, please do not hesitate to contact me.

Sincerely,



John R. Marks, III

JRM/lcg

Enclosures

cc: Brian Wheeler
Steve Medina

RECEIVED & FILED

JJ
FPS-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

07652 JUL 30 1991

PSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**IN RE: Petition for Exemption)
From Regulation Pursuant to)
Section 367.022 Florida Statutes)
_____)**

Docket No: 910813-WS
Filed:

PETITION FOR EXEMPTION

The City of Kissimmee as Receiver for Kings Point Utilities, Inc. (Petitioner), by and through its undersigned attorneys and pursuant to Section 367.022, Florida Statutes, hereby files this petition and request for exemption from regulation by the Florida Public Service Commission (Commission) as a utility. In support thereof, The City of Kissimmee (City) states:

1. All notices, pleadings and other documents in this matter should be served upon:

**John R. Marks, III
Katz, Kutter, Haigler, Alderman,
Davis, Marks & Rutledge, P.A.
215 South Monroe Street, Suite 400
Tallahassee, Florida 32301**

2. The City of Kissimmee is an incorporated municipality located in Osceola County, Florida. Its mailing address is 101 Church Street, Kissimmee, Florida 32741.

3. By order dated April 1, 1991, the Circuit Court of the Ninth Judicial Circuit in and for Osceola County, Florida appointed the City receiver of the Kings Point Utilities, Inc. (Utility) water and sewer systems (Exhibit A).

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

4. By Florida Public Service Commission Order No. 24414 in Docket No. 891323-WS issued April 22, 1991, (Exhibit B) the Commission cancelled Certificates of Public Convenience and Necessity numbers 437-W and 386-S, the water and sewer certificates issued to Kings Point Utilities, Inc. (Utility).

5. The purpose and object of regulation (and the related certification process) by the Commission as contemplated by the legislature has variously been held to be to protect the consumer/ratepayer from potential abuses by utility monopolies and to prevent unjust discrimination and unnecessary duplication of utility plants and facilities. Further, regulation serves to secure to the public all of the advantages of competition in obtaining fair, just and reasonable rates and in providing safe, efficient and sufficient service.

6. The Legislature pursuant to Section 367.022, Florida Statutes, has exempted certain entities from regulation by the Commission. The legislature determined that those entities or actions by those entities should not be subject to the provisions of Chapter 367. Among the entities that are exempt pursuant to Section 267.022, Florida Statutes are:

(2) Systems owned, operated, managed or controlled by governmental authorities.

The legislature through its enactment of the exemptions determined that the purposes and objectives of regulation were being adequately met by other means and the safeguards provided by the Florida Public Service Commission were not needed in these instances.

7. Ordering paragraph B of the aforementioned court order states that as receiver, the City shall:

- (i) operate, manage and control the Kings Point water and sewer systems.**

Clearly the City is exempt from the regulatory jurisdiction of the Commission. The appointment of the City as receiver should not preclude the application or invocation of the exemptions contained in Chapter 367.022, Florida Statutes.

8. Relief by way of receivership is equitable in nature and is controlled by and administered on equitable principles. The object and purpose of a receivership is to secure and preserve the property or thing in controversy (in this instance, the utility assets) so that it may be subject to such order or decree as the court may make or render. A receiver is appointed by a court to take custody, control and management of property or funds pending judicial action concerning such property or funds.

9. Equity would dictate that the Commission relinquish its regulatory authority born in statutory law. In this matter the statutory jurisdiction of the PSC is concurrent with the equity jurisdiction of the court. A concurrent remedy at law does not oust the equity jurisdiction of the courts. The remedy in equity is proper particularly where the legislature gives such remedy more flexibility or it is better adapted to the particular circumstances than the remedy at law.

10. In this instance, requiring the City to comply with the Commissions rules and regulations clearly makes operating, managing and controlling the utility more burdensome and less flexible. Allowing the City to operate, manage and control the utility in the same manner as it does with other utility operations, provides a more flexible remedy and it is better adapted to these particular circumstances.

11. An entity once regulated by the Commission but now operated, managed and controlled through a receivership by a governmental authority no longer needs or requires the pervasive and burdensome regulatory oversight or safeguards of the Florida Public Service Commission.

12. The City, as receiver, desires to avoid and does not believe it is necessary to have the additional burden and related costs associated with the regulatory oversight of the Florida Public Service Commission.

13. The Commission should avoid imposing an added burden on the City in its capacity as receiver.

14. No valid public purpose or policy is served with the continuing regulation of the Kings Point Utilities water and sewer systems by the Florida Public Service Commission. The ratepayers of Kings Point are adequately protected by the regulatory oversight of the

City of Kissimmee.

WHEREFORE, The City of Kissimmee as Receiver for Kings Point Utility, Inc. respectfully request that it be exempt from regulation by the Florida Public Service Commission pursuant to Section 367.022, Florida Statutes.

Dated this 30th day of July, 1991.

Respectfully submitted,



**John R. Marks, III
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