

MEMORANDUM

ORIGINAL  
FILE COPY

March 14, 1997

TO: DIVISION OF RECORDS AND REPORTING  
FROM: DIVISION OF LEGAL SERVICES (CYRUS-WILLIAMS) *DCW*  
RE: DOCKET NO. ~~960907~~-WS - Application for amendment of  
Certificates Nos. 306-W and 255-S in Charlotte/Lee  
Counties by Southern States Utilities, Inc.

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Please file the attached 15 copies of the Stipulation in the  
above referenced docket.

DCW/dp

Attachment

ACK \_\_\_\_\_  
AFA \_\_\_\_\_  
APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMU \_\_\_\_\_  
CTR \_\_\_\_\_  
EAG \_\_\_\_\_  
LEG \_\_\_\_\_  
LIN \_\_\_\_\_  
OPC \_\_\_\_\_  
RCH \_\_\_\_\_  
SEC 1 \_\_\_\_\_  
WAS \_\_\_\_\_  
OTH \_\_\_\_\_

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

ORIGINAL  
FILE COPY



# CITY OF CAPE CORAL

Office of The City Attorney

February 27, 1997

Donna Cyrus-Williams  
Staff Counsel  
Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Re: Stipulation for resolution of Docket No. 960907-WS--  
Application for Amendment of Water and Wastewater  
Certificates Nos. 306-W and 255-S.

Dear Ms. Cyrus-Williams:

As you are aware, the parties in the above referenced docket have agreed to and executed a Stipulation which we believe represents a resolution of this matter. The original signed Stipulation is enclosed along with fifteen (15) copies to be filed with the Division of Records and Reporting.

The parties now request that the P.S.C. adopt the Stipulation's full terms in a final Order. The grant of such an Order will result in the withdrawal of Cape Coral's Written Objection and the Applicant's Motion to Dismiss, thereby eliminating the need for further proceedings. Therefore, any outstanding dates for future proceedings related to Cape Coral's Written Objection should be cancelled when the Order is granted.

It is my understanding that you will now schedule this matter on the next available Commission Agenda Conference and forward the Stipulation with this request for adoption to the Commission. Please keep me informed of the date of the Commission Agenda Conference for which this matter will be scheduled. Also, I am requesting that you send me a copy of the Stipulation certified as received by the P.S.C.

Should you have any questions or concerns, please call me at (941) 574-0408.

Sincerely,

Clifford Repperger, Jr.  
Assistant City Attorney

Enclosure

cc: Matt Feil, Florida Water Services Staff Attorney, with enclosure  
Steve Daignault, Interim City Manager, with enclosure  
Rick Sosnowski, City Planner, with enclosure  
David Waldie, Utilities Division Manager, with enclosure

POST OFFICE BOX 150027  
CAPE CORAL, FLORIDA 33915-0027

TELEPHONE (941) 574-0408  
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FPSC-RECORDS/REPORTING

DOCUMENT NUMBER-DATE  
02713 MAR 14 97  
FPSC-RECORDS/REPORTING

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.

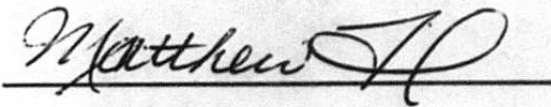
9. Both parties request that the Public Service Commission

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. Sweet - Vice President  
Florida Water Services

  
MATTHEW FEIL

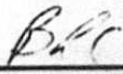
STAFF COUNCIL  
FLORIDA WATER SERVICES  
1000 Color Place  
Apopka, FL 32703  
(407) 880-0058  
Florida Bar # 0822744

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  
Post Office Box 150027  
Cape Coral, FL 33915-0027  
(941) 574-0408  
Florida Bar #368199