

GATLIN, SCHIEFELBEIN & COWDERY, P.A.

Attorneys at Law

ORIGINAL

3301 Thomasville Road, Suite 300
Tallahassee, Florida 32312

B. KENNETH GATLIN
WAYNE L. SCHIEFELBEIN
KATHRYN G.W. COWDERY

TELEPHONE (850) 885-9996
TELECOPIER (850) 885-6755
E-MAIL bk.gatlin@ocetally.com

OF COUNSEL
THOMAS F. WOODS

January 5, 1998

Blanca S. Bayo, Director
Division of Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

HAND DELIVERY

Re: Docket No. 970696-WS
Application for Extension of Service Area (Amendment of
Certificates Nos. 27-W and 24-S) by FLORIDA CITIES WATER
COMPANY in Lee County, Florida.

Dear Ms. Bayo:

Enclosed on behalf of Florida Cities Water Company for filing
in the above docket are an original and 12 copies of a Motion to
Dismiss Objection Letters.

Please acknowledge receipt of the foregoing by stamping the
enclosed extra copy of this letter and returning same to my
attention. Thank you for your assistance.

Sincerely,

Wayne L. Schiefelbein

Wayne L. Schiefelbein

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEW 1 _____
- LIN 5 _____
- OPC _____
- RCH _____
- SEC 1 _____
- WAS Redemann _____
- OTH _____

WLS/cas
Enclosures

DOCUMENT FILED DATE
00058 JAN-5 98
REPORTING

In re: Application for Extension)
of Service Area (Amendment of)
Certificates Nos. 27-W and 24-S) Docket No. 970696-WS
by FLORIDA CITIES WATER COMPANY)
in Lee County, Florida)

MOTION TO DISMISS OBJECTION LETTERS

Florida Cities Water Company (FCWC), by and through undersigned counsel, requests that the objections of Mr. Duane E. Rutledge and Mary H. Rutledge, and Jerry Shannon, to the above-captioned Application, be dismissed, and in support states the following:

BACKGROUND

1. This docket was initiated by FCWC's Request for Authority to Extend Temporary Water Service, filed with the Public Service Commission on June 9, 1997. FCWC thereby sought authority to provide temporary water service to two property owners in Lee County who had expressed an immediate need for service, with the understanding that said property owners' service locations would be included in FCWC's forthcoming Application for Extension of Service Area. By PAA Order No. PSC-97-0784-FOF-WS (July 1, 1997), the PSC granted FCWC's request.

2. On July 21, 1997, FCWC filed an Application for Extension of Service Area. After consultation with its neighboring service providers, Lee County and Gulf Utility Company, FCWC identified four areas (A", "B", "C", and "D") adjacent to the current service areas to which water and/or wastewater service would be most likely

DOCUMENT NUMBER DATE
00058 JAN-5 8
PSC 97-0784-FOF-WS

needed and most efficiently provided by FCWC in the future. By its application, FCWC seeks to extend its territories to include such areas and to avoid the expense and delay of applying for many small extensions. FCWC also seeks to add one water customer (in Area "C") served by FCWC since 1987 which was inadvertently not included in FCWC's service area. Further, the two property owners to whom temporary water service authority was previously granted are located in Area "B".

3. FCWC completed all public notice requirements as of July 30, 1997:

- a) On July 22, 1997, written notice was dispatched to all utilities and government officials identified on the PSC Staff's Notice List.
- b) On July 22, 1997, written notice was dispatched to all known property owners of record in the proposed service area.
- c) On July 22, 1997, the Notice was published in the Fort Myers News-Press.
- d) On July 30, 1997, a corrected notice was published in the Fort Myers News-Press.

4. Pursuant to PSC requirements, all said notices indicated as follows:

Any objections to the application must be filed in writing with the Director, Division of Records and Reporting, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0870 no

later than thirty (30) days after the last date that this notice was mailed or published, whichever is later.

This was followed by the statement that:

A copy of said objection should be mailed to Wayne L. Schiefelbein, Gatlin, Schiefelbein & Cowdery, P.A., 1709-D Mahan Drive, Tallahassee, FL 32308, (904) 877-5609, Attorneys for Florida Cities Water Company.

5. Thus, since July 30 was the last date on which the Notice was mailed or published, the deadline for filing an objection with the Division of Records and Reporting was August 29, 1997. No objections were filed with the PSC on or before that date.

6. On or about August 17, 1997, the undersigned counsel received a letter addressed to him from Mary H. Rutledge, Trustee, stating, without explanation, that she objected to the proposed expansion. (Exhibit "1").

7. On information and belief, Ms. Rutledge is a property owner of record within Area "C" of the requested Extension, which FCWC seeks to add to its water (not wastewater) service area.

8. On August 19, 1997, FCWC dispatched a letter to Ms. Rutledge, explaining that water service would be only an option available to her property, and offering the opportunity to discuss the matter and to answer any questions (Exhibit "2"). No response was received.

9. On August 22, 1997, the undersigned counsel received a letter from Jerry S. Shannon, addressed to the Division of Records and Reporting, indicating his objection to the proposed extension

on the basis of concern that the extension may cost him money. (Exhibit "3").

10. On information and belief, Mr. Shannon is also a property owner of record within Area "C" of the requested extension, which FCWC seeks to add to its water (not wastewater) service area.

11. On September 8, 1997, FCWC dispatched a letter to Mr. Shannon, explaining that water service would be only an option available to his property and offering the opportunity to discuss the matter and to answer any questions. (Exhibit "4"). No response was received.

12. Subsequently, it came to the attention of the undersigned counsel that the Division of Records and Reporting had not received said letters from Ms. Rutledge and Mr. Shannon, or a letter from the Southwest Florida Regional Planning Council indicating the Council Staff's recommendation that the proposed extension is consistent with the regulatory comprehensive plan.

13. Accordingly, on September 18, 1997, FCWC submitted to the Division of Records and Reporting the letters from Ms. Rutledge and Mr. Shannon, FCWC's responses thereto, and the Regional Planning Council letter. (Exhibit "5"). FCWC requested that PSC Staff contact Ms. Rutledge and Mr. Shannon to further attempt to alleviate their concerns.

14. By letters to Ms. Rutledge and Mr. Shannon dated October 24, 1997, PSC Staff inquired as to their intent regarding the

objections, and requesting advisement by November 5, 1997.

15. By letter dated October 31, 1997 and received by the Division of Records and Reporting on November 6, 1997, Mr. Duane E. Rutledge and Mary H. Rutledge responded to PSC Staff's letter, and thereby enclosed two letters of objection dated August 13, 1997. (Exhibit "6"). Mr. Shannon did not respond to PSC Staff's letter.

16. FCWC has again attempted to contact Mr. and Mrs. Rutledge by leaving telephone messages on their answering service. No response has been received.

Untimely Objections

17. Neither Mr. and Mrs. Rutledge or Mr. Shannon timely filed their objections to FCWC's Notice of Application. Their initial letters or objections were in fact submitted to the PSC by FCWC, nearly three weeks after the period for filing objections had passed. No good cause has been provided for their failure to timely file their objections. It bears further mention that neither Mr. and Mrs. Rutledge or Mr. Shannon requested a hearing before the PSC.

Substantial Interest Not Affected

18. Before one can be considered to have a substantial interest in the outcome of the proceeding (s)he must show 1) that (s)he will suffer injury in fact which is of sufficient immediacy to entitle him or her to a Section 120.57 hearing, and 2) that his or her substantial injury is of a type or nature which the

proceeding is designed to protect. Agrico Chemical Company vs. Department of Environmental Regulation, 406 So. 2d 478, 482 (2d DCA, 1981)


19. Both of the Agrico requirements must be met to establish standing in an administrative proceeding. Mr. and Mrs. Rutledge's and Mr. Shannon's letters fail to meet either prong of this test for substantial interest.

20. At best, it appears that Mr. and Mrs. Rutledge and Mr. Shannon are property owners within an area to which FCWC seeks to include in its water service area; that they are currently meeting their own needs for water service from private wells; and that they do not need or want water service from FCWC.

21. FCWC does not seek to force its water service on Mr. and Mrs. Rutledge or Mr. Shannon. It has no authority to mandate water service connections. It seeks instead to provide the option of central water service availability to property owners within Area "C" of its requested extension.

Based on the foregoing, Florida Cities Water Company requests that the PSC dismiss the objection letters of Mr. and Mrs. Rutledge and Mr. Shannon.

Respectfully submitted,



Wayne L. Schiefelbein
Gatlin, Schiefelbein & Cowdery, P.A.
3301 Thomasville Road, Suite 300
Tallahassee, FL 32312
PH: (850) 385-9996

Attorneys for Florida Cities Water
Company

Certificate of Service

I the undersigned hereby certify that a true and correct copy of the foregoing Motion to Dismiss was sent by U.S. Mail to Mr. and Mrs. Duane E. Rutledge, 832 Sunset Vista Drive, Fort Myers, FL 33919, and Mr. Jerry S. Shannon, 16200 S. Pebble Lane, Fort Myers, Florida 33912, and hand delivered to Jennifer Brubaker, Esq., Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, on this 5th day of January, 1998.


Wayne L. Schiefelbein

Mary H. Rutledge
832 Sunset Vista Drive
Fort Myers, FL 33919

August 13, 1997

Wayne L. Schiefelbein
Gatin, Schiefelbein & Cowdery, P.A.
1709-D Mahan Drive
Tallahassee, FL 32308

Re: 09-46-25-00-00007.0000
09-46-25-05-00191.0480

Pursuant to the letter I just now received regarding Florida Cities Water Company expanding water and wastewater territory in my area, I object to said expansion.

Sincerely,

Mary H. Rutledge
Mary H. Rutledge

FLORIDA CITIES WATER COMPANY

August 19, 1997

Mary H. Rutledge
832 Sunset Vista Drive
Fort Myers, FL 33919

Dear Ms. Rutledge:

Wayne Schiefelbein, Esq., has asked me to contact you in response to your recent letter concerning the proposed expansion of Florida Cities Water Company's service area.

Your letter cited a specific concern re: Sections 6 and 9. The proposal applies to water only in these Sections, providing a potential for service where none presently exists. As a private utility, all we can do is offer to make service available in our certificated area, we have no authority to require connections to our system.

In summary, the expansion provides another option to property owners. It requires nothing of them.

I hope this explanation addresses your concerns. If you would care to call me at 936-0247 extension 214, I would be pleased to discuss the matter with you and answer any questions that you might have.

Sincerely,
FLORIDA CITIES WATER COMPANY


Roger Ytterberg
Regional Manager

cc: Wayne L. Schiefelbein

Rutledge/ty97

RECEIVED

AUG 22 1997

OFFICE OF
WAYNE L. SCHIEFELBEIN

August 19, 1997

The Director
Division of Records and Reporting,
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Fla. 32399-0870

Dear Sir:

The proposed addition to add water lines to Section 6, Township 46 South, Range 25 East, All the Section, Less the South 1320 feet thereof in Briarcliff is totally unacceptable. I have lived on South Pebble Lane since 1989. During this time we have sunk a 200 foot well, and dug not one but two drain fields. We have also purchased above the ground well equipment. But all these expenditures pale in comparison to the MSBU taxing unit which was established to pave South Pebble and control the overflow of water. Therefore, let it be crystal clear to you, that I do not, under any circumstances wish to invest any more money in improvements that will cost me money today as well as all my tomorrows.

Sincerely,

Jerry S. Shannon .

**FLORIDA CITIES
WATER COMPANY**

RECEIVED

SEP 11 1997

September 8, 1997

OFFICE OF
WAYNE L. SCHIEFELBEIN

Jerry S. Shannon
16200 South Pebble Lane
Fort Myers, FL 33912

**RE: WATER FRANCHISE EXPANSION, SECTION 6, TOWNSHIP 46 SOUTH, RANGE
25 EAST**

Dear Mr. Shannon:

We have been asked to add a response to your letter of August 19, 1997 to the Florida Public Service Commission.

You expressed concern re: the possibility of mandatory connections and the creation of an MSBU to finance build-out. Your concern is understandable but you may rest assured that, as an investor-owned utility, all we can do is to offer to make service available to property owners in a service territory. We have no authority to mandate connections. Furthermore, we cannot create a bonding or taxing unit as that is a function of government that would require a referendum.

In summary, the proposed expansion provides another option to property owners. It requires nothing of them.

I trust this properly addresses your concerns. If you would care to call me at 936-0247 extension 214, I would be pleased to discuss the subject with you and attempt to answer any additional questions you may have.

Sincerely,
FLORIDA CITIES WATER COMPANY


Roger Ytterberg
Regional Manager

cc: Wayne L. Schiefelbein
Douglas Young

GATL N, SCHIEFELBEIN & COWDERY, P.A.

Attorneys at Law

The Mahan Station
1709-D Mahan Drive
Tallahassee, Florida 32308

B. KENNETH GATLIN
WAYNE L. SCHIEFELBEIN
KATHRYN G.W. COWDERY

OF COUNSEL
THOMAS F. WOODS

RECEIVED

SEP 18 1997

FPSC - Records/Reporting
TELEPHONE (850) 497-3009
TELECOPIER (850) 877-9031
E-MAIL: bkgatlin@ncually.com

September 18, 1997

Blanca S. Bayo, Director
Division of Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

HAND DELIVERY

Re: Docket No. 970696-WS
Application for Extension of Service Area (Amendment of
Certificates Nos. 27-W and 24-S) by FLORIDA CITIES WATER
COMPANY in Lee County, Florida.

Dear Ms. Bayo:

I have reviewed the docket file for the above proceeding and was surprised to find that it did not include the following correspondence.

1. August 7, 1997 letter from the Staff of the Southwest Florida Regional Planning Council, addressed to you, indicating Staff's recommendation that the proposed extension is consistent with the regional comprehensive plan.
2. August 13, 1997 letter from Mary H. Rutledge, addressed to me, indicating her objection to the proposed extension.
3. August 19, 1997 letter from Jerry S. Shannon, addressed to you, indicating his objection to the proposed extension on the basis of concern that the extension may cost him money.

Both Ms. Rutledge and Mr. Shannon are property owners of record in Area "C" of the requested extension. Please note that Florida Cities Water Company seeks to add Area "C" to its water (not wastewater) service area.

RECEIVED & FILED**FPSC-BUREAU OF RECORDS**

Blanca S. Bayo, Director
Division of Records & Reporting
Docket No. 970696-WS
September 18, 1997
Page 2

Florida Cities Water Company has sent letters to Ms. Rutledge and Mr. Shannon to attempt to alleviate their concerns. As indicated therein, the proposed extension would, if approved, impose no obligations on them if they do not wish to receive central water service. No response to our letters has been received.

While we do not believe that the objections of Ms. Rutledge and Mr. Shannon are legally valid, we believe that the Commission should be aware of them.

We request that Commission Staff contact Ms. Rutledge and Mr. Shannon to further attempt to alleviate their concerns.

All of the foregoing correspondence is enclosed herewith for filing in the referenced docket.

Please acknowledge receipt of the foregoing by stamping the enclosed extra copy of this letter and returning same to my attention. Thank you for your assistance.

Sincerely,



Wayne L. Schiefelbein

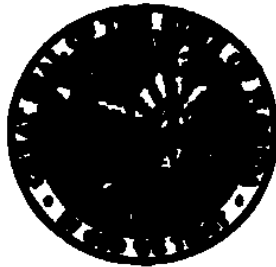
WLS/pav
Enclosures

cc w/encl.: Wayne E. Daltry, Southwest Florida Regional
Planning Counsel
Mary H. Rutledge
Jerry S. Shannon
Doug Young
Roger Ytterberg
Lila Jaber, Esq. (Hand Delivery)
John Williams (Hand Delivery)

EXHIBIT 6

Date: Nov. 25, 1997

STATE OF FLORIDA



PUBLIC SERVICE COMMISSION

2540 SHUMARD OAK BOULEVARD
CALLAHAN, FL 32399-0850

TO:

Wayne Schiefelbein, Esq.
Gartin, Schiefelbein & Cowdery

Fax: 877-9031

FROM:

Jennifer Brubaker
FPSC

Fax: 413-6250

Telephone: 413-6228

NUMBER OF PAGES:
(including cover page)

5

Note: Florida Cities 970696-WS
Attached please find letter w/
enclosures from Mr Rutledge,
dated Oct. 31, 1997.

1292

RECEIVED
NOV 5 9 13 AM '97
ADMINISTRATIVE
MAIL ROOM

Duane E. and Mary H. Rutledge
832 Sunset Vista Drive
Fort Myers, FL 33919

RECEIVED

NOV - 6 1997

FPSC - Records/Reporting

October 31, 1997

Public Service Commission
Capital Circle Office Center
Attn: Jennifer S. Brubaker
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

970696-WS

Re: Docket No. 970696-WS - Request for authority to extend temporary water service by Florida Cities Water Company - Lee County Division, and for amendment of Certificates 27-W and 24-S to include territory in Lee County

Re: 06-46-25-00-00007.0000
09-46-25-05-00191.0480

Dear Ms. Brubaker:

As I spoke with you on the phone, I am listing my objections to the proposed water service.

1. We object to the fact that we would become a customer if this is approved and we do not want it.
2. This service will affect our property value and assessment which we do not want.
3. We have absolutely no need for this service.
4. This would only duplicate a service which we successfully provide for ourselves.
5. Our perception of the financial ability and stability of the company will directly affect quality of service with this being a service for profit and profit will dictate the quality of water.
6. We do not want the susceptibility of centralized service to biological hazards or even internal/external espionage.
7. Natural disasters wiping out services for blocks of time.
8. My perception of down time from system failures and faults due to incompetent employees.

ACK _____
 AFA _____
 AFP _____
 CAF _____
 CMU _____
 CTR _____
 EAG _____
 LEG I _____
 LIN _____
 OFC _____
 RCH _____
 SEC I _____
 WAS I _____
 OTH _____

DOCUMENT NUMBER-DATE
12023 NOV 24 5
FPSC-RECORDS/REPORTING

Public Service Commission/Page Two

9. The service fees would be prohibitive and cost of service outrageous.
10. Talking to many existing customers and they do not have one good thing to say about their service.
11. The potability of your water would always be in question.
12. We do not want to be forced to depend on your service. We grow our own pork and only buy from Publix when we feel like it.
13. We have since spoken to potential customers that are in this proposed area. They don't want the service you propose, but did not receive proper information on time, or proper explanation of ramifications, and only feel the dollar-profit-hungry Florida Cities Water will lawyer and dollar their way in even if they object.
14. What part of NO is not understood here?
15. This gives one company too much influence (monopoly) in one area.
16. The aggressive nature of a utility company is not to serve but to acquire new areas with disregard to private citizens autonomy, thus not truly giving anything, but being in the posture of taking away.
17. Finally, since when have you seen a voluntary utility that did not turn mandatory at a later date under some law/ordinance/permitting/policy/planning process?

We cannot afford a lawyer to represent us and this is ridiculous that we should have to do it just to protect our domicile and property. Any further correspondence regarding this matter should be addressed to my husband who will represent me and our interests should you need it in a formal proceeding. I have enclosed a copy of my original letters as you requested.

Sincerely,


Duane E. Rutledge


Mary H. Rutledge

Enclosures

COPY

Mary H. Rutledge
832 Sunset Vista Drive
Fort Myers, FL 33919

August 13, 1997

Director, Division of Records and Reporting
Florida Public Service Commission
2540 Stansard Oak Boulevard
Tallahassee, FL 32399-0870

Re: 06-46-25-00-00007.0000
09-46-25-05-00191.0480

Pursuant to the letter I just now received regarding Florida Cities Water Company expanding water and wastewater territory in my area, I in no way, shape or form want to be a part of your service at this time. Neither do I want any taxes or mandatory levies placed upon my property for your service. I have spoken with several of your existing customers and they complained of poor service, poor quality of water, high fees, and general dissatisfaction with no way out. I am adequately serviced by my own well and septic system where I can safely monitor the quality of water my family and I use and keep my cost down. Potability of your water is always in question and you do not adequately inform the public of the problem until way after the fact. I do not want to be forced to depend upon your services.

If in the future, I should decide I want to subscribe to your service, I will at that time pay the necessary hookup fees providing they were within reason. At this time, I am not interested in supporting a Public/Private for Profit company to come in and lay water lines and expect me to foot the bill. I will loudly protest any and all fees associated with this.

As a private property owner, I don't want the Florida Public Service Commission or Florida Cities Water determining for me what's in my best interest and deciding somehow that I am automatically or mandatorily going to support their decision.

To receive this letter on such short notice and allowing only thirty days for an objection does not build trust nor is it appreciated

Sincerely,

Mary H. Rutledge

COPY

Mary H. Rutledge
832 Sunset Vista Drive
Fort Myers, FL 33919

August 13, 1997

Wayne L. Schiefelhorn
Galka, Schiefelhorn & Cowdery, P.A.
1709-D Mahan Drive
Tallahassee, FL 32308

Re: 06-46-25-00-00007.0000
09-46-25-03-00191.0480

Pursuant to the letter I just now received regarding Florida Cities Water Company expanding water and wastewater territory in my area, I object to said expansion.

Sincerely,

Mary H. Rutledge