

FLORIDA PUBLIC SERVICE COMMISSION
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Tallahassee, Florida 32399-0850

MEMORANDUM

FEBRUARY 26, 1998

RECEIVED

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FPSC - Records Reporting

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER & WASTEWATER (REDFORD) *MSM*
DIVISION OF LEGAL SERVICES (VACCARO) *JDW*

RE: DOCKET NO. 961531-WU - APPLICATION FOR AMENDMENT OF
CERTIFICATE NO. 347-W BY MARION UTILITIES, INC.
COUNTY: MARION

AGENDA: MARCH 10, 1998 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\WAW\WP\961531WU.RCM

DOCKETS NOS. 961531-WU, 971498-WU, AND 971157-WS SHOULD BE
PLACED ON THE AGENDA IN CONSECUTIVE ORDER AS LISTED.

DOCUMENT NUMBER DATE

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FPSC-RECORDS/REPORTING

DOCKET NO. 961531-WU
DATE: FEBRUARY 26, 1998

CASE BACKGROUND

Marion Utilities, Inc. (Marion or utility) provides water and wastewater service to approximately 4,311 water customers and 118 wastewater customers in Marion County, Florida. The utility's 1996 annual report shows an annual operating revenue of \$932,844 and a net operating income of \$80,004. The utility is a Class A utility company under Commission jurisdiction.

On December 24, 1996, the utility applied for an amendment to Water Certificate No. 347-W in Marion County, Florida pursuant to Rule 25-30.036(3), Florida Administrative Code. Decca Utilities, Inc. (Decca) objected to Marion serving this area on January 22, 1997. On November 13, 1997, a stipulation was filed between Decca and Marion. Part of the agreement was that Marion would delete three parcels of land that were originally granted to Marion and Decca would serve these areas with water and wastewater.

This docket was the first of three interrelated dockets filed with the Commission. Decca filed an amendment application in Docket No. 971157-WS to serve the area that Marion was to delete, in addition to other areas. By Docket No. 971498-WU, Marion filed an amendment application to delete the three areas listed in the settlement agreement. The other dockets will be addressed following the Commission's decision in this docket.

Staff has authority to administratively approve applications for amendment when no objections have been filed and the application is without controversy. This case is being brought to the attention of the Commission because there was an objection. The settlement agreement will be addressed in Issue 1.

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DISCUSSION OF ISSUES

ISSUE 1: Should the settlement agreement between Marion Utilities, Inc. and Decca Utilities be approved by the Commission?

RECOMMENDATION: Yes, the settlement agreement between Marion Utilities, Inc. and Decca Utilities should be approved. (VACCARO, REDEMANN)

STAFF ANALYSIS: As stated in the case background, on January 22, 1997, Decca filed an objection to MUI's application for amendment. Subsequently, the parties initiated negotiations for settlement of Decca's protest. As a result of those negotiations, MUI agreed to delete certain portions of its existing service territory which Decca would seek to add to its territory. In addition, Decca would agree to withdraw its objection in Docket No. 961531-WU.

In October of 1997 pursuant to their agreement, Decca filed an application for amendment of its territory to add portions of MUI's territory. Decca's amendment application is being processed under Docket No. 971157-WS. On November 13, 1997, MUI filed a corresponding application for deletion of its territory sought by Decca. This application is being processed under Docket No. 971498-WU.

On October 31, 1997, the parties entered into a settlement agreement which was filed with the Division of Records and Reporting on November 13, 1997. The settlement agreement is attached to this recommendation (Attachment A) and is self explanatory. It basically provides the following:

MUI agrees to a deletion of property in its existing service territory as described in Exhibits "A", "B" and "C" of the settlement agreement, in connection with Decca's application for amendment to add this territory;

Decca agrees to reimburse MUI the sum of \$600 for connections made by Decca within the property described in Exhibit "A" of the settlement agreement;

MUI agrees not to file objections to Decca's amendment applications in Docket No. 971157-WS;

Decca agrees not to file any objections to future amendment applications filed by MUI, provided that such amendments are not contrary to Decca's plans for regional service;

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Upon the Commission's approval of MUI's deletion of the property described in Exhibits "A", "B" and "C" of the settlement agreement, Decca agrees to a voluntary dismissal of its objection in Docket No. 961531-WU with prejudice.

Staff recommends that the settlement agreement entered into by the parties on October 31, 1997 and filed with the Division of Records and Reporting on November 13, 1997, be approved as a reasonable resolution of their dispute.

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ISSUE 2: Should Marion's application for amendment of Water Certificate No. 347-W be granted?

RECOMMENDATION: Yes, Marion's application should be granted for the additional territory described in Attachment B. Marion should 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. (REDEMANN)

STAFF ANALYSIS: As stated earlier, on December 24, 1996, the utility filed an application for amendment of Certificate No. 347-W to add territory in Marion County. The application contains a check in the amount of \$1,000, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The utility has provided a copy of a 50-year lease for the Spruce Creek North Water Plant, and a copy of a warranty deed for the Woods and Meadows Water Plant 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. A description of the water territory is appended to this recommendation as Attachment B. 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. The local planning agency was provided notice of the application and did not file a protest to the amendment. As stated in Issue 1 Decca filed an objection, and a settlement agreement was filed on November 13, 1997.

The utility states that the provision of service will be consistent with the utility section of the local comprehensive plan. Service will be provided by the utility's Spruce Creek North Water Plant (Spruce Creek), and the Woods and Meadows Water Plant (Woods and Meadows). Spruce Creek has a current capacity of 420,000 gallons per day (gpd) with a recent addition of a new well. Two additional 10,000 gallon storage tanks will be added shortly, when the construction is complete Spruce Creek will have a capacity of 1,000,000 gpd. This expansion will provide fire flow to the area. The current maximum peak day flow is 240,000 gpd with the average monthly flow of 107,700 gpd. The Woods and Meadows has a current capacity of 370,000 gpd with a peak day flow of 183,000 gpd, and the average monthly flow is 116,800 gpd. The majority of

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the area will be serviced from the Spruce Creek facility. The Woods and Meadows facility will be used for back-up. There will be initially 400 residential homes built in this area with another 150 planned to be constructed. Ultimately the utility believes that 1500 homes will be built in the area. With the expansion of the Spruce Creek water treatment plant the utility has adequate capacity to serve this area in the future.

The utility employs four Class C Operators to operate and maintain its water plants and facilities. Staff has contacted the Department of Environmental Protection and learned that there are no outstanding notices of violation issued for this system. The utility's annual report indicates a positive return on its investment of approximately \$80,004. Construction for the facilities to serve the area will initially be financed by the developers. However, the utility intends to file a service availability case once all the costs for construction are known, which will increase its connection charges to recover those costs. This will be the primary source of funds to repay the developers. Consequently, staff believes the utility has demonstrated the technical expertise and financial ability to provide quality service to these customers. The utility has filed revised tariff sheets incorporating the additional territory into its tariff and returned its certificate for entry reflecting the additional territory.

Marion's approved rates were effective September 30, 1995, pursuant to Order No. PSC-95-1193-POF-WS, issued September 22, 1995 in Docket No. 950170-WS, an investigation for possible overearnings case. Marion's approved charges for the Woods and Meadows facility were effective January 21, 1992, pursuant to Order No. 25565, issued January 3, 1992 in Docket No. 910770-WU. Marion's approved charges for the Spruce Creek facility were effective January 21, 1992, pursuant to Order No. 25563, issued January 3, 1992 in Docket No. 910793-WU. Marion should 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.

Based on the above information, staff believes it is in the public interest to grant the application of Marion Utilities, Inc. for amendment of Water Certificate No. 347-W, to add the additional territory described 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.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed. (VACCARO)

STAFF ANALYSIS: No further action will be required and the docket should be closed.

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ATTACHMENT A
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SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made and entered into by and between Marion Utilities, Inc. and DECCA Utilities.

W I T N E S S E T H

WHEREAS, Marion Utilities, Inc. has filed an application with the Florida Public Service Commission ("PSC") for an amendment to its Water Certificate, which application has been assigned PSC Docket No. 961531-WU; and,

WHEREAS, DECCA Utilities has filed a protest of that application with the PSC; and,

WHEREAS, the parties desire to amicably resolve this dispute without additional time and expense.

NOW, THEREFORE, for and in consideration of the mutual covenants set forth herein, the parties agree as follows:

1. The foregoing recitations are true and correct and incorporated herein.

2. Marion Utilities, Inc. agrees to a deletion from its service area of the property described in Exhibits "A", "B", and "C" hereto. The parties will cooperate in accomplishing that deletion in connection with DECCA Utilities' application to the PSC for an amendment to its existing Water and Wastewater Certificates which is pending before the PSC in PSC Docket No. 971157-W5 or as part of PSC Docket No. 961531-WU, whichever is determined to be most expedient. Should the PSC require a separate application be filed by Marion Utilities, Inc. to accomplish the deletion of the service area described in Exhibits "A", "B", and "C" hereof, then

Marion Utilities, Inc., at its sole expense, shall file such application within 30 days of notice of such requirement. DECCA Utilities shall cooperate with Marion Utilities, Inc.'s application for deletion of that portion of Marion Utilities, Inc.'s service area described in Exhibits "A", "B", and "C" hereto, including but not limited to providing maps and legal descriptions of the property to be debated.

3. DECCA Utilities will reimburse Marion Utilities, Inc. within 30 days after the PSC's approval of the Agreement the sum of \$ 600.00 for connections made by DECCA Utilities within the property described on Exhibit "A" hereto.

4. Marion Utilities, Inc. agrees not to protest DECCA Utilities application to the PSC to amend its Water and Wastewater Certificate, in PSC Docket No. 971157-WS. Marion Utilities, Inc. also agrees not to object to DECCA Utilities' application for an amendment of its Water and Wastewater Certificates filed in PSC Docket No. 971053-WS.

5. DECCA Utilities will not object to future Certificate Amendments by Marion Utilities, Inc. provided that such Amendment is not contrary to Marion County's plans for regional service.

6. DECCA Utilities will not file any objections to any permit modifications requested by Marion Utilities, Inc. to provide service within its PSC certificated service area.

7. Upon the PSC's approval of the deletion from Marion Utilities, Inc.'s Water Certificate of the property described in Exhibits "A", "B", and "C" hereto, DECCA agrees to file with the

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PSC in Docket No. 961531-WU a voluntary dismissal of its objection with prejudice.

8. The parties agree to take such other actions and execute other such documents as are necessary to implement this Settlement Agreement.

9. Should either party be required to initiate civil or administrative actions to enforce the terms of this Settlement Agreement, then the prevailing party shall be entitled to reasonable attorneys fees and costs, including those on appeal.


10. This Settlement Agreement is subject to the approval of the PSC. If this Settlement Agreement is not approved by the PSC exactly as written, then it shall become null and void.

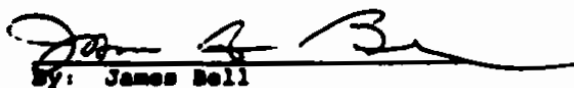
11. This Agreement sets forth all the covenants, promises, agreements, conditions and understandings between the parties concerning the leased premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties unless reduced to writing and signed by them.

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as of October 21, 1997.

MARION UTILITIES, INC.

DECCA UTILITIES

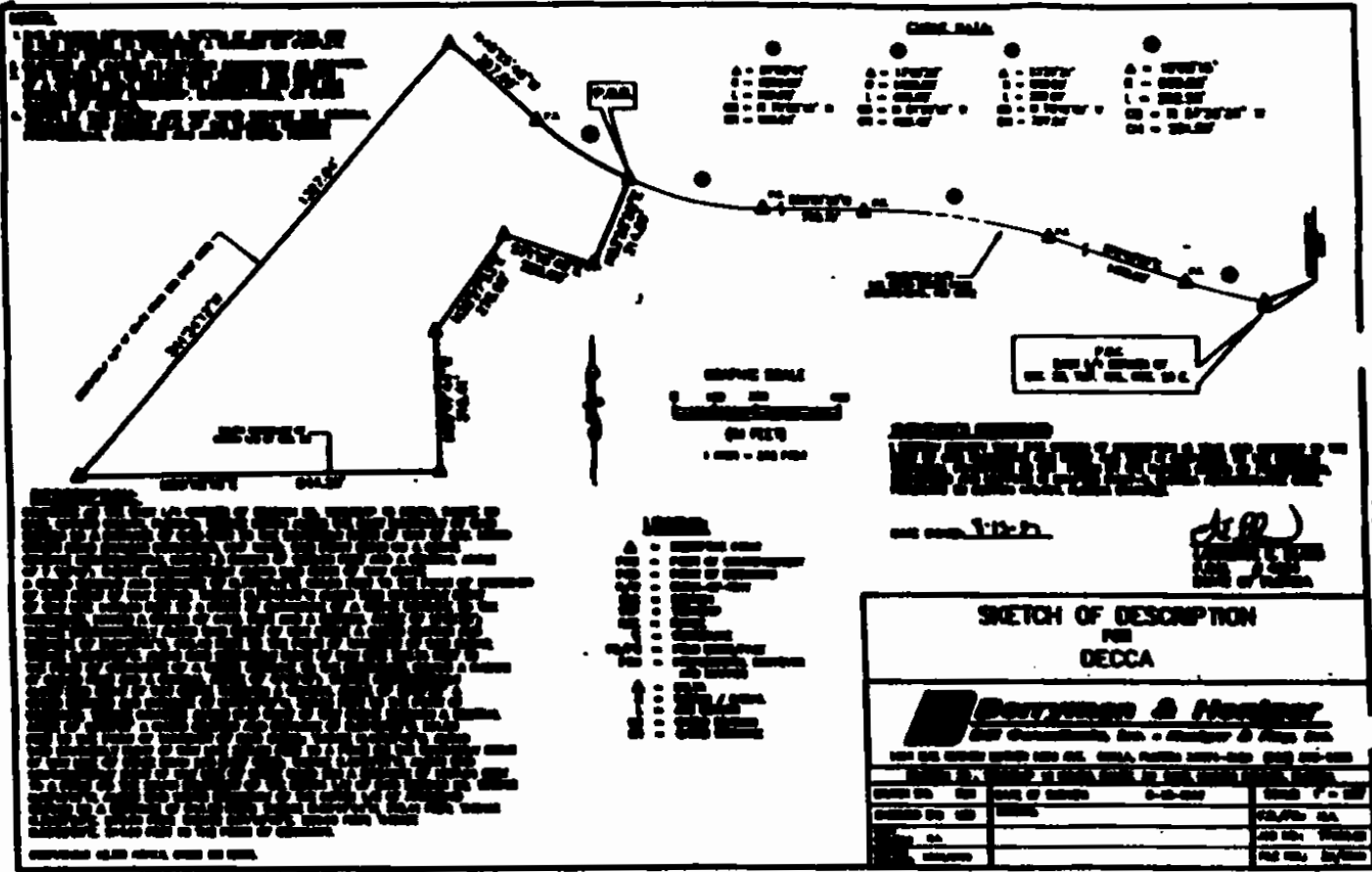

By: Tim E. Thompson
President


By: James Bell
Secretary

amco/mtt/le agr

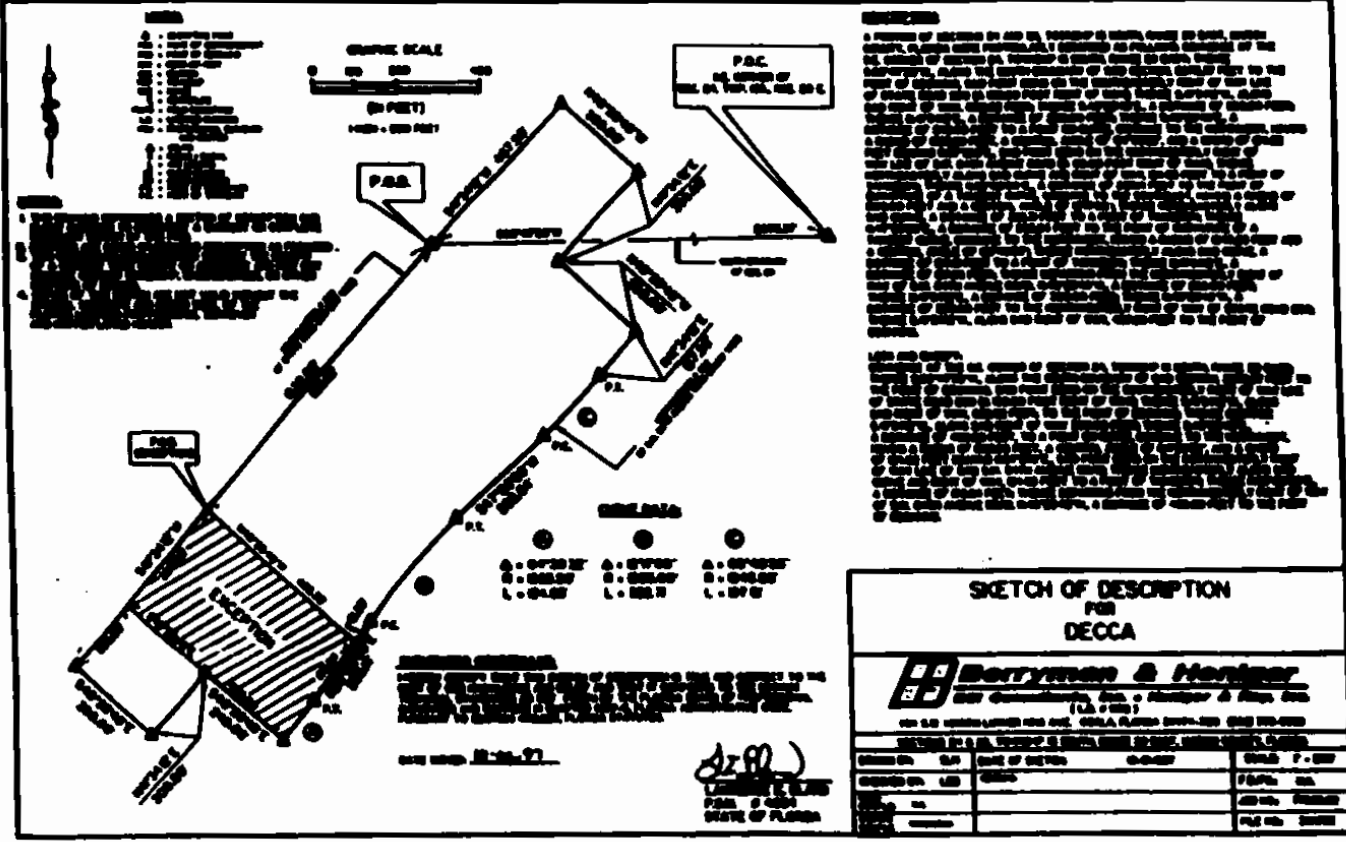
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MARION UTILITIES, INC.

TERRITORY DESCRIPTION - MARION COUNTY

THE AREA WILL BE SERVED FROM THE SPRUCE CREEK NORTH
WATER PLANT AND THE WOODS AND MEADOWS WATER PLANT

Water Service Area Addition

SECTION 27 AND PORTIONS OF SECTIONS 22, 28, 29, 32, 33 AND 34, TOWNSHIP 16
SOUTH, RANGE 21 EAST, MARION COUNTY, FLORIDA, MORE PARTICULARLY
DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHEAST CORNER OF SECTION 27, TOWNSHIP 16 SOUTH, RANGE
21 EAST, MARION COUNTY, FLORIDA; THENCE S.00°40'40"W., ALONG THE EAST
BOUNDARY LINE OF THE N.E. 1/4 OF SAID SECTION, 2654.18 FEET TO THE NORTHEAST
CORNER OF THE S.E. 1/4 OF SAID SECTION; THENCE S.00°40'23"W., ALONG SAID EAST
BOUNDARY LINE, A DISTANCE OF 2653.63 FEET TO THE SOUTHEAST CORNER OF SAID
SECTION; THENCE S.00°45'15"W., ALONG THE EAST BOUNDARY LINE OF N.E. 1/4 OF
SECTION 34, TOWNSHIP 16 SOUTH, RANGE 21 EAST, 2664.49 FEET TO THE NORTHEAST
CORNER OF THE S.E. 1/4 OF SAID SECTION; THENCE S.00°04'49"W., A DISTANCE OF
659.91 FEET; THENCE N. 89°24'06"W., A DISTANCE OF 2626.36 FEET; THENCE
S.00°32'00"W., A DISTANCE OF 662.43 FEET; THENCE N.89°26'24"W., A DISTANCE OF
2641.08 FEET; THENCE N.89°36'01"W., A DISTANCE OF 2651.47 FEET; THENCE
N.89°35'43"W., A DISTANCE OF 2645.28 FEET; THENCE N.89°34'59"W., A DISTANCE OF
1331.97 FEET; THENCE N. 19°46'49"W., A DISTANCE OF 83.19 FEET TO THE POINT OF
CURVATURE OF A TANGENT CURVE, CONCAVE TO THE SOUTHWEST, HAVING A
RADIUS OF 570.00 FEET AND A CENTRAL ANGLE OF 47°42'05"; THENCE
NORTHWESTERLY ALONG SAID CURVE, A DISTANCE OF 474.55 FEET TO THE POINT
OF TANGENCY; THENCE N.67°28'54"W., A DISTANCE OF 319.52 FEET TO THE POINT OF
CURVATURE OF A TANGENT CURVE, CONCAVE TO THE NORTHEAST, HAVING A
RADIUS OF 850.00 FEET AND A CENTRAL ANGLE OF 57°24'46"; THENCE
NORTHWESTERLY ALONG SAID CURVE, A DISTANCE OF 851.74 FEET TO THE POINT
OF TANGENCY; THENCE N.10°04'08"W., A DISTANCE OF 1108.52 FEET TO THE POINT
OF CURVATURE OF A CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF
25.00 FEET, A CENTRAL ANGLE OF 90°00'01", AND A CHORD OF 35.36 FEET BEARING
N.55°04'09"W., THENCE NORTHWESTERLY ALONG SAID CURVE, A DISTANCE OF 39.27
FEET TO A POINT ON THE EAST RIGHT OF WAY OF AQUEDUCT ROAD; THENCE
N.79°55'52"E., ALONG THE SAID RIGHT OF WAY 449.36 FEET TO THE POINT OF
CURVATURE OF A TANGENT CURVE, CONCAVE TO THE NORTHWEST, HAVING A

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MARION UTILITIES, INC.

TERRITORY DESCRIPTION - MARION COUNTY

THE AREA WILL BE SERVED FROM THE SPROUCE CREEK NORTH
WATER PLANT AND THE WOODS AND MEADOWS WATER PLANT

Water Service Area Addition

RADIUS OF 1300.00 FEET AND A CENTRAL ANGLE OF 41°31'17"; THENCE NORTHEASTERLY ALONG SAID CURVE, A DISTANCE OF 942.09 FEET TO THE POINT OF TANGENCY; THENCE N.38°24'35"E, A DISTANCE OF 827.35 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE, CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 1040.00 FEET AND A CENTRAL ANGLE OF 25°45'42", THENCE NORTHEASTERLY ALONG SAID CURVE, A DISTANCE OF 467.61 FEET TO THE POINT OF TANGENCY; THENCE N.12°38'53"E, A DISTANCE OF 505.73 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE, CONCAVE TO THE WEST, HAVING A RADIUS OF 1940.00 FEET AND A CENTRAL ANGLE OF 37°46'13"; THENCE NORTHERLY ALONG SAID CURVE, A DISTANCE OF 1278.88 FEET TO THE POINT OF CURVATURE OF A REVERSE CURVE, CONCAVE TO THE EAST, HAVING A RADIUS OF 460.00 FEET, A CENTRAL ANGLE OF 31°00'43", AND A CHORD OF 245.95 FEET BEARING N.09°36'59"W.; THENCE NORTHERLY ALONG SAID CURVE, A DISTANCE OF 248.98 FEET TO THE POINT OF TANGENCY; THENCE N.05°53'23"E, A DISTANCE OF 110.00 FEET TO A POINT OF INTERSECTION ON THE EAST RIGHT OF WAY OF AQUEDUCT ROAD AND THE SOUTH RIGHT OF WAY OF HIALEAH ROAD; THENCE S.84°06'37"E, ALONG SAID SOUTH RIGHT OF WAY 1825.00 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE, CONCAVE TO THE NORTH, HAVING A RADIUS OF 1949.88 FEET AND A CENTRAL ANGLE OF 15°24'09"; THENCE EASTERLY ALONG SAID CURVE, A DISTANCE OF 524.18 FEET TO THE POINT OF TANGENCY; THENCE N.80°29'14"E, A DISTANCE OF 1576.64 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE, CONCAVE TO THE NORTH, HAVING A RADIUS OF 1949.83 FEET AND A CENTRAL ANGLE OF 05°58'43"; THENCE EASTERLY ALONG SAID CURVE, A DISTANCE OF 203.46 FEET; THENCE N.74°30'31"E, A DISTANCE OF 1390.97 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE, CONCAVE TO THE SOUTH, HAVING A RADIUS OF 1870.00 FEET AND A CENTRAL ANGLE OF 16°12'06"; THENCE EASTERLY ALONG SAID CURVE, A DISTANCE OF 528.79 FEET TO THE POINT OF TANGENCY; THENCE S.89°17'23"E, A DISTANCE OF 230.34 FEET TO A POINT ON THE WEST BOUNDARY LINE OF THE S.W. 1/4 OF SECTION 27, TOWNSHIP 16 SOUTH, RANGE 21 EAST, THENCE N.00°36'27"E,

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MARION UTILITIES, INC.

TERRITORY DESCRIPTION - MARION COUNTY

THE AREA WILL BE SERVED FROM THE SPRUCE CREEK NORTH
WATER PLANT AND THE WOODS AND MEADOWS WATER PLANT

Water Service Area Addition

ALONG SAID WEST BOUNDARY LINE A DISTANCE OF 40.00 FEET TO THE S.W. CORNER OF THE N.W. 1/4 OF SAID SECTION; THENCE N.00°36'27"E, ALONG THE WEST BOUNDARY OF THE N.W. 1/4 OF SAID SECTION, 2657.38 FEET TO THE NORTHWEST CORNER OF SAID SECTION; THENCE N.00°27'12"E, ALONG THE WEST BOUNDARY LINE OF THE S.W. 1/4 OF SECTION 22, TOWNSHIP 16 SOUTH, RANGE 21 EAST, 2638.88 FEET TO THE N.W. CORNER OF THE S.W. 1/4 OF SAID SECTION; THENCE S.89°25'45"E, A DISTANCE OF 5280.49 FEET TO THE NORTHEAST CORNER OF THE S.E. 1/4 OF SAID SECTION; THENCE S.00°39'27"W, ALONG THE EAST BOUNDARY LINE OF SAID SECTION 2653.96 FEET TO THE POINT OF BEGINNING.