

 **LEE COUNTY**
SOUTHWEST FLORIDA

BOARD OF COUNTY COMMISSIONERS

Writer's Direct Dial Number: (941) 335-2236

John E. Manning
District One

June 2, 1999

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District Two

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District Four

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District Five

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County Manager

James G. Yaeger
County Attorney

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County Hearing Examiner

Blanca S. Bayó
Director, Division of Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
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BY: FACSIMILE & FEDERAL EXPRESS

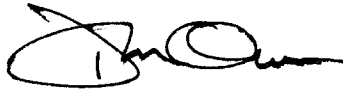
**RE: LEE COUNTY'S FORMAL WITHDRAWAL OF OBJECTION TO
APPLICATION FOR ORIGINAL WATER CERTIFICATE BY TOWN
AND COUNTRY UTILITY COMPANY IN LEE COUNTY, FLORIDA,
FPSC DOCKET NO. 981288-WU**

Dear Ms. Bayó:


Please accept for filing, the original and six (6) copies of Lee County's Formal Withdrawal of Objection to Application for Original Water Certificate by Town and Country Utility Company in the above docket.

Please acknowledge receipt of the foregoing by stamping the enclosed additional copy of this letter and returning same to me at your convenience. Thank you for your assistance in this matter.

Cordially,



David M. Owen
Assistant County Attorney

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DMO:dm
Enclosures

- xc: James G. Yaeger, County Attorney
Robert W. Gray, Deputy County Attorney
J.W. French, P.E., Director, Public Works Administration
Larry Johnson, P.E., Director, Environmental Services
Glenn Greer, P.E., Director, Lee County Utilities
James F. Garner, Esq., Pavese, Garner, et al.
F. Marshall Deterding, Esq., Rose, Sundstrom & Bentley, LLP
Rosanne Gervasi, Esq., Florida Public Service Commission
Donna Clemons, Esq., Florida Public Service Commission

- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG _____
- MAS _____
- OPC _____
- RRR _____
- SEC _____
- WAW _____
- OTH _____

DOCUMENT NUMBER-DATE
06858 JUN-3 99
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of Town and Country)
Utilities Company to operate a water)
utility in Charlotte and Lee Counties,)
Florida)
_____)

DOCKET NO. 981288-WU

WITHDRAWAL OF OBJECTION

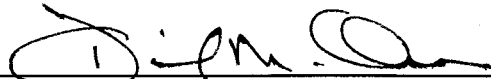
The Board of County Commissioners of Lee County, Florida (the "Board"), hereby files this Withdrawal of Objection to the Application of Town and Country Utilities Company ("Applicant") for an original water certificate, and in support hereof states as follows:

1. This Withdrawal of Objection relates to the Application of Town and Country Utilities Company for an original water certificate filed October 8, 1998 (the "Application") and the Board's Objection to that Application filed on November 4, 1998 (the "Objection").
2. The Board is the governing body in and for Lee County, Florida, a political subdivision of the State, and a County affected by the Application.
3. On May 25, 1999, the Board and the Applicant entered into a Stipulated Memorandum of Agreement ("M.O.A.") wherein the Board agreed in settlement with the Applicant, to withdraw its Objection to the Application in the above-referenced docket in return for certain terms and conditions as contained within the M.O.A., a certified copy of which is attached hereto as **Exhibit "A"** and incorporated herein.

DOCUMENT NUMBER-DATE
06858 JUN-3 99
FPSC-RECORDS/REPORTING

WHEREFORE, in consideration of the above, the Board hereby officially withdraws its Objection to the Application of Town and Country Utilities Company.

Respectfully submitted this 2ND day of JUNE, 1999, by:



David M. Owen
Assistant County Attorney
Florida Bar No. 380547
2115 Second Street, 6th Floor
Post Office Box 398
Fort Myers, Florida 33902-0398
(941) 335-2236

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by facsimile and regular U.S. Mail to the following on this 2ND day of JUNE, 1999.

F. Marshall Deterding, Esq.
Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301

Rosanne Gervasi, Esq.
Legal Division
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0873

James F. Garner, Esq.
Pavese, Garner, Haverfield, Dalton,
Harrison & Jensen
1833 Hendry Street
Fort Myers, Florida 33902-1507

Donna Clemons, Esq.
Legal Division
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0873

Blanca S. Bayó, Director
Division of Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0873



David M. Owen
Assistant County Attorney
Florida Bar No. 380547
2115 Second Street, 6th Floor
Post Office Box 398
Fort Myers, Florida 33902-0398

MEMORANDUM OF AGREEMENT

COME NOW, on this 25th day of May, 1999, Town and Country Utilities Company (hereinafter "Town and Country" or "Utility"), a Florida corporation, and Lee County, Florida (hereinafter the "County"), a political subdivision of the State of Florida, collectively the "Parties", and enter into this Memorandum of Agreement, and in support thereof state as follows:

WHEREAS, Town and Country has filed an Application with the Florida Public Service Commission (hereinafter the "Commission") for a certificate to operate a water utility in Lee and Charlotte Counties, Florida; and,

WHEREAS, the County has filed a timely objection with the Commission to the proposed certification of the Utility lying within Lee County; and,

WHEREAS, the Parties now wish to enter into an Agreement which will allow Town and Country to move forward with its proposed certification of a water utility in Lee County, to include development by the Utility of water resources which may enable it to provide bulk, raw fresh water service to the County, while at the same time insuring that the County will be provided the opportunity to provide potable water services in the County's portion of the proposed service territory of Town and Country as those needs arise therein.

NOW THEREFORE, in consideration of the mutual Agreements and undertakings outlined herein, the Parties agree as follows:

1. The County will withdraw its Objection to Certification of Town and Country as a water utility by the Florida Public Service Commission within fourteen (14) business days from execution of this Agreement by both Parties.

2. Town and Country will proceed with the permitting, testing and analyses

necessary to determine its ability to deliver bulk, raw fresh water to the County of sufficient quantity and quality as may be further determined and agreed upon by the Parties. It is the intention of the Parties to evaluate whether Town and Country can make available for a reasonable consideration, sufficient quantities and quality of bulk, raw fresh water from within Lee County to satisfy the County's need for such service, as such needs may arise. To enable the County to receive such services, and at the County's sole election, the Parties may undertake negotiations for a formal Agreement for the provision of such services upon notice from the utility of its completion of the preliminary testing and analyses which will analyze and determine such availability to the County.

3. The County and the Utility agree that as the need for central potable water service arises within the certificated service territory of the Utility, the Parties will investigate cooperatively to determine whether the Utility or the County is in the best position to provide such service in the public's interest. To the extent that it is determined that the County is in a better position to provide such potable water services to County customers within the proposed Town and Country service area, Town and Country agrees to file an Application with the Commission to amend its certificated service area to remove those areas where the County is in a better position to provide such services.

WHEREFORE, Town and Country Utilities Company and Lee County enter into this Agreement in order to memorialize the Parties' responsibilities, obligations and intentions with regard to one another and for the provision of potable and non-potable water service(s) in and around the proposed water service territory of Town and Country Utilities Company.

TOWN AND COUNTRY UTILITIES COMPANY

(Corporate Seal)

By: Richard S. Cuda
Richard S. Cuda, President

STATE OF ~~FLORIDA~~ ~~xxxx~~) (Connecticut)
COUNTY OF LEE) (Hartford)

The foregoing instrument was acknowledged before me this 26th day of May, 1999, by Richard S. Cuda, President of Town and Country Utilities Company, a Florida corporation, on behalf of the corporation. He is personally known to me or has produced himself as identification.

Joyce L'Esperance
Print Name Joyce L'Esperance
Notary Public
State of ~~Florida~~ at Large (Connecticut)
My Commission Expires

JOYCE L'ESPERANCE
NOTARY PUBLIC
MY COMMISSION EXPIRES DEC. 31, 2003

ATTEST: CHARLIE GREEN
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: Ruth Ferguson
Deputy Clerk

By: Ray Judal
Chairman

State of Florida
County of Lee

APPROVED AS TO FORM:

I Charlie Green, Clerk of the Circuit Court for Lee County, Florida, do hereby certify this document to be a true and correct copy of the original document filed in the Minutes Department.

By: [Signature]
Office of the County Attorney

Given under my hand and official seal at Fort Myers, Florida, this 2nd day of June, A.D. 1999

CHARLIE GREEN, CLERK
By: Ruth Ferguson
Deputy Clerk