

**RUDEN
McCLOSKEY
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ATTORNEYS AT LAW**

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October 4, 2000

Blanca S. Bayo, Director
Division of Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

VIA HAND DELIVERY

Re: Docket No. 990489-WS
Application by Florida Cities Water Company, holder of Certificate Nos. 027-W and 024-S in Lee County and 007-W and 003-S in Brevard County, and Poinciana Utilities, Inc., holder of Certificate Nos. 146-W and 103-S in Polk and Osceola Counties, for transfer of facilities to Governmental Utility Authority and cancellation of Certificate Nos. 027-W, 024-S, 007-W, 003-S, 146-W, and 103-S.

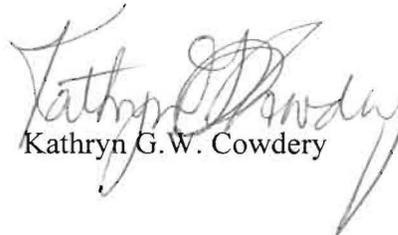
Dear Ms. Bayo:

Enclosed is an original and two copies of an Amended Application for Transfer of Facilities to the Florida Governmental Utility Authority and to Lee County.

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.

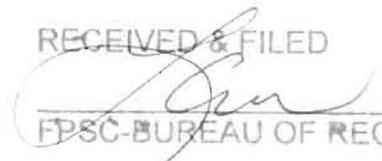
Thank you.

Sincerely,


Kathryn G. W. Cowdery

RGD
neg
see

KGWC/ldv
Enclosures
cc: Cheryl Johnson
Richard Redemann

RECEIVED & FILED

FPSC-BUREAU OF RECORDS DOCUMENT NUMBER - DATE

TAL:32250:1

FORT LAUDERDALE ■ MIAMI ■ NAPLES ■ PORT ST. LUCIE ■ SARASOTA ■ ST. PETERSBURG ■ TALLAHASSEE ■ TAMPA ■ WEST PALM BEACH

12620 OCT-4 8
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application by Florida)
Cities Water Company, holder)
of Certificate Nos. 027-W and)
024-S in Lee County and 007-W)
and 003-S in Brevard County,) Docket No. 990489-WS
and Poinciana Utilities, Inc.,)
holder of Certificate Nos.) Filed: October 4, 2000
146-W and 103-S in Polk and)
Osceola Counties, for transfer)
of facilities to Governmental)
Utility Authority and)
cancellation of Certificate)
Nos. 027-W, 024-S, 007-W, 003-S,)
146-W, and 103-S.)

AMENDED APPLICATION
FOR TRANSFER OF FACILITIES TO THE
FLORIDA GOVERNMENTAL UTILITY AUTHORITY AND TO LEE COUNTY

Applicants, Florida Cities Water Company ("FCWC") and Poinciana Utilities Inc. ("Poinciana"), file this their Amended Application for Transfer of Water and Wastewater Facilities to the Florida Governmental Utility Authority ("GUA") and to Lee County, Florida, pursuant to § 367.071(4) Fla. Stat. (1999), and state:

1. FCWC operates in the following counties pursuant to certificates issued by the Commission:

- a) Lee County, Certificate Nos. 027-W, 024-S, and
- b) Brevard County, Certificate Nos. 007-W, 003-S.

2. Poinciana operates in Polk and Osceola counties pursuant to Commission Certificate Nos. 146-W and 103-S.

3. The name and address of Florida Cities Water Company, Poinciana Utilities Inc., and its authorized representative, for purposes of this application, are:

Florida Cities Water Company
Poinciana Utilities Inc.
4837 Swift Road, Suite 100 DOCUMENT NUMBER-DATE

Sarasota, FL 34231

Authorized representative:

Kathryn G.W. Cowdery
Ruden, McClosky, Smith, Schuster
& Russell, P.A.
215 S. Monroe Street, Suite 815
Tallahassee, FL 32301
(850) 681-9027

4. The Florida Governmental Utility Authority, a legal entity and public body created by interlocal agreement pursuant to § 163.01(7)(g), Fla. Stat., and Lee County are exempt from regulation by the Commission pursuant to § 367.022(2), Florida Statutes.

5. On April 15, 1999, Applicants filed with this Commission their Application for Transfer of Facilities to Governmental Authority ("Application"). On that date, the Poinciana facilities and the FCWC Brevard County facilities were transferred to the GUA, pursuant to Contract. (A copy of the Utility System Asset Acquisition Agreement ("Contract") transferring the water and wastewater facilities to GUA is attached to the Application as Appendix "A," and is incorporated by reference herein).

6. The FCWC Lee County facilities were transferred to Lee County, pursuant to Contract and Assignment, on April 15, 1999, except for the facilities located in and serving customers within the Town of Ft. Myers Beach ("the Town System"). The Town System was excluded from the Application because of litigation brought by the Town of Fort Myers Beach against Lee County, which resulted in delay of validation of the bonds to be used to acquire the Town System. In order to proceed with the closing, the parties entered

into an Assignment, dated April 7, 1999, wherein GUA assigned its right to purchase the Ft. Myers System to Lee County. Additionally, the parties entered into an Addendum to Utility System Asset Acquisition Agreement Concerning the Fort Myers Utility System, dated April 7, 1999 ("Addendum"). The Addendum set a deferred closing date for the Town System, which was based upon resolution of certain then pending litigation. (Both the Assignment and Addendum are attached as part of Appendix "A" to Application previously filed in this docket).

7. With regard to the Town System, on July 13, 2000, the Supreme Court of Florida in Raymond J. Murphy v. Lee County, issued Opinion No. SC96997, which affirmed the decision of the lower court, which validated and confirmed \$3,500,000 Lee County, Florida Water and Sewer Revenue Bonds, 1999 Series B, to be issued by Lee County to, inter alia, pay all or part of the cost of acquisition of the FCWC water system located within the boundaries of the Town of Fort Myers Beach.

8. The Town System was conveyed to Lee County on September 29, 2000. The Transfer Assignment and Assumption Agreement entered into on September 29, 2000 for the Town System conveyance are attached hereto as Appendix "C", and incorporated by reference herein.

9. GUA and Lee County obtained from FCWC and Poinciana the then most recent available income and expense statement, balance sheet, statement of rate base for regulatory purposes, and contributions-in-aid-of-construction applicable to the FCWC Lee

County facilities, as was required by § 125.3401, Florida Statutes. Lee County fully complied with the requirements of § 125.3401, Florida Statutes. See paragraph 10 of the Final Judgment, Appendix "A" attached to Application.

10. Customer deposits and the interest thereon have been were credited to GUA and Lee County as provided in the Contract, Section 5.05, and Assignment.

11. All regulatory assessment fees for FCWC (except Town System) and Poinciana have been paid in full. Regulatory assessment fees from January 1, 2000 through September 29, 2000 for the Town System will be paid when due in accord with PSC regulations.

12. There are no fines or refunds owed. However, on April 8, 1999, the Commission issued Order No. PSC-99-0691-FOF-SU, Notice of Proposed Agency Action Order Correcting and Removing Used and Useful Adjustments to Reuse Facilities, and Final Order Setting Wastewater Rates, Requiring Refunds, and Granting in Part and Denying in Part Motion to Make Rates Permanent, in Docket 950387-SU, In re: Application for a rate increase for North Ft. Myers Division in Lee County by Florida Cities Water Company - Lee County Division. FCWC appealed this Final Order to the First District Court of Appeal. Florida Cities Water Company v. Florida Public Service Commission, Case No. 1D99-1666. The appeal is pending.

WHEREFORE, the Applicants request that this Commission:

1) Recognize the Florida Governmental Utility Authority and Lee County to be exempt from the Commission's jurisdiction;

2) Approve the transfer of water and wastewater facilities as set forth in this application to the Florida Governmental Utility Authority and to Lee County as a matter of right, pursuant to § 367.071, Florida Statutes; and

3) Such other relief as is appropriate.

DATED this 4th day of October 2000.

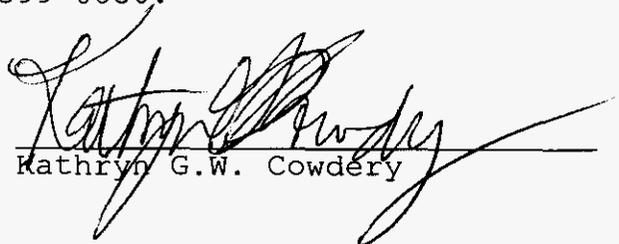


KATHRYN G.W. COWDERY
Fla. Bar No.: 0363995
Ruden, McClosky, Smith,
Schuster & Russell, P.A.
215 South Monroe Street, Suite 815
Tallahassee, FL 32301
Phone: (850) 681-9027

Attorneys for FLORIDA CITIES WATER
COMPANY and POINCIANA UTILITIES INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Amended Application for Transfer of Facilities to the Florida Governmental Utility Authority and to Lee County has been furnished this 4th day of October 2000, by hand delivery to Tim Vaccaro, Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.



Kathryn G.W. Cowdery

Prepared by and return to:
Laurie L Gildan, Esq.
Greenberg Traurig, PA.
777 South Flagler Drive, Suite 300 East
West Palm Beach, Florida 33401

TRANSFER, ASSIGNMENT AND ASSUMPTION AGREEMENT
(Town of Ft. Myers Beach System portion of the Ft. Myers System - Lee County)

THIS AGREEMENT, is made and entered into this 29th day of September, 2000, by and between Lee County, Florida, a political subdivision of the State of Florida (the "County"), and Florida Cities Water Company, a Florida corporation ("FCWC").

WITNESSETH:

WHEREAS, FCWC has as of this date conveyed to the County, pursuant to that certain Utility System Asset Acquisition Agreement, as amended by Addendum thereto (the "Purchase and Sale Agreement") between FCWC and Poinciana Utilities, Inc. and the Florida Governmental Utility Authority, as assigned to the County, all of the real and personal property, both tangible and intangible, which comprises the Purchased Assets relating to the Town System portion of the Ft. Myers System as described therein.

NOW, THEREFORE, in consideration of the mutual promises, covenants, representations and agreements contained herein, together with \$10 and other good and valuable consideration exchanged between the parties, the parties do undertake, promise and agree for themselves, their permitted successors and assigns as follows:

SECTION 1. PURPOSES AND DEFINITIONS. This Agreement is intended to (A) supplementally transfer and assign FCWC's rights, remedies, powers, title and interest in the Purchased Assets, any permits or other authorizations relating to the Town System portion of the Ft. Myers System, or arising by virtue of the County assuming the operation and control over the Town System portion of the Ft. Myers System, (B) establish certain post closing relationships of the parties, (C) provide for the assumption by the County for the obligations and responsibility of operation of the Town System portion of the Ft. Myers System, and (D) identify specific contractual obligations of FCWC that the County agrees to assume. This Agreement is supplemental to the Purchase and Sale Agreement. All capitalized words and terms not otherwise defined herein shall have the meanings set forth in the Purchase and Sale Agreement.

SECTION 2. TRANSFER AND ASSIGNMENT. FCWC shall, and does hereby, transfer, assign, convey, and grant, bargain and sell unto the County (1) all rights, remedies, powers, title or interest in the Purchased Assets which comprise the Town System portion of the Ft. Myers System, including any rights, remedies, powers, title or interest arising by virtue of any franchise or certificate of authorization granted to FCWC by any county in the state of Florida, or arising by virtue of the County assuming the ownership, operation and control of the Town System portion of the Ft. Myers System of the Utility System; (2) all rights, privileges,

easements, licenses, prescriptive rights, rights of way, rights to use public and private roads, highways, streets, railroads, or other areas owned or used by FCWC in connection with the construction, reconstruction, installation, expansion, maintenance and operation of the Town System portion of the Ft. Myers System or the Purchased Assets, which shall include, but not be limited to the easements in Appendix B to the Utility System Asset Acquisition Agreement; and (3) all fee simple real property interests owned by FCWC in Lee County, Florida, which are used or specifically available for use in the operation of the Town System portion of the Ft. Myers System; such interests, however, shall not include any excluded property or assets described in Appendix N of the Utility System Asset Acquisition Agreement. The foregoing transfer and assignment is supplemental to all other instruments and actions necessary to close pursuant to the Purchase and Sale Agreement.

SECTION 3. ASSUMPTION. The County hereby accepts the transfer and assignment set forth in Section 2 above, and assumes the ownership, operation and control of the Town System portion of the Ft. Myers System and the performance and satisfaction of those obligations, duties and liabilities (1) accruing thereto at Closing, (2) expressly assumed by the County in the Purchase and Sale Agreement, and (3) expressly assumed as follows:

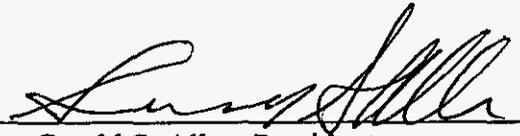
- (a) the obligation to return customer deposits in due course;
- (b) the obligations and responsibilities of FCWC set forth in or arising out of Appendices A, B, E, H, I, J, K and L to the Purchase and Sale Agreement.

(B) Upon Closing pursuant to the Purchase and Sale agreement and the transfer of possession of the Purchased Assets to the County thereunder, FCWC's obligation or responsibility to act or serve as a provider of water or wastewater services as the owner of the Town System portion of the Ft. Myers System of the Utility system shall cease and terminate. FCWC shall have no liability or obligation with respect to the Purchased Assets or the Utility System after Closing. Accordingly, in such an event, the County acknowledges and accepts the responsibility and obligation to provide water and wastewater services, as a governmentally owned and controlled service provider within the area previously served by FCWC.

SECTION 4. BINDING EFFECT. This Agreement shall inure to the benefit of and be binding upon FCWC and the County and their successors and assigns.

IN WITNESS WHEREOF, FCWC and the County have caused this Agreement to be duly executed and entered into on the date first above written.

FLORIDA CITIES WATER COMPANY, a
Florida corporation

By: 
Gerald S. Allen, President

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

ATTEST:
CLERK OF COURTS

By: _____
Deputy Clerk

By: _____
Chairman

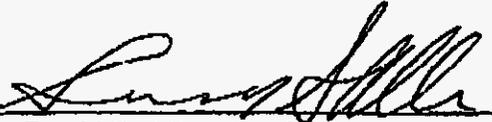
APPROVED AS TO FORM:

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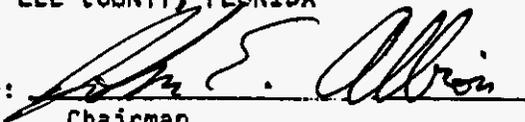
By: _____
Office of the County Attorney

IN WITNESS WHEREOF, FCWC and the County have caused this Agreement to be duly executed and entered into on the date first above written.

FLORIDA CITIES WATER COMPANY, a Florida corporation

By: 
Gerald S. Allen, President

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: 
Chairman

APPROVED AS TO FORM:

By: 
Office of the County Attorney

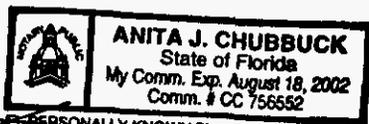
ATTEST
CLERK OF COURTS
By: 
Deputy Clerk

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STATE OF FLORIDA

COUNTY OF SARASOTA

This instrument was acknowledged before me this 26th day of September, 2000, by Gerald S. Allen, as President of Florida Cities Water Company, a Florida corporation, on behalf of said corporation.



Anita J. Chubbuck

Notary Public
State of Florida

ANITA J. CHUBBUCK
(Print, Type or Stamp Commissioned Name)

PERSONALLY KNOWN BY ME
 PRODUCED I.D.

Personally Known OR Produced Identification
Type of Identification Produced _____

STATE OF FLORIDA

COUNTY OF LEE

This instrument was acknowledged before me this 29th day of September, 2000,
by JOHN F ALBION, as the Chairman of the Board of County
Commissioners of Lee County, Florida, a political subdivision of the State of Florida, on
behalf of said County.



Bette Jo Greenwell
MY COMMISSION # CC861216 EXPIRES
September 13, 2003
BONDED THRU TROY FAIN INSURANCE, INC.

Bette Jo Greenwell
Notary Public
State of Florida

(Print, Type or Stamp Commissioned
Name

Personally Known OR Produced Identification

Type of Identification Produced _____