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May 18, 2001

ORIGINAL

E-MAIL ADDRESS

Our File No: 40200-1

VIA FACSIMILE 850-413-7118 AND HAND DELIVERY

Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0870

RECEIVED - FPSC
01 MAY 18 PM 2:44
RECORDS AND REPORTING

Re: Transmittal of Objection and Petition to Initiate Formal Proceedings of Marion County to Application of Marion County Utilities, Inc. for Amendment of Water Certificate 347-W

Dear Ms. Bayó:

Please find enclosed the original and fifteen (15) copies of the above-referenced objection for filing today.

Sincerely yours,

Thomas A. Cloud, Esquire

GRAY, HARRIS & ROBINSON, P.A.

TAC/jg
Enclosure

cc: Larry Cretul, Marion County Commissioner (via fax 352-620-3392)
Janet Tutt, Asst. County Administrator, Marion County (via fax 352-620-3344)
Vince Riccobono, Director, Utilities, Marion County (via fax 352-687-8900)
Tim Thompson, Marion Utilities, Inc. (via fax 352-622-6924)

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Done 5/22/01

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ORLANDO TAMPA
FPSC-RECORDS/REPORTING

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Application for amendment)
of Certificate No. 347-W to add)
territory in Marion County by)
Marion Utilities, Inc.)
)
)
_____)

Docket No. 010649-WU

**OBJECTION AND PETITION TO
INITIATE FORMAL PROCEEDINGS OF MARION COUNTY
TO APPLICATION OF MARION UTILITIES, INC.
FOR AMENDMENT OF WATER CERTIFICATE 347-W**

Marion County, Florida (hereafter "Marion County"), by and through its undersigned counsel, and pursuant to Florida Administrative Code Rules 25-30.031 and 25-22.036, Florida Administrative Code Chapter 28-106, and Sections 120.569, 120.57, and 367.045, Florida Statutes (hereafter collectively "applicable procedural authority") and hereby files this Objection to and Petition to Initiate Formal Proceedings in Opposition to the Application of Marion Utilities, Inc. (hereafter "MUI") for the amendment of water certificate number 347-W. In support thereof, Marion County states as follows:

1. Marion County is a political subdivision of the State of Florida whose official address is 601 S.E. 25th Avenue, Ocala, Florida, 34471-2690. For purposes of this Objection and Petition, all notices, pleadings and correspondence regarding this matter should be sent to Thomas A. Cloud, Esquire, Gray, Harris & Robinson, P.A., 301 East Pine Street, Suite 1400, Orlando, Florida 32801.

2. Applicant MUI is a Florida corporation operating as a water-only utility supplying water to certain areas of Marion County, Florida, as authorized by the Florida

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FPSC-RECORDS/REPORTING

Public Service Commission (hereafter "FPSC"). MUI's address is 710 N.E. 30th Avenue, Ocala, Florida 34470, in care of Mr. Tim Thompson.

3. Marion County provides both water and wastewater service throughout Marion County, Florida, and constitutes a "governmental authority" as that term is used in Section 367.045(4), Florida Statutes.

4. The substantial interests of Marion County will be affected by the proposed extension requested by MUI in that:

- a. In 1993, Marion County acquired the General Development Utilities ("GDU") Silver Springs Shores Water and Wastewater System for over \$10 million dollars.
- b. Since that time, Marion County adopted its Water Resource Protection and Utilities Plan on May 21, 1996, and amendments to its Comprehensive Plan in November of 1996, directing the County to expand the former GDU Silver Springs Shores Water and Wastewater System to service the disputed territory.
- c. Pursuant to the Water Resources Protection Plan and the Comprehensive Plan, the County adopted the Marion County Water and Wastewater Service Area by Ordinance Number 98-19, on May 19, 1998, which provides that Marion County is the exclusive provider of water and wastewater service to the disputed territory.
- d. In furtherance thereof, Marion County has likewise acquired four water systems previously owned by A.P. Utilities by contract in

1999, one of said systems is adjacent to or in close proximity to the disputed territory.

- e. Marion County has expended funds in extending utility lines to interconnect the former A.P. Utilities Water Systems to its Silver Springs Shores Systems.
- f. Thus, Marion County is authorized and desires to provide water and/or wastewater services to the disputed territory by earlier claim than MUI. Marion County has the technical ability and financial capacity and resources to provide high quality, safe, sufficient and efficient water and/or wastewater services to the area sought to be certificated by MUI.
- g. If MUI's request is granted, residents within the disputed territory may be precluded from obtaining water, wastewater, and fire services at better quality and less cost.
- h. If MUI is not financially able to provide adequate service, the disputed territory will be left without a service provider.
- i. Granting such disputed territory to MUI will remove the customers' ability to enjoy the economies of scale in Marion County's facilities.

5. The disputed issues of material fact known at this time include, but are not limited to, the following:

- a. Whether there is a need for water only service to be delivered to the disputed territory;
- b. Whether there is a need for water service to be delivered by MUI to

- the disputed territory;
- c. Whether MUI has the technical ability to serve the disputed territory;
- d. Whether MUI has the financial ability to serve the disputed territory;
- e. Whether MUI has sufficient water and fire flow capacity to serve the disputed territory;
- f. Whether MUI's water system will be in competition with, or a duplication of, any other system;
- g. Whether MUI has waived its right to seek to extend its certificate to the disputed territory;
- h. Whether MUI is in compliance with the rules and statutes of the FPSC;
- i. Whether amendment of MUI's water certificate violates or is inconsistent with Marion County's Comprehensive Plan, Water Resource Protection and Utilities Plan, and Exclusive Service Area Ordinance; and
- j. Whether it is in the public interest for MUI to serve the disputed territory.

6. The following ultimate facts are alleged:

- a. MUI is requesting an extension of a water certificate in an area that is already the exclusive water and wastewater service area of Marion County;
- b. Marion County possesses the earliest and only exclusive right to

provide water and wastewater service to the public in the disputed territory;

- c. There is no need for water only service to be delivered to the disputed territory by MUI;
- d. There is no need for water service to be delivered to the disputed territory by MUI;
- e. MUI does not possess the technical ability to serve the disputed territory;
- f. MUI does not have the financial ability to serve the disputed territory;
- g. MUI does not have adequate water service capacity or fireflows to serve the disputed territory;
- h. MUI's water system will be in competition with, and a duplication of Marion County's water system;
- i. MUI has waived its right to seek to extend its certificate to the disputed territory;
- j. MUI's application violates and fails to comply with FPSC rules and statutes;
- k. Amending MUI's water certificate violates and is inconsistent with Marion County's Comprehensive Plan, Water Resource Protection and Utilities Plan, and Marion County's Exclusive Service Area Ordinance; and
- l. It is not in the public interest for MUI to serve the disputed territory.

7. Marion County is entitled to the relief it seeks pursuant to applicable procedural authority as outlined above and/or FPSC decisions, statutes, rules, and orders, as well as Florida case law relevant to the disposition of water and wastewater territorial disputes.

WHEREFORE, Marion County respectfully requests that the Florida Public Service Commission do the following:

1. Hold an administrative hearing on MUI's application for amendment to water certificate 347-W and Marion County's Objection thereto;
2. Authorize the issuance of subpoenas and grant adequate time prior to the administrative hearing such that Marion County may conduct discovery to adequately prepare for the administrative hearing; and,
3. Deny MUI's application to amend water certificate of authority number 347-W to provide water service to the disputed territory.

Respectfully submitted this
18th day of May, 2001, by



THOMAS A. CLOUD, ESQUIRE
GRAY, HARRIS & ROBINSON, P.A.
301 East Pine Street, Suite 1400
Orlando, Florida 32801
407-244-5624

Attorneys for Marion County, Florida

CERTIFICATE OF SERVICE

I certify that a true copy of this foregoing was filed this 18th day of May, 2001 by facsimile and by hand delivery.

Original and 15 copies via hand delivery to:

Blanca S. Bayó, Director
Division of Records and Reporting
Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
850-413-6770

With a copy via facsimile and U.S. mail to:

Tim Thompson
President
Marion Utilities, Inc.
P.O. Box 280
Silver Springs, FL 34489-0280
352-622-1171



THOMAS A. CLOUD, ESQUIRE
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Attorneys for Marion County, Florida