

STATE OF FLORIDA

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Public Service Commission

October 23, 2001

Ms. Marianne Marshall, Chair
Nassau County Board of County Commissioners
P.O. Box 1010
Fernandina Beach, Florida 32035-1010

Re: Docket No. 011344-WS - Resolution No. 2001-128 by Nassau County, in accordance with Section 367.171, F.S., rescinding Florida Public Service Commission jurisdiction over investor-owned water and wastewater systems in Nassau County.

Dear Ms. Marshall:

The Florida Public Service Commission (FPSC) has opened Docket No. 011344-WS in order to acknowledge the above-referenced Resolution by Nassau County (County), rescinding FPSC jurisdiction over investor-owned water and wastewater systems in the County. As a result of the Resolution, and pursuant to Section 367.171, Florida Statutes, the FPSC staff will recommend to the FPSC that the certificates of authorization issued by the FPSC to all utilities situated in the County be cancelled after all pending matters are resolved, unless the utilities' systems transverse county boundaries such that the FPSC would maintain exclusive jurisdiction over those utility systems in their entirety.

I am in receipt of a copy of your letter to Mr. John T. Marino, of United Water Florida Inc. (UWF), dated October 4, 2001, in which you advise that because the County has determined that the services provided by UWF to County residents do not cross county boundaries, those services are regulated by the County as a result of the Resolution. The purpose of this letter is to inform you, as a courtesy, that the FPSC Division of Legal Services respectfully disagrees with the County's interpretation of the case law which led the County to reach its determination.

The First District Court of Appeal's decision in Hernando County v. FPSC, 685 So. 2d 48 (Fla. 1st DCA 1996), reversed an FPSC order determining that the FPSC had exclusive jurisdiction over Southern States Utilities, Inc.'s (SSU, now Florida Water Services, Inc. or FWSC) facilities and land in the State of Florida pursuant to Section 367.171(7), Florida Statutes. The Court found that the FPSC relied primarily upon centralized organization out of the utility's Apopka office, as well as regional management, to provide the basis for its decision that the various facilities constituted a single system providing service which transversed county boundaries. Id. at 50. The Court also found that rather than applying a distinct meaning to the word "service," the FPSC concluded that the word "service" which must transverse county boundaries encompassed all of the same operational and administrative functions which were found to make SSU's facilities a "system." Id. at 50-51. The Court found that the FPSC's definition of the word "service" was too expansive, and that "to satisfy the prerequisites of Section 367.171(7), Florida Statutes, the FPSC must find that 'the systems were operationally integrated, or functionally related, in . . . utility service delivery [rather] than fiscal management.' Id. at 51 (quoting

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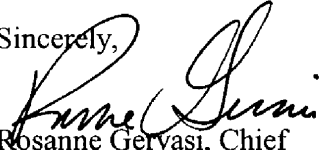
Ms. Marianne Marshall, Chair
October 23, 2001
Page 2

Citrus County v. Southern States Utils., 656 So. 2d 631 (Fla. 1st DCA), which was overruled on other grounds by Southern States Utils. v. FPSC, 714 So. 2d 1046 (Fla. 1st DCA 1998.).

The Court went on to find that its previous decisions, including its decision in Board of County Commissioners of St. Johns County v. Beard, 601 So. 2d 590 (Fla. 1st DCA 1992), do not supply a valid basis for the FPSC's expansive definition of the word "service" which it applied in determining its jurisdiction over FPSC's facilities in the Hernando County case. Hernando County at 51. In distinguishing Beard, however, the Court in no way invalidated the Beard decision, in which the Court found that UWF's (then Jacksonville Suburban Utilities Corp. or JSUC) facilities indeed constitute "'a combination of functionally related facilities and land'; in a word, a 'system.' Because the service provided by this system crosses county boundaries, it is clear that the PSC has exclusive jurisdiction over JSUC pursuant to subsection 367.171(7)." Beard at 593. Because the Beard decision is good law, it is the opinion of this Division that unless UWF's methods of operation have changed since the time of that decision such that the utility's facilities no longer operate as a single, functionally related system, the FPSC maintains exclusive jurisdiction over UWF.

The Commission staff will endeavor to determine whether Nassau County or the FPSC has jurisdiction over UWF and FWSC's facilities in Nassau County. During the course of the FPSC staff's investigation in the above-referenced docket, we will formulate a recommendation as to whether UWF's methods of operation have changed in such a way that would cause the FPSC to lose jurisdiction over that utility's facilities in Nassau County. Similarly, we shall investigate whether FWSC's facilities situated in Nassau County are functionally related to, or operationally integrated with, FWSC's facilities in a contiguous county such that the FPSC would maintain jurisdiction over that utility's facilities in Nassau County. I will see to it that you are mailed a copy of the FPSC staff's recommendation in this regard as soon as one is filed. The County will certainly be welcome to participate at the FPSC's agenda conference at which the FPSC will render its decision on the staff recommendation.

Please be advised that the opinions contained in this letter are those of the Division of Legal Services and in no way bind the Commission. If you have any questions about any of the above, please feel free to contact me at (850) 413-6224.

Sincerely,

Rosanne Gervasi, Chief
Division of Legal Services
Bureau of Water and Wastewater

RG/dm

cc: Division of the Commission Clerk and Administrative Services
Division of Regulatory Oversight (Rieger, Daniel)
Walton F. Hill, Vice President
Kenneth A. Hoffman, Esquire
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