

State of Florida



Public Service Commission
-M-E-M-O-R-A-N-D-U-M-

DATE: February 7, 2002
TO: Division of the Commission Clerk and Administrative Services
FROM: Office of the General Counsel (Gervasi) *ps*
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.

Please file the attached letter dated February 6, 2002, in the docket file for the above-referenced docket.

RG/dm

cc: Division of Economic Regulation (Rieger, Iwenjiora)
Office of the General Counsel (Crosby)

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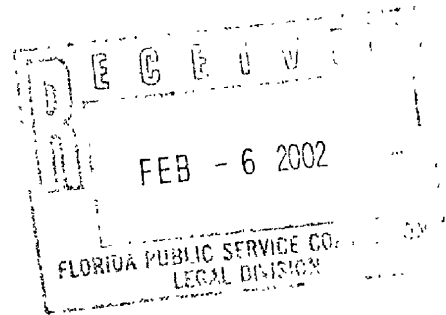
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February 6, 2002

Roseanne Gervasi, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard, Room 370
Tallahassee, FL 32399-0850

RE: Docket No. 011344-WS



Dear Ms. Gervasi:

On behalf of Florida Water Services Corporation ("Florida Water"), thank you for the opportunity to supplement my letter to you dated December 7, 2001, in support of Florida Water's position that the Florida Public Service Commission ("Commission") retains jurisdiction over Florida Water's Nassau County's systems pursuant to Section 367.171(7), Florida Statutes, notwithstanding the resolution adapted by the Nassau County Board of County Commissioners on September 17, 2001 asserting jurisdiction over such systems.

The relevant inquiry for the Commission in this matter is whether the facts demonstrate that Florida Water's Nassau County systems are part of a utility system whose service transverses county boundaries under Section 367.171(7), Florida Statutes. Florida Water maintains that the relevant precedents to be analyzed and applied by the Commission are found in Order No. PSC-93-1162-FOF-WS (the "St. Johns County Declaratory Statement") and Hernando County v. Florida Public Service Commission, 685 So.2d 48 (Fla. 1st DCA 1997) ("Hernando County"). Under Hernando County, the court held that a finding of Commission jurisdiction under Section 367.171(7) must be predicated upon: (1) an "actual inter-relationship of two or more facilities providing utility services in a particular geographic area comparable to the 'service area' defined in Section 367.021(10), over which the PSC ordinarily has jurisdiction;" and (2) "that the facilities forming the asserted 'system' exist in contiguous counties across which the service travels." Hernando County 685 So.2d at 52. It is Florida Water's position that the administrative and operational integration between its Nassau County and Duval County systems is virtually identical to the administrative and operational integration between its St. Johns County and Duval County systems determined to be sufficient to trigger Commission jurisdiction in the St. Johns County Declaratory Statement and sufficient to satisfy the Hernando County test. The grounds and rationale for our position are set forth below.

In St. Johns County Declaratory Statement, the Commission found that Florida Water's water facilities owned and operated in St. Johns County constitute a functionally related system whose service transverses county boundaries on the basis of an administrative and operational inter-relationship between Florida Water's St. Johns County and Duval County facilities. The pertinent findings in the St. Johns County Declaratory Statement are equally applicable in the instant case, to wit:

1. The Nassau County facilities consist solely of land and the treatment and distribution plant - - no offices or personnel (apart from small space provided for on-site operators) are located at any of the Nassau County sites. All services to these facilities, including meter reading, plant equipment maintenance and resolution of plant equipment emergencies and/or outages, are provided by Florida Water facilities in Duval County, and ultimately in Palm Coast (regional manager) and Apopka, the home office.
2. The central office for operations conducted in Nassau County is at the Woodmere facility in Duval County, which is a 30-40 minute drive from the Nassau County facilities. Personnel who provide meter reading and maintenance services to the Nassau County plants report to the Woodmere office daily and consider that facility their home plant, traveling from there to the facilities in Nassau County.
3. Meter readers are based in Duval County and travel to each of the Nassau County plants 4 days each month to read the meters.
4. Most parts and supplies needed for repair and maintenance of distribution plant are stored at Woodmere and Duval County and must be transported from Duval County when needed in Nassau County.
5. Testing samples collected at the Nassau County facilities are transported back to Duval County for courier transport to the laboratory located in Deltona.
6. Water and wastewater treatment plant operator back-up and fill-in is assigned out of Duval County.
7. The local administrative personnel for the Nassau County plants are located in Duval and Flagler County. In addition, as in the St. Johns County Declaratory Statement, all of Florida Water's facilities, including the facilities in Nassau County, are ultimately managed and operated from the central office in Apopka, Florida. Functions and services such as budgeting, personnel management, purchasing, customer service, billing and collection, strategic and operational planning, accounting, engineering, and environmental permitting and compliance are performed on a company-wide basis by departments and personnel located in the

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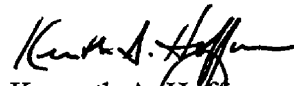
central office in Orange County.

The precedent established by the Commission in the St. Johns County Declaratory Statement applies equally to Florida Water's Nassau County facilities and supports a determination that the Commission has jurisdiction over Florida Water's Nassau County land and facilities under Section 367.171(7). Moreover, the operational and administrative inter-relationships outlined above satisfy the court's application of Section 367.171(7) in Hernando County. These facts demonstrate that there is an actual inter-relationship of the facilities in Duval and Nassau Counties in the provision of water and wastewater services to the Nassau County facilities, as well as the sharing of the operational and administrative expenses necessary to the provision of service in both Duval and Nassau Counties. These facilities, of course, form the "system" in contiguous counties across which the service travels.

I am mindful of the fact that the preliminary staff recommendation dated December 21, 2001 addressing the issue of the Commission's jurisdiction over the facilities of Florida Water and United Water Florida, Inc. ("UWF") in Nassau County recommended a finding of Commission jurisdiction over UWF's facilities in Nassau County but not over Florida Water's facilities in Nassau County. I would respectfully submit that the facts concerning UWF are not distinguishable from the facts supporting Commission jurisdiction over Florida Water. Indeed, from the administrative standpoint, UWF is essentially a "mini-Florida Water" with all administrative functions originated out of its office in Duval County. From an operational standpoint, the various services critical to the operation of UWF's Nassau County plants are essentially no different than the operational activities of Florida Water from the standpoint of the sharing of operating personnel, resources, activities and expenses with the Duval County operations. Moreover, although not a required criterion under the Hernando County decision, neither UWF nor Florida Water have facilities which cross the Duval/Nassau County line in the provision of operationally integrated water and wastewater services.

On behalf of Florida Water, I thank you again for this opportunity and maintain that the above facts support a finding by the Commission that it has exclusive jurisdiction over Florida Water's land facilities in Nassau County pursuant to Section 367.171(7), Florida Statutes, as determined by the Commission in the St. Johns County Declaratory Statement and by the court in the Hernando County decision.

Respectfully submitted,


Kenneth A. Hoffman

KAH/knb

cc: Mr. Forrest L. Ludsen
Mr. Tony Isaacs
Bobbie Reyes, Esquire

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