

**REQUEST FOR CHANGE TO AGENDA CONFERENCE
HAND DELIVER**

Date of Request: 3/1/02 Date of Agenda Conference: 3/5/02 Item No. 11

Docket No.: 011344-WS Brief Title: Nassau County Resolution Rescinding PSC Jurisdiction

Requested by: Staff Other Nassau County

Please attach a copy of the written documentation filed (if other) _____ (Name)

STAFF's Recommendation to Executive Suite (IF OTHER) Approve Request Deny Request

ACTION REQUESTED [see APM 2.11 and SOP 1607]

- Defer Item to Agenda Scheduled Date: 3/19/02
- Change Order of Item or Take Up at Time Certain
- Withdraw Item
- Late Filed Recommendation (must be filed no later than 3:00 p.m. on the date approved for late filing) **A copy of the front page of the recommendation must be provided to CCA by 12 noon on the regular filing date for use as a place-holder during agenda preparation.**
- Add Item to Published Agenda [see Section 120.525(2), F.S.] - Issue an ADDENDUM and give Legal NOTICE
- Add Emergency Item to Published Agenda [see Section 120.525 (3), F.S.] - Issue an ADDENDUM and Give Fair NOTICE

Concise explanation, justification or comments (attach additional sheet if necessary):

By letter dated and faxed March 1, 2002, Mr. Brian Armstrong requests deferral of this item on behalf of Nassau County. Mr. Armstrong explains that he is unable to attend due to his required attendance at negotiations with Florida Water concerning potential acquisition by the Florida Governmental Utility Authority. He represents that he has been authorized by Mr. Ken Hoffman to advise that Florida Water has consented to this deferral request. Deferral of the recommendation should not affect other interested utilities. United Water has been sold to JEA and Florida Public is a stand-alone system that operates only in Nassau County. If deferral is approved, Staff will notify all four Nassau County utilities.

Signature (OPR Staff): [Signature]

Initials (OPR Division Director or Designee): JDT

Signature (Legal Staff): [Signature]

Initials (Legal Division Director or Designee): [Signature]

DEPUTY EXECUTIVE DIRECTOR/TECHNICAL OR EXECUTIVE DIRECTOR:

Recommendation to the Chairman's Office Approve Request Deny Request
Initials: [Signature] Date: 3/4/02

Comments:

- AUS _____
- CAF _____
- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- MMS _____
- SEC _____
- OTH _____

CHAIRMAN'S OFFICE:
Initials: [Signature]

Approve Request Deny Request
Date: 3/4/02

Executive Suite will send the original to the Division of Commission Clerk and Administrative Services and return a copy to the requesting staff after the Chairman's Office takes action on this request. Requesting staff should distribute copies to the Division Directors (OPR & OCR) and Attorney assigned to the docket.

Sandy
Rose
Blanca

PSC/EXD-1 (08/01)

DOCUMENT NUMBER-DATE
02442 MAR-4 8
FPSC-COMMISSION CLERK

NABORS, GIBLIN & NICKERSON, P.A.
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March 1, 2002

Via Facsimile

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

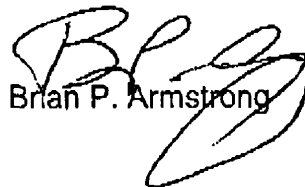
Re: Docket No. 011344-WS

Dear Ms. Gervasi:

By this letter, and on behalf of Nassau County, we confirm our earlier discussion pursuant to which Nassau County requests a deferral of the above-referenced item from the March 5, 2002 agenda. I will be unable to attend due to my required attendance at negotiations with Florida Water concerning potential acquisition by the Florida Governmental Utility Authority. I have been authorized by Ken Hoffman, Esquire to represent that Florida Water has consented to this deferral request.

Thank you for your anticipated cooperation. Please advise me at (850) 224-4070 if there is any difficulty in deferring this item until the next Commission agenda.

Very truly yours,


Brian P. Armstrong

BPA/gs

cc: Kenneth Hoffman, Esquire
Rutledge, Ecenia, Purnell & Hoffman, P.A.

NABORS, GIBLIN & NICKERSON, P.A.
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February 28, 2002

Via Facsimile & Overnight Mail

Ms. Blanca Bayo
Division of Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd., Room 370
Tallahassee, FL 32399-0850

Re: Docket No. 011344-WS

Dear Ms. Bayo:

RECEIVED - FPSC
02 MAR - 1 AM 11:01
COMMISSION
CLERK

On behalf of Nassau County (the "County"), Florida, this letter is provided to state the County's opposition to the staff recommendation dated February 21, 2002 in which the staff has reversed its earlier recommendation that the Commission acknowledge the County's jurisdiction over the assets of Florida Water Services Corporation ("Florida Water") located in the County. Apparently, the staff's reversal of its prior recommendation is based on information contained in a second letter dated February 6, 2002 from the attorney for Florida Water. The County has reviewed both the December 7, 2001 and February 6, 2002 correspondence from Florida Water's attorney and notes that there is little to no substantive difference in the information provided.

Florida Water's reliance upon the Commission's order with respect to the St. Johns County Declaratory Statement in 1993 and the facts concerning United Water Florida, Inc. ignores the pertinent findings of the First District Court of Appeals in Hernando County v. Florida Public Service Commission, 685 So. 2nd 48 (Fla. 1st DCA 1997) which render such precedent meaningless.

In Hernando County, the court noted that the First District Court of Appeals opinion in Board of County Commissioners v. Beard, 601 So. 2nd 590 (Fla. 1st DCA 1992) which addressed the Commission's jurisdiction over United Water facilities "did not reach the question and is not controlling with regard to the issue of the meaning of "service" as used in section 367.171(7)." The Hernando County court quoted favorably from the "well-reasoned dissent" of Commissioner Deason and the court's earlier opinion in Citrus County v. Southern States Utilities, 656 So. 2d 1307 (Fla. 1st DCA 1995), finding that to satisfy the "service" requirement of section 367.171(7), the Commission must find that the systems

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FPSC-COMMISSION CLERK

Ms. Blanca Bayo
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are "operationally integrated, or functionally related, in . . . utility service delivery [rather] than fiscal management." Specifically, the court quoted Commissioner Deason's finding that "[t] here are 44 references to the word "service" in Chapter 367 with the connotation of a physical delivery of water and/or wastewater . . ." The court further noted the "legislative intent that the facilities and land forming a system must exist in close geographical proximity across a county border."

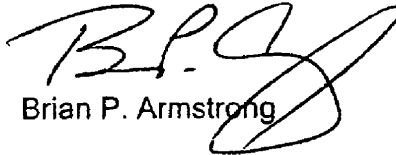
The correspondence submitted by Florida Water indicates only limited administrative and operational functions of a cross-county nature, none of which relate directly to every day "utility service delivery". By the Company's admission, the Nassau County facilities are a 30-40 minute drive from the Duval County facilities – certainly not the "close proximity" contemplated in Hernando County – and the facilities are not physically interconnected. Perhaps most important, however, is the fact that all water and wastewater equipment necessary to provide services and the operations personnel required to operate such equipment are located and provide "utility service delivery" solely within Nassau County. The mere periodic use of personnel from Duval County to "back-up and fill-in" for Nassau County operators, perform some maintenance activities on equipment in Nassau County (in addition to maintenance provided by the operators at the Nassau County sites) or assist in emergency repair situations are clearly insufficient to establish integrated "utility service delivery", as required by the court. As the court recognized in Hernando County:

If the legislature had intended, the administrative and operational functions of a company to satisfy the cross-county activity necessary to support PSC jurisdiction under section 367.171(7), it could have simply used the word "system" instead of also referring to "service". In other words, the legislature could have provided that the commission shall have exclusive jurisdiction over all utility systems which transverse county boundaries, or, even more expansively, which operate in multiple counties. We must presume that these limiting terms were deliberately included to restrict the exercise of PSC jurisdiction over utilities in non-jurisdictional counties.

The record of the Commission proceeding which the Court reviewed in Hernando County contained conspicuously similar allegations of cross-county integration as presented in the February 6 correspondence. The Court rejected such "limited examples of specific instances of facilities operating in tandem" as insufficient to deprive regulatory jurisdiction from a county which has taken the steps necessary to assume such jurisdiction. For these reasons, the County respectfully requests that the Commission issue an order consistent with staff's initial recommendation in this matter thereby affirming the County's right to regulate Florida Water. The failure to do so in light of the Hernando County decision can only result in the wasteful expenditure of time and resources litigating this matter.

Ms. Blanca Bayo
February 28, 2002
Page Three

Very truly yours,



Brian P. Armstrong

BPA/gs

cc: Ms. Roseanne Gervasi, Esquire
Division of Legal Services
Florida Public Service Commission

Kenneth Hoffman, Esquire
Rutledge, Ecenia, Purnell & Hoffman, P.A.