



# Public Service Commission

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COMMISSION CLERK

**DATE:** MARCH 21, 2002

**TO:** DIRECTOR, DIVISION OF COMMISSION CLERK AND ADMINISTRATIVE SERVICES (BAYÓ)

**FROM:** DIVISION OF ECONOMIC REGULATION (RIEGER, MAILHOT) <sup>SOR</sup> OFFICE OF THE GENERAL COUNSEL (CROSBY, GERVASI) <sup>DM</sup> <sup>RL</sup> <sup>met</sup> <sup>JD</sup> <sup>SA</sup>

**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.

**AGENDA:** 04/02/02 - REGULAR AGENDA - PROPOSED AGENCY ACTION FOR ISSUES 2 AND 3 - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\RGO\WP\011344.RCM

### CASE BACKGROUND

On November 17, 1964, the Board of County Commissioners of Nassau County (County Board) adopted a resolution declaring Nassau County (County) subject to the provisions of Chapter 367, Florida Statutes. This resolution invoked Commission jurisdiction over investor-owned water and wastewater utilities in the County. The Commission acknowledged the resolution by Order No. 3733, issued January 6, 1965, in Docket No. 5818-WS.

On September 17, 2001, the County Board adopted Resolution No. 2001-128, rescinding the Commission's jurisdiction over investor-owned water and wastewater utilities in the County effective immediately. This recommendation addresses the County resolution.

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FPSC-COMMISSION CLERK

DOCKET NO. 011344-WS

DATE: March 21, 2002

A recommendation was originally filed in this docket on December 21, 2001, for the January 8, 2002, agenda conference. Since the filing of the original recommendation, staff learned that United Water Florida Inc. (UWF), a utility at issue in this docket, had been sold to JEA, a governmental authority exempt from Commission regulation pursuant to Section 367.022(2), Florida Statutes. The original recommendation was therefore deferred and a revised recommendation was filed on January 10, 2002, for the January 22, 2002, agenda conference to address the ramifications of the sale in Issue 2.

On January 18, 2002, Florida Water Services Corporation (FWSC), another utility at issue in this docket, requested deferral of the item in order to determine whether it could provide additional information or a more persuasive case for the retention of Commission jurisdiction over FWSC. A second deferral resulted as a result of that request. FWSC provided the additional information, and upon consideration of that information, staff filed a second revised recommendation on February 21, 2002, for the March 5, 2002, agenda conference. Staff's recommendation changed from the January 10, 2002, recommendation with respect to Issue 3 only.

On March 1, 2002, Nassau County requested deferral of the February 21, 2002, recommendation because counsel for the County was unable to attend the scheduled agenda conference due to his required attendance at negotiations with FWSC concerning potential acquisition of FWSC by the Florida Governmental Utility Authority. Moreover, on March 1, 2002, the County also filed a letter stating its opposition to staff's recommendation. The County's deferral request was granted.

Due to the foregoing, this recommendation is the third revised recommendation filed in this docket. It incorporates the positions of both FWSC and the County in Issue 3. Staff's recommendation has not otherwise changed from the second revised recommendation filed on February 21, 2002.

The Commission has jurisdiction pursuant to Section 367.171, Florida Statutes.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission acknowledge Resolution No. 2001-128, rescinding the Commission's jurisdiction over investor-owned water and wastewater utilities in Nassau County effective September 17, 2001?

**RECOMMENDATION:** Yes. The Commission should acknowledge Resolution No. 2001-128, rescinding the Commission's jurisdiction over investor-owned water and wastewater utilities in Nassau County, effective September 17, 2001. Certificate No. 001-W, held by Florida Public Utilities Company (FPUC), should be canceled and returned to the Commission within 30 days from when FPUC is no longer a party to, or at the conclusion of, Docket No. 990817-WS. The cancellation of the certificate does not affect the authority of the Commission to collect, or the obligation of FPUC to pay, regulatory assessment fees accrued prior to the September 17, 2001, transfer of jurisdiction to the County. (RIEGER, CROSBY)

**STAFF ANALYSIS:** As stated in the case background, on November 17, 1964, the County Board adopted a resolution declaring the County subject to the provisions of Chapter 367, Florida Statutes. This resolution invoked Commission jurisdiction over investor-owned water and wastewater utilities in the County. On September 17, 2001, in accordance with Section 367.171(1), Florida Statutes, the County Board adopted Resolution No. 2001-128 rescinding Commission jurisdiction in the County effective immediately.

Section 367.171(1), Florida Statutes, provides that a county, after ten continuous years under Commission jurisdiction, may by resolution or ordinance rescind said jurisdiction and thereby exclude itself from the provisions of Chapter 367, Florida Statutes, except from Section 367.171, Florida Statutes. The County has met that requirement. Therefore, staff recommends that the Commission acknowledge Resolution No. 2001-128, which rescinds Commission jurisdiction in Nassau County as of September 17, 2001.

The following utilities held certificates of authorization from the Commission to provide water and/or wastewater service in Nassau County on September 17, 2001:

<u>UTILITY</u>	<u>CERTIFICATE NUMBER(S)</u>	
Florida Public Utilities, Inc. (Fernandina Beach System)	001-W	
Florida Water Services Corporation	171-W	122-S
United Water Florida Inc.	236-W	179-S

Pursuant to Section 367.171(5), Florida Statutes, when a utility becomes subject to regulation by a county, all cases in which the utility is a party then pending before the Commission shall remain within the jurisdiction of the Commission until disposed of in accordance with the law in effect on the day such case was filed. Florida Public Utilities, Inc. (Fernandina Beach System) (FPUC) is a party to one docket pending before the Commission, which is Docket No. 990817-WS -- Application of Florida Water Services Corporation for amendment of Certificates Nos. 171-W and 122-S to add territory in Nassau County. Staff recommends that Certificate No. 001-W, held by FPUC, be canceled and returned to the Commission within 30 days from when FPUC is no longer a party to, or at the conclusion, of Docket No. 990817-WS. A recommendation is scheduled to be filed in that docket for a regular agenda conference in June, 2002. Staff notes that the cancellation of the certificate does not affect the authority of the Commission to collect, or the obligation of FPUC to pay, regulatory assessment fees (RAFs) accrued prior to the September 17, 2001, transfer of jurisdiction to the County. See Section 367.145(1)(a), Florida Statutes, and Rule 25-30.120(2), Florida Administrative Code.

Staff notes that Section 367.171(7), Florida Statutes, provides, in relevant part, that "the [C]ommission shall have exclusive jurisdiction over all utility systems whose service transverses county boundaries, whether the counties involved are jurisdictional or nonjurisdictional. . . ." UWF and FWSC, both of which provide service in Nassau County, also provide service in certain other counties in the area, including Duval County, which is contiguous to Nassau County. Therefore, jurisdiction over these two utilities is further addressed in Issues 2 and 3 of this recommendation, respectively.

**ISSUE 2:** Did the Commission retain exclusive jurisdiction over United Water Florida Inc.'s (UWF) facilities in Nassau County after the date of the County Resolution pursuant to Section 367.171(7), Florida Statutes, and regulatory authority over UWF up to the date that the utility was subsequently sold to an exempt governmental entity?

**RECOMMENDATION:** Yes, pursuant to Section 367.171(7), Florida Statutes, because UWF operates as a single utility system transversing county boundaries, the County resolution did not rescind the Commission's exclusive jurisdiction over UWF's facilities in Nassau County, as well as in St. Johns and Duval Counties. Nevertheless, pursuant to Order No. PSC-02-0280-FOF-WS, issued March 4, 2002, in Docket No. 020055-WS, the utility became exempt from Commission regulation on December 28, 2001, upon the sale of UWF to the JEA, an exempt governmental authority. (GERVASI, RIEGER)

**STAFF ANALYSIS:** UWF held Certificates Nos. 236-W and 179-S from the Commission to provide water and wastewater service in Duval, St. Johns, and Nassau Counties on September 17, 2001. Duval County is contiguous to both Nassau and St. Johns Counties. St. Johns is a nonjurisdictional county.

**Jurisdiction When Service Transverses County Boundaries**

As noted in Issue 1, Section 367.171(7), Florida Statutes, provides, in relevant part, that "the [C]ommission shall have exclusive jurisdiction over all utility systems whose service transverses county boundaries, whether the counties involved are jurisdictional or nonjurisdictional. . . ."

By Order No. 24335, issued April 8, 1991, in Docket No. 910078-WS, the Commission found that UWF, then known as Jacksonville Suburban Utilities Corporation (Jacksonville Suburban or JSUC), was comprised of a "combination of functionally related facilities and land [which was] indeed a utility system whose service transverse[d] county boundaries and [was], therefore, subject to this Commission's exclusive jurisdiction." At that time, the question presented was whether the utility's services in St. Johns County were properly subject to regulation by the County, or whether exclusive jurisdiction resided within the Commission pursuant to Section 367.171(7), Florida Statutes. Among the

uncontroverted facts considered in reaching its decision, the Commission noted that:

Jacksonville Suburban's facilities in Duval, Nassau, and St. Johns counties [were] managed from a single centrally located office. Officers and personnel responsible for management, engineering, accounting, maintenance, customer service representation, laboratory testing, and administrative support [were] the same for the utility's operations in all three counties. Staffing, planning, and budgeting [were] done on a system-wide basis rather than county by county. Operating costs [did] not vary materially from county to county and rates [were] uniform throughout the utility's service area.

Order No. 24335 was affirmed on appeal in Board of County Commissioners of St. Johns County v. Beard, 601 So. 2d 590 (Fla. 1<sup>st</sup> DCA 1992) (Beard). In that case, the Court found that in determining whether Jacksonville Suburban was a system whose service transversed county boundaries within the meaning of Section 367.171(7), the Commission properly focused upon the statutory definition of "system" set out in Section 367.021(11), which states that "[s]ystem' means facilities and land used or useful in providing service and, upon a finding by the [C]ommission, may include a combination of functionally related facilities and land." Id. at 592-593.

In so finding, the Court rejected the County's assertion that the functional relationship referred to requires an actual physical connection between Jacksonville Suburban's facilities. "If physical interconnection was required there would be little need for a 'finding by the [C]ommission' that the facilities were functionally related." Id. at 593. The Court went on to agree with the Commission that "the undisputed evidence establishe[d] that these facilities [were] interrelated administratively and operationally." Id.

Further, by Order No. PSC-97-0929-FOF-WS, issued August 4, 1997, in Docket No. 970210-WS, the Commission granted UWF an amendment to its operating certificates to include additional territory in St. Johns County when UWF acquired the assets of Sunray Utilities. In so doing, the Commission found that the acquisition of the Sunray facilities would not change UWF's method of operation, and that once the facilities were acquired, they

would be "functionally related to the other facilities owned by UWF in St. Johns, Nassau, and Duval Counties, and that they [would] thus become a portion of UWF's single utility system. . . ."

Staff notes that by Order No. PSC-97-0929-FOF-WS, the Commission determined that it had jurisdiction to process UWF's amendment application under both Beard and Hernando County v. FPSC, 685 So. 2d 48 (Fla. 1<sup>st</sup> DCA 1996) (Hernando County). Specifically, at pages 2 - 3 of the Order, the Commission noted that:

In Hernando County v. FPSC, the court reversed a Commission order determining that the Commission has jurisdiction over existing facilities and land of Southern States Utilities, Inc., in Florida. The court concluded that the relevant inquiry when determining the existence of jurisdiction under section 367.171(7) is the 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. Id. at 52. The court further concluded that the requirements of this statute can only be satisfied by evidence that the facilities forming the asserted system exist in contiguous counties across which the service travels. Id. Further, the court noted that to satisfy the prerequisites of section 367.171(7), the PSC must find that the systems were operationally integrated, or functionally related, in... utility service delivery [rather] than fiscal management. Id. at 51. . . . We note that the court found Beard to be both factually and legally distinguishable. Id.

(emphasis added; citation omitted.)

Staff notes that the court found Beard to be distinguishable in that all of the system-wide functions emanated from Duval County, and because the Beard case is concerned with the meaning of the word "system" rather than focusing on the meaning of "service." Id.

#### Nassau County Letter

By letter dated October 4, 2001, Nassau County informed UWF 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 at issue in this docket. The County cites to Beard and Hernando County in arriving at this conclusion. The County noted that the Hernando County court found that the Beard holding "does 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)." Hernando County at 51. The County goes on to note that the Hernando County court treated the interpretation of the term "service" as used in the statute as an issue of first impression. The County concludes that the "service areas" which UWF is authorized to serve in Nassau and Duval Counties are not contiguous to one another, are not physically interconnected, and can easily be segregated from one another.

#### Staff Response

In response to this letter, by letter dated October 23, 2001, legal staff informed the County, as a courtesy, that the Division of Legal Services disagreed with the County's interpretation of the case law which led the County to reach its determination. In this letter, legal staff explained that the Hernando County decision reversed a Commission order determining that the Commission had exclusive jurisdiction over Southern States Utilities, Inc.'s (SSU, now FWSC) facilities and land in the State of Florida pursuant to Section 367.171(7), Florida Statutes. The Court found that the Commission 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 Commission 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 Commission's definition of the word "service" was too expansive, and that "to satisfy the prerequisites of Section 367.171(7), Florida Statutes, the Commission must find that 'the systems were operationally integrated, or functionally related, in . . . utility service delivery [rather] than fiscal management.'" Id. at 51 (quoting Citrus County v. Southern States Utils., 656 So. 2d 1307 (Fla. 1<sup>st</sup> DCA), overruled on other grounds by Southern States Utils. v. FPSC, 714 So. 2d 1046 (Fla. 1<sup>st</sup> DCA 1998)).



Legal staff further explained that the Court went on to find that its previous decisions, including its decision in Beard, did not supply a valid basis for the Commission's expansive definition of the word "service" which it applied in determining its jurisdiction over SSU'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 Jacksonville Suburban's facilities indeed constituted "'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.

Legal staff advised the County that because the Beard decision is good law, it is our opinion 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 Commission maintains exclusive jurisdiction over UWF. We further advised that staff would endeavor to determine whether UWF's methods of operation have changed in such a way that would cause the Commission to lose jurisdiction over the utility's facilities in Nassau County as a result of the resolution.

#### UWF Letters

By letter dated October 22, 2001, UWF's Vice President of Regulatory Business, Mr. Walton F. Hill, advised legal staff that the facts cited in Order No. PSC-97-0929-FOF-WS (UWF amendment docket referenced at pages 5-6 of this recommendation), and as set forth in Docket No. 960451-WS (a UWF rate case that went to hearing, wherein the Commission accepted stipulations that UWF's land and facilities were functionally related and formed a single system), have not changed. According to the utility,

UWF still manages and operates all of its facilities from its office in Duval County, and its rates for utility service are uniform for all customers. Central office personnel provide the same utility services across the entire service area. UWF's customers are all serviced by the same customer service representatives at the same customer service telephone number. Financial, operating and capital planning is done centrally for all utility

facilities. Thus, all of UWF's facilities and land in all Counties are functionally related.

Moreover, by letter dated October 23, 2001, counsel for UWF, Mr. William E. Sundstrom, advised staff that he supports the proposition that the Commission retains jurisdiction over the UWF system located in Nassau County and that this matter was settled by the Beard decision. He also pointed out that in Order No. PSC-97-0929-FOF-WS, the Commission found that UWF was subject to Commission jurisdiction under both the Beard and Hernando County decisions because UWF's systems in Duval, St. Johns, and Nassau Counties were but "a single system whose service transverses all three county boundaries," making them a "single utility system" within the meaning of Section 367.021(11), Florida Statutes.

Counsel for UWF argued that this is a simple proposition of law and that unless the facts have changed, or the law has changed, lower courts and administrative agencies are bound by the precedential statements of higher courts. The legal principle is that trial courts and the administrative agencies may be at liberty to disagree with the binding precedent of the district courts of appeal having jurisdiction over them, and they are also at liberty to state the reasons for their disagreements in their orders or judgments for consideration by the higher courts, but they are nevertheless bound by such precedent and must follow it, unless the Florida Supreme Court says otherwise. (Citations omitted). Counsel further argued that the County may not, by ordinance, supersede a General Act of the Legislature, and that while it is true that pursuant to Section 367.171, the County may rescind Commission jurisdiction, it may not do so when Section 367.171(7) applies, as it does here.

### Conclusion

Staff agrees with UWF that since UWF's methods of operation have not changed, the Beard decision is controlling law with respect to this matter. For all of the foregoing reasons, staff recommends that pursuant to Section 367.171(7), Florida Statutes, because UWF operates as a single utility system that transverses county boundaries, the County resolution does not rescind the Commission's exclusive jurisdiction over UWF's facilities in Nassau County, as well as in St. Johns and Duval Counties.

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However, as stated in the case background, since the time that the County Resolution was executed, UWF was sold on December 28, 2002, to JEA, a governmental authority exempt from Commission regulation pursuant to Section 367.022(2), Florida Statutes. Pursuant to Section 367.071(4)(a), Florida Statutes, the sale of facilities to a governmental authority is approved as a matter of right. On January 17, 2002, UWF and JEA jointly filed an application for transfer of UWF to JEA and for cancellation of UWF's certificates. By Order No. PSC-02-0280-FOF-WS, issued March 4, 2002, in Docket No. 020055-WS, the sale was approved and UWF's Certificates Nos. 236-W and 179-S were cancelled. Nevertheless, it is necessary for the Commission to rule on this issue so that UWF will know to which regulatory body, as between the Commission and the County, it owes its RAFs for the period from the date of the County Resolution to the date of the sale to JEA.

**ISSUE 3:** Does the Commission retain exclusive jurisdiction over Florida Water Services Corporation's (FWSC) facilities in Nassau County pursuant to Section 367.171(7), Florida Statutes?

**RECOMMENDATION:** Yes, because FWSC's facilities in Nassau County are part of a single utility system transversing county boundaries between Nassau and Duval Counties, the County resolution does not rescind the Commission's exclusive jurisdiction over FWSC's facilities in Nassau County. (GERVASI, RIEGER)

**STAFF ANALYSIS:** By letter dated October 23, 2001, and referenced in Issue 2 of this recommendation, staff counsel advised the County that staff would endeavor to determine whether the County or the Commission has jurisdiction over FWSC's facilities in Nassau County. The purpose of staff's inquiry was to determine 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 Commission would maintain jurisdiction over FWSC's facilities in Nassau County pursuant to Section 367.171(7), Florida Statutes.

As noted in Issue 2, the Hernando County decision reversed a Commission order determining that the Commission had exclusive jurisdiction over SSU's (now FWSC) facilities and land in the State of Florida pursuant to Section 367.171(7), Florida Statutes. The Court found that "to satisfy the prerequisites of section 367.171(7), the PSC must find that the systems were operationally integrated, or functionally related, in . . . utility service delivery [rather] than fiscal management." Hernando County v. FPSC, 685 So. 2d at 51 (citation omitted). The court also concluded that "the requirements of this statute can only be satisfied by evidence that the facilities forming the asserted 'system' exist in contiguous counties across which the service travels." Id. at 52.

**FWSC Letters**

By letter dated December 7, 2001, and filed December 14, 2001, counsel for FWSC, Mr. Kenneth A. Hoffman, provided information concerning the cross-county operating functions shared by FWSC employees in connection with the provision of water and wastewater services by the utility in Nassau and Duval Counties. According to that letter, FWSC's employees situated outside of Nassau County provide the following services in Nassau County or have oversight

responsibility for operational activities in Nassau County: meter reading; plant equipment maintenance; resolution of emergencies and/or outages; area supervisor based in Jacksonville; and regional manager based in Palm Coast.

In our previously filed recommendations in this docket, staff recommended that the above-referenced functions, in and of themselves, did not support a finding that FWSC's Duval and Nassau systems are operationally integrated, or functionally related, in . . . utility service delivery [rather] than fiscal management. As noted in Issue 2, the Hernando County court found that the Commission relied primarily upon centralized organization, as well as regional management, to provide the basis for its decision that SSU's various facilities constituted a single system providing service which transversed county boundaries throughout the state. Id. at 50. Such activities were not enough to sustain the Commission's decision. The activities which FWSC identified in its December 7, 2001, letter to staff appeared to be similar to those identified by the Commission in Hernando County.

Nevertheless, in its subsequent letter dated February 6, 2002, and filed February 7, 2002, in this docket, FWSC provided substantially more information concerning whether its Nassau County facilities are part of a utility system whose service transverses county boundaries under Section 367.171(7), Florida Statutes. FWSC's position is that the administrative and operational integration between its Nassau and Duval County systems is virtually identical to the administrative and operational integration between its St. Johns and Duval County systems which the Commission determined to be sufficient to trigger Commission jurisdiction in Order No. PSC-93-1162-FOF-WU, issued August 10, 1993, in Docket No. 930108-WU (in re: Southern States Utilities, Inc.'s Petition for a Declaratory Statement Regarding Commission Jurisdiction Over its Water Facilities in St. Johns County). Moreover, FWSC believes that the administrative and operational integration between its Nassau and Duval County systems is sufficient to satisfy the Hernando County test identified in Issue 2 at page 7 of this recommendation.

According to FWSC, 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 central office in Orange County.

Moreover, FWSC asserts that the facts supporting the retention of Commission jurisdiction over UWF, as set forth in Issue 2, are not distinguishable from the facts supporting the retention of Commission jurisdiction over FWSC. From the administrative standpoint, all administrative functions of both utilities originate out of the Duval County office, and 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 FWSC, including the sharing of operating personnel, resources, activities, and expenses with the Duval County operations.

#### Nassau County Letter

On March 1, 2002, counsel for the County, Mr. Brian P. Armstrong, filed a letter in opposition to the second revised staff recommendation filed in this docket on February 21, 2002. The County states that it has reviewed both FWSC letters and that there is little to no substantive difference in the information provided.

According to the County, the correspondence submitted by FWSC indicates only limited administrative and operational functions of a cross-county nature, none of which relate directly to every day "utility service delivery." The County argues that FWSC's reliance on the Commission's order with respect to the St. Johns County Declaratory Statement in 1993 and the facts concerning UWF ignores the pertinent findings of the Hernando County Court which render such precedent meaningless. The County notes that the Hernando County Court found that the Beard decision 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), Florida Statutes, and that to satisfy the "service" requirement of Section 367.171(7), the Commission must find that the systems are "operationally integrated, or functionally related, in . . .

utility service delivery [rather] than fiscal management." The County further notes that the Court found that "the facilities and land forming a system must exist in close geographical proximity across a county boarder."

The County argues that by FWSC's admission, FWSC's Nassau County facilities are a 30-40 minute drive from the Duval County facilities, which the County believes are not the "close proximity" contemplated in Hernando County. The County also notes that the facilities are not physically interconnected. Moreover, the County argues 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.

Further, the County believes that 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 [utility's] February 6 correspondence." The County argues that 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.

### Conclusion

As previously noted, FWSC asserts that the findings in the St. Johns County Declaratory Statement are equally applicable in the instant case. By Order No. PSC-93-1162-FOF-WU, in granting the Petition for Declaratory Statement with respect to SSU's facilities in St. Johns County, the Commission found that those facilities consisted solely of land, treatment, and distribution plant. No offices or personnel were located at either of the two sites. Contrary to the County's reading of FWSC's February 6, 2002, letter filed in this docket, FWSC indicates that "[t]he 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."

By Order No. PSC-93-1162-FOF-WU, with respect to the relationship between FWSC's Duval and St. Johns facilities, the Commission also found that all administrative and operational services were provided primarily through the utility's Woodmere



facility in Duval County, and noted that St. Johns County is contiguous to Duval County. Staff notes that that Declaratory Statement was issued prior to the Hernando County decision, and it was not appealed. Even so, staff disagrees with the County that the Hernando County decision renders such precedent meaningless. Staff believes that the Declaratory Statement comports with Hernando County, as well as with the findings in the Beard decision which led the Court to conclude that the Commission has jurisdiction over UWF's single system (see Issue 2).

As required by the Hernando County Court, based on the information contained in FWSC's February 6, 2002, letter, FWSC's Nassau County facilities appear to be operationally and functionally interrelated with its Duval County facilities in utility service delivery such that the service transverses the two contiguous county boundaries. And, as in the Beard case, virtually all of FWSC's utility functions in Nassau County appear to emanate from Duval County.

Further, that the facilities are not physically interconnected across county boundaries is of no consequence. As noted in Issue 2, neither were UWF's facilities at issue in Beard physically interconnected across county boundaries, yet the Hernando County Court did not overrule Beard. Therefore, there is no requirement in the law of such physical interconnection in order for the Commission to retain jurisdiction pursuant to Section 367.171(7), Florida Statutes.

For the foregoing reasons, staff recommends that because FWSC's facilities in Nassau County are part of a single utility system transversing county boundaries between Nassau and Duval Counties, the County resolution does not rescind the Commission's exclusive jurisdiction over FWSC's facilities in Nassau County.

For informational purposes, staff notes that as discussed in Issue 1, FWSC has one docket pending before the Commission respective to its Nassau County facilities, which is Docket No. 990817-WS -- Application of Florida Water Services Corporation for amendment of Certificates Nos. 171-W and 122-S to add territory in Nassau County.

DOCKET NO. 011344-WS

DATE: March 21, 2002

**ISSUE 4:** Should this docket be closed?

**RECOMMENDATION:** No. If no protest is received from a substantially affected person to the proposed agency action issues, a consummating order should be issued and this docket should remain open until Docket No. 990817-WS has been closed, after which time this docket should be closed administratively and FPUC'S Certificate No. 001-W should be cancelled. (CROSBY)

**STAFF ANALYSIS:** If no protest is received from a substantially affected person to the proposed agency action issues, a consummating order should be issued and this docket should remain open until Docket No. 990817-WS has been closed, after which time this docket should be closed administratively and FPUC'S Certificate No. 001-W should be cancelled.