

RESOLUTION NO. 02 - 428

A RESOLUTION OF COLLIER COUNTY, FLORIDA, DIRECTING AND AUTHORIZING THAT NOTICE BE GIVEN IMMEDIATELY TO THE CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA; TO THE CITY COUNCIL OF THE CITY OF MILTON, FLORIDA; TO THE FLORIDA WATER SERVICES AUTHORITY, TO ALLETE, INC., AND TO THE FLORIDA PUBLIC SERVICE COMMISSION, THAT THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY HAS CONCERNS REGARDING THE PROPOSED SALE OF WATER AND WASTEWATER SYSTEMS OWNED BY FLORIDA WATER SERVICES, INC. TO THE FLORIDA WATER SERVICES AUTHORITY; PROVIDING AN EFFECTIVE DATE

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA, that:

SECTION 1. Expression of Concerns.

A. The Board of County Commissioners of Collier County, Florida (the "Board") has recently become aware that the City of Gulf Breeze, Florida, ("Gulf Breeze") and the City of Milton, Florida ("Milton") within a very short period of time have agreed with Florida Water Services, Inc. ("FWS") and its parent corporation, Allete, Inc. ("Allete") - without any prior notice to, or consultation with, Collier County or the City of Marco Island, or to the best of our knowledge with any other affected local governments throughout Florida - to create by interlocal agreement pursuant to Section 163.01, Florida Statutes, (the "Interlocal Act") a legal entity called the "Florida Water Services Authority" ("FWSA") for the purpose of acquiring title to 152 water and/or wastewater utility systems owned by Allete throughout Florida. One of these systems is located in the City of Marco Island and one other system is located near the City of Marco Island, but in unincorporated Collier County. These two (2) utility systems are regulated by the Collier County Water-Wastewater Authority.

B. Allete, Gulf Breeze and Milton have apparently agreed to a transaction (the "Transaction") which will, among other things, pay annually to Gulf Breeze two percent (2%) of the annual gross revenues of all of the subject 152 systems throughout Florida, and such annual payments will not in any event be less than 1.5 MILLION DOLLARS (\$1,500,000) each year. The Board understands that these added costs will be passed on to the utility systems' customers. The Board has concerns whether these added costs will be prudent, just and reasonable. Furthermore, the Board is concerned that there are inherent conflicts of interest between Allete, Gulf Breeze and Milton and the FWSA, which are likely to benefit them to the detriment of all current FWS customers, including those in Collier County. First, the fact that the FWSA participants are compensated as a percentage of customer annual gross revenues means that Gulf Breeze and Milton will see financial advantage each time utility rates are increased. Secondly, there is no advantage for Gulf Breeze to have pressed for a lower purchase price since it separately receives income based on the gross amount of bonds issued in connection with the purchase transaction. The higher the purchase price, the more bond transaction income that flows to Gulf Breeze.

C. The Board has concerns that the creation of the FWSA and the proposed Transaction appear to have been conducted in undue haste.

D. The Board has concerns whether it was possible for the City Council of the City of Gulf Breeze and the City Council of the City of Milton, in such a short period of time, to have conducted valid due diligence assessments of the physical condition of the 152 utility systems that are planned to be purchased by the FWSA, including, but not limited to, the need for clearly necessary and very expensive capital improvements to such systems in the foreseeable future. The Board has concerns whether the two cities could lawfully base any decision to purchase these 152 systems without having first rendered their own independent, objective analysis to determine the fair market value of each of the 152 systems. Furthermore, the Board has concerns that the total purchase price agreed to by FWSA of \$507 million, which is \$57 million in excess of the most recent offer considered to be reasonable by the Florida Governmental Utility Authority

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("FGUA"), will necessarily increase the likelihood of short-term rate increases, the deferral of essential capital improvements, or both, merely so Allete may take from the sale substantially more "contributed property" already paid for by the utility's customers than would have been the case under the pending Florida Governmental Utility Authority's offer to purchase.

E. The Board has concerns whether the creation of the FWSA to implement the Transaction is in the public interest. FWSA's actions may be contrary to proper public purposes and may be unconscionable, illegal, or both. The Board has concerns whether the Transaction is authorized by law and the Florida Constitution.

F. The Board has concerns that the Transaction, as structured, may render the subject 152 utility systems to be without any effective regulation if the Transaction takes place, including with regard to rates, capital improvements, and quality of service. The Board has concerns that if the Transaction takes place, whether these utility systems will be without effective, objective, regulation that might be controlled by, or unduly influenced by, the officers of these utility systems. The Board has concerns whether the City Council of the City of Gulf Breeze and the City Council of the City of Milton have sufficient time, sufficient ability or sufficient expertise to effectively regulate and operate these 152 utility systems. Pursuant to Chapter 367, Florida Statutes, many employees of the Florida Public Service Commission ("FPSC") have historically expended innumerable hours regulating such of these 152 utility systems that are under the FPSC's jurisdiction pursuant to Chapter 367, Florida Statutes. The systems that are not regulated by the FPSC pursuant to Chapter 367, F.S., are regulated by five (5) Florida counties, including the Collier County Water-Wastewater Authority with regard to the two (2) systems located in Collier County. Apparently all such FPSC and Florida county regulation is to be transferred to the FWSA. While there is a line of political accountability for the actions of the FPSC running through the Governor and the Florida legislature and for county utility regulation through the elected County Commissioners, there will be no political accountability for the actions of the officials of City of Gulf Breeze and the City of Milton or the board members and management of the FWSA they appoint with regard to the customers of the 152 utility systems located in 27 other Florida counties. The Board has concerns that such a lack of accountability may be intolerable.

G. It appears that with regard to the utility systems that are under the FPSC's Chapter 367, F. S., jurisdiction, the Transaction requires formal approval from the FPSC pursuant to Section 367.071, Florida Statutes. The Board is interested in how the FPSC will make its decisions with regard to the Transaction.

SECTION 2. Direction to Deliver Resolution.

The County Manager is hereby directed to immediately provide a certified copy of this Resolution to the City Manager of the City of Gulf Breeze, to the City Manager of the City of Milton, to the FWSA, to Allete, and to the Florida Public Service Commission.

This Resolution is adopted after motion, second and majority vote favoring adoption this 8th day of October 2002.

ATTEST:
Dwight E. Brock, Clerk

BOARD OF COUNTY COMMISSIONERS
COLLIER COUNTY, FLORIDA

By: Ellie Hoffmann
Deputy Clerk
Attest as to Chairman's
signature only
Approved as to form
and legal sufficiency:

By: James N. Coletta
James N. Coletta, Chairman
State of FLORIDA
County of COLLIER

Thomas C. Palmer
Thomas C. Palmer,
Assistant County Attorney

I HEREBY CERTIFY THAT this is a true and correct copy of a document on file in Board Minutes and Records of Collier County. WITNESS my hand and official seal this 7th day of Oct, 2002

DWIGHT E. BROCK, CLERK OF COURTS
By: Ellie Hoffmann D.C.