

REQUEST TO ESTABLISH DOCKET  
(PLEASE TYPE)

Date 10/18/02

Docket No. 021066-WS

1. Division Name/Staff Name ECR/Patti Daniel
2. OPR Patti Daniel, Connie Kummer, Marshall Willis *PK CK MSK*
3. OCR Mary Anne Helton, John Williams *JW*
4. Suggested Docket Title Investigation into proposed sale of Florida Water Services Corporation

5. Suggested Docket Mailing List (attach separate sheet if necessary)

- A. Provide NAMES ONLY for regulated companies or ACRONYMS ONLY regulated industries,  
as shown in Rule 25-22.104, F.A.C.  
B. Provide COMPLETE name and address for all others. (Match representatives to clients.)

1. Parties and their representatives (if any)

<u>Florida Water Services Corporation</u>	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

2. Interested Persons and their representatives (if any)

<u>Collier County Board of Commissioner</u>	<u>Hernando County Board of Commissioners</u>
<u>James N. Coletta, Chairman</u>	<u>Hannah M. Robinson, Chairperson</u>
<u>County Courthouse</u>	<u>20 North Main Street</u>
<u>Naples, FL 33940</u>	<u>Brooksville, FL 34601-2893</u>
_____	_____

6. Check one:

- Documentation is attached.  
 Documentation will be provided with recommendation.

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PSC/RAR 10 (Revised 01/96)

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FPSC-COMMISSION CLERK

**RESOLUTION NO.: 2002-229**

**A RESOLUTION OF THE HERNANDO COUNTY BOARD OF COUNTY COMMISSIONERS REQUESTING THAT THE CITIES OF MILTON AND GULF BREEZE RECONSIDER THEIR ACTIONS TO ESTABLISH A UTILITY AUTHORITY KNOWN AS FLORIDA WATER SERVICE AUTHORITY UPON A DETERMINATION THAT ACQUISITION OF THE SPRING HILL WATER AND WASTEWATER UTILITY SYSTEM BY SUCH AUTHORITY IS NOT IN THE PUBLIC INTEREST WITH RESPECT TO THE 35,000 HERNANDO COUNTY CUSTOMERS OF THE SYSTEM.**

**WHEREAS**, for years Hernando County has documented the record of poor service provided to our residents in Spring Hill by Florida Water Services, where there are 35,000 households and businesses which are customers of the investor-owned water and wastewater utility; and

**WHEREAS**, Hernando County was hopeful that in working through the Florida Governmental Utility Authority, we would be able to amicably resolve our differences and to conclude these issues; and

**WHEREAS**, the announcement of an agreement for sale between Florida Water Services and a newly formed utility authority, ironically denominated as the "Florida Water Service Authority," which appears to have been hastily assembled with the cooperation and encouragement of the elected and appointed officials of the Cities of Milton and Gulf Breeze, reinforces our long-term experience with Florida Water Services, in that

---We have not been included in whatever process has been undertaken;

---Without notice to all affected customers and host governments, the public purpose for the acquisition of facilities has not been and cannot be established;

---The fact that Florida Water Services will be the operator/manager leaves us in the same position as before—poor service from an uncaring company;

---A scenario has been created in which Hernando County may have NO regulatory control whatsoever over rates or service...something we consider outrageous; and

**WHEREAS**, while the new "Authority" and the cities which are the founding members

thereof may maintain that eminent domain cannot be exercised against a utility authority with respect to public utility facilities within the jurisdiction of a local government, such is not the position of Hernando County, and

**WHEREAS**, Hernando County has been engaged in a costly and lengthy process with the Florida Governmental Utility Authority (FGUA) to develop a cooperative relationship which meets our needs and those of the other host governments while offering Florida Water Services a fair price for the facilities; and

**WHEREAS**, Hernando County has endorsed the FGUA acquisition process and is committed to acquiring ownership of the Spring Hill facilities in the interest of ensuring that ALL the residents of Hernando County get high quality water at a fair price with local accountability;

**NOW, THEREFORE, BE IT RESOLVED BY THE HERNANDO COUNTY BOARD OF COUNTY COMMISSIONERS, HERNANDO COUNTY, FLORIDA, AS FOLLOWS:**

**SECTION 1.** County staff shall take all necessary and proper steps to protect the rights of Hernando County and the customers of Florida Water Services so that ALL the residents of Hernando County get high quality water at a fair price with local accountability, including but not limited to working closely with other host governments and other involved parties in the formulation of any and all legal action which may prevent consummation of the pending transaction between Florida Water Services, Inc., and a newly formed entity purportedly created by the Cities of Milton and Gulf Breeze denominated as "Florida Water Service Authority."

**SECTION 2.** Hernando County stands ready to work with the other host communities to ensure that we are treated fairly and that the public interest of all the customers of Florida Water Services and not just the parochial interests of two municipalities without any Florida Water Services customers in their jurisdictions may be properly served.

**SECTION 3.** Hernando County urges the elected and appointed officials of the Cities of Milton and Gulf Breeze to recognize the substantial harm their actions in forming the "Florida Water Service Authority" will cause to tens of thousands of Florida Water Services customers throughout Florida and to rescind any actions to create this "Authority."

**SECTION 4.** Hernando County urges the executives and shareholders of Allete,



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

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FLORIDA PUBLIC SERVICE COMMISSION  
GENERAL COUNSEL

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 Allele 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 Allele, 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: Collier Hoffman  
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 10th day of Oct, 2002

DWIGHT E. BROCK, CLERK OF COURTS

By: Collier Hoffman D.C.

