

ORIGINAL

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November 22, 2002

Agency Clerk
Florida Public Service Commission
C/O Harold McLean, Esquire, General Counsel
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RECEIVED FPSC
02 NOV 25 PM 12:48
COMMISSION
CLERK

021188-WS

Re: City of Palm Coast's Petition for Rulemaking (Capital Charges)

Dear Public Service Commission Agency Clerk:

Please find enclosed the Petition to Initiate Rulemaking filed on behalf of the City of Palm Coast, Florida. The proposed Rule relates to Capital Charges.

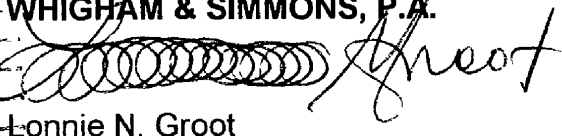
We will appreciate your office and the Commission taking appropriate action relative to this Petition.

Please feel free to call with questions and to let me know if I can be of assistance in this matter or in any other way. Thank you for your attention to this matter.

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Sincerely,

STENSTROM, McINTOSH, COLBERT,
WHIGHAM & SIMMONS, P.A.


Lonnie N. Groot

cc: Richard Kelton, City Manager
Ms. Clare Hoeni, Deputy Clerk
William L. Colbert, Esquire, City Attorney
Virginia Cassady, Esquire

I:\Lng\Cities\2002\Palm Coast\PSC FGUA\ltr to Agency Clerk filing 2nd petition 11-22-02.wpd

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ORIGINAL

**BEFORE THE FLORIDA PUBLIC SERVICE
COMMISSION**

DOCKET NUMBER: 021188-WS

CITY OF PALM COAST'S PETITION TO INITIATE RULEMAKING

COMES NOW, the Petitioner, CITY OF PALM COAST, FLORIDA (the "City"), a Florida municipality, and files this Petition to Initiate Rulemaking under the provisions of Section 120.54, *Florida Statutes*, Rule 28-103.006, *Florida Administrative Code* (Uniform Rules of Procedure), and Chapter 25-40.001, *Florida Administrative Code* (Rules of the Florida Public Service Commission).

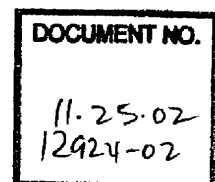
A. Name, Address and Telephone Number of the Petitioner:

The name, address and telephone number of Petitioner's legal representative is:

William L. Colbert, Esquire
Florida Bar #122761
Lonnie N. Groot, Esquire
Florida Bar #266094
Stenstrom, McIntosh, Colbert,
Whigham & Simmons, P.A.
Post Office Box 4848
200 W. First Street, Suite 22
Sanford, Florida 32772-4848
(407) 322-2171/834-5119
Attorneys for Petitioner

The name, address and telephone number of Petitioner is:

Mr. Richard Kelton
City Manager
CITY OF PALM COAST
Post Office Box 354610
264 Palm Coast Parkway
Palm Coast, Florida 32135-5610
(386) 447-4255



B. The Specific Rule or Action Requested:

Retention of Capital Charges Upon Transfer of Water or Wastewater Utility to Specified Entities Created Under Section 1630.01(7)(g)1, *Florida Statutes*:

- a. This Rule is adopted under the exclusive jurisdiction of the Commission over the authority of water or wastewater utility systems and to ensure that capital charges paid by or assessed against consumers and customers such as landowners, builders or developers by means of sources such as impact fees, guaranteed revenues, service availability fees and other such fees and charges are not paid by such consumers and customers without being dedicated for the use of the systems used by the consumers and customers. It is hereby prohibited for such capital charges to be paid by an Entity to any firm or person to include, but not be limited to, a seller of a water or wastewater utility system. This Rule is also appropriate to exercise the police power of the State, as vested in the Commission, to protect the public interest by ensuring that payments of capital charges by consumers and customers do not occur in such a manner that would result in a detriment to the public without appropriate Commission action and oversight.
- b. As used in this Rule, the term "Entity" means a legal entity created under the authority of Section 163.01(7)(g)1, *Florida Statutes*, which, except for populations included under the authority in Section 180.02(3), *Florida Statutes*, serve populations outside of the county or counties of the members of the legal entity.
- c. As used in this Rule, the term "Capital Charges" means revenues such as impact fees, guaranteed revenues, service availability fees, or such other charges or fees imposed upon landowners, builders or developers in connection with the improvement of property utilizing a water or wastewater utility system to defray the costs of capital facilities.
- d. The sale, assignment or transfer of a non-exempt water or wastewater utility to an Entity can be used as a means of shifting the benefits of capital charges from those utility consumers and customers making such payments to those who would not invest such capital charges into public utility system upon whom the consuming public rely thereby circumventing the regulatory jurisdiction of the Commission which is implemented to protect the public interest.
- e. The provisions of Section 367.071, *Florida Statutes*, are intended to protect the public from sales, assignments or transfers of water and wastewater utilities, and their assets (such as "Capital Charges"), that are contrary to or inconsistent with the public interest.
- f. Prior to a water or wastewater utility selling, assigning or transferring its certificate of

authorization, facilities, or any portion or assets (such as “Capital Charges”) thereof, or major organizational control to any Entity, the Commission shall docket and evaluate the proposed sale, assignment or transfer. This requirement relates to utilities which are to be sold or transferred that are under the regulation of the Commission and those that have systems that are both under the regulation of the Commission and regulated by other governmental entities.

- g. An Entity shall not be deemed to be a governmental authority and shall not be deemed to be a district as set forth in Section 1.01(8), *Florida Statutes*.
- h. It is prohibited for any privately owned water or wastewater utility that sells, transfers or assigns its certificate of authorization, facilities, or any portion thereof, or major organizational control to an Entity, to be paid Capital Charges paid to the Entity by consumers and customers being served by the Entity.

Specific Authority: §120.54, F.S.

Law Implemented: §367.011, §367.071, §367.121, and §367.171, F.S.

C. The Reasons for the Rule or Action Requested:

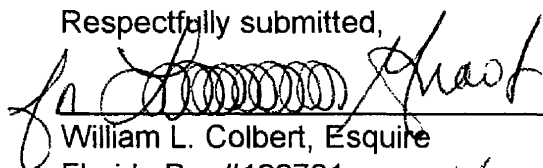
The Petitioner hereby refers to and incorporates herein by this reference thereto the materials and documents included in Florida Public Service Commission Docket Number 21066-WS and Docket Number 21128-WS. The Petitioner has a substantial interest in the proposed rule in that the acquisition of the water and wastewater systems owned and operated by Florida Water Services Corp. (“FWSC”) could have a major impact on the quality and level of water and wastewater service provided to the citizens of the City of Palm Coast and the equities and fairness of paying capital charges. The citizens, consumers and customers of the City of Palm Coast could be substantially impacted by the fact that payments of capital charges made to defray the costs of capital facilities would be diverted from the jurisdictional limits of the City and the system serving the City and its residents to other persons and entities not responsible for providing public services within the jurisdiction. Notwithstanding the fact that Flagler County, pursuant to the provisions of Section 367.171, *Florida Statutes*, is a county that has water and wastewater utility regulatory authority, the rules and policies of the Florida Public Service Commission have significant and material impact on the regulatory actions and activities of Flagler County and the rate setting and other policies of Flagler County. See the attached exhibits relating to the City of Palm Coast.

D. Facts Showing that the Petitioner is Regulated by the Public Service Commission or has a Substantial Interest in the Rule or Action Requested:

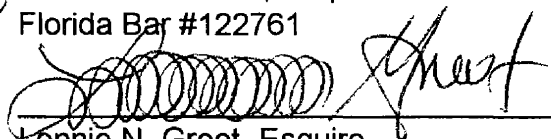
The Petitioner hereby refers to and incorporates herein by this reference thereto the materials and documents included in Florida Public Service Commission Docket Number 21066-WS and Docket Number 21128-WS. Florida Water Services Corp. ("FWSC") proposes to sell, assign and transfer its water and wastewater utility systems to a purported entity known as the Florida Water Services Authority ("FWSA") that was purportedly created by the cities of Gulf Breeze and Milton. The purported FWSA was purportedly created under the provisions of, and purports to have authority relative to water and wastewater systems under, Section 163.01(7)(g)(1), *Florida Statutes*. FWSC owns water and wastewater systems in twenty-six (26) counties. None are located within the jurisdictional boundary of Santa Rosa County in which the cities of Gulf Breeze and Milton lie much less within the city limits of those cities. The purported FWSA and the cities of Gulf Breeze and Milton are not proximate to the many jurisdictions which would be served by the purported new entity (FWSA). Indeed, the FWSA/Cities of Gulf Breeze and Milton and the jurisdictions to be served by water and water services are located in totally different areas of the State and hundreds of miles from Milton and Gulf Breeze. The Petitioner will benefit from the Commission of ensuring that capital charges paid by customers and consumers within a jurisdiction are utilized to accomplish the capital improvement programs needed within jurisdictions, to accomplish the capital needs of jurisdictions, and to meet the capital deficiencies of systems within jurisdictions. The Commission is the governmental entity within the construct of Florida State Government that has the jurisdiction, organization, professional staff, and expertise to protect the public interest when the acquisition of water and wastewater systems under a proposal which would result in regulated actions being indirectly accomplished when such actions could not be directly accomplished and when the interests of the consuming public are jeopardized.

DATED this 22nd day of November, 2002.

Respectfully submitted,



William L. Colbert, Esquire
Florida Bar #122761



Lonnie N. Groot, Esquire
Florida Bar #266094

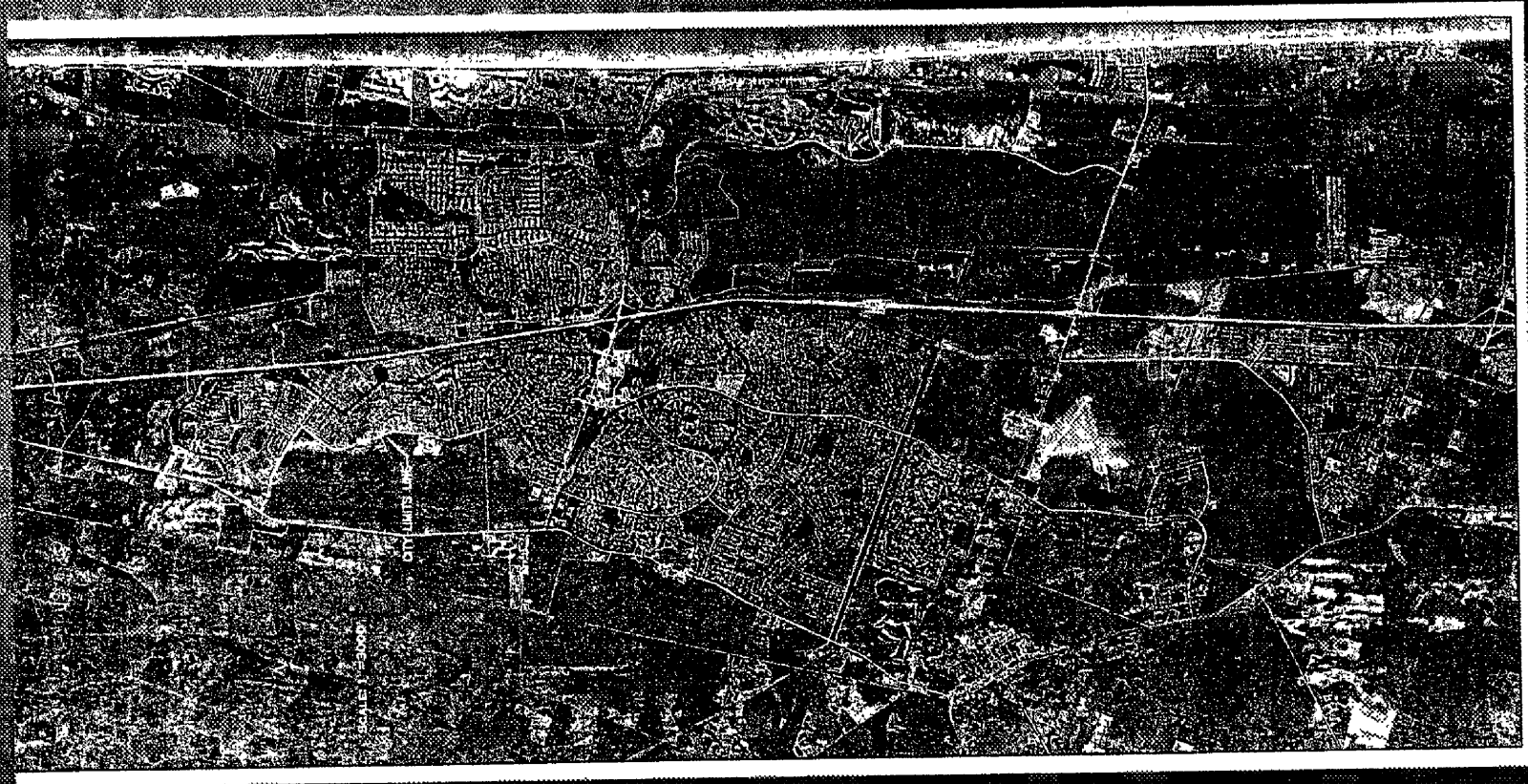
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Attorneys for Petitioner.



Palm Coast

- Incorporated as a City on December 31, 1999
- 32,600 Acres (51 Square Miles)
- Provision for 44,000 RSF Homes / 33% Developed
- 2002 Population = 38,348

cph



City Limits

cph