

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition to Initiate Rulemaking to Amend)
Rule 25-30.041, F.A.C., Application for)
Approval of Transfer to Governmental)
Agency, by City of Palm Coast.)

Docket No. 021128-WS

Filed: November 27, 2002

CITY OF PALM COAST'S RESPONSE TO MOTION TO DISMISS

COMES NOW the Petitioner, CITY OF PALM COAST ("City"), and responds to the Motion to Dismiss filed in this proceeding by Florida Water Services Corporation ("FWSC") and requests the Commission to deny the Motion and, in support thereof, states as follows:

- (1) The City is a customer of FWSC. See copies of attached bills. The City has standing both as a customer and a local government with constitutionally vested powers relating to serving and protecting the citizens of the City.
(2) The City has standing as a representative of the citizens of the City of Palm Coast under the provisions of Article VIII, Section 2 of the Constitution of the State of Florida and Chapter 166, Florida Statutes. Article VIII, Section 2(a) of the Constitution of the State of Florida provides, in pertinent part, that "[m]unicipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law." (Emphasis added). Section 166.021(a), Florida Statutes, provides that "[a]s provided in s. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law." (Emphasis added). Section 166.021(b), Florida Statutes, defines the term "municipal purpose" as meaning "... any activity or power which may be exercised by the state or its political subdivisions." (Emphasis added).

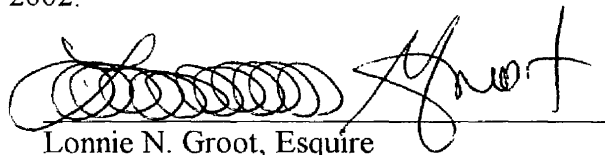
- (3) The City, acting through its City Council has the right and obligation to take any and all administrative and legislative actions that it deems appropriate and in the public interest in order to protect the citizens of the City of Palm Coast and the economic well being of the businesses within the City.

AUS
CAF
CMP
COM
CTR
ECR
GCL
OPC
MMS
SEC
OTH

- (4) The City, under the provisions of Article VIII, Section 2, *Constitution of the State of Florida*, and Chapter 166, *Florida Statutes*, has any and all powers of local government not prohibited by general law.
- (5) The movant, FWSC, acknowledges in paragraph 3 of its Motion that it does not seek dismissal on the basis of this Commission's statutory and rulemaking authority to promulgate the proposed rule. FWSC also acknowledges in paragraph 5 of its Motion that counties have express statutory authority to participate in administrative proceedings on behalf of citizens/consumers residing within the jurisdictional limits of counties. As quoted above, Article VIII, Section 2 of the *Constitution of the State of Florida* and Chapter 166, *Florida Statutes*, provides for very little limitation of a city's right to exercise governmental powers on behalf of its citizens. Although counties, to some extent, may need to obtain express legislative approval to take certain actions, municipalities are constitutionally entitled to operate within the entire and plenary range and spectrum of local government powers absent an express constitutional or statutory prohibition. There is no such prohibition relative to municipalities initiating rulemaking proceedings on behalf of its citizens or itself. Indeed, the reference in footnote 3 to FWSC's Motion to Section 120.52(12)(d), *Florida Statutes*, indicates that the power granted to counties by that statute is a local governmental power in a general sense that municipalities have not been prohibited from exercising by constitutional or statutory provision.
- (6) The Commission has the overarching substantive and procedural powers to promulgate, in the public interest, the Rule requested by the City.
- (7) The City has the overarching obligation to protect the rights and interest of the citizens of the City.

WHEREFORE, for the foregoing reasons, the City respectfully requests the Commission to deny the Motion to Dismiss filed by FWSC.


DATED this 9th day of December, 2002.



Lonnie N. Groot, Esquire
Florida Bar No. 266094
STENSTROM, McINTOSH, COLBERT,
WHIGHAM & SIMMONS, P.A.
200 West First Street, Suite 22
Post Office Box 4848
Sanford, FL 32772-4848
(407) 322-2171
Attorneys for Plaintiff City of Palm Coast.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a copy of the City of Palm Coast's Response to Florida Water Services Corporation's Motion to Dismiss was furnished by U.S. Mail, this 9th day of December, 2002, to the following:


Lonnie N. Groot, Esquire

Samantha Cibula, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 370
Tallahassee, Florida 32399-0850

Kenneth A. Hoffman, Esquire
RUTLEDGE, ECENIA, PURNELL & HOFFMAN
Post Office Box 551
Tallahassee, Florida 323701-1841

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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



FLORIDA WATER SERVICES
P.O. BOX 609520
ORLANDO, FL 32860-9520
Call Toll Free 1-800-432-4501

| |
|---------------------------|
| CUSTOMER NUI 010021104 |
|---------------------------|

SERVICE ADDRESS
264 NE PALM COAST PARKWAY

CITY OF PALM COAST
P O BOX 354610
PALM COAST FL 32135-4610

| | |
|---------------------------------------|-------------------------------|
| CURRENT CHARGES DUE BY 11/22/02 | TOTAL AMOUNT \$ 109 |
|---------------------------------------|-------------------------------|

Bill Date 10/23/02 Plant 3001
Location Number 0000090010

WATER Rate Code-533
Billing Period 8/15/02 TO 10/16/02
Days in Billing Period: 62
Meter Readings:
Present Previous Usage
613860 597540 16320 Gal
Meter Size: 1"
Meter Number 47744154 3
Connect 5/16/00

SEWER Rate Code-533
Connect 5/16/00

| | |
|---------------------------------------|---------------|
| PREVIOUS BALANCE | 109.71 |
| PAYMENT RECEIVED ON 9/30/02 THANK YOU | 109.71CR |
| | .00 |
| WATER | |
| BASE FACILITY CHARGE | 30.03 |
| GALLONAGE CHARGE WATER CHARGES | 54.34 |
| TOTAL WATER | 84.37 |
| SEWER | |
| BASE FACILITY CHARGE | 25.20 |
| GALLONAGE CHARGE SEWER CHARGES | 54.68 |
| TOTAL SEWER | 79.88 |
| MISC | |
| PREVIOUS EST WATER BILL CREDIT | 27.16CR |
| PREVIOUS EST SEWER BILL CREDIT | 27.32CR |
| TOTAL MISC | 54.48CR |
| CURRENT CHARGES DUE BY 11/22/02 | \$ 101 |
| TOTAL AMOUNT DUE | \$ 109 |

7926/110102

Free sewer cleanout cap! If your sewer cleanout cap is broken or missing, call our Customer Care Department at 1-800-432-4501 to request a replacement. A Utility Systems Technician will install it free of charge. This will help us reduce excess water flows into the wastewater collection system from rain, stormwater runoff, and high groundwater levels. Your cooperation in this project is greatly appreciated.

For additional information about Florida Water Services, Corp. and water conservation tips please visit our WEB site www.florida-water.com

*****IMPORTANT MESSAGE*****

Florida Water's bill payment address has changed effective September 2002. Please use the envelope enclosed with this bill. If you are using an online payment service please update the payment address to avoid a processing delay. Visit our website www.florida-water.com for all the payment options we offer.

RECEIVE
11-09-02

BY:.....

----- WATER USE -----
Daily Average Water Use:
Current Month 263 Gal/Day
Same Month Last Yr 244 Gal/Day
Daily Average Water Cost: \$ 1.36

PLEASE BRING ENTIRE BILL WHEN PAYING IN PERSON



FLORIDA WATER SERVICES
P.O. BOX 809520
ORLANDO, FL 32880-9520
Call Toll Free 1-800-432-4501

CUSTOMER NUI
010034034

SERVICE ADDRESS
22 UTILITY DRIVE

CITY OF PALM COAST
PO BOX 354610
PALM COAST FL 32135-4610

CURRENT CHARGES DUE BY 11/22/02
TOTAL AMOUNT \$ 23.

Bill Date 10/23/02 Plant 3001
Location Number 0000087670

WATER Rate Code-533
Billing Period 9/16/02 TO 10/16/02
Days in Billing Period: 30
Meter Readings:
Present Previous Usage
162980 159570 3410 Gal
Meter Size: 3/4" x 3/4"
Meter Number 39971303 1
Connect 10/01/00

| | |
|--|---------------|
| PREVIOUS BALANCE | 22.68 |
| PAYMENT RECEIVED ON 9/30/02 THANK YOU | 22.66CR |
| | <u>.00</u> |
| WATER | |
| BASE FACILITY CHARGE | 12.00 |
| GALLONAGE CHARGE 3410 Gal @ \$.003330 | 11.36 |
| TOTAL WATER | <u>23.36</u> |
| CURRENT CHARGES DUE BY 11/22/02 | \$ 23 |
| TOTAL AMOUNT DUE | <u>\$ 23.</u> |

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7927/110102

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OCT 28 2002

BY:

----- WATER USE -----
Daily Average Water Use:
Current Month 114 Gal/Day
Same Month Last Yr 5 Gal/Day
Daily Average Water Cost: \$.78

PLEASE BRING ENTIRE BILL WHEN PAYING IN PERSON



FLORIDA WATER SERVICES
P.O. BOX 609520
ORLANDO, FL 32860-9520
Call Toll Free 1-800-432-4501

| |
|--------------------------|
| CUSTOMER NU 010034035 |
|--------------------------|

SERVICE ADDRESS
US ROAD DEPT SITE
APT# 1

CITY OF PALM COAST
PO-BOX 354610
PALM COAST FL 32135-4610

| | |
|---------------------------------------|------------------------|
| CURRENT CHARGES DUE BY 11/22/02 | TOTAL AMOUNT \$ 69. |
|---------------------------------------|------------------------|

Bill Date 10/23/02 Plant 3001
Location Number 0000090140

WATER Rate Code-533
Billing Period 9/16/02 TO 10/16/02
Days in Billing Period: 30
Meter Readings:
Present Previous Usage
1014830 1007780 7070 Gal
Meter Size: 5/8" x 3/4"
Meter Number 41309000 1
Connect 10/03/00

SEWER Rate Code-533
Connect 10/03/00

PREVIOUS BALANCE 68.97
PAYMENT RECEIVED ON 9/30/02 THANK YOU 68.97CR

| | | | | |
|----------------------|-----------------------|--|-------|-------|
| WATER | | | | |
| BASE FACILITY CHARGE | | | 12.00 | |
| GALLONAGE CHARGE | 7070 Gal @ \$.003330 | | 23.54 | |
| TOTAL WATER | | | | 35.54 |
| SEWER | | | | |
| BASE FACILITY CHARGE | | | 10.07 | |
| GALLONAGE CHARGE | 7070 Gal @ \$.003350 | | 23.68 | |
| TOTAL SEWER | | | | 33.75 |

CURRENT CHARGES DUE BY 11/22/02 \$ 69
TOTAL AMOUNT DUE \$ 69

7928/11/01/02

Free sewer cleanout cap! If your sewer cleanout cap is broken or missing, call our Customer Care Department at 1-800-432-4501 to request a replacement. A Utility Systems Technician will install it free of charge. This will help us reduce excess water flows into the wastewater collection system from rain, stormwater runoff, and high groundwater levels. Your cooperation in this project is greatly appreciated.

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BY: _____

----- WATER USE -----
Daily Average Water Use:
Current Month 236 Gal/Day
Same Month Last Yr 416 Gal/Day
Daily Average Water Cost: \$ 1.18

PLEASE BRING ENTIRE BILL WHEN PAYING IN PERSON



FLORIDA WATER SERVICES
 P.O. BOX 609520
 ORLANDO, FL 32860-9520
 Call Toll Free 1-800-432-4501

CUSTOMER NUMBER
010033896

SERVICE ADDRESS
 305 NE PALM COAST PARKWAY

CITY OF PALM COAST
 PO BOX 354610
 PALM COAST FL 32135-4610

CURRENT CHARGES DUE BY 11/22/02
 TOTAL AMOUNT DUE \$ 151

Bill Date 10/23/02 Plant 3001
 Location Number 0000087750

WATER Rate Code-533
 Billing Period 9/16/02 TO 10/16/02
 Days in Billing Period: 30
 Meter Readings:
 Present Previous Usage
 971980 957510 14470 Gal
 Meter Size: 1"
 Meter Number 46740120 3
 Connect 10/03/00

SEWER Rate Code-533
 Connect 10/03/00

| | |
|---|---------------|
| PREVIOUS BALANCE | 148.69 |
| PAYMENT RECEIVED ON 9/30/02 THANK YOU | 148.69 CR |
| | <u>.00</u> |
| WATER | |
| BASE FACILITY CHARGE | 30.03 |
| GALLONAGE CHARGE 14470 Gal @ \$.003330 | 48.19 |
| TOTAL WATER | <u>78.22</u> |
| SEWER | |
| BASE FACILITY CHARGE | 25.20 |
| GALLONAGE CHARGE 14470 Gal @ \$.003350 | 48.47 |
| TOTAL SEWER | <u>73.67</u> |
| CURRENT CHARGES DUE BY 11/22/02 | \$ 151 |
| TOTAL AMOUNT DUE | \$ 151 |

7929/11/01/02

Free sewer cleanout cap! If your sewer cleanout cap is broken or missing, call our Customer Care Department at 1-800-432-4501 to request a replacement. A Utility Systems Technician will install it free of charge. This will help us reduce excess water flows into the wastewater collection system from rain, stormwater runoff, and high groundwater levels. Your cooperation in this project is greatly appreciated.

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----- WATER USE -----
 Daily Average Water Use:
 Current Month 482 Gal/Day
 Same Month Last Yr 352 Gal/Day
 Daily Average Water Cost: \$ 2.61

PLEASE BRING ENTIRE BILL WHEN PAYING IN PERSON



FLORIDA WATER SERVICES
 P.O. BOX 609520
 ORLANDO, FL 32860-9520
 Call Toll Free 1-800-432-4501

| |
|--------------------------|
| CUSTOMER NU 010033891 |
|--------------------------|

SERVICE ADDRESS
 4751 BELLE TERRE PARKWAY

CITY OF PALM COAST
 PO BOX 354610
 PALM COAST FL 32135-4610

| | |
|---------------------------------------|------------------------|
| CURRENT CHARGES DUE BY 11/22/02 | TOTAL AMOUNT \$ 109 |
|---------------------------------------|------------------------|

Bill Date 10/23/02 Plant 3001
 Location Number 000090150

WATER Rate Code-533
 Billing Period 9/16/02 TO 10/16/02
 Days in Billing Period: 30
 Meter Readings:
 Present Previous Usage
 343310 330250 13060 Gal

Meter Size: 3/4" x 3/4"
 Meter Number 74170223 1
 Connect 10/03/00

SEWER Rate Code-533
 Connect 10/03/00

| | |
|---|---------------|
| PREVIOUS BALANCE | 154.47 |
| PAYMENT RECEIVED ON 9/30/02 THANK YOU | 154.47CR |
| | <u>.00</u> |
| WATER | |
| BASE FACILITY CHARGE | 12.00 |
| GALLONAGE CHARGE 13060 Gal @ \$.003330 | 43.49 |
| TOTAL WATER | <u>55.49</u> |
| SEWER | |
| BASE FACILITY CHARGE | 10.07 |
| GALLONAGE CHARGE 13060 Gal @ \$.003350 | 43.75 |
| TOTAL SEWER | <u>53.82</u> |
| CURRENT CHARGES DUE BY 11/22/02 | \$ 10 |
| TOTAL AMOUNT DUE | <u>\$ 109</u> |

7930/110102

Free sewer cleanout cap! If your sewer cleanout cap is broken or missing, call our Customer Care Department at 1-800-432-4501 to request a replacement. A Utility Systems Technician will install it free of charge. This will help us reduce excess water flows into the wastewater collection system from rain, stormwater runoff, and high groundwater levels. Your cooperation in this project is greatly appreciated.

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 OCT 28 2002

----- WATER USE -----
 Daily Average Water Use.
 Current Month 435 Gal/Day
 Same Month Last Yr 575 Gal/Day

Daily Average Water Cost: \$ 1.85

PLEASE BRING ENTIRE BILL WHEN PAYING IN PERSON BY: _____



FLORIDA WATER SERVICES
 P.O. BOX 809520
 ORLANDO, FL 32880-9520
 Call Toll Free 1-800-432-4501

CUSTOMER NUM
 010071308-1

RECEIVED
 OCT 21 2002

SERVICE ADDRESS
 PALM COAST COMMUNITY PARK

CITY OF PALM COAST
 ATT LORI SIEGLER
 264 PALM COAST PARKWAY
 PALM COAST FL 32137

CURRENT CHARGES
 DUE BY **11/17/02**

TOTAL AMOUNT
 \$ **108.**

Bill Date 10/18/02 Plant 3001
 Location Number 0000073570

WATER Rate Code-533
 Billing Period 9/10/02 TO 10/11/02
 Days in Billing Period: 31
 Meter Readings:
 Present Previous Usage
 3513890 3500880 13010 Gal
 Meter Size: 3/4" x 3/4"
 Meter Number 47947057 1
 Deposit \$ 50.00
 Connect 10/16/01

SEWER Rate Code-533
 Deposit \$ 50.00
 Connect 10/16/01

| | |
|---|----------------|
| PREVIOUS BALANCE | 61.89 |
| PAYMENT RECEIVED ON 9/30/02 THANK YOU | 61.89CR |
| | <u>.00</u> |
| WATER | |
| BASE FACILITY CHARGE | 12.00 |
| GALLONAGE CHARGE 13010 Gal @ \$.003330 | 43.32 |
| | <u>55.32</u> |
| TOTAL WATER | 55.32 |
| SEWER | |
| BASE FACILITY CHARGE | 10.07 |
| GALLONAGE CHARGE 13010 Gal @ \$.003350 | 43.58 |
| | <u>53.65</u> |
| TOTAL SEWER | 53.65 |
| CURRENT CHARGES DUE BY 11/17/02 | <u>\$ 108.</u> |
| TOTAL AMOUNT DUE | <u>\$ 108.</u> |

10/17/02

Free sewer cleanout cap! If your sewer cleanout cap is broken or missing, call our Customer Care Department at 1-800-432-4501 to request a replacement. A Utility Systems Technician will install it free of charge. This will help us reduce excess water flows into the wastewater collection system from rain, stormwater runoff, and high groundwater levels. Your cooperation in this project is greatly appreciated.

For additional information about Florida Water Services, Corp. and water conservation tips please visit our WEB site www.florida-water.com

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----- WATER USE -----
 Daily Average Water Use:
 Current Month 420 Gal/Day

Daily Average Water Cost: \$ 1.78

PLEASE BRING ENTIRE BILL WHEN PAYING IN PERSON



FLORIDA WATER SERVICES
 P.O. BOX 609520
 ORLANDO, FL 32860-9520
 Call Toll Free 1-800-432-4501

| |
|--------------------------|
| CUSTOMER NU 010068919 |
|--------------------------|

SERVICE ADDRESS
 268 NE PALM COAST PARKWAY
 APT# B

CITY OF PALM COAST
 264 PALM COAST PKWY NE
 PALM COAST FL 32137-8217

| | |
|---------------------------------------|------------------------|
| CURRENT CHARGES DUE BY 11/22/02 | TOTAL AMOUNT \$ 118 |
|---------------------------------------|------------------------|

Bill Date 10/23/02 Plant 3001
 Location Number 0000131320

WATER Rate Code-533
 Billing Period 9/16/02 TO 10/16/02
 Days in Billing Period: 30
 Meter Readings:
 Present Previous Usage
 46960 32480 14480 Gal
 Meter Size: 5/8" x 3/4"
 Meter Number 51576905 1
 Connect 9/21/01

SEWER Rate Code-533
 Connect 9/21/01

| | |
|---|---------------|
| PREVIOUS BALANCE | 33.96 |
| PAYMENT RECEIVED ON 9/30/02 THANK YOU | 33.96CR |
| | <u>00</u> |
| WATER | |
| BASE FACILITY CHARGE | 12.00 |
| GALLONAGE CHARGE 14480 Gal @ \$.003330 | 48.22 |
| TOTAL WATER | <u>60.22</u> |
| SEWER | |
| BASE FACILITY CHARGE | 10.07 |
| GALLONAGE CHARGE 14480 Gal @ \$.003350 | 48.51 |
| TOTAL SEWER | <u>58.58</u> |
| CURRENT CHARGES DUE BY 11/22/02 | \$ 11 |
| TOTAL AMOUNT DUE | <u>\$ 118</u> |

7892/110102

RECEIVED
 OCT 24 2002
 BY: _____

Free sewer cleanout cap! If your sewer cleanout cap is broken or missing, call our Customer Care Department at 1-800-432-4501 to request a replacement. A Utility Systems Technician will install it free of charge. This will help us reduce excess water flows into the wastewater collection system from rain, stormwater runoff, and high groundwater levels. Your cooperation in this project is greatly appreciated.

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----- WATER USE -----
 Daily Average Water Use:
 Current Month 483 Gal/Day
 Same Month Last Yr 30 Gal/Day
 Daily Average Water Cost: \$ 2.01

PLEASE BRING ENTIRE BILL WHEN PAYING IN PERSON



FLORIDA WATER SERVICES
 P.O. BOX 808520
 ORLANDO, FL 32860-8520
 Call Toll Free 1-800-432-4501

CUSTOMER NUMBER
900010256

SERVICE ADDRESS
 264 PALM COAST PKWY (CTHM)

CITY OF PALM COAST
 264 PALM COAST PKWY
 PALM COAST, FL 32137

CURRENT CHARGES DUE BY 11/22/02 **TOTAL AMOUNT \$ 41.**

Bill Date 10/23/02 Plant 3001
 Location Number 0300104086

WATER Rate Code-533
 Billing Period 9/17/02 TO 10/16/02
 Days in Billing Period: 29
 Meter Readings:
 Present Previous Usage
 9000 200 8800 Gal
 Meter Size: 3/4"
 Meter Number 70067189 2
 Deposit \$ 535.00
 Connect 9/17/02

PAYMENT RECEIVED ON 8/23/02 THANK YOU 15.00CR

CREDIT BALANCE CARRIED FORWARD → \$ 15

WATER
 BASE FACILITY CHARGE 12.00
 GALLONAGE CHARGE 8800 Gal @ \$.003330 29.30

TOTAL WATER 41.30

MISC
 NEW CONNECTION FEE 15.00

TOTAL MISC 15.00

CURRENT CHARGES DUE BY 11/22/02 \$ 56

TOTAL AMOUNT DUE \$ 41.

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7900/110102

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 OCT 25 2002

BY: _____

----- WATER USE -----
 Daily Average Water Use:
 Current Month 303 Gal/Day

Daily Average Water Cost: \$ 1.42

PLEASE BRING ENTIRE BILL WHEN PAYING IN PERSON