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January 20, 2003

VIA FEDERAL EXPRESS

Agency Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Investigation Into Proposed Sale of Florida Water Services Corporation
Docket No. 021066-WS

Dear Public Service Commission Agency Clerk:

Please find enclosed the City of Palm Coast's Comments as to Commission's Current and Continuing Jurisdiction.

These comments are submitted in response to an invitation for same by Tim Devlin, Director of the Commission's Economic Regulation Division. We would appreciate your forwarding the Comments to Mr. Devlin.

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.

Sincerely,

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

Virginia Cassady

cc: Richard Kelton, City Manager
Ms. Clare Hoeni, Acting City Clerk
William L. Colbert, Esquire, City Attorney
Lonnie N. Groot, Esquire

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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Investigation into Proposed Sale of)
Florida Water Services Corporation)

Docket No. 021066-WS

CITY OF PALM COAST'S COMMENTS AS TO COMMISSION'S CURRENT AND CONTINUING JURISDICTION

COMES NOW, the CITY OF PALM COAST ("City"), and, as an interested party, files these comments in regard to the proposed sale of Florida Water Services Corporation ("FWSC") assets to the Florida Water Service Authority ("FWSA").

I. PALM COAST AS AN INTERESTED PERSON

The City is a customer of Florida Water Services Corporation ("FWSC") as are the thirty-six thousand (36,000) citizens of the City. By Resolution adopted in 2002, the City determined that the acquisition of the water and utility assets of FWSC is in the public's best interest. The City found that it had a paramount public purpose in acquiring the utility system of FWSA located within the City to meet the statutory mandates of State law relating to comprehensive planning and growth management and the City's responsibilities under State law and to provide essential public services to the citizens of the City. The City has filed two (2) Petitions to Initiate Rulemaking to Capital Charges before the Public Service Commission, Docket Numbers 021128-WS and 021188-WS.

FWSC and FWSA intend on closing on the transaction of the utility assets of FWSC, including those located in the City, on or before February 14, 2003. Therefore, the City respectfully requests that the Commission expedite its investigation and any procedures necessary to come to a conclusion that the transaction is not in the public interest on this matter prior to February 14, 2003.

II. FWSA IS NOT "A GOVERNMENTAL AUTHORITY" UNDER SECTION 367.021(7), FLORIDA STATUTES, WHICH WOULD BE EXEMPT FROM PSC JURISDICTION UNDER SECTION 367.022(2), FLORIDA STATUES.

FWSA was purportedly formed by Interlocal Agreement between the cities of Gulf Breeze and Milton under the purported authority of Section 163.01(7)(g), Florida Statutes. That section states that " any separate legal entity created under this paragraph is not subject to commission jurisdiction ...". A review of the legislative history of this statute shows that the Legislature never intended for municipalities to create separate legal entities for the purpose of acquiring utility systems located hundreds of miles from their jurisdictional limits which are completely separate from and in no way connected with those municipalities or their water systems, and such assumption of ownership does not further a legitimate public purpose, violates public policy and other laws in the State of Florida. Therefore, the entity created by Gulf Breeze and Milton (FWSA) is not a 163.07(7)(g) entity.

Legislative History of Section 163.01(7)(g), Florida Statutes: Section 163.01(7)(g), Florida Statutes, enacted in 1997 as part of the Florida Interlocal Cooperation Act, [1]provides:

> "... any separate legal entity created under section, the membership of which is limited to municipalities and counties of the State, may acquire, own, construct, improve, operate, and manage public facilities relating to a governmental function or purpose, including, but not limited to,... water or alternative water supply facilities,... which may serve populations within or outside of the members of the entity." *(Emphasis added)*

The language of the statute could be erroneously read to not appear to limit cities' power to enter into interlocal agreements with only cities or counties which are adjacent or contiguous to their own boundaries. However, a familiar and well recognized rule of statutory construction is that a statute should be construed and applied so as to give effect to the legislative intent, even if the result seems contradictory to the technical rules of construction and the strict letter of the statute.[2] That is, the intent of the Florida Legislature, in matters that are entrenched in public policy issues and concern (such as the matter in question) should prevail over the literal reading of the words used. A review of the legislative Staff Report regarding House Bill (HB) 1323 (Chapter 97-236, Laws of Florida) shows that the Legislature never intended to extend the powers of municipalities to enter into interlocal agreements for the acquisition and maintenance of utility systems which are separate from and not contiguous to their own utility systems The Staff Report states:

> "... Chapter 163, F.S., regulates interlocal agreements, whereby cities or counties enter into agreements to provide services, or share the expenses for services which their residents need" *(Emphasis added)*.[3]

In the proposed acquisition of FWSC utility assets by the Milton and Gulf Breeze - created FWSA, the citizens of the cites of Milton and Gulf Breeze will not be served with utility systems owned by FWSA.

The Staff Report of the Legislature further states that HB 1323 amends the Florida Interlocal Cooperation Act of 1969 to apply to legal entities created by local governments which can acquire, construct, and operate water utility systems within or outside the jurisdictional boundaries of the local governments. The Staff Report further states:

> "Specifies that these legal entities will not be required to pay taxes or assessments of any kind, because they provide essential governmental services." [4] *(Emphasis added)*

[1] House Bill 1323

[2] The Deltona Corporation v Florida Public Service Commission, 220 So 2d 905 (Fla 1969)

[3] House of Representatives Committee on Water Resource Management Final Bill Research and Economic Impact Statement (May 20, 1997)

[4] Id

Based upon the foregoing, it is evident that the Legislature intended that interlocal agreements between governments were for the purpose of sharing services which were needed by their residents. The Legislature did not envision that cities could (or would under any reasonable consideration of a public purpose determination) enter into agreements to provide ongoing services in all and other remote parts of the State, including sister cities located hundreds of miles distant from their own municipal jurisdictional limits.

Legislative intent can also be gleaned from the subject matter to be regulated.[5] The subject sought to be regulated in HB 1323 is the acquisition and operation of public works for a public purpose. It would make no sense to read Section 163.01 as allowing municipalities to agree to acquire and operate utility systems far away from their own boundaries and jurisdictional limits since to so construe that Section would conflict with the provisions of Section 180.02(2), Florida Statutes, which prohibits a municipality from doing just that. Statutory construction requires that, where possible, statutes be interpreted in such a way as to avoid conflicts in their meanings, operation and effects. [6]

Section 163.01(7)(g) is part of The Florida Interlocal Cooperation Act of 1969.[7] The operative word of this statutory provision is cooperation. The Legislature intended that interlocal agreements for acquisition and operation of utility systems involve consenting, cooperating parties who would create new entities to accomplish their mutual goals and further the public interest. None of the communities and governmental entities whose utility systems have been purchased by Milton and Gulf Breeze's illegal formation of FWSA consented or cooperated with Milton and Gulf Breeze. Indeed, neither Milton nor Gulf Breeze sought the consent or cooperation of the other jurisdictions into which they have intruded and encroached. The cities of Milton and Gulf Breeze, without appropriate public notice as required by State law, purported to establish an entity with virtual unlimited, and potentially Statewide, jurisdiction.

It is well settled under Florida law that municipalities can exercise their corporate powers outside of their boundaries, particularly with respect to proprietary projects, where such powers are supported by or derived from a Legislative grant.[8] However, all cases in which courts have upheld cities' exercise of extraterritorial powers involved territories outside of cities' boundaries which were adjacent and contiguous. Moreover, a review of the cases in Florida indicates that exercising extraterritorial powers was approved because such was necessary or imperative for the protection of the public health of the city,[9] existing private facilities were inadequate for present needs and contiguous entities had inadequate facilities themselves, [10]or there was an urgent need for water and other sources were not adequate.[11] The Florida Supreme Court has recognized that cities may exercise their extraterritorial powers for reasons which indicate that there is a valid public purpose: that is, when there is proximity of the project to the city, job opportunities, equal opportunity employment, wage scales, training programs, stimuli to the

5 The Deltona Corporation v Florida Public Service Commission at 907

6 City of Indian Harbour Beach v City of Melbourne, 265 So.2d 422 (Fla.4th DCA 1972).

7 See Section 163 01(7)(1) ("This section shall be known and may be cited as the "Florida Interlocal Cooperative Act of 1969 ")

8 State v City of Riviera Beach, 397 So 2d 685 (Fla 1981)

9 State v City of Pensacola, 197 So 520 (Fla 1940)

10 State v City of Melbourne, 93 So.2d 371 (Fla 1957)

11 State v City of Cocoa, 92 So 2d 537 (Fla 1957) see also Town Riviera Beach v State, 53 So 2d 828 (Fla 1951)

local economy, and a mutual desire that a project become part of the city (i.e., annexation).[12] To read into Section 163.01(7)(g) a legislative intention of allowing municipalities to create separate entities to acquire and own utility assets which are unconnected in any way to their own assets would be unreasonable, arbitrary, and capricious. Moreover such a reading of Section 163.01(7)(g) would usurp and overrule the entire body of case law governing extraterritorial jurisdiction of governmental bodies. No public purpose is served. No public policy is furthered.

The City realizes that the Commission cannot decide whether FWSA is an invalid separate legal entity. The Commission can, however, decide that FWSA[13] is a purported legal entity which is attempting to own utility systems which are neither adjacent, necessary or contiguous to the utility systems of Gulf Breeze and Milton and therefore, because the utility systems proposed to be owned are in governmental jurisdictions which never consented to the ownership by the entity, FWSA is not a 163.01(7)(g) entity and must continue to fall under the Commission's plenary regulatory jurisdiction. Furthermore, under the purported Interlocal Agreement between Milton and Gulf Breeze (two cities with a combined population of 15,000), the cities will receive $1.5 million in annual gross revenues from the water systems in the State. The cities are wolves in sheeps' clothing; [14]they are using Section 163.01(7)(g) to disguise FWSA as a public entity but, essentially, FWSA is an investment clearinghouse - a business enterprise - to produce revenues for Gulf Breeze and Milton. As such, **FWSA is not much different, at all from FWSC and will have less political and legal accountability than FWSA if the Commission does not regulate FWSA**.

"Governmental Authority" Under Section 367.021, Florida Statues : In addition to FWSA's not being a separate legal entity contemplated by the Legislature under Section 163.01(7)(g), Florida Statutes, FWSA is not a governmental authority as defined under Chapter 367. It is not a political subdivision as defined by Section 1.01(8), Florida Statutes, in that it is not a county, city, town, village, or any other district within the State.[15] Further, FWSA is not a regional water supply authority created under Section 373.1962, Florida Statutes, in that FWSA has made no attempt whatsoever to comply with the mandates of that statute. Finally, FWSA is not a nonprofit corporation formed to act on behalf of a political subdivision; since the City has never consented to or asked FWSA to act on its behalf, it cannot be exempt under Chapter 367.[16] Under all democratic forms of government, the City must first consent in order to allow FWSA to act on the City's behalf. Furthermore, FWSA is not exempt from regulation by the Commission under any of the other applicable definitions of Chapter 367.

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[12] State v City of Riviera Beach, 397 at 687

[13] By submitting these comments, the City does not concede FWSA ia a valid legal entity The City, like other local governments, is contesting its validity in several lawsuits now pending in trial courts throughout Florida The City merely asserts that, if FWSA is a valid entity, it must remain under state oversight

[14] Even this description is inadequate because, in this case the wolf operated secretly in violation of Florida's Open Government Laws

[15] See discussion relating to districts under Section III herein

[16] "Acting on behalf of" necessarily implies that the person who is being represented had consented Definitions for "behalf" include 'interest, benefit, support, in the interest of, as a representative of " See Websters Ninth New Collegiate Dictionary 1987

In summary, although Gulf Breeze and Milton purportedly entered into an Interlocal Agreement purportedly under the authority of Section 163.01(7)(g), Florida Statutes, the legislative history shows the statute was never intended to be used to allow two remote cities to acquire utility systems in no way connected with their own systems when the governmental entities affected by the sale did not consent to the acquisition. To construe FWSA as a legal entity not subject to Commission jurisdiction under Section 163.01(7)(g) would allow FWSA to act without any political or legal accountability to affected citizens or to the State. Moreover, FWSA cannot be a "governmental authority" under other existing definitions of Chapter 367. Therefore, FWSA must remain under the Commission's regulatory jurisdiction. To construe the statute otherwise effectively makes the Commission and FWSA entities of equal standing. Indeed, in theory (at least), FWSA could consume all of the Commission's jurisdiction.

III. GOVERNMENTAL ENTITIES; NECESSITY FOR REPRESENTATION AND CONSENSUAL RELATIONSHIPS; COMMONALITY OF INTERESTS AND PURPOSES.

Certain characteristics are inherent in a democratic form of government: citizens are entitled to have a voice through their governmental representatives, and governmental bodies are voluntarily formed or merged with the consent of the affected citizens. Formation and existence of FWSA is totally contrary to the normal characteristics of democracy. FWSA does not implement a public purpose. FWSA does not serve the interests of the citizens residing in the jurisdictions in which utility services will be provided.

The FWSA has no legal or political accountability to the citizens of the City. If economic practices of the FWSA are onerous or unfair, there is no statutory mandate which regulates the FWSA's actions for the protection of the citizens. Board members of the FWSA are not politically accountable to citizens of the City, to any State agency, or to the Legislature. Such lack of accountability and unfettered powers which would result from the absence of regulation is contrary to pubic policy and violates all notions of democracy.

To allow FWSA to regulate public utilities outside the scope of any State agency's jurisdiction is contrary to all other forms of Stare governments/local governments relationships applicable to local or regional governmental bodies. All local or regional governmental bodies are formed because of commonality of interests and for a purpose unique to a geographically connected area, and, typically, in the context of State government supremacy. A city incorporated for the first time must be compact and contiguous and amenable to separate municipal government.[17] Two or more cities may merge by passage of a concurrent ordinance and must be compact and contiguous and susceptible to urban services.[18] A municipality may only annex contiguous, compact, and rationally connected territories.[19] Regional planning agencies consider growth and development which affect units of government within specific geographical boundaries. [20] The expressway system under the Florida Expressway Authority Act includes all expressways within the geographic boundaries of an expressway authority, and

[17] Section 165 061(1) Florida Statues

[18] Sections 165 041(2), 165 061(2), Florida Statutes

[19] Sections 171 0413, 171 043(1), Florida Statutes

[20] Sections 186 502, 186 504, Florida Statutes

an "authority" shall mean any authority established within a county. [21] Metropolitan Planning Organizations are designated for each urbanized area of the State, and boundaries for each MPO must include the existing urbanized area of the MPO and the contiguous area expected to be urbanized within twenty years.[22] Special districts are local units of special purpose government restricted to a limited boundary. A dependent special district may be created only by an ordinance of a local government having jurisdiction over the affected area, and the ordinance must state the geographic boundary limitations of the district.[23] Independent special districts are created by the Legislature unless general law provides otherwise. Each special district is considered a unit of local government and involves a limited geographical area of the State. A statement must be submitted to the Legislature which documents, among other things, that the creation of the proposed district is consistent with the approved local government plans of the local governing body and that the local government has no objection to the creation of the proposed district.[24] It is clear that all of these forms of government are established in the context of national jurisdictional boundaries with the established entity designed to serve a particular constituency to which it is accountable with overiding jurisdictional supremacy by an agency of the State.

Because of the lack of consent by affected citizens acting through their own local officials, because there is no contiguity between Milton and Gulf Breeze and the utility systems proposed to be purchased, and because of the lack of legal or political accountability to affected citizens, the Commission should either assert and retain jurisdiction over FWSA to provide the necessary governmental oversight, or the Commission should determine that the sale to FWSA is not in the public interest.

IV. FWSA JANUARY 10, 2003, HEARING RELATING TO RATE INCREASES FOR CONNECTION CHARGES.

The proceedings, conduct, and decision-making process of FWSA at its January 10, 2003 hearing to consider adoption of a rate resolution exemplifies the necessity for the Commission's oversight of FWSA.

Some time after December 31, 2002, citizens of the City received a Notice of Public Hearing from FWSA announcing a "public meeting and public hearing" on January 10, 2003, in Orlando, a location which is approximately ninety (90) miles from the City. A copy of the Notice is attached hereto as Exhibit "A". Citizens of the City were not sent documents showing what rate charges would be considered. No staff, local official, or regulatory authority representative received any backup documents which would purportedly be considered by FWSA in its decision making. As attendees of the public hearing entered the room, each was given a copy of the Resolution (a copy of which is attached as Exhibit "B") with extensive exhibits which included new connection fee charges and monthly rate schedules for each community, a "Uniform Service Policy," and "Emergency Potable Water Use Restrictions." A

[21] Section 348 0002(2), (9), Florida Statutes

[22] Section 339 175(1), Florida Statutes

[23] The Local Government Formation Manual, Local Government And Veterans Affairs Committee, Florida House of Representatives, December 2002, pages 62 and 70.

[24] The Local Government Formation Manual, Local Government And Veterans Affairs Committee, Florida House of Representatives December 2002, pages 71-72

copy of the connection fee schedule for Palm Coast is attached hereto as Exhibit "C".

The Chair of the FWSA Board announced at the hearing in his introductory comments that this was not a "hearing per se," that the Board would invite public comment, and that there was no necessity of a public meeting for rate setting. After hearing from FWSA's Executive Director that the new connection fees would be raised and were being proposed by the FWSA Board's expert, the Board passed the Resolution with one minor change after allowing public comment.[25] Connection charges in the City will increase significantly; see Exhibit "D" which are the present charges for the City. Nonetheless, the City had no input into the decision making and did not have an opportunity to review or question the documents which were relied upon by the FWSA Board's expert. The FWSA Board's expert, if present, made no comments. FWSA neither afforded citizens of over 150 communities a full rate hearing, nor did it follow a process similar to the PPA process with its protections. The Uniform Service Policy adopted by FWSA requires no test year nor does it afford an appeal process for such decisions. Moreover, the Policy is silent on the location of rate hearings. Thus, citizens in the City and throughout the State may have to bear the burden of traveling almost 100 miles or more[26] to attend future rate hearings. Local officials, local staff members, or local legislators will not have an opportunity to address or resolve local citizen complaints or problems because the FWSA Board is accountable to no one. The only recourse for local citizens is through the cost-prohibitive judicial process. Rate setting decisions should be made by an entity with political accountability to citizens of the City and with a full range of administrative appellate protections.

The City believes that FWSA, with a Board comprised of representatives of Gulf Breeze and Milton, has no interest or incentive in considering the City's individual local concerns or needs relative to its utility system. Furthermore, without the Commission's jurisdiction, the FWSA has totally unbridled discretion to make unchecked decisions which affect the thirty-six thousand (36,000) citizens of the City.

V. SALE TO FWSA VIOLATES THE FLORIDA CONSTITUTION.

Violation of Article VIII, Section 4 of the Florida Constitution ("The Transfers of Powers Clause"):

When the transfer of the powers of a county, municipality or other local government is involved, Article VIII, Section 4 of the Florida Constitution (the "Transfer of Powers Clause") must be considered. A creation of the 1968 Constitution revision process, the "Transfer of Powers Clause" states:

> By law or by resolution of the governing bodies of each of the governments affected, any function or power of a county, municipality or special district may be transferred to or contracted

[25] No transcript of the January 10th proceeding is available at the present time, however, the undersigned attended the hearing One of the comments made was that, because attendees were just given the rate changes five (5) minutes before the meeting began, no comment could be made until the changes could be studied

[26] FWSA has held its last two (2) statewide hearings in Orlando, which is slightly less than 100 miles from the City

> by, another county, municipality or special district, after vote of the electors of the transferor and approval by vote of the electors of the transferee, or as otherwise provided by law. (Emphasis added).

Both the plain language of the Transfer of Powers Clause and the case law interpreting that provision lead to the clear conclusion that an acquisition of a water or wastewater utility by a separate legal entity created under Section 163.01(7)(g), Florida Statues, is a transfer of governmental powers which implicates the Transfer of Powers Clause.

In *Sarasota County v. Town of Longboat Key,* 355 So.2d 1197 (Fla.1978), the Florida Supreme Court considered an ordinance and proposed voter referendum that sought to transfer to the County five distinct governmental functions (pollution control, parks and recreation, roads and bridges, planning and zoning and police) from municipalities within the County. The municipalities opposed the transfer of such powers, and brought suit challenging the ordinance and referendum. The Court held that such a transfer violated the Transfers of Powers Clause of the Constitution because "it was initiated neither 'by law' nor by resolution of all affected governments." *Sarasota County, supra*, 355 So.2d at 1200-01. Specifically, the Court stated that either the citizens of the cities would have to approve such a transfer of powers or it would have to be provided by law. *Id.*

The case law interpreting the Transfer of Powers Clause requires distinct actions or conditions as conditions precedent to the lawful transfer of governmental power. Specifically, there are two types of actions or conditions necessary to accomplish a transfer of powers: (1) the initiation of the transfer (which may be accomplished by law or by resolution of the governments affected), and (2) the approval of the transfer (which may be accomplished by dual referenda of the local governments affected by law). This distinction was set forth by Justice England writing for the Florida Supreme Court in *Sarasota County v. Town of Longboat Key*, 355 So.2d at 1201 which states:

> A plain reading of the Article VIII, Section 4 reflects that a transfer of governmental powers requires distinctive procedures for the initiation of a transfer, that is, "by law or by resolution of the governing bodies of each of the governments affected." (FN 15) We think it is clear from the specificity of the procedure in Section 4 that the "by law" reference connotes the need for a separate legislative act addressed to a specific transfer, in the same manner that two or more resolutions of the affected governments would address a specific transfer. *(Emphasis added).*

Footnote 15 referenced above goes on to explain:

> Procedures for the approval of a transfer are either a vote of the electors of both the transferor and transferee, or "as otherwise provided by law." The latter phrase does not describe an alternate method for initiating a transfer; it addresses only the means for

approval.

Sarasota County v. Town of Longboat Key, 355 So.2d at N.15 *(Emphasis added).*

Applying these guidelines to any proposed acquisition in by a utility authority created pursuant to Section 163.01(7)(g), the consent of each affected county or municipality is necessary to satisfy the "initiation" of the Transfer of Powers Clause that the transfer must be initiated "[b]y law or by resolution of the governing bodies of each of the governing bodies affected..." Although the "approval" prong of the Transfer of Powers Clause (dual referenda or as otherwise provided by law) is only met with the statutory authority under Section 163.01(7)(g)1,[27] the Florida Supreme Court in *Sarasota County, supra*, clearly contemplated that specific authority for the initiation of such a transfer (like a special act, for example) or the resolutions of the local governments would be required. In *Sarasota County*, the reliance by *Sarasota County* on its authority under Section 125.86(7) granting it police powers within the County was not specific enough to satisfy the "initiation" prong of the Transfer of Powers Clause. Similarly, the general authority for local governments to form legal entities for utility acquisition is not specific enough to satisfy that prong of the test, which otherwise requires the local governments to consent by means of adoption of a resolution. In any event, under *Sarasota County*, the required separate legislative acts both initiating and approving the specific transfer are not in place in Section 163.01(7)(g), Florida Statutes. The constitutionally required prerequisites have not been accomplished. The acts of FWSA are outside of any lawful authority that it purportedly may have. Its acts are ultra vires. Its acts are unconstitutional.

The Florida Supreme Court has made it clear that one legislative act cannot serve as the "by law" authority for both the initiation and the approval prongs of the requirements of Article VIII, Section 4. Rather, the initiating prong must be met with specific statutory authority (which does not exist in Chapter 163, Florida Statutes, as Section 163.01(7)(g) only meets, at least, the "approval" prong "by law") or resolutions all of the local governments affected. Accordingly, the specific authority from the Legislature required to initiate such a transfer is lacking for the FWSA to acquire investor-owned utilities located in each affected county or municipality. As such, the consent by resolution of each and every affected county and municipality must be obtained and this Commission, or any county government sitting in a similar regulatory capacity, should refuse to approve any transfer requested by Florida Water Services Corporation (or at least defer any such approval until the issue is resolved by currently pending litigation).

Article VIII, Section 2(b), Florida Constitution ("Municipal Home Rule Clause"):

"Municipalities 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 of municipal purposes except as otherwise provided by law."

The Legislature has traditionally recognized that municipalities may construct, extend,

[27] The "approval" prong in the first sentence of Section 163.01(7)(g)1 is necessary because the alternative - dual referenda , would be impracticable if not impossible for a separate legal entity created by interlocal agreement

acquire, operate, and manage public utilities in the performance of their municipal functions and have the inherent authority to do so. [28] Municipalization of public utilities and water systems is especially desirable since cities can be aware of and responsive to the need of their own citizens, with citizens being notified of and heard on all proceedings regarding the public utilities under Florida's Government in the Sunshine Law and with cities being able to attend any proceeding relating to water utility services without having to drive an unreasonably long distance. Additionally, the State's growth management laws require local governments to comprehensively plan for the provision of public utilities within their jurisdictional limits. If distant and remote cities, such as Milton and Gulf Breeze can intrude upon the public facility planning and provision responsibilities of other local governments located hundreds of miles away from their boundaries, the entire fabric of growth management and public facility planning will be tainted and prevented.

The Gulf Breeze, Milton, and FWSA have infringed upon the City's constitutional right to home rule power and the citizens of Palm Coast's rights to be governed by a home rule government. This has been done in insidious ways. The City, a municipality recently incorporated in 1999, negotiated with and performed all steps necessary under Section 180.301, Florida Statutes, through the agency of Florida Governmental Utility Authority ("FGUA"), to acquire its own water system from FWSC. Simultaneously, and within a period of weeks, FWSA was formed and entered into an acquisition agreement with FWSC for the sale of the utilities located in the City and did so without notifying the City or the citizens of Palm Coast.

The City realizes that the Commission cannot decide whether FWSA is an invalid separate legal entity on the basis that the formation of FWSA violates provisions of the Florida Constitution. However, the City emphasizes the constitutional and legal problems as further indication that the Commission should retain regulatory jurisdiction; otherwise there will be absolutely no meaningful governmental oversight.

DATED this ____ day of January, 2003.

Respectfully submitted,

Virginia Cassady, Esquire
Florida Bar No. 0500372

William L. Colbert, Esquire
Florida Bar No. 122761

Lonnie N. Groot, Esquire
Florida Bar No. 266094

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Attorneys for Palm Coast

[28] Chapter 17118, Laws of Florida (1935), Chapter 180, Fla Stat see also City of Pompano Beach v Oltman 389 So 2d 283, 285 (Fla 4th DCA 1980) (Cities have the inherent authority to own and operate a utility and to set reasonable rate and charges therefore)

NOTICE OF PUBLIC HEARING

The Florida Water Services Authority (the "Authority") will hold a public meeting and public hearing on Friday, January 10, 2003, at 9:00 a.m., at the Hyatt Regency Orlando International Airport, in meeting rooms on the Lobby Floor located at 9300 Airport Blvd., Orlando, Florida 32827.

At the meeting, the Authority will conduct a hearing to receive public comment on and consider the adoption of a rate resolution establishing utility rates, fees and charges, and the adoption of service, extension and other utility policies and procedures by the Authority. In the event the Authority acquires Florida Water Services Corporation's (the "Utility") facilities, these matters will apply to customers of the Utility.

The rate resolution does not contain any increases to monthly rates for current water, wastewater, and reuse customers.

At the meeting, the Authority may also consider the adoption of certain procedures, practices, policies and/or requirements; employment agreements; and certain documents relating to the proposed financing of such acquisitions. The Authority may consider other issues relating to the acquisition by the Authority and financing of the transaction.

IN ACCORDANCE WITH THE PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT (ADA), PERSONS IN NEED OF A SPECIAL ACCOMMODATION TO PARTICIPATE IN THIS PROCEEDING SHOULD, WITHIN THREE (3) DAYS PRIOR TO ANY PROCEEDINGS, CONTACT 850-916-5420.

All persons are advised that, if they decide to appeal any decision made at this hearing, they will need a record of the proceedings, and for such purpose, they may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the Authority for the introduction or admission of evidence of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

All interested parties may appear at the above public hearing at the stated time and place fixed for said public hearing and be given an opportunity to express their views for or against the proposal with respect thereto. The hearing may be continued from time to time as may be necessary. The public record of this meeting may be examined at the Authority's temporary office located at 1070 Shoreline Drive, Gulf Breeze, Florida 32561.

THE FLORIDA WATER SERVICES AUTHORITY

WALTER GOSSETT	NASSAU COUNTY
MICHAEL MULLIN	NASSAU COUNTY
RICHARD WESCH	CITRUS COUNTY
KENNETH SAUNDERS	CITRUS COUNTY
LAURA JO THACKER	OSCEOLA COUNTY
LAURA BLACKMON	OSCEOLA COUNTY
CHRIS CROWE	OSCEOLA COUNTY
KATHY WALL	OSCEOLA COUNTY
DAVID OWEN	LEHIGH COUNTY
JANET TUTT	MARION COUNTY
VINCENT RICCOBONO	MARION COUNTY
PAUL NUGENT	CITY OF OCALA
HENRY HICKS	CITY OF OCALA
MARTHA BURTON	CHARLOTTE COUNTY
RENEE FRANCIS LEE	CHARLOTTE COUNTY
RICHARD HOWELL	CHARLOTTE COUNTY
LAURIE CASE	CHARLOTTE COUNTY
RICHARD RADACKY	SPRING HILL
GARTH COLLER	HERNANDO COUNTY
CHARLES LEWIS	HERNANDO COUNTY
KENT WEISSINGER	HERNANDO COUNTY
JAN MCLEAN	HERNANDO COUNTY
KAY ADAMS	HERNANDO COUNTY
VICKIE P. CAVEY	JEA
MICHAEL WEDNER	CITY OF JACKSONVILLE
FRITZ BEHRING	CITY OF DELTONA
JAMES FOWLER	CITY OF DELTONA
JEFFREY LARSON	CITY OF DELTONA
JIM DWYER	AUDIT MANAGER, STATE OF FL
JOHN TOPA	ASSISTANT ATTORNEY GENERAL, STATE OF FL
JACK SHREVE	OFFICE OF PUBLIC COUNSEL, STATE OF FL
ROSANNE GERVASI	OFFICE OF GENERAL COUNSEL, STATE OF FL
JOHN WILLIAMS	DIVISION OF EXTERNAL AFFAIRS, STATE OF FL
DEBBIE GILREATH	GOVERNMENT OPERATIONS, STATE OF FL
KARA COLLINS-GOMEZ	LEGISLATIVE POLICY ANALYST, STATE OF FL
CHUCK HEFRAN	LEGISTLATIVE POLICY ANALYST, STATE OF FL
MICHAEL B. TWOMEY	COLLIER COUNTY
SUSAN W. FOX	SUGARMILL WOODS CIVIC ASSOCIATION, INC.
ARTHUR JACOBS	AMELIA ISLAND PLANTATION COMMUNITY ASSOCIATION, INC.
WILLIAM COLBERT	CITY OF PALM COAST
VIRGINIA CASSADY	CITY OF PALM COAST
LONNIE GROOT	CITY OF PALM COAST
HONEY RAND	ENVIRONMENTAL PR GROUP

Number of pages, including this cover sheet: 3

PLEASE SEE ATTACHED NOTICE OF PUBLIC HEARING.

FROM: **FLORIDA WATER SERVICES AUTHORITY**

DATE: **12/31/02**

TO:

JOHN PETERS	CITY OF ALTAMONTE SPRINGS
JAMES FOWLER	CITY OF ALTAMONTE SPRINGS
RAY NORMAN	BRADFORD COUNTY
TERENCE BROWN	BRADFORD COUNTY
RICHARD MARTENS	BREVARD COUNTY
SCOTT KNOX	BREVARD COUNTY
WILLIAM SUNDSTROM	CLAY COUNTY UTILITY AUTHORITY
DAVID HAAS	FLAGLER COUNTY
CARL KERN	FLAGLER COUNTY
ELIZABETH PALMER	CITY OF FRUITLAND PARK
LISA ABSHER	CITY OF GROVELAND
JASON YARBOROUGH	CITY OF GROVELAND
CARL COOL	HIGHLANDS COUNTY
J. ROSS MACBETH	HIGHLANDS COUNTY
MIKE MCWEENEY	HILLSBOROUGH COUNTY
DONALD ODOM	HILLSBOROUGH COUNTY
KAPIL BHATIA	HILLSBOROUGH COUNTY
PAT BEAN	HILLSBOROUGH COUNTY
LLOYD GREEN	CITY OF KEYSTONE HEIGHTS
WILLIAM NERON	LAKE COUNTY
SANFORD MINKOFF	LAKE COUNTY
RON STOCK	CITY OF LEESBURG
JOHN POLLEY	MARTIN COUNTY
NANCY SHUTTS	MARTIN COUNTY
STEPHEN FRY	MARTIN COUNTY
MARCUS COLLINS	CITY OF MOUNT DORA
MICHAEL CHANDLER	ORANGE COUNTY
THOMAS WILKES	ORANGE COUNTY
PAT DIVECCHIO	ORANGE COUNTY
DOUG BRAMBLETT	PASCO COUNTY
JOHN GALLAGHER	PASCO COUNTY
ROBERT SUMNER	PASCO COUNTY
LEA ANN THOMAS	POLK COUNTY
DARRELL GUNN	POLK COUNTY
MARK CARPANINI	POLK COUNTY
RICK LEARY	PUTNAM COUNTY
RUSSELL CASTLEBERRY	PUTNAM COUNTY
WILLIAM YOUNG	ST. JOHNS COUNTY
JAMES SISCO	ST. JOHNS COUNTY
KEVIN GRACE	SEMINOLE COUNTY
ROBERT MCMILLAN	SEMINOLE COUNTY
CYNTHIA COTO	VOLUSIA COUNTY
DANIEL ECKERT	VOLUSIA COUNTY
MARY CONNORS	VOLUSIA COUNTY
PETER HERBERT	WASHINGTON COUNTY
GERALD HOLLEY	WASHINGTON COUNTY
KENETH CUYLER	CITY OF MARCO ISLAND
WILLIAM MOSS	CITY OF MARCO ISLAND
JOHN JENKINS	CITY OF MARCO ISLAND
RICHARD KELTON	CITY OF PALM COAST
DAVIS HAAS	FLAGLER COUNTY
J.M. OXLEY, JR.	NASSAU COUNTY

RESOLUTION NO. _____-03

A RESOLUTION OF THE FLORIDA WATER SERVICES AUTHORITY, ESTABLISHING A PUBLIC UTILITY, ADOPTING RATE TARIFFS, ESTABLISHING AN EFFECTIVE DATE FOR SUCH RATE TARIFFS, ADOPTING UNIFORM UTILITY POLICIES, ESTABLISHING A UTILITY SERVICE AREA; ADOPTING A COST OF LIVING AUTOMATIC ADJUSTMENT AND UTILITY COST PASS-THROUGH; ESTABLISHING AN IMPACT FEE TRUST FUND; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Florida Water Services Authority (the "Authority") has proposed to acquire the utility assets of Florida Water Services Corporation, and to provide water, wastewater and reuse water utility service to the public; and

WHEREAS, notice has been provided to the customers of the Florida Water Services Corporation utility systems and the Authority has received input from the public on proposed rates, fees, and charges and utility policies; and

WHEREAS, the Authority is authorized to establish, and amend from time to time, just and equitable rates, fees and charges, and utility policies for the provision of service by the Authority's utility system;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE FLORIDA WATER SERVICES AUTHORITY AS FOLLOWS:

Section 1. Establishment of Utility.

The Authority establishes a public utility to provide water, wastewater, and reuse water utility service to the former customers of the Florida Water Services Corporation utility systems.

Section 2. Adoption of Rate Tariffs.

The Authority determines that the rates, fees and charges as set forth on the Rate Tariffs attached to this Resolution as composite Exhibit "A", and made a part of this Resolution, are just and equitable, and are hereby established as the Rate Tariffs of the Authority.

Section 3. Effective Date of Rate Tariffs.

The rates, fees and charges set forth on the attachments to this resolution shall become effective on the date of acquisition of the Florida Water Services Corporation utility assets by the Authority, and in accordance with the terms set forth in this Resolution.

purposes of investment of fund balances, the Authority may commingle the impact fee trust funds with other funds of the Authority, provided that a strict accounting of such commingled funds and interest allocations among such funds is made by the Authority to assure compliance with the impact fee trust account funding limitations.

Section 8. Effective Date.

This Resolution shall take effect immediately upon its adoption by the Board of the Florida Water Services Authority.

ADOPTED ON THIS _____ DAY OF JANUARY, 2003.

FLORIDA WATER SERVICES AUTHORITY BOARD

(SEAL)

By: _____
Its: Chairman

Attest:

By: _____
Its: Authority Clerk

WATER CONNECTION FEES
FOR PALM COAST IN FLAGLER COUNTY

Meter Installation Charges:

Per Connection -	5/8" x 3/4"	$106.25
Per Connection -	1"	$200.00
Per Connection -	1-1/2"	$481.25
Per Connection -	2"	$568.75
Per Connection -	Over 2"	Actual Cost

Backflow Preventor (other than single family, duplex or triplex residences):

Per Connection -	1" or less	$256.25
Per Connection -	1-1/2"	$437.50
Per Connection -	2"	$437.50
Per Connection -	Over 2"	Actual Cost

Customer Connection (Tap-in) Charges:

Per Connection -	5/8" x 3/4"	$185.94
Per Connection -	1"	$185.94
Per Connection -	Over 1"	Actual Cost

System Capacity Charges:

Residential - Per ERC (188 gpd)	$1,875.00
All Others - Per Gallon	$9.96

Plan Review Charge: Actual Cost

Inspection Fee: Actual Cost

Guaranteed Revenue Charge: Actual Cost

WASTEWATER CONNECTION FEES
FOR PALM COAST IN FLAGLER COUNTY

System Capacity Charges:

Residential - Per ERC (137 gpd)	$1,737.50
All Others - Per Gallon	$12.69

Plan Review Charge: Actual Cost

Inspection Fee: Actual Cost

Sewer Lateral Inspection Charge:

Per Inspection	$31.25

Guaranteed Revenue Charge: Actual Cost

FIRST REVISED SHEET NO. 40.0
CANCELS ORIGINAL SHEET NO. 40.0

WASTEWATER TARIFF
NAME OF COMPANY Florida Water Services Corporation

SCHEDULE OF FEES AND CHARGES

SEWER

DESCRIPTION	AMOUNT	SHEET NO.
System Capacity Charge Residential-per ERC (137 GPD) All others-per gallon	$1,390.00 $10.15	34.0
Plan Review Charge Refer to Rule 11.0	Actual Cost	35.0
Inspection Fee Refer to Rule 11.0	Actual Cost	35.0
Sewer Lateral Inspection Charge Per inspection (refer to Rule 12.0)	$25.00	35.0-36.0
Guaranteed Revenue Charge	Actual Cost	37.1-37.4
CIAC Tax Impact Charge Refer to Rule 15.0	Actual Cost	38.0-39.0

Forrest L. Ludsen, Senior Vice President
Rates & Regulatory Affairs

WATER TARIFF
NAME OF COMPANY Florida Water Services Corporation

THIRD REVISED SHEET NO. 46.0
CANCELS SECOND REVISED SHEET NO. 46.0

SCHEDULE OF FEES AND CHARGES

WATER

DESCRIPTION	AMOUNT	SHEET NO.
System Capacity Charge		
Residential - per ERC (188 GPD)	$1,500.00	37.0
All other - per gallon	$ 7.97	
Meter Installation Fee		
5/8" x 3/4"	$ 85.00	38.0 - 39.0
1"	$ 160.00	
1 ½"	$ 385.00	
2"	$ 455.00	
Over 2"	Actual Cost	
Backflow Preventor (Other than single family, duplex or triplex residences)		
1" or less	$ 205.00	39.0
1 ½"	$ 350.00	
2"	$ 350.00	
Over 2"	Actual Cost	
Customer Connection (Tap-in) Charge		
5/8" x 3/4" Metered service	$ 148.75	39.0
1" Metered service	$ 148.75	
Over 1" Metered service	Actual Cost	
Plan Review Charge		
Refer to Rule 11.0	Actual Cost	39.0
Inspection Fee		
Refer to Rule 11.0	Actual Cost	39.0
Guaranteed Revenue Charge		
Refer to Rule 15.0	Actual Cost	42.0 - 43.7
CIAC Tax Impact Charge		
Refer to Rule 16.0	Actual Cost	44.0 - 45.0

Forrest L. Ludsen, Senior Vice President
Rates & Regulatory Affairs