

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into)
Proposed Sale of Florida) DOCKET NO. 021066-WS
Water Services Corporation.) FILED: February 21, 2003
_____)

PETITION TO INTERVENE OF THE FLAGLER COUNTY
UTILITY REGULATORY AUTHORITY

The Flagler County Utility Regulatory Authority ("FCURA"), an agency of Flagler County, Florida, a political subdivision of the State of Florida, hereby respectfully files this Petition to Intervene and states in support thereof as follows.

1. The complete name and address of the Petitioner is:

Flagler County Utility Regulatory Authority
2285 East Moody Boulevard, Suite 209
Bunnell, Florida 32110.

2. All pleadings, notices, orders, correspondence, and other communications filed or had in this docket should be served on the following:

Robert Scheffel Wright
John T. LaVia, III
Landers & Parsons, P.A.
310 West College Avenue (ZIP 32301)
Post Office Box 271
Tallahassee, Florida 32302
Telephone (850) 681-0311
Telecopier (850) 224-5595

and

Carl E. Kern, County Attorney
Flagler County
1200 East Moody Boulevard, #11
Bunnell, Florida 32110,

with a courtesy copy to:

DOCUMENT NUMBER-DATE
01836 FEB 21 8
FPSO-COUNTY CLERK

Arthur Sirkin, Esquire, Administrator
Flagler County Utility Regulatory Authority
2285 East Moody Boulevard, Suite 209
Bunnell, Florida 32110.
Telephone (386) 586-2125
Telecopier (386) 586-2127 .

3. The name and address of the agency affected by this
Petition are:

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

4. Petitioner FCURA learned of the Commission's
consideration of the matters raised in this docket upon obtaining
a copy of the Commission Staff's recommendation, dated January
29, 2003, on or about February 4, 2003. The Petitioner learned
of the Commission's decision to set the matters raised herein for
hearing upon obtaining a copy of Commission Order No. PSC-03-
0193-FOF-WS on February 7, 2003.

STATUTES AND RULES THAT ENTITLE FCURA TO RELIEF

5. FCURA is entitled to intervene by Commission Rule 25-
22.039, Florida Administrative Code, and by Rules 28-106.201 and
28-106.205, F.A.C., and by Chapter 120, Florida Statutes,¹
because the Commission's determinations herein will almost
certainly determine whether Florida Water Services Corporation
("FWSC") is able to proceed to consummate the proposed transfer
to the Florida Water Services Authority ("FWSA"). In turn, if
the transfer occurs, the FCURA is facing the potential loss of

¹ All references herein to the Florida Statutes are to the
2002 edition thereof.

its ability to effectively protect the customers of FWSC's systems in Flagler County. As the Commission put it, prompt action is necessary "to prevent an irreversible situation whereby we would be deprived of determining whether this sale should be approved as a matter of right, or whether there must be a determination made that the sale is in the public interest." PSC Order No. 03-0193-FOF-WS at 4. This loss of regulatory authority would be an immediate injury of dramatic magnitude and impact on the FCURA and on the consuming public served by FWSC's systems in Flagler County.² Moreover, as a sister agency of the Commission facing identical issues in proceedings regarding FWSC's systems in Flagler County,³ the Commission should allow the Flagler County Utility Regulatory Authority to intervene as a matter of comity. The Commission's Docket No. 021066-WS remains open, and there will be no prejudice to any party by allowing the Flagler County Utility Regulatory Authority to intervene as a party.

² Like the Commission, the FCURA regulates investor-owned water and wastewater utilities in the public interest as an exercise of the police power. Where the Commission regulates pursuant to power delegated by the Legislature, FCURA regulates utilities within its geographic jurisdiction pursuant to authority reserved to Flagler County and other counties by the Legislature through Chapter 367. See Fla. Stat. § 367.171.

³ On February 17, 2003, the FCURA voted unanimously to issue its Emergency Order to Comply with Flagler County Ordinance No. 2002-10, in which the FCURA ordered FWSC not to sell, assign, or otherwise transfer its water and wastewater system facilities or certificates in Flagler County without first obtaining FCURA's determination and approval that the proposed transfer is in the public interest.

DISPUTED ISSUES OF MATERIAL FACT

6. The gravamen of this proceeding is the proposed transfer of all of the water and wastewater systems of Florida Water Services Corporation to the Florida Water Services Authority, recently formed by the City of Gulf Breeze, Florida, and the City of Milton, Florida. While technically, the PSC must rule only as to its approval of those water and wastewater systems that are in counties where the PSC regulates such systems, it appears highly likely that, if the PSC grants its approval to the transfer of those systems, the proposed transfer will be consummated and FCURA will be left facing an irreversible loss of its authority to regulate the FWSC systems in Flagler County. Accordingly, FCURA, while reserving its rights to raise all such additional issues as may be identified through pleadings and discovery as this proceeding goes forward, states that the following material issues of fact are likely to be in dispute in this proceeding:

- a. Whether the Florida Water Services Authority is a valid governmental authority within the meaning of Section 367.071, Florida Statutes;
- b. Whether the proposed transfer complies in all factual respects with the requirements of the Florida Constitution;
- c. Whether the "contingency" language proffered by FWSC and the FWSA is sufficient to protect the customers of FWSC who would be affected by the transfer;
- d. Whether the proposed transfer is in the public interest; and
- e. Whether the transferee, FWSA, will fulfill the

commitments, obligations, and representations of the utility.

ISSUES OF LAW

7. FCURA also suggests to the Commission that at least the following issue of law will be relevant to the Commission's determination of this case:

- a. Whether the proposed transfer complies with the Florida Constitution, Article VIII, Section 4, and Article VIII, Section 2(b).

ULTIMATE FACTS ALLEGED

8. Inasmuch as FCURA has similar proceedings pending before it, FCURA, like the Commission, has not yet had an opportunity to determine and find facts with respect to the proposed transfer. Accordingly, FCURA alleges that the protection of the interests of the people of Flagler County, of the people in the other 25 Florida counties where FWSC presently provides service, and the public interest generally, require that the Commission, at a minimum, conduct a full evidentiary hearing pursuant to Chapter 120, Florida Statutes, to determine the factual issues necessary to determine what type of evaluation of the transfer the Commission must make.⁴ Depending on the results of those factual determinations, the Commission may also have to

⁴ The FCURA's governing ordinance, Flagler County Ordinance No. 2002-10, makes no distinction between transfers to governmental and non-governmental entities. See Flagler County Ordinance No. 2002-10, Section 7.16 through 7.19. Nonetheless, the Commission's determination of this issue will very likely determine whether FWSC proceeds with the transfer, which would have irreversible, detrimental impacts on the FCURA's jurisdiction.

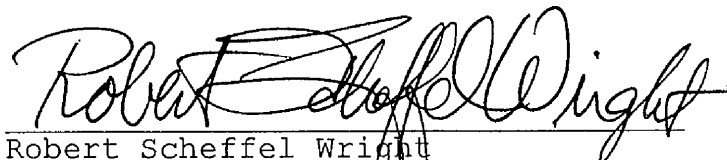
conduct an evidentiary hearing, also pursuant to Chapter 120, Florida Statutes, to determine whether the transfer should be approved.

CONCLUSION AND RELIEF REQUESTED

WHEREFORE, for the reasons set forth above, the Commission should grant this Petition to Intervene, and the Flagler County Utility Regulatory Authority respectfully asks the Commission:

1. to issue its order GRANTING FCURA's Petition to Intervene as a full party in this proceeding;
2. to require that all parties to this docket serve all pleadings, papers, notices, and other papers filed or served in this docket on FCURA's representatives indicated in paragraph 2 above; and
3. to hold the evidentiary hearing in this docket as stated in Commission Order No. 03-0193-FOF-WS.

Respectfully submitted this 21st day of February, 2003.



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Attorneys for the Flagler County
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery* or U.S. Mail, on the 21st day of February, 2003, upon the addresses listed below:

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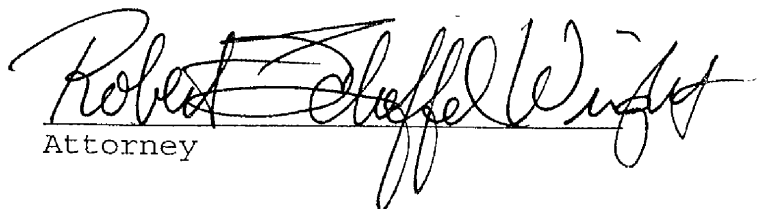
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