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February 21, 2003

COMMISSION
CLERK

FEB 24 AM 10:38

RECEIVED-FPSC

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 Motion for Intervention.

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

AUS
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GCL
OPC
MMS
SEC
OTH

5 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.

15/ Virginia Cassidy
Virginia Cassidy

Signed in his absence

to avoid delay.

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

DOCUMENT NUMBER - DATE

01851 FEB 24 03

FPSC-COMMISSION CLERK

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re:

Investigation into the proposed sale of
Florida Water Services Corporation

Docket No. 021066-WS

CITY OF PALM COAST'S MOTION FOR INTERVENTION¹

COMES NOW, the Movant, the CITY OF PALM COAST, FLORIDA (the "City"), a Florida municipality, and files this Motion for Intervention and, in support thereof, states as follows:

(1) The City and others entities appeared before the Florida Public Service Commission (the "PSC") on this matter on February 4, 2003. The City presented extensive oral and written arguments before the PSC, as did other jurisdictions and, thus, should be deemed to be a proper party in this matter.

(2) When the Florida Water Services Authority ("FWSA") and Florida Water Services Corporation ("FWSC") filed a Petition For Writ of Prohibition against the PSC, the City filed a Motion for Intervention. The First District Court of Appeal granted the City's Motion to Intervene. See Exhibit "A" attached hereto.

(3) The City entered Resolutions relative to the acquisition of the water and wastewater systems which serve the City and its citizens. On March 5, 2002, the City passed Resolution 2002-06 in which the City found that the acquisition by the City of the water and wastewater utility assets of Florida Water Services Corp. is in the public interest. On October 15, 2002, the City passed Resolution 2002-43 in which the City found, among

¹ The City believes that it is, in fact, a party in this proceeding but files this Motion to ensure that status. FWSC and FWSA did not recognize the City as such in appellate proceedings.

other things, that there was no valid public purpose which would justify Gulf Breeze or Milton, 425 miles away from the City, entering into an interlocal agreement to create Florida Water Services Authority. On November 5, 2002, the City passed Resolution 2002-46 in which the City authorized the City Manager and City Attorneys to take all reasonable actions necessary to prosecute or defend any lawsuit or other actions throughout the State of Florida relative to the sale of the system to Florida Water Services Authority.

(4) The City filed two petitions for rulemaking before the PSC and both were related to the subject matter that gave rise to the Commission's Order No. PSC-03-0193-FOF-WS in this case. The City was found to have standing to file the rulemaking petitions and the PSC concluded that the matters in this case would consume the requests for rulemaking as the PSC's action revolved around the same controverted actions of the purported legal entity called the Florida Water Services Authority. See attached Order No. PSC-03-0194-FOF-WS in Docket Numbers 021128-WS and 021188-WS, issued February 10, 2003. (Exhibit "B" hereto).

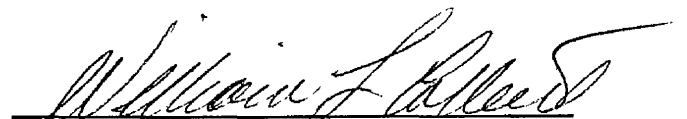
(5) The City has a substantial and material interest in the actions of FWSC and FWSA in that the acquisition by FWSA of the water and wastewater systems owned and operated by FWSC could have a major impact on the quality and level of water and wastewater service provided to the City, a customer of FWSA, and the citizens of the City.

(6) The City and citizens, consumers and customers in the City 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, and the rules and policies of the PSC have significant and material impact on the regulatory actions and activities affecting the City and the citizens of the City.

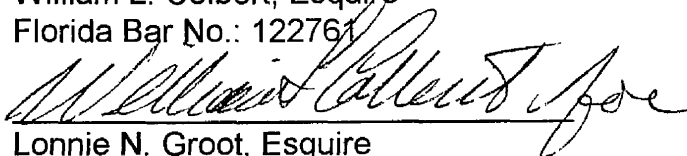
(7) FWSC proposes to sell, assign transfer its water and wastewater utility systems to the purported entity known as FWSA that was purportedly created by the Cities of Gulf Breeze and Milton. The purported FWSA was purportedly created under the provisions of, and purports to have authority relative to, water and wastewater systems under Section 163.01(7)(g), *Florida Statutes*. The City's water and wastewater system is located approximately four hundred twenty-five (425) miles from the Cities of Gulf Breeze and Milton. Gulf Breeze, Milton, and FWSA are not proximate to the City in any way, and the City has not consented to those entities' acquisition of the water and wastewater utility systems which serve the City.

WHEREFORE, the City respectfully requests that the PSC affirm that the City may intervene in the above-styled action or otherwise recognize that the City has party status in this proceeding.

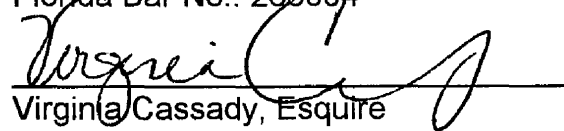
Dated this 21 day of February, 2003.



William L. Colbert, Esquire
Florida Bar No.: 122761



Lonnie N. Groot, Esquire
Florida Bar No.: 266094



Virginia Cassady, Esquire
Florida Bar No.: 0500372

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(407) 322-2171 - (407) 330-2379 -fax
Attorney for City of Palm Coast

CERTIFICATE OF SERVICES

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been served upon the following by U.S. Mail this 21ST day of February, 2003.

Harold McLean, General Counsel
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard, 3rd Floor
Gunter Building
Tallahassee, FL 32399

Jack Shreve, Public Council
Office of Public Council
111 West Madison Street, Room 812
Tallahassee, FL 32399

Thomas C. Palmer, Esquire
Collier County Board of Commissioners
3301 East Tamiami Trail
Administrative Building, 8th Floor
Naples, FL 34112

Kent Weissinger, Esquire
Hernando County Legal Department
20 North Main Street, Room 462
Brooksville, FL 32301
(for Charlotte County)

Barry Richard
Greenberg Traurig, P.A.
101 East College Avenue
Tallahassee, FL 32301

Robert Brazel, Esquire
Hillsborough County Attorney's Office
P.O. Box 1110
Tampa, FL 33601

John R. Jenkins, Esquire
2548 Blairstone Pines Drive
P.O. Box 1567
Tallahassee, FL 32302-1567

Michael S. Mullins
Nassau County Attorney's Office
P.O. Box 1010
Fernandina Beach, FL 32035-1010

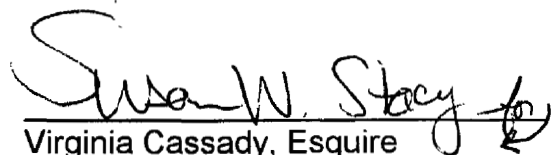
John A. DeVault, III, Deputy County Attorney
The Bedell Building
101 East Adams Street
Jacksonville, FL 32202-3303

Michael B. Towmey, Esquire
P.O. Box 5456
Tallahassee, FL 32314-5256

Matthew G. Minter, Deputy County Attorney
County of Volusia
123 West Indiana Avenue
DeLand, FL 32720-4615

Bruce Culpepper, Esquire
Akerman Senterfitt
301 S. Brounough Street, Ste. 200
P.O. Box 10555
Tallahassee, FL 32302-2555

John R. Marks, III, Esquire
Knowles Marks & Randolph
215 S. Monroe Street, Ste. 130
Tallahassee, FL 32301-1852


Virginia Cassady, Esquire

**DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Florida 32399-1850
Telephone No. (850) 488-6151**

February 12, 2003

CASE NO.: 1D03-432

L.T. No. : 021066-WS

Florida Water Services
Authority, Et Al.

v. Charlotte County, Florida
Collier County, Et Al.

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Respondents are ordered to show cause why the writ of prohibition, filed February 5, 2003, seeking to prohibit the Florida Public Service Commission from interfering with the sale, scheduled for February 14, 2003, should not be granted on the basis that the sale is contingent upon commission approval pursuant to section 367.071(1), Florida Statutes (2002). The response shall be filed with this court by 2:00 pm on Thursday, February 13, 2003.

City of Palm Coast's motion for intervention, filed February 11, 2003, is granted. City of Palm Coast, Florida will hereafter appear as a respondent in this proceeding.

Petitioner's motion to expedite filed February 5, 2003, is granted and this proceeding shall be afforded expedited treatment.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Served:

Barry Richard
Michael B. Twomey
William L. Colbert
Virginia Cassady
am

Bruce Culpepper
John R. Marks, III
Kent Weissinger
Harold Mclean

Thomas C. Palmer
Jack Shreve
Lonnie N. Groot


JOE S. WHEELER, CLERK



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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

In re: Petition to initiate rulemaking concerning capital charges by City of Palm Coast.

DOCKET NO. 021188-WS
ORDER NO. PSC-03-0194-FOF-WS
ISSUED: February 10, 2003

The following Commissioners participated in the disposition of this matter:

- LILA A. JABER, Chairman
- J. TERRY DEASON
- BRAULIO L. BAEZ
- RUDOLPH "RUDY" BRADLEY
- CHARLES M. DAVIDSON

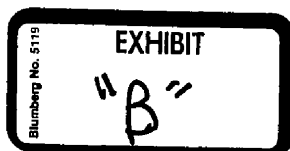
ORDER DENYING MOTIONS TO DISMISS AND PETITIONS TO INITIATE RULEMAKING

BY THE COMMISSION:

BACKGROUND

On November 6, 2002, the City of Palm Coast (City) filed a petition to initiate rulemaking. That filing was assigned Docket No. 021128-WS. In Docket No. 021128-WS, the City proposes that we adopt a rule that would require us to evaluate any proposed sale, assignment or transfer from a private water and wastewater utility to a legal entity created by an interlocal agreement under section 163.01(7)(g)1., Florida Statutes, prior to the sale, assignment or transfer of the utility's certificate of authorization, facilities, or any portion thereof, or majority organizational control.

On November 25, 2002, the City filed a second petition to initiate rulemaking. This filing was assigned Docket No. 021188-WS. In Docket No. 021188-WS, the City proposes that we adopt a rule that would require us to evaluate a proposed sale, assignment, or transfer of a private water and wastewater utility to a legal entity created by an interlocal agreement under section



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163.01(7)(g)1. to determine whether "capital charges" are being paid to the selling utility. The City's proposed rule defines "capital charges" as "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." The rule proposal prohibits the legal entity from paying "capital charges" to the selling utility.

On November 27, 2002, Florida Water Services Corporation (Florida Water or utility) filed a Motion to Dismiss the City's Petition to Initiate Rulemaking in Docket No. 021128-WS. On December 16, 2002, Florida Water filed a Motion to Dismiss the City's Petition to Initiate Rulemaking in Docket No. 021188-WS. Florida Water asserts that the City lacks standing to initiate these rulemakings. The City filed responses to the Motions to Dismiss.

Pursuant to section 120.54(7), Florida Statutes, we have 30 days from the date of the filing of a petition to initiate rulemaking proceedings, otherwise comply with the requested action, or deny the petition with a written statement of our reasons for the denial. The City waived the deadline until January 21, 2003, to allow itself time to respond to the Motions to Dismiss and to allow us to consider both petitions at the same agenda conference.

We have jurisdiction to consider the petitions pursuant to section 120.54, Florida Statutes.

MOTIONS TO DISMISS

In both of the Motions, Florida Water asserts that the City does not have standing to file the petitions for rulemaking. More specifically, Florida Water states that under section 120.54(8)(a), Florida Statutes, and Rule 28-103.006(1), Florida Administrative Code, an entity seeking to initiate rulemaking must allege facts demonstrating that the petitioner is either regulated by the agency or has a substantial interest in the agency rule that the petitioner proposes for adoption. Florida Water states that, because the City is not regulated by us, it must demonstrate the latter.

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Florida Water argues that there is no authority under Chapter 120, Florida Statutes, for the City to appear as a representative of its citizens in a rulemaking proceeding. Florida Water points out that while section 120.52(12)(d), Florida Statutes, includes counties in the definition of a "party," Chapter 120 does not include cities in the definition. Florida Water further states that the water and wastewater services provided by Florida Water to residents of the City who are customers of Florida Water are exclusively regulated by the Flagler County Utility Regulatory Authority, not this Commission.

In its responses to the Motions to Dismiss, the City argues that it has standing to file the petitions to initiate rulemaking and that Florida Water's motions should be denied. The City asserts that it is a customer of Florida Water. The City provided copies of its bills to prove that it is a customer of the utility.

The City further states that it has standing to represent its citizens under the provisions of Article VIII, Section 2 of the Constitution of the State of Florida and Chapter 166, Florida Statutes. It argues that Article VIII states that the City "may exercise any power for municipal purposes except as otherwise provided by law." It states that section 166.021(b) defines the term "municipal purpose" as "...any activity or power which may be exercised by the state or its political subdivisions." The City states that it 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."

In regard to Florida Water's argument that Chapter 120 specifically includes counties but not cities in the definition of a "party," the City asserts that counties to some extent may need to obtain express legislative approval to take certain action, action which cities are constitutionally entitled to take. It asserts that section 120.52(12)(d) "indicates that the power granted to counties by that statute is a local government power in a general sense that municipalities have not been prohibited from exercising by constitutional or statutory provision."

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Whether or not the City has standing to initiate rulemaking as the representative of its citizens, it is clear that the City is a customer of Florida Water. As a customer of the utility, actions taken by the utility will have an effect on the City. Thus, we find that the City has the requisite "substantial interest" to initiate these rulemakings. Accordingly, Florida Water's Motions to Dismiss filed in Dockets No. 021128-WS and 021188-WS are hereby denied.

PETITIONS TO INITIATE RULEMAKING

In Docket No. 021128-WS, the City requests that we adopt the following rule:

25-30.041 Transfer of Water and Wastewater Utility to Specified Entities Created Under Section 163.01(7)(g)1., Florida Statutes.

- a. This Rule is adopted under the exclusive jurisdiction of the Commission over the authority of water or wastewater utilities and to ensure that the rates of water and wastewater utilities are not raised indirectly without Commission action when rates could not be raised directly without Commission action. 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 water and wastewater utility rates are not raised and transfers of water and wastewater utilities 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, serves populations outside of the county or counties of the members of the legal entity.

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- c. The sale, assignment or transfer of a non-exempt water or wastewater utility to an Entity can be used as a means of raising rates that could not otherwise be raised and circumventing the regulatory authority of the Commission which is implemented to protect the public interest.
- d. The provisions of Section 367.071, Florida Statutes, are intended to protect the public from sales, assignments or transfers of water and wastewater utilities that are contrary to or inconsistent with the public interest.
- e. Prior to a water or wastewater utility selling, assigning or transferring its certificate of authorization, facilities, or any portion 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 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.
- f. This evaluation by the Commission of any proposed sale, assignment or transfer of a water or wastewater utility to an Entity shall include, but not be limited to, the following:
- (1) Whether the proposed sale, assignment or transfer will result in the commitments of the regulated utility being fulfilled.
 - (2) Whether the proposed sale, assignment or transfer will result in the obligations of the regulated utility being fulfilled.
 - (3) Whether the proposed sale, assignment or transfer will result in the representations of the regulated utility being fulfilled.

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- 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. 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, shall first submit an application to the Commission, or to the applicable regulator in conjunction with the Commission, to fix and change its rates.
- i. Notwithstanding the provisions of Section 367.171, Florida Statutes, any water or wastewater utility that owns or operates water or wastewater systems that propose to sell, transfer or assign said systems to an Entity shall be subject to Commission evaluation as provided in Section 367.171(5), Florida Statutes.

In Docket No. 021188-WS, the City requests that we adopt the following rule:

Retention of Capital Charges Upon Transfer of Water or Wastewater Utility to Specified Entities Created Under Section 163.01(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 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

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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 sales, 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 to the 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.

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- 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 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.

In both of its Petitions to Initiate Rulemaking, the City in essence states that the rules it wants us to adopt will address some of the ramifications resulting from the potential sale of Florida Water to a legal entity created under section 163.01(7)(g)1., known as the Florida Water Services Authority (FWSA). The FWSA was purportedly created by the cities of Gulf Breeze and Milton. The City states that none of Florida Water's water and/or wastewater systems are located within the jurisdictional boundaries of Santa Rosa County, where the cities of Gulf Breeze and Milton are located.

The City states that it "will benefit from the Commission having the maximum lawful and practicable participation in terms of the sale, assignment or transfer of the [Florida Water] systems to the purported FWSA." The City asserts that we have the jurisdiction, organization, professional staff, and expertise to protect the public interest in circumstances such as this that

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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."

As the City notes in its Petitions to Initiate Rulemaking, we currently have a docket open, Docket No. 021066-WS, in which we are investigating the proposed sale of Florida Water to the FWSA. In Docket No. 021066-WS, our staff is conducting discovery on the issues surrounding the sale. One issue that our staff is exploring is our jurisdiction over the proposed sale and the FWSA.¹ Because we have not yet made any determination as to our jurisdiction over the matter and because we are already investigating the proposed sale, we find that it would be premature to proceed with the City's rulemaking requests. Moreover, we find that it would be more administratively efficient for all efforts and resources to be focused on Docket No. 021066-WS at this time. Any rulemaking that may be necessary can be pursued once the investigation in Docket No. 021066-WS has concluded. Thus, the City's Petitions to Initiate Rulemaking filed in Dockets No. 021128-WS and 021188-WS are hereby denied.

No further action is required. Therefore, Dockets Nos. 021128-WS and 021188-WS shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the City of Palm Coast's Petitions to Initiate Rulemaking filed in Dockets Nos. 021128-WS and 021188-WS are denied. It is further

ORDERED that the Motions to Dismiss Petitions to Initiate Rulemaking filed by Florida Water Services Corporation are denied. It is further

¹ On December 20, 2002, our staff sent a memorandum to all parties in Docket No. 021066-WS and interested persons requesting comments on our current and continuing jurisdiction over the proposed sale and the FWSA. Our staff has requested that the comments be submitted by January 21, 2003.

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ORDERED that Dockets Nos. 021128-WS and 021188-WS shall be closed.

By ORDER of the Florida Public Service Commission this 10th day of February, 2003.

/s/ Blanca S. Bayó
BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

This is a facsimile copy. Go to the Commission's Web site, <http://www.floridapsc.com> or fax a request to 1-850-413-7118, for a copy of the order with signature.

(S E A L)

SMC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15)

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days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.