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August 25, 2003

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Tallahassee, Florida 32399-0850

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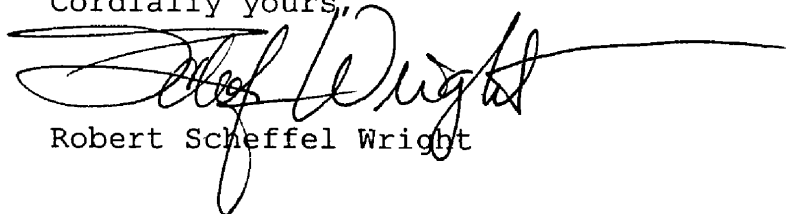
**Re: Lee County's Petition to Intervene and Motion to Dismiss,
FPSC Docket No. 030748-SU, In Re: Application of Forest
Utilities, Inc.**

Dear Ms. Bayo:


Enclosed for filing are the original and fifteen copies of Lee County's Petition to Intervene and Notice of Objection and also the original and fifteen copies of Lee County's Motion to Dismiss and Incorporated Memorandum of Law. I have also enclosed a 3.5" diskette containing both pleadings in WordPerfect format. I will appreciate your confirming receipt of the Petition to Intervene and the Motion to Dismiss by stamping the attached filing copies thereof and returning same to my attention.

As always, my thanks to you and to your professional Staff for their kind and courteous assistance. If you have any questions, please give me a call at (850)681-0311.

Cordially yours,


Robert Scheffel Wright

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FPSC-BUREAU OF RECORDS

Enclosures

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application of Forest Utilities, Inc. For Approval of a New Class of Service for Bulk Wastewater Service)
DOCKET NO. 030748-SU
FILED: August 25, 2003

LEE COUNTY'S PETITION TO INTERVENE AND NOTICE OF OBJECTION

Lee County, Florida ("Lee County" or "Petitioner"), pursuant to Chapter 120 and Section 367.091(2), Florida Statutes,¹ and Rules 25-22.039 and 28-106.201(2), Florida Administrative Code, hereby petitions to intervene in the above-styled docket. In summary, Lee County opposes -- on specific procedural grounds as well as on substantive grounds -- the relief requested in the "Application of Forest Utilities, Inc., for Approval of a New Class of Service for Bulk Wastewater Services" (the "Application") that initiated this docket. Accordingly, Lee County seeks to intervene to protect its interests in any proceedings conducted herein. Moreover, in the event that the Commission were to construe Forest Utilities' ("Forest") Application as a request to amend its certificate to extend its service area, Lee County objects to any such request as being inconsistent with Lee County's approved comprehensive plan, and further, Lee County requests a public hearing on the Application (if thus construed) pursuant to Section 367.045(4), Florida Statutes. In further support of its Petition to Intervene and

¹ All references in this Petition to the Florida Statutes are to the 2002 edition thereof.

DOCUMENT NUMBER DATE

07893 AUG 25 2

FPSC-COMMISSION CLERK

Notice of Objection, Lee County states the following.

PROCEDURAL BACKGROUND

1. The name, address and telephone number of the
Petitioner is:

Lee County, Florida
Attention: David M. Owen, Esq.
Chief Assistant Lee County Attorney
2115 Second Street, 6th Floor (ZIP 33901)
Post Office Box 398
Fort Myers, Florida 33902
(239) 335-2236 (Telephone)
(239) 335-2606 (Facsimile)

2. All pleadings, orders and correspondence should be
directed to Petitioner and Petitioner's representatives as
follows:

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

3. The agency affected by this Petition to Intervene is:

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

4. The facts preceding this Petition are as follows.

- a. Forest holds a current certificate (#300S) issued
by the Florida Public Service Commission
("Commission"), to provide certain residential and
commercial domestic wastewater treatment services

within a described service area in Lee County, Florida.

- b. Forest also has an approved wastewater tariff on file with the Commission, which provides for retail residential and commercial services rates, fees and charges.
- c. Forest currently has no tariff provisions for wholesale ("bulk") wastewater treatment service to any class of customer or customers.
- d. On August 1, 2003, Forest filed the subject Application and thereby initiated this proceeding. In the Application, Forest requested, inter alia, (i) Commission approval of a new class of service in order to provide wholesale wastewater treatment services to the Jamaica Bay West Mobile Home Park ("Jamaica Bay"), a 1400 unit mobile home park located in Lee County; and (ii) that the Commission state in an order approving the new class of service for Forest, that no extension of Forest's existing service territory is necessary, because the only proposed customer (Jamaica Bay) will allegedly connect to the Forest system inside a portion of Forest's currently certificated area. (See Application at ¶ 4.)
- e. Jamaica Bay is not located within Forest's current

Commission-certificated service area.

- f. Jamaica Bay is an exempt wastewater treatment provider pursuant to Section 367.022(5), Florida Statutes, providing wastewater treatment to its tenants without specific compensation therefor. Jamaica Bay is not a governmental authority.

LEE COUNTY'S RECEIPT OF NOTICE

5. Lee County received a copy of the Application dated August 1, 2003, by regular United States mail on August 8, 2003.

LEE COUNTY'S SUBSTANTIAL INTERESTS

6. Lee County has a substantial interest in the outcome of this proceeding. Lee County is a political subdivision and charter county of the State of Florida. Lee County owns and operates a comprehensive, regional potable water and wastewater utility serving approximately 70,000 customers throughout Lee County. Both Forest and Jamaica Bay lie within Lee County Utilities service area and are both existing water customers of Lee County Utilities and have been so for approximately twenty years. Lee County has operational wastewater main lines located proximate to Jamaica Bay and has capacity available to serve the immediate and future needs of the entire Jamaica Bay development. Specifically, Lee County has a 12-inch sewer force main located approximately 1,100 feet from Jamaica Bay's wastewater treatment plant, and Lee County has obtained the necessary approvals for

Jamaica Bay to connect to that sewer main via a right-of-way, known as the Ten Mile Canal right-of-way. Lee County has invested considerable public funds in the construction and maintenance of wastewater lines within its service area to provide wastewater treatment services to those entities within the County's service area.

7. In this proceeding, the Commission is ostensibly being requested by Forest to approve a new class of service for Forest to provide wholesale ("bulk") wastewater treatment services to a sole customer, Jamaica Bay, to treat wastewater generated by the tenants/residents of Jamaica Bay in an area that is wholly outside Forest Utilities' certificated service area. Forest attempts to accomplish this end via the artifice of having Jamaica Bay connect to Forest's system inside Forest's service area. Forest - and Jamaica Bay - are thus attempting to evade the statutorily required procedures required for Forest to add Jamaica Bay into Forest's certificated service area pursuant to Section 367.045(2), Florida Statutes.

8. In substance, Forest's proposed extension of its service area to encompass Jamaica Bay would compete directly with the wastewater treatment system of Lee County Utilities. Forest's proposed extension would also be duplicative of Lee County Utilities' system. Due to the size and residential character of Jamaica Bay, Lee County's utility operations will be directly and adversely impacted and affected by the Commission's

decision with respect to approving Forest's request. These facts alone provide the statutory basis, pursuant to Section 367.045(5)(a), Florida Statutes, for Lee County's right to intervene herein as a substantially affected person. In addition, Forest's Application for a new class of service with its attendant request for the Commission's declaration that no service territory extension is required, contravenes the concepts of franchises, service areas, and non-duplication of facilities for both public and private utilities.² Accordingly, Lee County has a direct, substantial, and legislatively recognized interest in the outcome of the subject docket.

9. Moreover, even with regard to the nominal purpose of Forest's Application, namely the approval of a new rate schedule

² In this regard, the instant situation is quite similar to that addressed in Lee County Electric Co-op v. Marks, 501 So. 2d 585 (Fla. 1987), which involved a dispute regarding electric service territories under a territorial agreement between two electric utilities. There, the Florida Supreme Court stated that "[t]his Court has repeatedly approved the PSC's efforts to end the economic waste and inefficiency resulting from utilities' 'racing to serve,' and we cannot find that the transparent device of constructing a line into another utility's service area may suffice to avoid the effect of a territorial agreement." Id. at 587 (citations omitted). The Court went on to state that "[a]n individual has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself," id. (citing Storey v. Mayo, 217 So. 2d 304, 307-308 (Fla. 1968)), and that "[l]arger policies are at stake than one customer's self-interest, and those policies must be enforced and safeguarded by the PSC." Here, although no territorial agreement is at issue, the Legislature has clearly articulated the policies that are to govern such cases as this: the public interest and the avoidance of efforts, like those of Forest here, to extend service areas to compete with and duplicate the systems of other, existing utilities with ample capacity to serve.

(for which no customer within Forest's certificated service area qualifies), Lee County has a clear statutory right to intervene pursuant to Section 367.091(2), Florida Statutes, which provides:

Upon filing an application for new rates, the utility shall mail a copy of the application to the chief executive officer of the governing body of each county within the service areas included in the rate request. The governing body may petition the commission for leave to intervene in the rate change proceeding, and the commission shall grant intervenor status to any governing body that files a petition.

Thus, the Lee County Board of County Commissioners, as the governing body of a County wherein an entity with a corresponding service area has made a request for a new class of service, is entitled to intervenor status in this proceeding as a matter of right pursuant to Section 367.091(2), Florida Statutes.

DISPUTED ISSUES OF MATERIAL FACT

10. Disputed issues of material fact in this proceeding include, but are not limited to, the following:
 - a. whether the Application complies with Section 367.045, Florida Statutes and Rule 25-30.036, Florida Administrative Code;
 - b. whether Forest complied with all applicable notice requirements of Chapter 367, Florida Statutes and Chapter 25-30, Florida Administrative Code;
 - c. whether there is another utility in the area of the proposed territory that is willing and capable of

- providing reasonably adequate service to Jamaica Bay;
- d. whether Forest's proposed service to Jamaica Bay is necessary because service is otherwise not available;
 - e. whether Forest's proposal to serve Jamaica Bay is in the public interest;
 - f. whether Forest's proposal would compete with Lee County Utilities;
 - g. whether Forest's proposal would be duplicative of any portion of Lee County Utilities' wastewater collection and treatment system;
 - h. whether Forest's proposal is consistent with Lee County's approved comprehensive plan;
 - i. whether Forest's request to serve Jamaica Bay requires an extension of Forest's existing certificated service territory;³ and
 - j. such other issues as may be identified through discovery in this proceeding.

Lee County reserves all rights to raise additional issues in its prehearing statement, at the prehearing conference, and as otherwise permitted by the Commission's rules and by any procedural orders issued in this docket.

ULTIMATE FACTS THAT ENTITLE LEE COUNTY TO RELIEF

11. The ultimate facts that entitle Lee County to relief

³ Lee County regards this as a mixed issue of law and fact.

will be developed through discovery and testimony in this proceeding. At this time, based on preliminary review of Forest's filings in this docket, Lee County believes that the following facts entitle Lee County to relief:

- a. Forest's request to serve Jamaica Bay is a proposal to extend Forest's service area that requires an amendment of Forest's certificate of authorization.
- b. Forest's request that the Commission issue an order specifically stating that "no such extension of service territory is necessary under these circumstances" is an attempt to request relief that is beyond the scope of this proceeding. (At a minimum, this would be the proper subject for a petition for declaratory statement pursuant to Section 120.565, Florida Statutes, and Forest has not even attempted to comply with the procedural requirements of that statute.)
- c. Forest's proposal is not in the public interest.
- d. Forest's proposal would result in its system competing with, and duplicating, Lee County Utilities' wastewater collection and treatment system.
- e. Lee County Utilities' system has ample capacity to provide reasonably adequate service to Jamaica Bay, and Lee County Utilities stands fully ready, willing, and able to provide such service.
- f. Forest's proposal is inconsistent with Lee County's

approved comprehensive plan.

NOTICE OF OBJECTION

12. As explained above, Lee County believes that Forest's Application is an improper, procedurally defective attempt to end-run the Commission's statutes that govern extensions of service areas. In an abundance of caution, and specifically because of the notice requirement in Section 367.045(4), Florida Statutes, in the event that the Commission were inclined to construe Forest's Application as requesting an amendment to its certificate to extend its service area to take in Jamaica Bay, Lee County hereby formally gives notice that it objects to any such extension as being inconsistent with Lee County's approved comprehensive plan and requests the public hearing required pursuant to Section 367.045(4), Florida Statutes.

STATUTES AND RULES THAT ENTITLE LEE COUNTY TO RELIEF

13. The applicable statutes and rules that entitle Lee County to relief include, but are not limited to, Sections 120.569, 120.57(1), 367.045(2), (4), and (5)(a), and 367.091(2), Florida Statutes, and Chapters 25-30 and 28-106, Florida Administrative Code.


RELIEF REQUESTED

WHEREFORE, Lee County respectfully requests the Florida Public Service Commission to enter its order GRANTING this Petition to Intervene and authorizing Lee County to intervene in

this proceeding with full party status.

Respectfully submitted this 25th day of August, 2003.

James G. Yaeger
Lee County Attorney

By: 
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AND

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CERTIFICATE OF SERVICE
DOCKET NO. 030748-SU

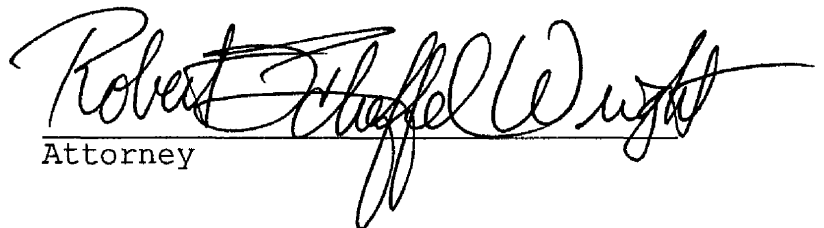
I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Hand-delivery (*), or U.S. Mail, on this 25th day of August, 2003, to the following:

Jennifer Rodan, Esq.*
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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