

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Declaratory Statement Before the Florida Public Service Commission for FOREST UTILITIES, INC. and Jamaica Bay West Associates, Ltd. in Lee County Florida.

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PETITION FOR DECLARATORY STATEMENT

Applicants, FOREST UTILITIES, INC. (hereinafter "Forest" or "Utility") and JAMAICA BAY WEST ASSOCIATES, LTD. (hereinafter "Jamaica Bay"), by and through their undersigned attorneys and pursuant to Chapter 28-105, Florida Administrative Code, files this Petition for Declaratory Statement, and states:

1. The name and address of the Petitioners are:

Forest Utilities, Inc.
6000 Forest Blvd.
Ft. Myers FL 33908-4318

Jamaica Bay West Associates, Ltd.
280 Davis Street, Ste. 300
Birmingham, Michigan 48009

2. The name and address of Forest's and Jamaica Bay's attorneys are:

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Attorney for Jamaica Bay

3. Rule 28-105.001, Florida Administrative Code, provides, in relevant part,

that a declaratory statement is a means for resolving questions or doubts as to how a

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statute or rule may apply to Forest's particular circumstances. This Petition seeks to resolve doubts and questions on the part of Forest and Jamaica Bay with regard to whether an extension of Forest's service territory is necessary for the provision of bulk wastewater service to an exempt entity (Jamaica Bay). This Declaratory Statement is sought with regard to the Commission's interpretation, and application to Forest and Jamaica Bay's unique circumstances, of Section 367.045(2), F.S.

4. Pursuant to Rule 28-105.02(5), Florida Administrative Code, the following is a description of how the Commission's interpretation of Section 367.045(2), F.S. will substantially affect Forest and Jamaica Bay in their particular set of circumstances:

- (a) Pursuant to Section 367.091, Florida Statutes, on August 1, 2003, Forest filed an application for approval of new class of service for bulk wastewater service to an exempt entity, Jamaica Bay in Lee County (PSC Docket No. 030748-SU). Forest has filed a notice of its decision to withdraw that Application by separate letter of October 21, 2003.
- (b) Forest and Jamaica Bay continue to discuss the interconnection of their systems and the potential provision of bulk wastewater service even though Jamaica Bay recently entered into a "Temporary, Emergency" Agreement with Lee County for such bulk wastewater services. However, such Agreement allows for discontinuance of such services on 90 days notice. Both Jamaica Bay and Forest believe that continued discussion and negotiation for bulk wastewater services from Forest are necessary and may be in the best interests of both parties and the public generally. Forest and Jamaica Bay may enter into a written agreement pursuant to which Forest will provide

bulk wastewater service to Jamaica Bay in the near future. This arrangement is being undertaken to assist Jamaica Bay in meeting requirements being imposed upon it by the Florida Department of Environmental Protection (DEP) to upgrade its wastewater treatment facility without any interruption in service to the individual tenants within the customer property.

- (c) Forest has the additional wastewater capacity and is willing to provide that service on a temporary and perhaps permanent basis.
- (d) Once an agreement has been reached between Forest and Jamaica Bay, Forest will file a new Application for Approval of a New Class of Service for Bulk Wastewater Service so that it can provide bulk wastewater treatment to Jamaica Bay. Jamaica Bay will connect to Forest's facilities within Forest's certificated territory. Forest will provide bulk wastewater treatment to Jamaica Bay, but it will not serve any Jamaica Bay retail customers.
- (e) As a result of the original Application for a New Class of Service in order for Forest to provide bulk service to Jamaica Bay (PSC Docket No. 030748-SU), Lee County intervened and filed a Motion to Dismiss the Application of Forest, based primarily on an allegation that Forest had an obligation under the provisions of Chapter 367.045(2) to seek an extension of service territory in order to provide bulk wastewater service to Jamaica Bay under the circumstances as outlined above. Forest responded to that Motion to Dismiss demonstrating that no extension of service territory was required under the statute and none had ever been suggested as required by

the Commission in bulk service arrangements approved by the Public Service Commission in the previous 25 years. The staff also issued its recommendation agreeing with Forest's interpretation of the applicability of this statutory section.

- (f) Because Jamaica Bay entered into a temporary emergency arrangement for bulk wastewater service from Lee County, and the arrangement for bulk service from Forest to Jamaica Bay was not finalized, Lee County has taken the position that Forest's Application for New Class of Service is no longer appropriate, and that these questions were more appropriately answered through a declaratory statement request.
- (g) The Lee County Building Permitting Department denied Jamaica Bay the authority to construct a line to interconnect to the facilities of Forest based entirely on the suggestion that an extension of service territory by Forest was as necessary prerequisite to the provision of such service.
- (h) The Florida Department of Environmental Regulation's local office in the Lee County area proposed to deny a permit for the interconnection of Jamaica Bay's system to Forest which was necessary to undertake the bulk service arrangement between those two entities, based in part upon an allegation that an extension of service territory by Forest was a prerequisite to the provision of bulk service by Forest to Jamaica Bay under these circumstances. While that permit denial was never formally issued, it is clear that in similar circumstances the DEP's local office will raise the

applicability of Section 367.045(2), F.S. again as a bar to any such interconnect, should an agreement be reached between Forest and Jamaica Bay.

5. Forest seeks a declaration from the PSC that no rule, statute, or Commission precedent requires Forest to seek an extension pursuant to Section 367.045(2), F.S. as a prerequisite to providing the intended bulk service to Jamaica Bay.

6. In the absence of such a declaration it is clear that both Lee County and their Building Permitting Department and the local office of the Florida Department of Environmental Protection will continue to use this alleged “ambiguity” in the applicability of Section 367.045(2), F.S. as a method by which to deny Forest and Jamaica Bay the opportunity to enter into a bulk service arrangement that both may determine to be in the best interests of their respective customers and the public generally.

7. The Florida Public Service Commission has for over 25 years approved bulk service arrangements between entities regulated by the Commission and by retail providers such as Jamaica Bay. In none of the dozens of such cases approved by the Public Service Commission has the Commission ever suggested that the utility must have the area served by the bulk customer included within the service territory of the regulated utility requesting such bulk rate approval. In fact, in at least one case of which the undersigned is aware the Commission has specifically approved of an arrangement whereby an extension application to provide retail service was withdrawn after negotiation of a bulk service arrangement and approval of a new class of service rate. In *Application for Amendment of Certificates by Lake Utilities, Inc. 98 FPSC 6:86, June 3, 1998*, an agreement between the regulated utility and the protestant (an unregulated governmental entity) to withdraw the extension application and to instead authorize bulk

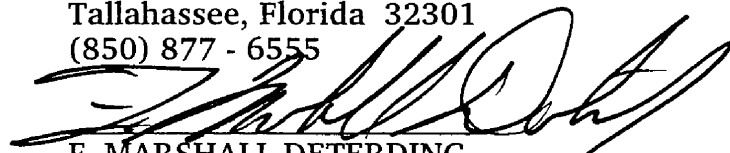
service between the regulated utility and an exempt retail provider of service was approved by the Commission.

Not only does the Commission's precedent clearly demonstrate that no extension of service territory is required for a regulated entity to provide bulk service to a retail provider of service, it also demonstrates that in over 25 years of approving such arrangements, the Commission has never required such an extension. However, in none of the orders previously issued on this subject is there any definitive statement outlining this interpretation of the provisions of Chapter 367.045(2), F.S. and their applicability to bulk service arrangements.

WHEREFORE, in consideration of the above, Forest and Jamaica Bay respectfully request, that for all the reasons contained in this Petition for Declaratory Statement, and based upon the Commission's past and present interpretation of its rules, statutes, and precedents, that this Commission declare that Forest's provision of service to Jamaica Bay as described herein would not require an Application for an Extension of Forest's Territory, pursuant to Section 367.045(2), F.S., nor require any additional filing on behalf of Forest other than a Request for a New Class of Service (see, generally, Docket No. 030748-SU regarding Forest's previous request for same), and such other relief as the Commission deems appropriate in response to this Petition.

Respectfully submitted this 15th
day of October, 2003, by:

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