

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Certificate )  
to provide water service in Volusia )  
and Brevard Counties by Farmton Water ) Docket No. 021256-WU  
Resources LLC )  
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**PREHEARING STATEMENT**

Applicant, Farmton Water Resources LLC, by and through its undersigned attorneys, hereby files this Prehearing Statement pursuant to Order No. PSC-03-0370-PCO-WU issued in Docket No. 021256-WU on March 18, 2003 as revised by Order No. PSC-03-1038-PCO-WU issued on September 18, 2003, Order No. PSC-04-0085-PCO-WU issued on January 26, 2004, and Order No. PSC-04-0334-PCO-WU issued on March 30, 2004 and states:

I. WITNESSES.

A. **Mr. Gerald Hartman**, Hartman & Associates, Inc., Southeast Bank Building, 201 East Pine Street, Suite 1000, Orlando, FL 32801.

Mr. Hartman will testify on both direct and rebuttal as an expert in support of the application of Farmton Water Resources LLC including testimony regarding the exhibits filed with that application and the minor revisions to those exhibits subsequently filed. Mr. Hartman will testify as to the identity of Farmton Water Resources LLC, why Farmton Water Resources LLC is applying for a certificate, the technical ability of Farmton Water Resources LLC to provide service, the need for service, the need for certification of this territory, the existence and nature of other

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utilities in the area and the comprehensive plans of the surrounding governmental entities and the formulation of appropriate rates and charges for service. Mr. Hartman will also provide rebuttal testimony to the direct testimony of the various complainants/intervenors in this docket.

B. **Mr. Howard Landers**, 326 Settlers Lane, Charlotte, NC 28202.

Mr. Landers will testify as an expert in support of the application of Farmton Water Resources LLC. Mr. Landers is an expert in planning and will testify regarding the Comprehensive Plans of the various parties, the relationship between the application and the operation of Farmton Water Resources LLC to those Comprehensive Plans, the implementation of the various plans, and the basic philosophies, policies, and purposes of comprehensive planning itself. Mr. Landers will also testify regarding the scheme and goals of comprehensive planning as created by the various Florida Statutes, particularly the State Growth Management Act.

C. **Mr. Charles Drake**, Hartman & Associates, Inc., 201 E. Pine Street, Orlando, FL 32801.

Mr. Drake will testify as an expert in support of the Application of Farmton Water Resources. Mr. Drake is an expert in hydrogeology and water resource issues and planning, and the ability of both Farmton and other entities to provide service to the proposed territory and to provide other services, such as bulk water service.

D. **Mr. Earl Underhill**, 1625 Maytown Road, Osteen, FL 32764.

Mr. Underhill will testify as the President of Farmton Water Resources LL as to the technical ability to serve and the financial ability to serve.

E. **Ms. Tara Hollis**, Hartman & Associates, Inc., 201 E. Pine Street, Suite 1000, Orlando, Florida 32801.

Ms. Tara Hollis will testify as an expert in support of the application of Farmton Water Resources LLC. Ms. Hollis will testify on the financial and rate issues raised by the utility's application, the financial ability of the applicant to provide service as well as the various expense, rate, revenue, and cost issues raised by the various intervenors or protestants.

## II. EXHIBITS.

Farmton Water Resources LLC will request, at the time of hearing, that the Commission take judicial notice of Farmton Water Resources LLC' entire application with revisions as contained within the Commission's files. Farmton Water Resources LLC also anticipates that it will use certain demonstrative exhibits at the time of hearing for the convenience of the Panel, the staff and the parties. These demonstrative exhibits will be comprised of various maps, possibly with overlays, which provide visual assistance to the testimony of the witness.

1. Gerald Hartman.

<u>Exhibit No.</u>	<u>Exhibits</u>
GCH-1	Application for Original Water Certificate in Volusia and Brevard Counties.
GCH-2	Resume.
GCH-R1	Service areas and locations of major facilities within the areas.
GCH-R2	FPSC certification public interest example.
GCH-R3	Chapters 373.016 and 403.021, Florida Statutes.
GCH-R4	Revised Farmton resources requested certification area and legal description.

2. Howard Landers.

<u>Exhibit No.</u>	<u>Exhibits</u>
HML-1	Resume
HML-2	Consistency of zoning classifications with future land use map series, Chapter 62 Code of Ordinances, November 12, 2002.
HML-3	Gerald Hartman, FPSC certification public interest example.
HML-4	Matrix for consistent zoning classification with future land use categories.
HML-5	Florida Department of Community Affairs Technical Memo.

3. Charles Drake.

<u>Exhibit No.</u>	<u>Exhibits</u>
CWD-1	Resume

4. Earl Underhill.

<u>Exhibit No.</u>	<u>Exhibits</u>
N/A	No exhibits.

5. Ms. Tara Hollis.

<u>Exhibit No.</u>	<u>Exhibits</u>
TLH-1	Order No. PSC-02-0898-PAA-WS
TLH-2	Resume

III. Farmton' STATEMENT OF BASIC POSITION.

There is a need for potable water, agricultural/irrigation water, and there is expected to be a need for bulk raw water services, throughout the territory applied for by Farmton Water Resources LLC. The applicant is ready, willing and able from both a technical and financial standpoint to provide those services currently needed and to meet additional needs as they arise. No other utility can provide service to the territory as economically or efficiently as Farmton Water Resources LLC. The proposed certification of Farmton Water Resources LLC is in the public interest and is in no way inconsistent with the Comprehensive Plans of any of the protestants or intervenors in this case developed pursuant to §§ 163.3161-163.3211, Fla. Stat. In fact, the certification of Farmton Water Resources LLC will facilitate effective and orderly growth management and resource preservation and allocation within the proposed territory comprised of lands owned by Farmton Water Resources LLC's affiliated entities.

IV. ISSUES OF FACT, LAW, AND POLICY.

Issues 3-6 and 8-17 are mixed issues of fact and law. Issues 1 and 2 are questions of law. Issue 7 is a question of policy.

**1. Does the Commission have exclusive jurisdiction over the certification of private utilities?**

Farmton's Position:

Yes, the Commission has exclusive jurisdiction under the provisions of Chapter 367, Florida Statutes and any attempts by local government to assert jurisdiction over those issues, is contrary to law and ineffectual.

**2. Do any of the intervenors' protests have jurisdiction equal to or superior to that of the Florida Public Service Commission regarding the proposed service, territory and rates of Farmton Water Resources LLC?**

Farmton's Position:

None of the intervenors' protestants have jurisdiction equal to or superior to that of the Florida Public Service Commission regarding the proposed service territory and the rates of Farmton Water Resources LLC. The provisions of Chapter 367 could not be more clear on this point.

**3. Is the service proposed by Farmton Water Resources LLC exempt from Commission jurisdiction?**

Farmton's Position:

No, the service proposed by Farmton Water Resources LLC is not exempt from jurisdiction under the provisions of Chapter 367, Florida Statutes.

**4. Has Farmton met the filing and noticing requirements pursuant to Rules 25-30.030 and 25-30.033, Florida Administrative Code?**

Farmton's Position:

Yes, Farmton has met all of the filing and noticing requirements required by Commission Rules for this Application.

**5. Is there a need for service in Farmton's proposed service territory and, if so, when will service be required?**

Farmton's Position:

Yes, there is an immediate need for potable water and fire protection services throughout the proposed service territory and additional needs are anticipated in the near future.

**6. Is Farmton's application inconsistent with Brevard County's or Volusia County's comprehensive plans?**

Farmton's Position:

No, certification of Farmton Water Resources LLC in the area applied for in its Application is not inconsistent with the Comprehensive Plans of either Brevard or Volusia Counties.

7. Are attempts to utilize the Public Service Commission's exclusive jurisdiction over the service territory of private utilities a necessary or legally appropriate growth management tool to be utilized by the protestants and intervenors to prevent "urban sprawl" in the respective jurisdictions, or are other more appropriate tools available to these protestants for that purpose?

Farmton's Position:

The protestors possess sufficient alternative growth management tools to prevent growth of so called "urban sprawl" in their jurisdictions. The usurpation of the Public Service Commission's authority over utility service territory is therefore not only contrary to law and contrary to the public interest, but a necessary attempt to utilize utility certification prevention as a tool of growth management.

8. Will the certification of Farmton result in the creation of a utility which will be in competition with, or duplication of, any other system?

Farmton's Position:

No, there are no other existing utility systems other than those operated by Farmton, within the proposed territory or immediately adjacent thereto.

9. Does Farmton have the financial ability to serve the requested territory?



Farmton's Position:

Yes, Farmton has demonstrated the financial ability to serve the requested territory.

**10. Do any of the intervenors or protestants in this docket currently serve or have present intentions to serve the territory for which Farmton Water Resources LLC seeks a certificate?**

Farmton's Position:

None of the intervenors or protestants in this docket are currently serving or have the present intentions to serve the territory for which Farmton Water Resources LLC seeks a certificate, and have no plans to do so.

**11. Does Farmton have the technical ability to serve the requested territory?**

Farmton's Position:

Yes, Farmton has the technical ability and is currently operating the water systems within the proposed territory and has the expertise and will acquire additional qualified individuals to assist in the operation of the Utility as additional needs arise.

**12. Does Farmton have sufficient plant capacity to serve the requested territory?**

Farnton's Position:

Yes, Farnton has sufficient plant capacity to serve the requested territory and any needs in the reasonable foreseeable future.

**13. Has Farnton provided evidence that it has continued use of the land upon which the utility treatment facilities are or will be located?**

Farnton's Position:

Yes, Farnton has provided a draft lease between the Utility and the landowner, which they will execute upon approval of certification by the Florida Public Service Commission. That lease will allow Farnton the use of lands throughout the proposed territory as and when needed on a long term basis.

**14. Is it in the public interest for Farnton to be granted a water certificate for the territory proposed in its application?**

Farnton's Position:

Yes, there is a need for service and Farnton is in the best position to provide such service. No other entity has facilities in place which will allow it to provide the service efficiently and effectively. Farnton is in the best position to properly provide the services needed and to operate those facilities in an efficient manner which will best utilize and preserve

the resources for all of the customers within the proposed territory, now and in the future.

**15. What is the appropriate return on equity for Farmton?**

Farmton's Position:

The appropriate return on equity for Farmton is the return on equity yielded by the most current leverage formula order in effect at the time the Commission issues its Final Order in this proceeding.

**16. What are the appropriate potable water, fire protection, and bulk raw water rates and charges for Farmton?**

Farmton's Position:

The appropriate potable water, fire protection, and bulk raw water rates are those proposed by Farmton (as revised).

**17. What are the appropriate service availability charges for Farmton?**

Farmton's Position:

The appropriate service availability charges for Farmton are those as proposed by Farmton (as revised).

**18. What is the appropriate Allowance for Funds Used During Construction (AFUDC) rate for Farmton?**

Farmton's Position:

The appropriate Allowance for Funds Used During Construction rate for Farmton is that yielded by use of the leverage formula in effect at the time the Commission issues its Final Order in this proceeding.

V. STIPULATED ISSUES.

Farmton is aware of no issues which have been stipulated by the parties as of the date of filing of Prehearing Statements.

VI. PENDING MOTIONS.

Farmton Water Resources LLC's Motion to Strike the Prefiled Direct Testimony of Patrick A. Barnes provided by Titusville on April 21, 2004.

VII. COMPLIANCE WITH PREHEARING ORDER REQUIREMENTS.

Farmton Water Resources LLC is not aware at this time of any specific requirements of the Prehearing Order, as amended, that cannot be complied with.

DATED this 7<sup>th</sup> day of May, 2004.



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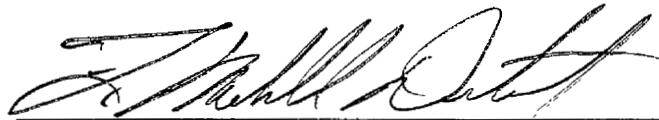
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Request for Confidential Classification has been furnished by Facsimile, U.S. Mail (denoted by \*), or Hand Delivery (denoted by \*\*) this 7<sup>th</sup> day of May, 2004, to:

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