BEFORE THE FLORIDA
PUBLIC SERVICE COMMISSION
DOCKET NO. 021256-WU

POST-HEARING MEMORANDUM FILED ON BEHALF OF FARMTON WATER RESOURCES, LLC

F. Marshall Deterding, Esquire
John L. Wharton, Esquire
ROSE, SUNDSTROM & BENTLEY, LLP
2548 Blairstone Pines Drive
Tallahassee, FL 32301

TABLE OF CONTENTS

TABLE OF AUTHORITIES

INTRODUCTION AND BACKGROUND

In accordance with Public Service Commission (the "PSC" or "Commission") practice, Farmton Water Resources, LLC ("Farmton" or "Utility") hereby submits a detailed Post-Hearing Memorandum in response to each of the enumerated issues posed in Commission Order No. PSC-04-0589-PHO-WU.

On December 20, 2002, Farmton filed its Application for Certificate to provide water service in Volusia and Brevard Counties with the Florida Public Service Commission. Volusia County, Brevard County, and the City of Titusville objected. The City of Edgewater also objected but withdrew its objection after a restrictive amendment filed by Farmton excluded some portions of the territory proposed for service.

Formal hearings were held on June 22, 2004 and June 23, 2004, during which the Commission received testimony and other evidence on the Application and during which all parties were given an opportunity to present both testimony and other evidence to support their positions on all of the issues enumerated in the Prehearing Order.

While there are 15 issues enumerated within the Prehearing Order on which the case hinges, there are several key issues. Each of these issues is summarized briefly hereof.

Comprehensive Plan

The primary basis for the protest advanced by each of the three remaining protestants was an alleged violation with the local Comprehensive Plan of each County, resulting from the grant of the certificate requested by Farmton. This alleged violation comprised the core concern of the original protests filed by each of these parties, and the majority of the testimony presented in support of their respective objections.

The Utility presented the expert testimony of Mr. Howard Landers, a long-time planner who provided testimony both in this case and in the East Central Florida Services (ECFS) case wherein similar protests were offered by the City of Cocoa and Orange and Brevard Counties, and such bases were rejected by the Public Service Commission as either an inappropriate interpretation of the Comprehensive Plan requirements or an inappropriate attempt to use the Public Service Commission certificate process as a super zoning proceeding.

The testimony given by Mr. Landers clearly demonstrates that an interpretation of the Comprehensive Plan as proposed by the protestants (and by the DCA's witness), is an attempt to

utilize the PSC certification process for the sole purpose of the local government avoiding its responsibilities to properly exercise its growth management authority through the clearly enumerated mechanisms within their zoning and comprehensive planning authorities.

Need for Service

Each of the three protestants took the position that there is no need for water service within the territory proposed by Farmton. Their position focused on the level of development allowed under the Comprehensive Plans, rather than on the actual existing need throughout the proposed territory. Little or no evidence was presented by the protestants to deal with the actual needs within the proposed territory. The Utility presented testimony of Messrs. Hartman, Underhill and Drake, each of whom explained the current need for each of the services proposed to be provided by Farmton in great detail. These include service to the hunt club campsites, check stations, cattle ranch residences, as well as a need for fire service throughout the proposed territory.

Exemptions from PSC Jurisdiction

While each of the protestants suggested that the service proposed by Farmton was exempt from PSC regulation, there was no specific reference to any of the twelve exemptions contained within Section 367.022, Fla. Stat. offered. In addition, no testimony or other evidence was presented by any of these protestants to clarify the exemption relied upon, much less to demonstrate the applicability of any of the exemptions under the statute. Farmton and its witnesses provided extensive testimony demonstrating that the proposed service constitutes a utility system subject to regulation by the Florida Public Service Commission, to which no exemption applies.

Public Interest

Farmton's Application for Original Certificate enumerates its basis for filing the Application requesting certification of a water utility within Brevard and Volusia Counties. That Farmton's Application is in the public interest is demonstrated not only in Hearing Exhibit 3, but also within the direct testimonies of Witnesses Underhill and Hartman. The need to provide the current service demanded within the proposed territory and to plan for provision of future services therein is amply demonstrated by the record. Farmton has demonstrated that it is in the unique position to provide the existing and future services and plan for services for the future, as well as to properly manage the resource for the benefit of not only those persons within the proposed territory, but for

all of the citizens of the surrounding area who will be in need of additional water services now and in the coming years.

While Protestant Titusville did not enumerate the basis upon which it contended that granting a certificate to Farmton was not in the public interest, both Brevard and Volusia Counties relied upon the contention (within their stated positions and in the testimony of their witnesses), that each of these Counties have established ordinances that did not authorize the establishment of private utilities within the County without County authorization to do so. Such an argument clearly turns upon the issue of whether or not the Florida Public Service Commission's jurisdiction to grant certificates is exclusive, as fully discussed in Issue 1. Under the clear language of Florida Statutes under Chapter 367, that exclusive jurisdiction is one of the most clearly and concisely stated of any agency authority under Florida Statutes. As such, the argument of these parties fails.

Based upon the great weight of evidence presented, the Commission should find that Farmton Water Resources, LLC has demonstrated a need for and an entitlement to a certificate to operate a water utility in the service area represented and that the grant of such a certificate is in the public interest.

In addition to the above-referenced issues, more fully discussed in the body of this Memorandum, all of the issues tried in this proceeding as outlined in the Prehearing Order are specifically addressed herein and in accordance with the Commission's standard procedure.

DISCUSSION OF ISSUES
ISSUE 1

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

The Commission has exclusive jurisdiction over the certification of private utilities such as Farmton. With all due respect and deference to the governments of Volusia and Brevard Counties, the fact that they have enacted ordinances which attempt to override that exclusive jurisdiction should be and must be disregarded by this Commission.

Volusia County's ordinance is a manifestation of its "legislative decision that all new water utility providers within the County shall be government owned and controlled" (Prehearing Order page 7). Brevard County admits to no such sweeping agenda, but has enacted an ordinance in an attempt to require any proposed utility to obtain the "consent" of the County after "**review** and **approval** of applications for newly proposed service areas" (emphasis supplied) (Tr. 255). In each case, the attempt of these two counties, who have affirmatively accepted the Commission's jurisdiction over the private utilities within their political boundaries, to *ex post facto* avoid the exclusivity of that jurisdiction should be denounced, or at best ignored, by this Commission.[1]

Chapter 367 and its interpretive case law could not be more clear as to the extent of the Commission's jurisdiction. The legislature has made its intent to grant exclusive jurisdiction over utilities to the Commission patently clear. Chapter 367 unequivocally mandates that "(t)he Florida Public Service Commission *shall have exclusive jurisdiction* over each utility with respect to its authority, service, and rates." Section 367.011(2), Fla. Stat. (emphasis supplied); *see, e.g. Orange City Water Co. v. Orange City*, 255 So. 2d 257 (Fla. 1971) (where the court recognized that the 1971 overhaul of Chapter 367, in scope and nature, vested "exclusive regulation in the Public Service

[1]The Counties can hardly deny that the ordinances are an attempt to have their cake and eat it too. If the certification of utilities is subject to a process requiring both Commission and County approval, then the Commission's jurisdiction over the same is hardly exclusive.

Commission over water and sewer rates," divesting the appellee city of authority to infringe on that jurisdiction). Though the clarity of this language requires little interpretation, the courts have confirmed this jurisdictional exclusivity on a number of occasions.

The Florida Supreme Court has recognized that "(w)hile the authority given to cities and counties in Florida is broad, both the constitution and statutes recognize that cities and counties have no authority to act in areas that the legislature has pre-empted." *Florida Power Corp. v. Seminole County*, 570 So.2d 105, 107 (Fla. 1991). In terms of authority, service, and rates over utilities, "the power and authority of the Public Service Commission are preemptive," and "(i)t is plain beyond any doubt that in formulating Chapter 367, the Legislature desired exclusive jurisdiction to rest with the Public Service Commission." *Hill Top Developers v. Holiday Pines Service Corp.*, 478 So. 2d 368, 371 (Fla. 2d DCA 1985); see, also *State, Pub. Serv. Comm'n v. Lindahl*, 613 So. 2d 63 (Fla. 2d DCA 1993); *Sandpiper Homeowners Ass'n v. Lake Yale Corp.*, 667 So. 2d 921 (Fla. 5th DCA 1996) (wherein the court acknowledged that "the PSC has exclusive jurisdiction to entertain actions involving utilities with regard to authority, services, and rates"); *Utils., Inc. v. Corso*, 846 So. 2d 1159 (Fla. 5th DCA 2003) (where a writ of prohibition issued to prevent the circuit court from infringing upon the Commission's exclusive jurisdiction over rates and charges over water and wastewater provision); and *City of Mount Dora v. JJ's Mobile Homes, Inc.*, 579 So.2d 219 (Fla. 5th DCA 1991).

While there was some testimony on the point, certainly it remains somewhat speculative as to how Volusia and Brevard intend to implement their respective ordinances (each of which essentially purport to give them the power to veto the certification of Farmton) should certification by granted by the Commission. In this regard, all the Commission can do at this stage of the proceedings is to clearly reassert and reaffirm its exclusive jurisdiction. Farmton will address any unlawful application

of the ordinances here at issue at the appropriate time (assumably in a circuit court, given the Commission's lack of direct jurisdiction over county ordinances) and at that time the Commission may choose to become involved in the proceeding. Therefore, the Commission must find that in accordance with its clear statutory mandate, it has exclusive jurisdiction over the certification of private utilities and both Brevard and Volusia County's attempts to circumvent that jurisdiction is either unlawful or at best, ineffectual, and can have no bearing on Farmton's "ability to serve" or otherwise import the Commission's ruling in this case.

ISSUE 2

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

Under the provisions of Section 367.022, Fla. Stat. those entities which are exempt from Florida Public Service Commission jurisdiction are listed in 12 subsections. No party has raised in testimony any contention, much less proof, of the Protestants' stated position that Farmton Water Resources, LLC is exempt from the Commission's jurisdiction under any of these exemptions. However, there have been some claims through the stated positions of those protestants in the Prehearing Order that Farmton's proposed service is exempt under some provision of that statute, though none are specific. The evidence clearly demonstrates that the Utility is not exempt from Commission jurisdiction, nor are the services proposed by it exempt.

Farmton proposes to provide three different classes of service: potable water service; fire protection service; and bulk raw water service. Each of these is addressed separately below:

Potable Water Service

Farmton proposes to provide potable water service to the existing needs within its proposed certificated service territory through the use of eight 4" wells located throughout the territory (Tr.

40). As noted by Charles Drake who testified on behalf of Farmton, there are plans to run electricity to the wells or to have the pumps operated by solar power (Tr. 149). Witnesses Underhill and Hartman testified as well to these plans. Witness Gerald Hartman for Farmton testified that there were sustained long term demands from approximately 650 people, which could be considered seasonal in use and that there was use required throughout the year as well for such potable services, with peaks as high as 1,000 persons needing service on the same day (Tr. 75-Tr. 76).

Section 367.022(6) provides:

> *"Systems with the capacity or proposed capacity to serve 100 or fewer persons."*

The service proposed to be provided by Farmton clearly exceeds this minimum based on the only evidence of record.

The provisions of Rule 25-30.055, F.A.C. entitled "Systems with a Capacity or Proposed Capacity to Serve 100 or Fewer Persons," further defines this provision by stating:

> *"A water or wastewater system is exempt under Section 367.022(6), Fla. Stat. if its current or proposed water or wastewater treatment facilities and distribution or collection system have or will have a capacity, excluding fire flow capacity, of no greater than 10,000 gallons per day or if the entire system is designed to serve no greater than 40 Equivalent Residential Connections (ERCs). For the purpose of this rule only, one ERC = 250 gallons per day."*

Both the statute and the rule clearly rely on a determination of "capacity" to serve, rather than current uses. Such capacity is also clearly based upon gallons of such capacity. Mr. Hartman testified that the average daily flow capacity at each of the wells present or proposed by Farmton, is 20,000 gallons per day with maximum day approximately two times that amount and peak hour approximately two more times that amount (Tr. 75), so that the maximum capacity of each well would be approximately 80,000 gallons per day per well. Mr. Hartman also noted that the capacity

of the potable water wells proposed by Farmton would be on the order of 118,000 gallons per day "when we restrict the capacity" just for the retail portion and that the peaking basis would be multiples of that.

Questions posed to the Utility's witnesses by some of the protestants suggest that those entities believe that the meter equivalents contained within Rule 25-30.055, F.A.C. somehow are determinative of the Utility's fitting within the exemption of Section 367.022(6), Fla. Stat. As noted above, both the statute and the rule clearly refer to capacity to serve and clearly define capacity in terms of gallons per day. Under the protestants' interpretation, every Utility seeking an Original Certificate would be exempt at the time it applied for authority to create a water or wastewater utility.

Therefore, however interpreted for present or proposed capacity of the facilities under Section 367.022(6), Fla. Stat., or in terms of gallons per day, persons, or ERCs (based on a gallons of capacity figure) as defined by Rule 25-30.055(1), F.A.C., Farmton's proposed potable water service is clearly not exempt from Florida Public Service Commission jurisdiction and the Commission should so find.

Fire Service

No party has alleged that the firefighting service proposed by Farmton is exempt under the provisions of Florida Statutes and nowhere within the exemptions outlined in Section 367.022, Fla. Stat., is there any specific reference to an exemption related to firefighting services. As such, this service is not exempt from Commission jurisdiction and the capacities for such service as outlined in the Utility's original Application are more than sufficient to avoid the present or proposed capacity minimum size for such services as outlined in Section 367.022(6), Fla. Stat.

Two fire protection wells are currently in existence and the Utility further is proposing to add 10 additional fire protection wells within its proposed territory.

Therefore, the Commission must find that this service is not exempt from Commission jurisdiction under any provision of Florida Statutes and specifically, any provision of Section 367.022, Fla. Stat.

Bulk Water Services

While none of the protestants provided any testimony or other evidence with relation to this bulk service, there was raised a question of whether the proposed bulk raw water services fit within the provisions of the exemption outlined under Section 367.022(12), Fla. Stat. Such exemption specifically provides:

> *"The sale or resale of bulk supplies of water or the sale or resell of wastewater services to a governmental authority or to a utility regulated pursuant to this chapter either by the Commission or the County."*

While Farmton's original calculation of the proposed bulk facilities was premised upon a potential for service to the City of Titusville (admittedly an exempt service), witnesses for Farmton also provided examples of additional types of bulk raw water service that would not be exempt from the Commission's jurisdiction under this specific exemption or any other exemption contained under Section 367.022, Fla. Stat.

There are several types of bulk service that Farmton could provide that do not fit within this exemption. As noted by Witness Hartman, East Central Florida Services which was certificated by the Commission several years ago, provides bulk service in the form of a fire district station and a Reliant Energy Corporation power plant that were not specifically envisioned at the time ECFS was certificated (Tr. 82-Tr. 83). In addition, Mr. Hartman noted that industrial customers who would

be requesting the bulk water service proposed by Farmton would not be exempt under the Commission's statutes. He also noted that mobile home parks providing service to their residents without compensation may themselves be exempt from regulation, the bulk service to them by an entity like Farmton is not an exempt service under Florida Statutes. He testified that the Bell Ridge mobile home campgrounds had already inquired about receiving such service from Farmton, and might be an entity that would be served through this bulk service arrangement.

Witness Underhill also spoke at length to the needs for both potable and bulk raw water services and the potential for growth in those areas, in addition to the current demands (Tr. 166-Tr. 168). Therefore, the bulk raw water service proposed to be provided by Farmton is not exempt from Commission jurisdiction, except to the extent it may be provided to a governmental entity.

Based upon the facts as presented in the record and with no evidence to the contrary presented by any party, each and every one of the services proposed by Farmton to be provided within its proposed service territory are not exempt from Commission jurisdiction and the Commission should so find.

ISSUE 3

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

The City of Titusville raised a concern that the noticing undertaken by Farmton did not comply with the requirements of Chapter 25-30.030, F.A.C. Mr. Hartman is the only witness who provided testimony concerning the noticing required by Commission rules and specifically stated the notice undertaken by Farmton does comply with the rules and statutes and that the proof of publication and required affidavits on such noticings were a part of GCH-1 (Hearing Exhibit 3), and were filed either as part of the original Application or as part of the supplemental information filed

with the Commission by letter dated March 13, 2003 or April 4, 2003. These are also a part of GCH-1 (Hearing Exhibit 3).

No other witness spoke on the subject of notice or on Farmton's compliance with the requirements of Commission rules or statutes with regard to filing or noticing requirements.

While the City of Titusville's position in the Prehearing Order also references an alleged failure to meet the requirements of Chapter 373, Fla. Stat., with its Application, no specifics have been provided by any witness nor was any evidence presented at hearing delineating the nature of this alleged failure or supporting such allegation.

As such, based upon the only evidence of record submitted in this proceeding, the Commission must find that Farmton has met the filing and noticing requirements pursuant to Rules 25-30.030 and 25-30.033, F.A.C.

ISSUE 4

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

In accordance with the requirements of Section 367.045, Fla. Stat. and the provisions of Rule 25-30.033, F.A.C. the Utility has provided with its original Application (Hearing Exhibit 3) a statement concerning the need for service within the proposed service territory. In addition, the Utility provided extensive testimony by Witnesses Hartman, Underhill, and Drake concerning the specifics of that need (both currently and in the future). While the City of Titusville and Brevard and Volusia Counties have taken the position that there is no need for service, those contentions are based primarily upon alleged land designations within the territory which ostensibly do not support a demand or need for service, rather than on the specifics of whether such a demand

actually exists or can exist in the future. While the issues related to the Comprehensive Plan are more specifically addressed under Issue 5 hereof, Farmton is the only party who provided extensive testimony on the issue of both the current and future needs for service within the proposed area. We have outlined below the nature of that testimony with regard to each of the types of service proposed to be provided by Farmton in this service territory.

Potable Water Service

Mr. Hartman discussed the need for potable water service and the facilities related thereto, both in his testimony and in Hearing Exhibit 3. He specifically testified concerning the need for service at the Miami Corporation headquarters; hunting check station; and other commercial and residential uses, in addition to the hunt club camp sites (Tr. 32, Tr. 44-Tr. 45, Tr. 47).

The extensive current needs for service to the hunt club members and their request for service is discussed in detail by both Mr. Hartman and Mr. Underhill and that need (as to the capacity of facilities and number of persons to be served) is more definitively outlined under Issue 2 hereof. In summary, Mr. Hartman testified that approximately 650 people would require sustained long-term demands with peaks as high as 1,000 people on any given day, for hunt club members and their families (Tr. 75-Tr. 76). Mr. Underhill also referred to these existing demands from hunt club members and explained in detail the number of persons requiring service currently and type of services that they are currently in need of (Tr. 197-Tr. 199).

In addition, both Witnesses Hartman and Underhill testified concerning the expansion of these services and the likely need for additional service resulting from an increase in demand as potable is offered. Both also provided testimony on the potential to provide service to the Bell Ridge mobile home campground (Tr. 39-Tr. 40, Tr. 84, Tr. 77). Both Mr. Hartman and Mr. Underhill

testified about the expected growth in demand as the availability of water becomes known (Tr. 167-Tr. 168, Tr. 48, Tr. 49).

Mr. Underhill also testified that there is a potential for development within the Miami Corporation property which is also discussed at some length by Mr. Landers, though there are no immediate plans for such development (Tr. 167-Tr. 168).

As noted by Mr. Underhill, not only are the three protestants not in a position to meet these needs, but by their own statements the inclusion of a large portions of territory within each of the Counties' designated service area does not confer upon them any obligation or even intent to serve (Tr. 289-Tr. 292, Tr. 387-Tr. 388).

Witnesses Underhill and Hartman provided detailed testimony that the protesting entities could not provide the service proposed (Tr. 168-Tr. 169, Tr. 467, Tr. 469, Tr. 470-Tr. 471, Tr. 480-Tr. 481, Tr. 482, Tr. 484, Tr. 485, Tr. 494, Tr. 495, Tr. 507, Tr. 526-Tr. 528). If they ever attempted to do so, any such attempt by these local governments would be clearly in competition with or duplication of the existing facilities already in place owned and operated by Farmton. As such, that would be not only inefficient but contrary to law (Tr. 69, Tr. 526, Tr. 527-Tr. 528).

It is therefore clear from the evidence of record that only blanket statements about a lack of need for potable water service are made by the witnesses for the City of Titusville and Brevard and Volusia Counties and evidence of their own ostensible ability to provide such service if and when needed was offered without detail or supporting facts. By comparison, witnesses for Farmton have provided extensive and specific testimony about the current and anticipated future needs within the proposed territory that clearly demonstrate that a need for potable water service currently exists and will grow in the near future as that service is made available. Such testimony clearly indicates that

there is in fact such a need that exists throughout the territory proposed for service by Farmton, and that Farmton is in by far the best position to provide that service.

Fire Flow Service

None of the witnesses for the protestants provided any testimony concerning the need for fire flow service. However, Witnesses Hartman and Underhill both discussed this issue and clearly demonstrated there is such a current need. Mr. Hartman refers to the two existing fire protection wells on the property and the 10 additional fire protection wells planned to be constructed in the near future throughout the proposed territory (Tr. 51). Mr. Underhill also testified concerning this existing need for service for fire protection and recent experience demonstrating such need (Tr. 166, Tr. 199).

Therefore, it is clear that there is an immediate existing need for the fire flow services throughout the territory proposed for service by Farmton. No party has presented any evidence to rebut the evidence presented by Witnesses Underhill and Hartman in this regard.

Bulk Raw Water Service

Farmton has proposed to implement a rate for bulk raw water service in order to meet the demands for that service as and when they become apparent. While the Utility's initial proposal for providing such service was based upon inquiries from the City of Titusville, that does not represent the basis for requesting approval of such services. As noted by Mr. Hartman, East Central Florida Services also initially requested bulk services rate approval when no known customer existed at the time of approval of that rate. However, customers did materialize in need of such services who were not anticipated at the time of the establishment and approval of the bulk service rate by the Public Service Commission (Tr. 82-Tr. 83).

Mr. Hartman and Mr. Underhill also discussed inquiries that have already occurred by the Bell Ridge campground which may be provided service through a bulk arrangement (Tr. 77, Tr. 84, Tr. 200).

It is clear that while there are no existing agreements or demands for bulk raw water service, there have been several inquiries and, as such, the Utility needs to have an approved rate in place to respond to those demands as they occur and in order to implement proper planning for the provision of such services in the future.[2]

Therefore, based upon all of the evidence of record, it is clear that there is an existing need for all three types of services requested throughout the territory proposed for service. There is also an expectation of expansion of those needs in the near future based upon inquiries and growth already anticipated and delineated through the testimony and exhibits of the Witnesses Hartman and Underhill.

ISSUE 5

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

Farmton's Application is not inconsistent with the Comprehensive Plan of either Brevard County or Volusia County. In any case, under the facts and circumstances contained in the record of this proceeding, the Commission should elect (even should it find such an inconsistency with the relevant Comprehensive Plan) to consider, but not be bound by, such Plan.

---

[2]"Indeed it is common for this Commission to grant an Original Water Certificate and approve rates for service for which there is no present, quantifiable need, but which may be in demand at a future time." (Order No. PSC-92-0104-FOF-WU Page 33 East Central Florida Services, Inc., March 27, 1992)

Regardless of where the burden on this issue properly lies, the record has demonstrated that no such inconsistency exists or, in the alternative, that it is in the public interest for the Commission to elect to certificate Farmton despite the existence of any inconsistency with either the Comprehensive Plan of Brevard County or the Comprehensive Plan of Volusia County. Be that as it may, in this case, the burden rests squarely upon Brevard and Volusia to demonstrate any such inconsistency. The Commission has found that it need not even consider a Comprehensive Plan unless one is raised by a party who has standing to assert inconsistency with that particular Plan. In such a case, the objecting governmental entity must then affirmatively raise the issue of certification's inconsistency with its Plan. Under that statutory arrangement, the entity which raises the issue has the burden of proof on the issue. *In re: Application of East Central Florida Services, Inc.*, Order No. PSC-92-0104-FOF-WU.

A. *Farmton's application is not inconsistent with Brevard County's Comprehensive Plan.*

The expert planner who testified on behalf of Farmton, Mr. Howard Landers, has 38 years of professional experience, 31 of which were accrued in Florida (Tr. 550). Mr. Landers also brings a unique perspective to this case in that he had previously provided expert testimony to this Commission regarding the planning issues in the Certificate Application filed by East Central Florida Services, Inc. ("ECFS") (Tr. 55). Similar to Farmton, ECFS involved the certification of a very large area of land owned by a related party in very close proximity to the Farmton property (Brevard County was a party in both cases), in which local governments filed objections and advanced many of the same arguments being advanced by the local governments in this case. See, generally, Order No. PSC-92-0104-FOF-WU. The formal administrative hearing and subsequent certification and operation of ECFS lends historical perspective to many of the positions, facts and circumstances contained within the record of the case at bar.

It was the opinion of Mr. Landers that the granting of the Application of Farmton was consistent with the Comprehensive Plan of Brevard County (Tr. 102). Mr. Landers was of the opinion that Florida's Planning Statute, Chapter 163, does not enable local governments to regulate private utility certificated service areas through the Comprehensive Planning process and noted that Chapter 163 specifically provides that nothing therein is intended to withdraw or diminish the legal powers or responsibilities of state agencies such as the Public Service Commission (Tr. 102). It was Mr. Landers' opinion that designation of a certificated territory by the Public Service Commission is not a land use or development subject to Comprehensive Plan regulation (Tr. 559) and that the specific policies of the Brevard County Comprehensive Plan provide for and support the ability for land owners, such as Farmton's related party and other entities, to establish private certificated areas outside of the established service areas of existing utilities (Tr. 559-560). It was also Mr. Landers' opinion that Brevard County's planner had oversimplified the "Agricultural" designation and related policies in the Brevard County Comprehensive Plan and that there were opportunities within that designation for a property owner or developer to engage in development that would be appropriately supported by, if not actually require, a central potable water system (Tr. 562). Mr. Landers provided detailed testimony in support of that aspect of his opinion (Tr. 562-571). Mr. Landers also discussed the clustering of uses from one portion of a property to another which could result in the preservation of agricultural and forestry lands, as well as environmentally sensitive lands, and was of the opinion that Farmton could develop concentrated community areas under the county's provisions allowing the same (Tr. 570). It was also Mr. Landers' opinion that the designation of a certificated water territory would not in and of itself generate "urban sprawl" and that the Brevard County Comprehensive Plan contained numerous anti sprawl policies which would remain fully in place regardless of certification (Tr. 571-574).

Mr. Landers provided testimony from his unique perspective as an expert planning witness in the ECFS case. He noted that the potential for the issuance of that certificate to create urban sprawl was raised in the proceeding quite prominently and that, in the 12 years since the Commission had certificated East Central Florida Services, this fear had not come to fruition (Tr. 574-575). Mr. Landers identified that he had learned that there had been no developments or other activities upon the property within the ECFS certificated territory that have conflicted with the Brevard County Comprehensive Plan even after a decade of operations by ECFS (Tr. 575).

Even Mr. Scott, Brevard County's expert planner, opined that he did not believe that Farmton's Application in and of itself violated the Comprehensive Plan in Brevard County (Tr. 332). This was consistent with his opinion that the establishment of a certificated territory by the Commission is neither a land use nor is it development as defined by Florida's planning statute and rules (Tr. 331). In fact, Mr. Scott admitted that his initial opinion that Farmton's Application was inconsistent with Brevard County's Comprehensive Plan was in fact related only to that portion of the Comprehensive Plan wherein Brevard County has attempted to reserve unto itself the last word in an area in which the Commission has statutory exclusive jurisdiction. (*See, e.g.*, Tr. 332-333).

Mr. Scott's testimony was not limited to his opinion that Farmton's Application was not inconsistent with the Brevard County Comprehensive Plan. Mr. Scott was also very firm in his opinion that the County retains, even in the face of the granting of the certificate by the Commission which Farmton has sought in this case, every power, authority and means which it possesses prior to the granting of such certificate to control and oversee the development of the Farmton properties within the political boundaries of the County. *See, e.g.*, Tr. 336, 339. Mr. Scott agreed that the County would in no way be compelled to change the Comprehensive Plan in the future because a particular applicant for that change possessed a certificate to provide central water

service from the Commission (Tr. 336). Mr. Scott described Brevard County as a very fast-growing county which was currently issuing building permits at the rate of 189 single family homes per month and which was processing over 10,000 such permits a year (Tr. 346). Mr. Scott testified about Brevard County's clustering ordinance which allowed, consistent with the Brevard County Comprehensive Plan, a concentration of units on a land owner's property in exchange for an agreement to keep open spaces in another portion of that same land owner's property. *See, e.g.*, Tr. 349. Mr. Scott acknowledged that the open space subdivision ordinance in Brevard County was one which could actually be used without County approval (Tr. 349).

Finally, Mr. Scott was in agreement with Mr. Landers that there are planning advantages that are presented by the development of large tracts of land owned by a single land owners such as Farmton (Tr. 348). Mr. Landers was of the opinion that the fact that Farmton is the owner of a very large tract of currently rural land provides a very special land management opportunity to manage the land and water resources in order to preserve the rural, environmental and agricultural resources as desired by the local governments in this case (Tr. 585-587). Farmton's request for the creation of a utility was an effort, although not the first effort, to (at least in part) position its lands for long-term management, which would be consistent not only with the Comprehensive Plan of Volusia and Brevard Counties but also consistent with Florida's policies that recognize the significance of prudent management of large rural land and water resources (Tr. 587).

B. Farmton's application is not inconsistent with Volusia County's Comprehensive Plan.

Mr. Landers was of the opinion that the granting of Farmton's Application was consistent with the Comprehensive Plans of Volusia County. Mr. Landers' testimony, as cited herein above, regarding Florida's Planning Statute, Chapter 163, and its application to Brevard County's

Comprehensive Plan, also addresses the Comprehensive Plan of Volusia County and is equally applicable thereto.

It was Mr. Landers' opinion that the future land use element of Volusia County is not as restrictive as Volusia County's planner had testified and that significant uses that would benefit from central water services are permitted under Volusia County's Comprehensive Plan (Tr. 577). Mr. Landers gave very specific and detailed testimony to support his opinion (Tr. 577-587). It was Mr. Landers' opinion that the Volusia County Comprehensive Plan does not prohibit the establishment of a Commission certificated territory on the Farmton properties (Tr. 577); that the establishment of a certificated territory is not, in and of itself, a "land use" or "development" as defined by the Volusia County Comprehensive Plan or by Florida Statute (Tr. 578); that the Future Land Use Categories of the Volusia Comprehensive Plan allowed Farmton to develop a PUD totaling 1,984 residential units at some location on its property, or multiple PUDs totaling 1,984 units (Tr. 578); that development that would require and could be supported by central water services is permitted under the Volusia County Comprehensive Plan upon Farmton's lands (Tr. 584); and that the County's concerns about sprawl resulting from Farmton's Application were also unfounded (Tr. 584). Mr. Landers testified to the ability of a landowner to seek amendment to Comprehensive Plans (which opportunity to amend would be equally available under either the Brevard or Volusia County Comprehensive Plan) and also discussed the unique opportunity which owners of very large tracts of currently rural land provide to planners and governments who seek to control growth and preserve resources (Tr. 585-588).

Volusia County's expert planner, who indicated that he had never looked at the actual Application which Farmton submitted to the Commission (Tr. 403) agreed with both Mr. Landers and the planner from Brevard County that large tracts of land being owned by a single land owner

provide positive opportunities for planning (Tr. 421). It was that witness's opinion that the creation of a certificated territory by the Commission does not constitute development in and of itself (Tr. 421). That witness also acknowledged that, even if Farmton were certificated, the County would retain the power and the authority under its Comprehensive Plan to prevent the sprawl which he had testified was a County concern (Tr. 411). He further testified that his concern with Farmton's Application was that it may be the first falling domino in a line a dominoes that could lead to adverse affects on natural resources, but that other things would have to occur before that happened (Tr. 412). He candidly admitted that if sprawl occurs on the Farmton property in Volusia County, it will be because Volusia County allowed that to occur (Tr. 412). He further acknowledged that there is a concern that Volusia County might not have enough potable water to meet its future demands, yet he did not know whether or not the certification of Farmton would provide a positive net amount of water to Volusia County (Tr. 416). Volusia County is going to need to come up with somewhere between 8 million gallons a day and 22 million gallons a day of additional water resources (Tr. 418-420), yet the witness acknowledged that he did not know whether or not new water resources could be developed on the Farmton property which would add to the amount of water available to be served to the population in Volusia County (Tr. 417). That witness also discussed the fact that Volusia County has a clustering ordinance similar to that in Brevard where a land owner can transfer density into a compact area where it is appropriate to preserve a much larger area (Tr. 408-409).

The witness called by the staff from the Department of Community Affairs acknowledged that the granting of the Application would not be inconsistent with the Comprehensive Plans of Brevard and Volusia Counties (Tr. 446); did not constitute development (Tr. 447) and would not deprive the Counties of the power and authority to enforce their respective Comprehensive Plans (Tr. 447).

She conceded that she was not aware of any instance, anywhere or at any time, where the creation or designation of a utility service area had led directly to urban sprawl (Tr. 447).

The planning experts for Farmton, Volusia County and Brevard County, all agree that the large parcel of property which is the subject of Farmton's Application present, by its size and single ownership, unique planning opportunities. Farmton's Application is in furtherance of that opportunity and is a manifestation of the landowner's desire both to meet the need for service on its property and to manage its property in a cohesive, responsible, and predictable way. All three planners agree that certification of Farmton in and of itself is neither development nor a land use. All three planners were of the opinion that significant development could occur under some scenarios on the land, whether by application of the respective clustering ordinances of Brevard County or Volusia County or otherwise, and Mr. Landers gave a very detailed opinion that he felt development could occur on the land consistent with the Comprehensive Plans (which can be amended as all witnesses acknowledged in the future in any case) which was more intense than the opinions of the planners from Brevard County and Volusia County seemed to indicate. Just as important was the agreement by all three planners that the act of certification does not somehow deprive the counties of any sling, arrow, authority, power, or oversight which they currently have now over planning and growth within their counties and the specter of sprawl on the Farmton properties. This last point goes directly to whether the Commission should choose to exercise in this case the option of considering the Comprehensive Plans of the counties, but choosing not to be bound by them. The Commission is not the appropriate place for the county to push its zoning, growth or planning agenda. A labyrinth of rules, statutes and case law exist which address those areas directly. The counties have at their disposal numerous means to regulate growth consistent

with Florida law within their political boundaries, and opposing the Farmton certificate with the hidden agenda of achieving that regulation is not one of the those means.[3]

ISSUE 6

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

The certification of Farmton will not result in the creation of a utility which will be in competition with, or duplication of, any other system.

In actuality, there is only a scant claim on the part of the three protestors that Farmton's proposed certification will result in the creation of a utility which will be in competition with, or duplication of, any system operated by the three local governments, and even less evidence to support any such claims. Initially, it is difficult for parties to claim such a duplication or the potential for competition when their respective responses to the issue in the Prehearing Order as to whether there is a need for the service in Farmton's proposed service territory is "no" (Titusville), "no" (Brevard), and "absolutely not" (Volusia). Prehearing Order page 9.

Mr. Hartman testified that no other system serves the Farmton properties and that Farmton's proposed utility would not be in competition with or duplicate the services of any other water system (Tr. 034). Mr. Hartman noted that there are no other systems within close proximity to the proposed territory that could allow for services to the proposed property (Tr. 034). It was also Mr. Hartman's opinion that the existence of the facilities owned by Farmton currently providing those services would mean that service by any other entity would be a clear duplication of Farmton's existing service and extremely inefficient (Tr. 034).

[3]This sentence should not be taken as a concession by Farmton that the ordinances which have been enacted by each county, which purportedly give each county the right to "veto" Farmton's certification, is one of these legitimate means.

Notably, Mr. Hartman's testimony is consistent with the testimony of the witnesses of the three protestors in this docket.

Titusville's testimony indicated that the nearest facilities of the City of Titusville to the boundary of the Farmton property were "properly 7, 8, 9 miles, something like that" (Tr. 235). In fact, the proximity of those same facilities to the specific area proposed for initial service was even farther away (Tr. 235).

Brevard County's witness testified that the nearest Brevard County water facilities to Farmton's proposed territory were at least two miles away from the territory (Tr. 271). Even the portion of the service area for Brevard County which does not contain facilities does not overlap any of the territories proposed for service by Farmton (Tr. 272). The question of duplication or competition is perhaps moot, in any case, as it relates to Brevard County because Brevard County's current water use permit does not even authorize it to provide the quantity of service it is currently providing through its Mims plant (Tr. 280). That is because the County is currently exceeding its Consumptive Use Permit (Tr. 280).

Volusia County acknowledged that it does not have water in the area of Farmton (Tr. 379). Volusia County does not have any lines within ten miles of the proposed Farmton service area (Tr. 379). In fact, Volusia County has no plans to serve the Farmton area, and inclusion of the Farmton property in the County service areas does not indicate the County is ready, willing, or able to serve that area (Tr. 387-388).

Although there was some testimony from each of the protestors about what they might be able to do in the future if they elected to initiate service to the Farmton properties, this Commission has held that it cannot determine whether a proposed system will be in competition with or a duplication of another system when such other system does not exist. *In re: Application of East*

Central Florida Services, for an original certificate in Brevard, Orange and Osceola Counties, Docket No. 910114-WU, Order No. PSC-92-0104-FOF-WU (1992). The Commission is not required to hypothesize which of two proposed systems might be in place first and, thus, which would compete with or duplicate the other. Engaging in such speculation would be of little use. *Id.*

Certainly, in this case, there is no existing system operated by Volusia County, Brevard County, or Titusville and as such, both the existing system operated by Farmton and the additional systems proposed by it cannot be in competition with or a duplication of these non-existent systems.

ISSUE 7

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

Protestant City of Titusville has taken the position that Farmton Water Resources, LLC has not established that it has the financial ability to create and sustain a private water utility. Both Brevard and Volusia County have adopted this position. However, no evidence whatsoever was presented in support of this position. Farmton has complied with the Commission rules concerning this issue and in fact filed with its original Application a financial statement for Farmton Management, LLC as Exhibit "E" to GCH-1 (Trial Exhibit Number 3) along with an affidavit from Farmton Management promising to fund Farmton Water Resources, LLC with all funds needed to construct and operate the Utility's system. Mr. Underhill also provided testimony on behalf of Farmton Water Resources, LLC stating that the Utility does have the financial ability to provide this service and stating that Farmton Management, LLC has ample resources to fund the Utility's needs and has pledged to do so (Tr. 169-Tr. 171).

Mr. Underhill noted during cross examination by the Commission staff that the basis for his position that the parent company clearly has the ability to provide for any Utility capital needs, is

that the value of Miami Corporation's land (which it owns free and clear), should be sufficient to take care of any of those needs (Tr. 194).

In addition, on redirect examination, Mr. Underhill further clarified these statements by noting that Miami Corporation has made a commitment to Farmton to provide funding as and when needed to meet all reasonable needs of the Utility and has provided an affidavit to that effect (Tr. 203-Tr. 204 and Exhibit No. 40).

Therefore, based upon the clear evidence of record, including the testimony of Mr. Underhill and the affidavits provided by Farmton in Exhibit "E" to Trial Exhibit Number 3 and in Exhibit 40, both its direct parent Farmton Management, LLC and the landowner, Miami Corporation, have committed to provide for all reasonable capital needs for the Utility. Therefore Farmton Water Resources, LLC has clearly demonstrated that it has the financial ability to serve the requested territory. No evidence to the contrary has been provided by any witness or any party. Based upon the only evidence of record, the Commission should therefore find that Farmton Water Resources, LLC has the financial ability to serve the requested territory.

ISSUE 8

Does Farmton have the technical ability to serve the requested territory?

Farmton Water Resources, LLC clearly demonstrated through the contents of its Application that it has the technical ability to provide water service to the requested territory in the manner proposed. Witnesses Hartman (Tr. 34), Drake (Tr. 143) and Underhill (Tr. 169) further testified to this fact. While the City of Titusville, Brevard and Volusia Counties have alleged that Farmton's Application fails to demonstrate its technical ability to provide service, none of these parties provided any testimony or other evidence to support such a contention.

In addition to the general statements offered by the witnesses, Hartman, Drake and Underhill, Mr. Hartman provided extensive testimony concerning not only his background and experience as an expert in management and engineering related to water utilities, but also as to Farmton's enlisting of his firm's services in the design, planning and implementation of the provision of water services to the territory proposed for service by the Utility (Tr. 31, Tr. 32, Tr. 56, Tr. 57).

In addition, Mr. Underhill provided extensive testimony concerning his 25 years of experience dealing with water resource protection and planning and water resource development (Tr. 162-Tr. 163). He also explained that the Utility will enlist the services of additional persons (including Hartman & Associates) with experience in the operation and maintenance of water systems to assist the Utility as and when needed and that the Utility has already employed engineers, attorneys and regulatory consultants familiar with these issues for the purposes of assisting with design, planning and set up of the Utility (Tr. 164, Tr. 169, Tr. 190).

Therefore, based upon the only evidence of record, Farmton Water Resource has the technical ability to provide the water services proposed in its Application and the Commission should so find.

ISSUE 9

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

Mr. Hartman provided direct testimony outlining the adequacy of the facilities constructed and proposed to be constructed by Farmton Water Resources, LLC in order to provide service to the proposed territory. While the City of Titusville and Brevard and Volusia Counties took the position that the Utility does not have sufficient plant capacity to serve the requested territory, they provided no testimony or evidence supporting this contention.

Mr. Hartman provided testimony and a technical report prepared by his firm which addresses the need and the nature and the adequacy of the facilities required to deliver the services proposed by Farmton (Tr. 32 and Hearing Exhibit 3). He also specifically addressed the question of whether or not Farmton had or would have adequate capacity to provide that service. Mr. Hartman noted that the Application demonstrates that based on the current maximum day capacity needed in the proposed territory, the study amply demonstrates that Farmton either has, or is taking the appropriate measures to ensure, sufficient plant capacity to provide all of the proposed services (Tr. 34-Tr. 35). Mr. Hartman also provided detailed testimony concerning those facilities and the capacities which they would provide and the needs which they would meet.

Therefore, the Application and the testimony of Witnesses Hartman, Drake and Underhill clearly demonstrate that Farmton has sufficient plant capacity in the facilities constructed, or proposed, to meet the needs as outlined in the Application. Since there was no evidence to the contrary provided by any witness or party, the Commission should find that Farmton has sufficient plant capacity to serve the requested territory in the manner proposed in the Application.

ISSUE 10

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

The Commission staff and Farmton stipulated that Farmton has provided evidence that it has continued use of the land upon which the Utility treatment facilities are or will be located. The other parties took no position on this issue and provided no testimony or evidence to the contrary. Evidence was provided in the form of a draft long term lease that the Utility will execute upon approval of certification by the Florida Public Service Commission and which will allow Farmton the

use of the lands throughout the proposed territory as and when needed on a long term basis. That stipulation was unanimously approved by the Commission panel at Page 8, Lines 8 through 13 of the transcript.

ISSUE 11

Is it in the public interest for Farmton to be granted a water certificate for the territory proposed in its application?

It is in the public interest for Farmton to be granted a certificate for the territory proposed in its Application. Farmton demonstrated its entitlement to a certificate under the Commission's rules and statutes (which implicitly establishes satisfaction of the public interest standard in and of itself). Additionally, this Commission should duly consider the important opportunity, from a growth management, utility certification, development, and environmental and resource preservation standpoint, which Farmton's Application presents for the large tract of property owned by Farmton's related corporation.

Mr. Gerald Hartman, on behalf of Farmton, testified that the granting of Farmton's Application is in the public interest (Tr. 473). It was Mr. Hartman's opinion that granting Farmton's Application would be in the public interest via its promotion of the public health, safety and welfare (Tr. 473-474). Mr. Hartman opined that the policies of Florida, as embodied in Chapters 373 and 403, Fla. Stat., indicate that Farmton is in a unique position to promote and implement public policies created by Florida law regarding the types of property and resources encompassed within Farmton's proposed certificated territory (Tr. 474-478). Mr. Hartman was involved in the certificate case regarding the application of ECFS (discussed herein above) and noted that witnesses for Brevard County and the City of Cocoa expressed reservations about ECFS's

certification very similar to those advanced by the local governments in this case, but that none of the concerns expressed in the ECFS case have proven to have been well founded (and in fact have proven to have been invalid) (Tr. 477).

Likewise, Farmton Witness Howard Landers also participated in the ECFS case as an expert witness and agreed with Mr. Hartman that the concerns raised by local government in that case have not come to fruition (Tr. 574-575). Mr. Landers attached as an exhibit to his testimony (Ex. 35) a paper authored by Mr. Hartman entitled "FPSC Certification Public Interest Example: East Central Florida Services, Inc." Exhibit 35 notes that "there have been no developments or other activities that have conflicted with either the Brevard County or City of Cocoa Comprehensive Plans after over a decade of operations."

Additionally, Mr. Landers opined about the benefits and opportunities provided by large land owners (Tr. 585). The expert planners for Volusia County and Brevard County both agree that such benefits and opportunities do exist with regard to the properties of a large land owner such as the affiliated party of Farmton (Tr. 421 and Tr.348, respectively). Hence, it is clear that it is in the public interest for Farmton to be granted the certificate for which it has applied.

ISSUE 12

What is the appropriate return on equity for Farmton?

The Florida Public Service Commission staff and Farmton agreed that the return on equity to be established for Farmton and to be utilized in calculating rates for Farmton Water Resources, LLC should be based on the current leverage formula in effect at the time of the Commission vote in this proceeding. The other parties to the proceeding took no position on this issue and the stipulation

between the Utility and the Commission staff was unanimously accepted by the Commission panel at Page 8, Line 8 through 13 of the official hearing transcript.

ISSUE 13

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

Farmton proposed rates for potable water, fire protection, and bulk raw water as part of its original Application (Exhibit F of GCH-1 - Trial Exhibit 3). The rates and charges developed by the Utility were sponsored by Witnesses Hartman and Hollis. Ms. Hollis testified that she is a licensed CPA specializing in water and wastewater utility financial matters and she has been involved in the development of water and wastewater rates and charges for various government units throughout the State of Florida. These rates and charges in Trial Exhibit 3 should appropriately be updated based upon the contents of Trial Exhibits 38 and 41 and any other issues and evidence raised at hearing.

The only issue raised as to the rates as proposed by Farmton was the issue raised by Titusville that no bulk water service rate should be approved. Not only has Titusville provided no support for the contentions outlined as its position in the Prehearing Order, but Farmton has provided the testimony of several witnesses including Mr. Hartman and Mr. Underhill, outlining the basis for the establishment of all the rates, including a bulk service rate, and the need for establishment of such rates. The issue of the Commission's jurisdiction over the establishment of bulk rates is more fully discussed in Issue 2 hereof.

Wherefore, the Commission should approve the rates proposed for potable water, fire protection, and bulk raw water service as outlined in Farmton's Application as updated by the changes outlined in Trial Exhibits 38 and 41.

ISSUE 14

What are the appropriate service availability charges for Farmton?

Farmton proposed appropriate service availability and policy as outlined in Exhibit F to GCH-1 (Trial Exhibit 3) as updated for various filings in the adoption of Trial Exhibits 38 and 41 sponsored by Witnesses Hartman and Hollis. The only party that took exception to the charges proposed by Farmton was the City of Titusville. The City alleged in its statement of position on this issue, as contained in the Prehearing Order, that the charges proposed by Farmton in its initial Application are not appropriate. However, the City of Titusville provided no evidence nor any witness to support this contention nor elicited any evidence on cross-examination in support of this position. As such, the Commission should approve the service availability charges as submitted within Exhibit F to GCH-1 (Trial Exhibit 3) and as amended by Trial Exhibits 38 and 41 as the appropriate service availability charges for Farmton.

ISSUE 15

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

Farmton Water Resources, LLC and the Florida Public Service Commission stipulated that the Allowance for Funds Used During Construction (AFUDC), should be based upon the current leverage graph formula in effect at the time of the Commission vote in this proceeding. The other parties to the proceeding took no position on this issue. As such, the Commission panel

unanimously accepted this stipulation between the Utility and the Commission staff and such acceptance of the stipulation is contained on Page 8, Lines 8 through 13 of the official transcript of this proceeding.

CONCLUSION

Based upon the competent and substantial evidence presented by Farmton and reflected in the record in this proceeding; the lack of credible evidence to the contrary; the often specious and conclusiory opinions of the County's witnesses; and upon consideration of the record as a whole; applicable Florida law; and applicable precedents of this Commission; Farmton's Application to provide water service in Brevard and Volusia Counties should be granted by this Commission.

RESPECTFULLY SUBMITTED this 29th day of July, 2004, by:

ROSE, SUNDSTROM & BENTLEY, LLP
2548 Blairstone Pines Drive
Tallahassee, FL 32301
(850) 877-6555

F. Marshall Deterding
John L. Wharton

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of both the Statement of Issues and Positions and the foregoing have been furnished via U.S. Mail or (*) Hand Delivery to the following on this 29th day of July, 2004:

Patrick McNamara, Esq.
Edward P. de la Parte, Jr. Esq.
Charles R. Fletcher, Esq.
de la Parte & Gilbert, P. A.
P.O. Box 2350
Tampa, FL 33601-2350

Frank Roberts, City Manager
City of New Smyrna Beach
210 Sams Ave.
New Smyrna Beach, FL 32168-9985

William J. Bosch, III, Esq.
Volusia County Attorney
123 W. Indiana Ave.
DeLand, FL 32720-4613

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

Scott L. Knox, Esq.
Brevard County Attorney
2725 Judge Fran Jamieson Way
Viera, FL 32940

F. MARSHALL DETERDING

farmton\brief.wpd