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COMMISSION
CLERK

DATE: January 24, 2007

TO: Blanca S. Bayó, Commission Clerk and Administrative Services Director

FROM: Richard P. Redemann, Professional Engineer III, Division of Economic Regulation

RE: Docket No. 060726-WS; Application of Silver Lake Utilities, Inc. to Operate a Water Utility in Glades and Highlands Counties, Florida, and a Wastewater Utility in Glades County, Florida.

Please add to the docket file the attached letter dated January 19, 2007, from Martin S. Friedman, an attorney at the law firm of Rose, Sundstrom & Bentley, LLP responding to the comments made by the Department of Community Affairs.

RPR:kb

Attachment

cc: Division of Economic Regulation (Daniel, Brady)
Office of General Counsel (Gervasi)

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January 19, 2006

HAND DELIVERY

Mr. Richard Redemann
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RE: Docket No.: 060726-WS; Application of Silver Lake Utilities, Inc., to Operate a Water Utility in Glades and Highlands Counties, Florida, and a Wastewater Utility in Glades County, Florida
Our File No.: 40001.01

Dear Mr. Redemann:

This letter is in response to your December 20, 2006, correspondence requesting that Silver Lake Utilities, Inc., comment upon the letter from the Department of Community Affairs regarding the inconsistency of portions of the Application with the Comprehensive Plans of Glades and Highlands Counties. Based on the facts of this proposed utility and following the Commission's legal precedent, we ask that the Commission approved the proposed certificate.

The DCA expressed no concern regarding the proposed wastewater service area, which is limited to the Muse Village and West Glades School Campus area. Thus, this letter addresses Silver Lake Utilities, Inc.'s proposed water service area outside of the area of Muse Village and the West Glades School Campus. The Utility proposes to take over from Lykes Bros. Inc., the 22 existing wells which provide service to approximately 155 ERCs and to 73 ERCs which are served through a bulk connection with the Seminole Tribe. These systems are interspersed throughout the proposed service area as identified on Figures 3-1 and 3-2 of the Engineering Report that was filed as an Exhibit to the Utility's Application.

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Section 367.045 (5) (b), Florida Statutes, provides as follows:

When granting or amending a certificate of authorization, the commission need not consider whether the issuance or amendment of the certificate of authorization is inconsistent with the local comprehensive plan or a county or municipality unless a timely objection to the notice required by this section has been made by an appropriate motion or application. If such an objection has been timely made, the commission shall consider, but is not bound by, the local comprehensive plan of the county of municipality. (e. s.)

The time for filing objections to this Application has expired and I am unaware of any objections filed by any county or municipality. The DCA's letter does not find that the application is inconsistent with the local governments' comprehensive plans. Rather, their issue is one of potentially encouraging urban sprawl. As recognized by the appellate court in City of Oviedo v. Clark, 699 So. 2d 316 (Fla. 1st DCA 1997), it is within the discretion of the Commission as to whether to defer to the local comprehensive plan. The DCA has not pointed out any inconsistencies with the applicable comprehensive plans, but only points out existing densities.

The instant Application is not unlike that considered by the Commission in the Application filed by Farmton Water Resources LLC, which was an Application for water certificates in Volusia and Brevard Counties which were hotly contested by those two counties and the City of Titusville, Florida. In that case, the applicant served a hunt club, the parent company's offices, and a cattle station. In re: Application for certificate to provide water service in Volusia and Brevard Counties by Farmton Water Resources LLC, Order No.: PSC-04-0980-FOF-WU (October 8, 2004).

In the Farmton Water Resources LLC, case, the Commission followed its earlier precedence in In re: Application of East Central Florida Services, Inc., for an original certificate in Brevard, Orange and Osceola Counties, Order No. PSC-92-0104-FOF-WU (March 27, 1992). In both cases, the Commission specifically found that providing water service in the proposed territory appeared inconsistent with portions of the applicable comprehensive plans. However, the Commission concluded that granting a water certificate did not impede local governments' control over development:

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The evidence presented clearly shows that a county's control over development is not reduced with the issuance of a certificate. The counties' hands are not tied when it comes to enforcement of their own comprehensive plans and when rezoning is needed. Our certification does not deprive the counties of any authority they have to control urban sprawl on the Farmton properties. (at p. 16)

That conclusion is equally applicable to the instant Application by Silver Lake Utilities, Inc., and we urge the Commission to approve the pending Application.

If I can provide you with any additional information, please do not hesitate to give me a call.

Very truly yours,



MARTIN S. FRIEDMAN
For the Firm

MSF/mp

cc: Charles P. Lykes, Jr.

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