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December 29, 1998

VIA HAND DELIVERY

ROBERT M. C. ROSE
OF COUNSEL

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

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RECORDS AND REPORTING

Re: St. Johns Service Company
Petition for Declaratory Statement
Our File No. 20912.02

Dear Ms. Bayo:

Attached are the original and fifteen (15) copies of St. Johns Service Company's Petition for Declaratory Statement to be filed with the Commission.

Should you or any members of the staff have any questions or comments, please let me know.

Sincerely,

ROSE, SUNDBSTROM & BENTLEY, LLP

John L. Wharton, Esq.
For The Firm

ACK _____

AFA JLW/lm

APPcc: Mr. G.W. Whitmire, Jr.

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition of St. Johns Service)
Company for Declaratory Statement) Docket No. _____
_____)

**ST. JOHNS SERVICE COMPANY'S
PETITION FOR DECLARATORY STATEMENT**

St. Johns Service Company ("St. Johns"), by and through undersigned counsel and pursuant to Rule 25-22.020, Fla. Admin. Code, hereby files this Petition For Declaratory Statement, and in support thereof would state and allege as follows:

1. Name and address of Petitioner:

St. Johns Service Company
200 North Laura Street
10th Floor, The Greenleaf Building
Jacksonville, FL 32201-2506

2. Name and address of Agency:

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

3. The statutory provision on which a declaratory statement is sought: The applicability and effect of § 367.171(7), Fla. Stat.

4. A description of how this rule, order or statute may or does affect the Petitioner in its particular set of circumstances only:

(A) St. Johns Service Company is a water and wastewater company incorporated to do business in the state of Florida whose utility activities are regulated by St. Johns County.

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FPSC-RECORDS/REPORTING

(B) Under the provisions of § 367.171(7), Fla. Stat., the Florida Public Service Commission has jurisdiction over "utility systems whose service transverses county boundaries ..."

(C) St. Johns Service Company seeks a declaratory statement as to the applicability of this specific statutory provision as it applies to St. Johns Service Company in its particular set of circumstances.

(D) St. Johns Service Company provides service exclusively to customers in St. Johns County. Two such customers (is/is proposed to be) Sawgrass Homeowners Association VII, Inc., a Florida not-for-profit corporation (currently receiving service), and Sawgrass Homeowners Association VIII, Inc., a Florida not-for-profit corporation (proposed to receive service). Because the question posed for each customer herein is identical, both customers will be hereinafter referred to only as "SHA." SHA (is/is proposed to be) the owner and operator of certain internal distribution and collection facilities in Duval County.

(E) St. Johns Service Company (provides/proposes to provide) bulk water and wastewater service to the SHA at a point of delivery located within St. Johns County, Florida. The only customer who receives service from St. Johns Service Company at that point of delivery (is/will be) SHA, and the water and wastewater services conveyed to SHA at that point of delivery (are/will be) conveyed at said point of delivery in St. Johns County.

(F) St. Johns Service Company (charges/will charge) SHA a bulk service rate for such service as is delivered at the point of

delivery, said bulk service rate which (has been/shall be), approved by St. Johns County.

(G) St. Johns Service Company will not provide, and does not propose to provide, any active connections to customers in Duval County as that term is defined in Rule 25-30.515(1), Fla. Admin. Code. No customer connection charges, customer installation fees, developer agreements or other contractual arrangements will exist between any customers in Duval County and St. Johns Service Company other than the delivery of bulk service, within the confines of St. Johns County, to SHA as described hereinabove.

(H) St. Johns Service Company will not own any lines or appurtenant facilities on SHA's side of the point of delivery as described hereinabove.

(I) Accordingly, it is apparent that the service provided by St. Johns Service Company in St. Johns County does not transverse county boundaries as provided in § 367.171(6), Fla. Stat.

(J) Websters Ninth New Collegiate Dictionary defines "transverse" as "acting, lying, or being across." The only lines which transverse that county line which separates St. Johns County from Duval County in this instance are the lines owned by SHA. St. Johns Service Company does not provide service through any lines or facilities which "transverse" that county boundary.

(K) The Fourth District Court of Appeals has issued a recent decision which sheds some light on such bulk service arrangements and the appropriate determination as to what such a point of delivery means with regard to the location of service. In the case

of *Town of Jupiter v. Village of Tequesta*, 713 So.2d 429 (4th DCA 1998), the court was construing § 180.06, Fla. Stat., which provides that no municipality shall construct any system, work, project, if facilities of a similar character are being actually operated by a municipality in the territory immediately adjacent thereto. While this statute is admittedly different than any provision of Chapter 367, the holding of that case is illustrative.

In that case, Tequesta received a bulk water supply from the town of Jupiter. When Tequesta made known its intent to construct a reverse osmosis water treatment facility which would allow it to create its own potable water and eventually end its reliance upon water from Jupiter's facility, Jupiter brought suit to enjoin Tequesta from the intended expansion saying that such would be a "duplication of such facilities within the same municipal service area."

Noting that "under the Bulk Agreement, Jupiter merely supplies Tequesta with bulk potable water at a point of delivery," the Court of Appeal held,

All the fresh water sold by Jupiter to Tequesta is in bulk which is then sold by Tequesta to consumers within the service area. Providing Tequesta with bulk potable water at a point of delivery does not, in our opinion, constitute actual operation by Jupiter within Tequesta's consumer service area. The record establishes without contradiction that Jupiter is therefore not actually operating within the area serviced by Tequesta.

It is interesting to note that in the *Town of Jupiter* case, the point of delivery was actually apparently over the "line" of

the Village of Tequesta's "service area." Despite this fact, the Court of Appeal held that because "Jupiter merely supplies Tequesta with bulk potable water at a point of delivery," the same did not constitute service in Tequesta's service area and the same did not mean Jupiter was "actually operating" within Tequesta's service area.

In this case, the principle is even more clear because, unlike in the *Town of Jupiter*, the point of delivery is actually within St. Johns County. Thus, under the physical location of the point of delivery and under the principles enunciated in the *Town of Jupiter* case, St. Johns Service Company's provision of bulk service to a point of delivery in St. Johns County does not and cannot "constitute actual operation" by St. Johns Service Company in Duval County nor can the same be construed as St. Johns Service Company "actually operating" within Duval County.


(L) Counsel to the St. Johns Water and Sewer Authority has recommended and will continue to recommend to the Authority that it not take action on any matter for St. Johns Service Company until St. Johns Service Company obtains from the Public Service Commission some determination of whether or not the particular arrangement described herein invokes the jurisdiction of the Public Service Commission.

(M) An expeditious rendering of a declaratory statement on these facts is necessary such that St. Johns Service Company may proceed under the jurisdiction of the St. Johns County Water and

Sewer Authority so as to render the most efficient and effective service to its customers within St. Johns County as possible.

WHEREFORE, and in consideration of the above, St. Johns Service Company respectfully requests that this Commission declare that the service arrangement described herein does not render St. Johns Service Company subject to the jurisdiction of the Florida Public Service Commission, and that the provisions of § 367.171(7), Fla. Stat., are not applicable to the above-referenced service arrangement because St. Johns Service Company provides no utility system whose service transverses the boundary of St. Johns and Duval County.

DATED this 29th day of December, 1998.



John L. Wharton, Esq.
F. Marshall Deterding, Esq.
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