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October 14, 2004

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COMMISSION
CLERK

By Federal Express

Blanca Bayo, Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: *In Re: Application of Farmton Water Resources LLC for original Water Certificate in Volusia and Brevard Counties, Florida*, PSC Docket No. 021256-WU

City of Titusville v. Farmton Water Resources LLC, et al., Fla. 1st DCA Case No. _____; PSC Docket No. 021256-WU

Dear Ms. Bayo:

This firm represents the City of Titusville in the above-referenced matter. Enclosed are an original and two copies of the following: (1) Notice of Administrative Appeal; and (2) Titusville's Directions to Agency Clerk. Please file the original set in the PSC file, forward one of set of copies to PSC Staff, and date stamp the second set of copies and return it to me in the enclosed self-addressed stamped envelope.

In accordance with the applicable rules, we have forwarded a copy of these documents, along with the filing fee, to the First District Court of Appeal. Please call me if you have any questions or comments.

RECEIVED & FILED
FPSC-BUREAU OF RECORDS

Sincerely,

de la PARTE & GILBERT, P.A.

David M. Caldevilla

Enclosures
cc: Counsel of record (by mail)

DOCUMENT NUMBER-DATE
11114 OCT 15 04
Notice of Appeal
FPSC-COMMISSION CLERK

DOCUMENT NUMBER-DATE
11115 OCT 15 04
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

CITY OF TITUSVILLE, a municipal corporation of the State of Florida,	)	
Petitioner/Appellant,	)	**PSC Docket No. 021256-WU**
vs.	)	**Fla. 1st DCA Case No. _____**
FARMTON WATER RESOURCES LLC, et al.,	)	
Respondents/Appellees.	)	

NOTICE OF ADMINISTRATIVE APPEAL

NOTICE IS GIVEN that Petitioner/Appellant City of Titusville, a municipal corporation of the State of Florida, appeals to the Florida First District Court of Appeal the order of this agency rendered on October 8, 2004, a copy of which is attached as **"Exhibit A."** The nature of the order is a final order granting Respondent/Appellee Farmton Water Resources, LLC's application for an original water certificate to operate a water utility in Volusia and Brevard Counties.

Respectfully submitted,

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Counsel for City of Titusville

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by **U.S. Mail** to the following on October 14, 2004:

Scott L. Knox, Esquire
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Viera, FL 32940
Counsel for Petitioner Brevard County

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Counsel for Respondent Farmton Water Resources, LLC

David M. Caldevilla

cc: Clerk, Fla. 1st DCA

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for certificate to provide water service in Volusia and Brevard Counties by Farmton Water Resources LLC.	DOCKET NO. 021256-WU ORDER NO. PSC-04-0980-FOF-WU ISSUED: October 8, 2004

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY

APPEARANCES:

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On behalf of Farmton Water Resources LLC

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On behalf of the City of Titusville, Florida

SCOTT KNOX, ESQUIRE, Office of the County Attorney, 2724 Judge Fran Jamieson Way, Viera, Florida 32940
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On behalf of Volusia County

KATHERINE E. FLEMING, ESQUIRE, MARTHA C. BROWN, ESQUIRE, and JENNIFER A. RODAN, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission

FINAL ORDER GRANTING CERTIFICATE NO. 622-W

TO FARMTON WATER RESOURCES LLC,
AND SETTING INITIAL RATES AND CHARGES

BY THE COMMISSION:

BACKGROUND

On December 20, 2002, Farmton Water Resources LLC (Farmton or utility) filed an Application for an Original Certificate to Provide Water Service in Volusia and Brevard Counties pursuant to section 367.031, Florida Statutes, and Rule 25-30.033, Florida Administrative Code. Volusia County (Volusia), Brevard County (Brevard), and the City of Titusville (Titusville) objected to the application, asserting that there is no need for service in the proposed service area, that the application is inconsistent with local comprehensive plans, and that the service proposed by the utility is exempt from our jurisdiction.

The service hearing on this matter was held on May 13, 2004, in New Smyrna Beach, Florida. A Prehearing Conference was held on May 17, 2004, in Tallahassee, Florida. The technical portion of the administrative hearing was held on June 22-23, 2004, in Tallahassee, Florida. The proposed service territory, as modified, consists of 50,000 acres, of which 10,000 acres are in Brevard County and 40,000 are in Volusia County. According to Farmton, there is no development currently planned for the proposed service territory. The utility will serve the Miami Tract Hunt Club, the Miami Corporation, and the Clark Cattle Station located within the proposed service territory. Farmton's Application seeks a certificate for retail potable, fire protection, and bulk raw water service.

STIPULATIONS

The following stipulations reached by the parties, noting that Volusia, Brevard, and Titusville took no position, are reasonable and are hereby accepted as set forth below.

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

2. Return on equity shall be based on the current leverage graph formula in effect at the time of the Commission vote in this proceeding.

3. The Allowance for Funds Used During Construction (AFUDC) shall be based on the current leverage graph formula in effect at the time of the Commission vote in this proceeding.

COMMISSION JURISDICTION

The Florida Public Service Commission (PSC or the Commission) has exclusive, preemptive jurisdiction over private water and wastewater utilities under chapter 367, Florida Statutes. As section 367.011, Florida Statutes, provides:

* * *

> (2) The Florida Public Service Commission shall have exclusive jurisdiction over each utility with respect to its authority, service, and rates.
>
> (3) The regulation of utilities is declared to be in the public interest, and this law is an exercise of the police power of the state for the protection of the public health, safety, and welfare. The provisions of this chapter shall be liberally construed for the accomplishment of this purpose.
>
> (4) This chapter shall supersede all other laws on the same subject, and subsequent inconsistent laws shall supersede this chapter only to the extent that they do so by express reference. This chapter shall not impair or take away vested rights other than procedural rights or benefits.

Farmton argues that the language of section 367.011 is very clear, and the courts have repeatedly interpreted our regulatory jurisdiction over private utilities as broad, exclusive and preemptive. See, for example, Hill Top Developers v. Holiday Pines Service Corp., 478 So. 2d 368, 371 (Fla. 2d DCA 1985) (power and authority of the Public Service Commission is preemptive); Florida Power Corp. v. Seminole County, 570 So. 2d 105, 107 (Fla. 1991) ("While 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."). We, too, have interpreted our jurisdiction this way. In Order No. PSC-92-0104-FOF-WU, issued March 27, 1992, in Docket No. 910114-WU, In Re: Application of East Central Florida Services, Inc. for an original certificate in Brevard, Orange, and Osceola Counties, a case that is factually similar to this case, we found that our jurisdiction pursuant to section 367.011 preempted the local governments' claim to control the service area and certification process of a private water and wastewater utility.

The law on this issue is well-settled, and the local government intervenors appear to agree that section 367.011 provides this Commission jurisdiction over the certification of private utilities, but the intervenors still claim that other laws provide indirect local governmental control over certification as well. Brevard argues that under section 153.53(1), Florida Statutes,[1] a water

[1] Section 153.53 provides:

(1) Subject to this law, the board of county commissioners of any county may establish one or more districts as it shall in its discretion determine to be necessary in the public interest. Any such district shall consist of only unincorporated contiguous areas of such county, comprising part but not all of the areas of such county. As used herein, "unincorporated areas" shall mean all lands outside of the incorporated boundaries of towns, cities, or other municipalities of the state whether existing under the general law or special act and shall include any lands, areas, or

and sewer district created by county commissions has the authority to consent to construction of a water system within the district pursuant to section 153.86, Florida Statutes.[2] Brevard contends that we cannot grant Farmton a certificate in this case because Farmton failed to apply for Brevard's water district's approval for construction of facilities and thus Farmton cannot meet the certification requirements in section 367.045, Florida Statutes. Titusville and Volusia also acknowledge our jurisdiction, but they argue we are constrained in our exercise of that jurisdiction by the requirement of section 367.045(5)(b), Florida Statutes, which requires us to consider compliance with local comprehensive plans when we grant a service area. Titusville argues that we should decline jurisdiction over Farmton, given the nature of Farmton's proposal, the exemptions available, and the local comprehensive plans. Volusia contends that the Legislature intended the certification process to be a cooperative effort when land use issues or matters of particular concern to local governments are raised in certification proceedings.

None of these arguments effectively addresses the exclusive and preemptive language of section 367.011. While section 153.53, Florida Statutes, gives a local water and sewer district authority to approve construction of a water system within the district, that statute does not restrict our certification authority. It deals with construction of facilities, not certification of a utility service area. Section 367.011(4), Florida Statutes, clearly states that this chapter supersedes all other laws on the same subject. Chapter 153, Florida Statutes, was enacted before chapter 367, Florida Statutes, and is therefore expressly superseded as a limitation on our authority to regulate private utilities. Brevard's attempt to invoke section 153.53, Florida Statutes, in creating a requirement for local government approval prior to certification is not contemplated either by the plain language of section 367.011, Florida Statutes, or by the certification requirements of section 367.045, Florida Statutes. Similarly, Titusville's and Volusia's attempt to limit our certification authority by invoking section 367.045(5)(b), Florida Statutes, is misplaced. Section 367.045(5)(b) also provides that "the commission shall consider, but is not bound by, the local comprehensive plan of the county or municipality." See, City of Oviedo v. Clark, 699 So. 2d 316, 318 (Fla. 1st DCA 1997), where the court said:

> We hold that the PSC correctly applied the requirements of section 367.045(5)(b). The plain language of the statute only requires the PSC to consider the comprehensive plan. The PSC is expressly granted discretion in the decision of whether to defer to the plan.

---

property within the district of any special tax districts, school district, or any other public corporations or bodies politic of any nature whatsoever, except municipalities.

[2] Section 153.86 provides:
No sewage disposal plant or other facilities for the collection and treatment of sewage or any water treatment plant or other facilities for the supply and distribution of water, shall be constructed within any district unless the district board shall give its consent thereto and approve the plans and specifications therefor; subject, however, to the terms and provisions of any resolution authorizing any bonds and agreements with bondholders.

Based on the provisions of chapter 367, Florida Statutes, court decisions, and prior Commission orders, we find that we have exclusive preemptive jurisdiction over the certification of private utilities.

FARMTON NOT EXEMPT FROM COMMISSION JURISDICTION PURSUANT TO SECTION 367.022, FLORIDA STATUTES

Farmton's application proposes to provide retail potable water service, fire protection service, and bulk raw water service. The intervenors have argued that the proposed retail potable water service, bulk raw water service, and fire service would be exempt under section 367.022, Florida Statutes, which sets out exemptions from our jurisdiction. In particular, section 367.022 provides a exemptions for:

* * *

(6) Systems with capacity or proposed capacity to serve 100 or fewer persons.

* * *

(12) The sale for resale of bulk water supplies of water or the sale or resale of wastewater services to a governmental authority or to a utility regulated pursuant to this chapter either by the commission or the county.

Titusville contends that Farmton's proposed retail potable water service is exempt because section 367.022(6) specifically exempts systems with the capacity or proposed capacity to serve 100 or fewer persons. Rule 25-30.055, Florida Administrative Code, defines service of 100 or fewer persons as a capacity, excluding fire flow capacity, of no greater than 10,000 gallons per day. Titusville also contends that Farmton is exempt from our jurisdiction pursuant to section 367.022(12) and Rule 25-30.055 because Farmton does not have a contract or commitment from any entity to provide bulk water service and the potential customers that Farmton has identified are government entities. Titusville further contends that Farmton's proposed fire service is not in the public interest and that Miami Corporation, the property owner, can provide itself fire protection without our certification.

Farmton responds that section 367.022(6), which provides that systems with the capacity or proposed capacity to serve 100 or fewer persons are exempt from Commission jurisdiction, does not apply to its application because its proposed potable water service exceeds this minimum. Farmton also asserts that its proposed fire service is not exempt from our jurisdiction since section 367.022 makes no specific reference to an exemption related to fire service. Farmton further contends that its proposed bulk water service is not exempt from our jurisdiction because section 367.022(12) only provides an exemption for the sale or resale of bulk supplies of water to a governmental authority. Farmton states that while its original calculation of proposed bulk facilities was premised upon a potential for service to Titusville, Farmton's witnesses also provided examples of additional types of bulk raw water service to non-governmental entities that would not be exempt.

According to Witness Hartman, the capacity of the retail potable water wells is estimated to be 118,000 gallons per day. Rule 25-30.055(1), Florida Administrative Code, provides:

> A water or wastewater system is exempt under section 367.022(6), Florida Statutes, if its current or proposed water or wastewater treatment facilities and distribution or collection system have and 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).

Based on Mr. Hartman's testimony that Farmton will have the capacity to provide 118,000 gallons per day, Farmton has the proposed sufficient capacity to serve 472 ERCs, pursuant to Rule 25-30.055. Therefore, the utility's retail potable water service is not exempt from Commission jurisdiction. Witness Hartman also provided examples of types of bulk raw water service that the utility could serve that would not be exempt from Commission jurisdiction, such as the Osceola County fire district station, industrial customers, and Bell Ridge mobile home park. Section 367.022, Florida Statutes, does not provide a specific exemption for fire protection. Furthermore, it is our practice to grant one certificate for the provision of all classes of water service, and we often grant a certificate and approve tariffs for services that will not be immediately used. As we stated in East Central:

> Indeed, it is common for this Commission to grant an original water certificate and approve rates for services for which there is no present, quantifiable need, but which may be in demand at a future time. Numerous utilities have approved tariffs with general service rates and/or multi-residential rates even though the utility's current customer base is residential only. Some have approved tariffs with residential rates even though the utility serves only general service customers. The granting of a certificate to provide water service in a territory does not imply that the certificate is issued for any specific class of service.

Order No. PSC-92-0104-FOF-WU, at p. 19

Farmton's application proposes retail potable water service, fire protection service, and bulk raw water service. The intervenors have not shown that these services are exempt under section 367.022, Florida Statutes. Since Farmton's proposed retail potable water service is not exempt from Commission jurisdiction, we find that Farmton is not exempt pursuant to the provisions of chapter 367, Florida Statutes.

NEED FOR SERVICE

Section 367.045(1)(b), Florida Statutes, requires an examination of the need for service in the requested area, and Rule 25-30.033(1)(e), Florida Administrative Code, requires an applicant for an original certificate to provide a statement showing the need for service in the proposed area. The modified application reflects a proposed territory which includes approximately 10,000 acres in Brevard County and 40,000 acres in Volusia County.

While the City of Titusville and Brevard and Volusia Counties have taken the position that there is no need for service, Farmton believes that it has adequately outlined the current and future needs for potable water, fire flow, and bulk water services. The City of Titusville points out that for retail service, Farmton failed to obtain or present evidence to support its position, and that it camouflaged the lack of scientific study or basis by concocting a series of confusing assumptions to attempt to create the appearance of need. The potential customers for bulk raw water are identified as government utilities, which would be exempt pursuant to section 367.022(12), Florida Statutes. For fire service, Titusville points out that Miami Corporation is the sole owner of the property, and it is unnecessary for a landowner, through a subsidiary, to charge itself for fire protection service. Brevard County believes that the utility's request is excessive and that it failed to provide evidence to support a need for potable water service on the 10,000 acres within Brevard County. Volusia County believes that the testimony and exhibits in this case are noticeably lacking in substantial competent evidence regarding a clear need for service in this area because the area is an unpopulated wilderness without need for such services at this time or into the reasonably foreseeable future.

As reflected in the utility's application, the proposed service area boundaries, which include approximately 50,000 acres within the counties of Volusia and Brevard, are generally contiguous with the property boundaries of its parent company, Miami Corporation. Farmton indicated that the existing and proposed retail potable service is and will be provided to customers across the proposed service area. The area includes commercial uses such as corporate headquarters, single family homes, and recreational buildings.

Farmton is seeking this certificate in part for long-range planning purposes to allow it to be prepared to provide service as and when needed to any residential, commercial or industrial development in the area. In order to manage the resources properly, Farmton witness Underhill believes that a certificate is necessary to control the withdrawal of water so that overpumping would not result in salt water intrusion and ruin the groundwater below the Farmton property.

Currently Farmton has three retail service customers that include the Miami Tract Hunt Club, the Miami Corporation, and the Clark Cattle Station. The retail potable water treatment facilities will be located near the proposed customers. The utility received a letter from Miami Hunt Club Inc. requesting service for its 260 member hunt club. Mr. Underhill testified that currently there has been no agreement reached to extend the hunting lease between the Miami Corporation and the 261 family members Miami Tract Hunt Club beyond May of 2006. Four campgrounds are planned with twenty-five campsites each. Mr. Underhill indicated that as the need expands, the utility would be prepared to meet the needs. He believes that there are significant needs that are already existing for potable water service. Although it is unclear what the future needs will be within the territory, Mr. Underhill states that there are absolutely no current plans by the landowner for further development, and, as such, no plans for substantial changes in the number of persons receiving potable water service. He states that there are places in and surrounded by the proposed territory that may, in the near future, require or request potable water service. He suggested that there is likely to be a transition from the silviculture operations towards residential, commercial, and industrial development of properties. In order to properly plan for the future, he believes that setting up a utility when those needs arise would not only be less efficient and ultimately more costly to customers, it would fragment the water resource management for the water demands within the area. While explaining various other needs for water service, Farmton witness Hartman stated that it is a tremendous benefit if water is provided for the health, safety, and welfare of the area. Mr. Hartman and Mr. Underhill both testified that there has been a customer request for water service from the Bell Ridge campgrounds, an enclave not owned by the Miami Corporation, which has 100 units.

The fire protection service will also be provided across the Miami Corporation property. With two existing wells, the total facilities necessary for the provision of the fire protection water supply will consist of the development and construction of 10 fire protection wells. The utility believes that these wells will enhance the fire fighting capabilities for Miami Corporation. Mr. Underhill recognized that when the existing fire wells were installed by Miami Corporation, a PSC certificate was not needed. However, he believes that a PSC certificate is necessary as part of the overall package of putting together all the needs and managing the resources properly.

The bulk raw water will be needed to supply non-potable water outside of the proposed service area. The utility believes that even though entities outside of the service area do not wish to be included in the service area at this time, the planning and development of Farmton will place the utility in the position to provide bulk raw water for their use in the future. Farmton anticipates that nearby water utilities will be in need of additional bulk raw water. This is because water supply forecasts from the St. Johns River Water Management District (SJRWMD) indicate that resources may be stressed and alternative water supplies may be needed. Mr. Underhill believes that it is apparent that the bulk raw water need will increase as urban areas approach the area. Although there have been discussions with the City of Titusville, Mr.

Underhill agreed that there are no contracts with Titusville or with any governmental or private entity.

Brevard witnesses Martens and Scott both testified that there is currently no existing or planned residential or commercial development proposed in the certificated area applied for by Farmton. Mr. Martens indicated that Brevard County has thousands of self-service potable water supply wells and he does not see that such facilities generate the need for a utility. Titusville witness Grant also testified that there is no need for potable water service because much of the existing needs in the proposed service area can be met with the existing water supply sources and infrastructure and additional potable water demands based on future growth described in the application are purely speculative. Grant indicated that she works closely with each of the public water utilities in northern Brevard County, and is not aware of any presently existing demand for bulk water in the region.

Mr. Underhill believes that the intervenors' statements that the service is not currently needed are clearly wrong in that there is demand for several types of service within the territory. Mr. Hartman also disagreed with witness Grant about her statement that there is no need for a utility in this area. There are requests for service in the proposed area for a public water utility, and an investor-owned utility that offers raw, fire protection, and potable water services provides many benefits for the area. Using East Central as an example, he provided a summary in which raw, fire, and potable water service are provided and the significant public benefit which was derived from those services. He stated that raw water resources have been a significant and not a speculative need in the Titusville water service area for 20 years. Neither the City of Cocoa nor Brevard County has offered to meet the raw water needs for Titusville. A component of Farmton's application serves the regional need for raw water in an appropriate fashion while allowing for proper water resource stewardship. The SJRWMD witness Burklew testified that Titusville has applied to modify its existing consumptive use permit (CUP). Mr. Hartman believes that the fact that Farmton has offered to assist and help Titusville with its raw water supply problems is a positive way to facilitate the appropriate and responsible development of water resources.

Volusia witness Marwick testified that the south-central portion of Volusia County has never been included within any of the groundwater simulation models used by either the SJRWMD or the Volusia Water Alliance (Volusia County). However, she also indicated that if there is any need for service, Volusia County through the Water Authority of Volusia (WAV), will incorporate the area and its water supply demands into the regional water supply plan. WAV was created in 2003 to oversee the management of Volusia County's water supply. However, Mr. Hartman believes that as long as Farmton's service area contains the impacts of water withdrawals within the service area, then the importance of the Farmton area being included in a simulation model is not great, but is rather informational to update those models.

SJRWMD witness Burklew testified that the SJRWMD has not received an application for a CUP from Farmton. At the hearing, he agreed with the premise that a utility must be certificated by this Commission prior to obtaining a CUP.

Mr. Underhill testified that until such time as there are customers for whom the construction of water facilities would be needed, there is no reason for Farmton to apply for water management district (WMD) permits. He indicated that the utility will certainly do so as soon as requests for services are made. He reaffirms that it does not change the fact of Farmton's need to plan for the provision of such services and for the appropriate, efficient, and effective management with the least environmental and resource impacts. He believes that Farmton is in the best position to do that. He points out that section 367.031, Florida Statutes, specifically provides that a utility should obtain a PSC certificate before it obtains a CUP.

We believe that the utility's application complies with section 367.045(1)(b), Florida Statutes, which requires an examination of the need for service in the requested area. This is consistent with our practice in dealing with a large service area owned by a single entity. In **East** Central, we stated:

> We are concerned with the size of the proposed certificated territory in this case, some 300,000 acres, and the configuration of the facilities within that territory. Clearly, the need for service is not pervasive throughout the territory. This concern, however, is not cause to deny certification. We do not think it is in the public interest at this time to carve up a vast territory, which is all owned by one entity, so as to certificate only scattered portions thereof. Instead, we forewarn ECFS that pursuant to Section 367.111(1), Florida Statutes, we may delete any part of a utility's certificated territory, whether or not there has been a demand for service, within five years of authorizing that service.
>
> Therefore, in consideration of the foregoing, we find that there is a need for water service in the proposed certificated territory.

Order No. PSC-92-0104-FOF-WU, at pp. 20-21

Based on the record, we find that there appears to be a need, although limited, for potable water service, fire protection service, and bulk service in the proposed service area; however, it is not known when all forms of service will be required. Though the evidence shows that the need for service is not pervasive throughout the territory, when considering all three services, we believe that the utility has proven that the need exists in both Brevard and Volusia Counties. Consistent with our finding in East Central, it is not in the public interest to carve up the Farmton territory, which is owned by the utility's parent company, and certificate only a portion of the territory.

COMPREHENSIVE PLANS

Section 367.045(4), Florida Statutes, provides that notwithstanding the ability to object on any other ground, a county or municipality has standing to object on the ground that the issuance of a certificate violates established local comprehensive plans developed pursuant to chapter 163, Florida Statutes. Section 367.045(5)(b), Florida Statutes, provides that, if an objection is made, we shall consider, but are not bound by, the local comprehensive plan of the county or municipality. Although Farmton's position is that its application is consistent with the Volusia and Brevard County comprehensive plans, the other parties, including the staff witness representing the Department of Community Affairs (DCA), take the position that the application is inconsistent with the comprehensive plans.

Farmton witness Landers testified that chapter 367, Florida Statutes, supersedes chapter 163, with respect to the regulation of privately owned utilities. He testified that a PSC application would never be inconsistent with a comprehensive plan because the definition of development pursuant to section 380.04, Florida Statutes, contained in chapter 163, Florida Statutes, and the county comprehensive plans, does not define a PSC service territory as development. Therefore, the creation of a PSC regulated water utility and designation of a service territory is not development subject to comprehensive plan regulation. He testified that the comprehensive planning process is a tool to manage, not prohibit, growth and development. Each county has a comprehensive plan that sets forth rules on how a landowner or developer can develop land and those plans can be amended pursuant to chapter 163, Florida Statutes. The development process includes a number of approvals that are required to meet the specifics of a particular development and, in most cases, having a central water system is a prerequisite to having a substantial commercial or residential development. Filing an application with the Commission is the correct first step in the process. He also testified that a PSC certificate does not, in itself, stimulate development or create any impacts on natural resources.

Brevard County Comprehensive Plan

Brevard County's position is that Farmton's application is inconsistent with its comprehensive plan because Farmton has not applied for the approval of the County Commission in either its capacity as governing body of the County or the Brevard County Water and Sewer District. Policy 3.4 of the Potable Water Element of the Brevard County Comprehensive Plan provides that newly proposed service areas, expanding restricted service areas, or PSC regulated service areas must be reviewed and approved by Brevard County, and Farmton has not sought that approval. Ordinance No. 03-032, which was created pursuant to chapter 153, Florida Statutes, provides that the Brevard County Water and Sewer District makes the determination as to whether to approve the construction of a water or sewer system.

Brevard County's comprehensive plan contains several objectives that address urban sprawl. Objective 4 recognizes the importance of protecting agricultural land because the

industry benefits the economy, reduces the extent of urban sprawl and the costs of providing public facilities and services, provides environmental benefits, and provides open space and visual beauty. Objective 5 of the comprehensive plan states that Brevard County shall maximize the use of existing facilities to discourage urban sprawl.

Brevard witnesses Martens and Scott testified that potable water service should not be extended into agricultural areas of Brevard unless the Board of County Commissioners has a chance to discuss the potential land use implications and deems it to be in the public interest. Mr. Scott also testified that it is inefficient to attempt to provide centralized potable water service in an area that can only be used for agriculture. The granting of a certificated area to provide water services in an agricultural area could set up an attempt at leapfrog development unless the system were limited to providing bulk raw water to other retail water providers in areas outside of the proposed certificated area.

Witness Scott testified that the utility's application for a certificate is not in violation of Brevard's comprehensive plan, but he believes that Brevard needs to review a proposed Commission regulated service territory and deem it consistent with its comprehensive plan prior to us granting approval. However, witness Scott is not aware of any violation of the comprehensive plan case law in regards to what Farmton proposes. He agrees that there are certain development planning advantages for large tracts of land owned by single landowners.

Farmton witness Landers agreed with the concept that from a planning standpoint, urban sprawl is undesirable. However, he disagreed with the premise that a central water system in a nonurban, rural, forested, uninhabited area would be the first step towards urban sprawl. He believes that urban sprawl occurs largely because of fragmented land ownership and the first step to urban sprawl has already been taken by allowing residential development to occur on small acreage. This is supported by DCA technical memos on the subject. He believes that it is the large land owners, like Farmton, who have the potential to best manage their property.

Mr. Landers testified that the Brevard County policy on water service areas provides that although Brevard is not permitted to extend services into the agricultural areas, Brevard will accept facilities and provide utilities in agricultural areas. This policy does not prohibit others from establishing districts through which water service can be provided; in fact, it actually establishes a mechanism through which they can do so. It appears to him that these rules provide support for establishment of water service territories rather than absolutely prohibiting them. While he maintains that we have ultimate jurisdiction over the granting of a water service territory, this would appear to establish basic grounds for Farmton to establish a water service territory. Therefore, it is Mr. Landers' opinion that Farmton's request is consistent with those provisions of the Brevard County Comprehensive Plan because a water service territory, in and of itself, is neither a land use nor development as defined by Florida's planning statutes and rules, and any development that would require or greatly benefit from central water service can be pursued and potentially implemented. Mr. Landers states that the Brevard witnesses suggest

that the land use plan can be amended to allow other uses than those currently allowed on any property. To him, this reference identifies a right that all land owners have under Florida's Growth Management statutes and rules, a right to seek an amendment to the Comprehensive Plan. It is Mr. Landers' opinion that designation of a water services territory will not in and of itself generate sprawl and that the Brevard plan contains numerous anti-sprawl policies, as required by chapter 163, Florida Statutes. Using East Central, as an example, he argues that a properly pursued and approved amendment to the future land use map would not constitute sprawl.

Farmton witness Hartman stated that Brevard County's referenced comprehensive plan policy could be appropriate if Brevard County has taken back jurisdiction from the Commission and if the applicant was solely in Brevard County. However, since the application is a multi-county application, Mr. Hartman maintains that this portion of the policy statement does not apply. If Farmton wishes to establish its service area, it is fully capable of doing so through the same process. Mr. Hartman believes that we have exclusive authority to certificate water utilities and not Brevard County, especially when there is a multi-county utility involved.

Volusia County Comprehensive Plan

Volusia County's position is that Farmton's application is inconsistent with the guiding goals, policies, and objectives of Volusia's comprehensive plan, including the Future Land Use Element. Volusia's major concern is unplanned or harmful urban growth in areas not contiguous to existing urban areas and the preservation of its natural resources.

Volusia witnesses Thomson and Marwick stated that the proposed application to establish a water utility is inconsistent with the comprehensive plan for Volusia County, and that the policies in the plan limit the provision of water and sewer service to urban future land use designations except for limited circumstances where a bona fide threat to the health, safety, and welfare can be established or if the comprehensive plan is amended to change the land use designation. The Future Land Use Plan Categories that encompass the area in the Farmton application do not include urban land use. The land use designations within Farmton's proposed service territory are Environmental System Corridor (ESC), Forestry Resource (FR), and Agricultural Resource (AR). The witnesses testified that central water service is not required for nonurban areas and, to date, Volusia has not considered any changes to its plan to establish urban land uses within the Farmton service area to justify the creation of a utility. Furthermore, the witnesses point out that the application does not address a need that could be considered consistent with the plan. These land use designations are not intended to support uses which will require an extensive, central water service system as proposed by Farmton.

Witness Thomson agreed that comprehensive plans can be modified over time. Although designating a service area would not impact natural resources, the action to do so would be inconsistent with the plan under chapter 163. Mr. Thomson agreed that Volusia would not lose

any of that authority and that our certification does not have any force or effect over any development proposal. However, it would play into the decision making process. In reference to urban sprawl, Mr. Thomson points out, that there is no strict definition of sprawl, although under the Department of Community Affairs Rule 9J-5, Florida Administrative Code, there are seven categories or indicators of urban sprawl. Mr. Thomson did not agree that the Volusia County service area was inconsistent with the comprehensive plan because of interlocal agreements with municipalities to provide service to unincorporated areas. He acknowledged that as far as he knew, Volusia has never taken any action against a utility that proposed to receive a certificate from this Commission. Also, he agreed that large tracts of land being owned by single landowners provide positive opportunities for planning purposes.

It is Farmton Witness Lander's opinion that the future land use element is not as restrictive as claimed, and that significant uses that would benefit from central water services are permitted under the plan. These provisions of the land use element do not prohibit the establishment of a water service territory as regulated by the Commission, and the establishment of a water service territory is not, in and of itself, a "land use" or "development" as defined by the Volusia County Comprehensive Plan or State Statute. The use of a residential Planned Unit Development (PUD) is consistent with the ESC, FR, and AR land use categories. Therefore, development that would require and could be supported by central water service is permitted in the Volusia County comprehensive plan upon Farmton's lands.

According to Witness Landers, the Volusia County comprehensive plan identifies a right that all land owners have under Florida's growth management statutes and rules to seek an amendment to the comprehensive plan. The fact that Farmton is the owner of a very large tract of currently rural land provides a very special land management opportunity that has been recognized by the State of Florida. Witness Landers believes that Farmton's ownership and proposed water utility provides an opportunity to manage a land and water resource in order to preserve the rural, environmental and agricultural resources as desired by Volusia County while providing a sound basis for such innovative development as rural villages or new towns. He believes that the resulting preservation of environmentally sensitive areas is consistent with the goals of Volusia's comprehensive plan, as well as consistent with the rural land planning strategy that DCA lays out in its Technical Memos and later actions concerning urban sprawl.

Witness Landers argued that chapter 163 does not enable local governments to regulate private utility certificated service areas through the comprehensive planning process. He also argued that the Planned Development Cluster provision for lands in Volusia County's plan contradicts Witness Thomson's assertions on this topic. He believes that this is due to the fact that Volusia County has determined all areas not within another governmental utility service area as its service area. It is clear to him that being in the Volusia service area does not mean that Volusia would actually serve the area. There is no classification in the land use or zoning for a PSC certificated territory. Therefore, Mr. Landers believes a certificate by itself should not

constitute "development" in Volusia County, and that Farmton is proceeding in proper order with the initial authority for certifying a water service territory with the Commission.

Farmton witness Underhill stated that both the comprehensive plan and water supply plan are documents that are regularly reviewed to reflect changes to growth patterns and demand as part of responsible planning. He notes that since water is an essential prerequisite to development it would seem that planning for water resources prior to anyone requesting a PUD, DRI, or other change, would be a logical step to ensure availability of water as and when needed.

DCA witness James testified that the DCA believes that the utility's proposal is inconsistent with several goals, objectives, and policies of Volusia and Brevard Counties and the City of New Smyrna Beach Comprehensive Plans. She points out that the utility services are proposed in an area that is completely rural with some of these areas containing natural resources that are environmentally sensitive, and the proposed services may result in urban sprawl development patterns. At the hearing, witness James agreed that the granting of a PSC certificate was not inconsistent with the comprehensive plans of Brevard and Volusia Counties, and that it was not development or land use. She indicated that her concern was that a certificate could be part of a possible domino-effect that could lead to a certain type of development even though the counties would retain the power and authority of comprehensive plan enforcement. In reference to urban sprawl and its effect on the environment, she had no knowledge of any case where the granting of a certificate led directly to urban sprawl or harmed the environment.

Mr. Hartman stated that, in his experience, there is no correlation between a PSC certificate and urban sprawl or that the utility element of the Comprehensive Plan under chapter 9J-5, would preclude certification in and of itself. In reference to the countywide service areas, to his knowledge the countywide generalized service area has not had an impact on other entities as they may expand or modify their utility service areas.

Summary

Based on the evidence, we believe that Farmton's request to provide water service in the proposed service territory appears to be inconsistent with portions of the Brevard County comprehensive plan. Policy 3.4 of the Brevard County comprehensive plan provides that newly proposed service areas, expanding restricted service areas, or PSC regulated service areas must be reviewed and approved by Brevard County. The Brevard County witness testified that Farmton's application is not inconsistent with the comprehensive plan, but also testified that the County must review and approve Farmton's proposal prior to this Commission granting approval. The testimony is not clear whether that provision contemplates that Brevard needs to review a proposed PSC regulated service territory and deem it consistent with Brevard's comprehensive plan prior to our approval. Assuming that Brevard County is the authority on the provisions of its comprehensive plan, the granting of a PSC certificate to Farmton prior to

Brevard County reviewing and approving the Farmton proposal appears to be inconsistent with the Brevard County's comprehensive plan.

With respect to the Volusia County comprehensive plan, the policies in the plan limit the provision of water and sewer service to urban future land use designations except for limited circumstances where a bona fide threat to the health, safety, and welfare can be established or if the comprehensive plan is amended to change the land use designation. The land use categories that encompass the area in the Farmton application include Environmental System Corridor (ESC), Forestry Resource (FR), and Agricultural Resource (AR), none of which are considered urban areas. Therefore, Farmton's application appears to be inconsistent with the portion of the Volusia County plan that limits the provision of water service to urban areas.

We believe, however, that consistent with our finding in East Central, the planning process, as detailed in the comprehensive plans for Brevard and Volusia Counties, does not supersede our authority pursuant to section 367.011, Florida Statutes. In East Central, we said:

> Section 367.011(1), Florida Statutes, states that this Commission has exclusive jurisdiction over each utility with respect to its authority, service, and rates. Section 367.011(4), Florida Statutes, states that Chapter 367 supersedes all other laws on the same subject and that subsequent inconsistent laws shall supersede Chapter 367, Florida Statutes, only to the extent they do so by express reference. Chapter 163 does not make express reference to Chapter 367. Section 163.3211, Florida Statutes, specifically states, 'Nothing in this act is intended to withdraw or diminish any legal powers or responsibilities of state agencies or change any requirement of existing law that local regulations comply with state standards or rules.'
>
> In consideration of the above, we do not think that ECFS's certification is inconsistent with Chapter 163.

Order No. PSC-92-0104-FOF-WU, at p. 26

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 if 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. This includes Brevard County's right to maximize the use of existing facilities to discourage urban sprawl and the use of Ordinance No. 03-032 to approve the construction of a water or sewer system, and Volusia County's concerns over the construction of water facilities in nonurban areas. Therefore, we find that the issuance of a PSC certificate does not result in urban sprawl or harm to the environment.

In conclusion, although Farmton's application or our granting of a certificate to Farmton appears to be inconsistent with provisions of the Brevard and Volusia County comprehensive plans, pursuant to Section 367.045(5)(b), Florida Statutes, in light of the evidence presented in this case, that inconsistency shall not cause us to deny the utility's application. City of Oviedo, 699 So. 2d at 318.

COMPETITION WITH OR DUPLICATION OF FACILITIES

Pursuant to section 367.045(5)(a), Florida Statutes, we may not grant a certificate of authorization for a proposed system which will be in competition with, or duplication of, any other system or portion of a system, unless we first determine that such other system or portion thereof is inadequate to meet the reasonable needs of the public or that the person operating the system is unable, refuses, or neglects to provide reasonably adequate service. Section 367.021(11), Florida Statutes, defines "system" as facilities and land used and useful in providing service.

Farmton believes that there is little evidence that the creation of a utility will be in competition with, or duplication of any system operated by the three local governments. Although there was testimony that local governments might be able to provide service to the Farmton properties in the future, we have held that we cannot determine whether a proposed system will be in competition with or a duplication of another system when such other system does not exist. Brevard County believes that it has facilities that can provide service to the Miami Corporation property and any utility, including the Brevard County utilities department, can provide the limited type of service required by the one campsite in Brevard County. Titusville points out that Farmton never requested service from any of the surrounding local governmental entities and that bulk service will be duplicative with Titusville's planned bulk facility. Volusia County suggests that if Farmton's application is approved, it would create a situation where Volusia County and Farmton were both legally designated as the service providers, creating competition and confusion. It would also create a duplication of service, as Volusia is able, authorized, and expected to eventually extend its existing system through the adjacent City of Edgewater.

Titusville provides water service within five miles of Farmton. Brevard County is within two miles and Volusia County via the City of Edgewater is less than one mile from the proposed Farmton territory.

Farmton witness Hartman testified that no other system serves the proposed area, and it is his opinion that the proposed utility will not be in competition with or duplicate the services of any other water utility system. Even if there were such systems in the area, 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 would be extremely inefficient.

Brevard County witness Martens testified that the County Commission has enacted an ordinance that requires any water provider or supplier to obtain the consent of the County Commission to construct facilities. Farmton has not sought consent under this provision. Martens contends that if Farmton were to build a water treatment facility, it would be a duplication of the Brevard system at the Mims plant, to the extent that the Mims Plant has excess capacity. In reference to Titusville's proposed raw water lines from a wellfield in northern Brevard County duplicating county services, he pointed out that the district has acknowledged Titusville's application to construct. Mr. Martens did indicate that Brevard County has been exceeding its consumptive use permit (CUP) with the SJRWMD for more than two years. He did not think that Brevard had an obligation to serve the unincorporated areas of the county, although it has a right to do so under the comprehension plan consideration. Mr. Martens agreed that if facilities were already in place at Farmton, Brevard's proposal to provide service would be a duplication of service. He also indicated that it is customary for the developer to build the facilities and dedicate them to the county for operation and maintenance.

Mr. Hartman points out that Brevard County does not provide either raw water service, fire protection service, or potable water service to the proposed certificate area. In addition, Brevard has not provided facilities, costs, specific plans, nor included the area within Brevard's active utility operations area. Farmton's proposed service area is outside of the established North Brevard water system service area and therefore would not use such capacity. He notes that Brevard County has not planned for and has not developed the cost of service to provide services for Farmton customers, and that the Farmton area and development of water resources does not adversely impact Brevard's existing water system or the expansions planned by Brevard. He believes that Mr. Martens has not testified that Brevard County could or would have facilities to serve countywide or to serve systems that are not planned for at this time by county utilities.

Witness Grant testified that Titusville is well positioned to meet the potable water needs of any communities in the vicinity of its service area that are not served by Brevard or another municipality. However, the urbanizing areas of northern Brevard County, that are not in the City of Titusville's service area, are in the Brevard County service area. Titusville does not have plans to expand its service area in the near term, because there is not an unmet need for potable water service in northern Brevard County at the present time. She points out that if a need for potable water supplies developed in that area, Titusville is in a very good position to meet those needs. Brevard County would also be in a good position to supply the need in the proposed service area in northern Brevard County. Titusville and Brevard have a history of working cooperatively to ensure that water supply needs are met. She believes that when a need arises, Titusville and Brevard will work cooperatively with any developers to determine which utility can best meet the water supply needs and reach an appropriate agreement. Titusville has a CUP application pending with the SJRWMD for the construction of a wellfield in northern Brevard County. Ms. Grant stated that Titusville's application does not ask to increase pumping; however, it does identify another wellfield from which Titusville can draw water. She indicated

that Titusville also purchases potable water from the City of Cocoa. Given its excess water treatment plant capacity, she believed that it would be cheaper for Titusville to obtain raw water rather than its current arrangement with Cocoa.

Mr. Hartman points out that Titusville's water treatment plant is several miles away and would require a costly duplication of pipelines for service, and such service could not be as efficient or effective as service provided by Farmton. In addition, Brevard County does not have the Water Use Permit capacity or facilities to provide the services currently needed.

Farmton witness Drake notes that Titusville's service area does not include the Farmton area. He pointed out that Ms. Grant's statement that Titusville will meet all its projected needs, is contradicted by the fact that it has applied to the SJRWMD for a new wellfield in order to meet projected demands. Mr. Drake does not agree that Titusville is in a good position to meet the potable water needs of northern Brevard County, which includes the Farmton area. He believes that it is unlikely that Titusville could provide potable water at a reasonable cost to customers in northern Brevard County when the potable water would have to be pumped from Titusville's plant, versus it being pumped and treated locally. The proposal to meet the needs for water service in this area would therefore be very costly, many times the costs which service by Farmton would entail.

In reference to Titusville's SJRWMD application status, it is Mr. Drake's opinion that Farmton would be the far superior provider of water because it has significantly more land area in which to develop groundwater supplies, and has a vested interest in limiting adverse impacts to its lands, wetlands and silviculture operations. This includes the permitted wetland mitigation banks that are on the property.

Volusia County witness Marwick testified that while the Miami Corporation has not demonstrated a need for a potable water distribution system and treatment facilities, if such a need is ever demonstrated, Volusia utilities, through WAV, is prepared to serve the area. However, she did state that Volusia County requires developers to provide and dedicate potable water and wastewater systems within any new development to Volusia County.

Mr. Hartman suggests that Farmton's water use would be contained primarily on-site and would not impact any of Volusia's systems. The City of Edgewater would not be impacted and the cones of influence would not overlap. Volusia County does not have a system in its southeastern area of the county, and the closest county system is over 10 miles away. Volusia County also does not have any plans for service to the Farmton area. Mr. Hartman stated that the Brevard and Volusia County ordinances and their active utility service areas do not apply in this case. Mr. Hartman points out that while witnesses from Brevard, Titusville, and Volusia have suggested their ability to provide service as and when there is need to this area, none proposed to provide the raw water, fire protection or potable water service to Farmton. None have planned to

serve the area, none have the availability to serve the area, and none have budgeted to serve the area.

In East Central, we addressed the issue of competition or duplication of proposed systems, stating:

> We cannot determine whether a proposed system will be in competition with or a duplication of another system when such other system does not exist. We do not believe Section 367.045(5)(a), Florida Statutes, requires this Commission 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.

Order No. PSC-92-0104-FOF-WU, at p. 22

Based on the testimony provided by Brevard and Volusia County, and the City of Titusville, those entities do not have existing facilities within the proposed Farmton service territory. Although Volusia County indicated that it is prepared to serve the Farmton territory if a need is demonstrated, no testimony was provided to show that it has the capacity or plans to do so. The nearest Brevard County water facility, Mims, is two miles away, but is exceeding its CUP. Titusville's service area is five miles away from Farmton's proposed service area. In addition, none of the intervenors adequately addressed the need for raw water, fire protection, or retail potable water service. When considering the three services, we believe that the utility has shown that it can best provide the required water service in its proposed service territory in both Brevard and Volusia Counties. Miami Corporation is already providing a limited amount of water to the hunt club as well as several other Miami Corporation facilities.

While both Volusia and Brevard Counties testified that they would serve or have a right to provide water service throughout each of their respective counties, these statements of intent are insufficient to demonstrate that Farmton's proposal would be in competition with, or duplication of those systems. Consistent with our findings in East Central, since the intervenors have not demonstrated that they have existing facilities in place to serve Farmton, we find that the utility's application complies with section 367.045(5)(a), Florida Statutes, in that it will not be in competition with, or duplication of any other system.

FINANCIAL ABILITY

Section 367.045(1)(b), Florida Statutes, and Rule 25-30.033(1)(e), Florida Administrative Code, require a statement showing the financial ability of the applicant to provide service. Farmton believes it has demonstrated its financial ability to serve. Titusville and Brevard believe that Farmton has not. Volusia has taken no position.

According to Farmton's application, Farmton is a limited liability corporation, incorporated in Delaware on February 26, 2002, and registered to do business in Florida on March 20, 2002. Because Farmton is a limited liability corporation, it has no corporate officers or directors. Farmton's application further states that Farmton Management LLC is its sole member and owner. Farmton Management LLC is owned by the Miami Corporation, which has owned and managed the land and water resources in Farmton's proposed service area for over 75 years.

In its application, Farmton indicated that because it cannot receive utility revenue from existing customers until this Commission approves its rates and charges, there is no detailed balance sheet, statement of financial condition, or operating statement available for Farmton. Instead, Farmton filed financial statements for Farmton Management LLC which indicate that Farmton Management LLC had $1,247,917 of member capital as of March 31, 2004.

The original financial statement for Farmton Management LLC was accompanied by an affidavit from Farmton Management LLC which indicated that it will provide or assist Farmton in securing necessary funding to meet all reasonable capital needs and any operating deficits on an as and when needed basis. Since Farmton Management LLC's assets come from its member's capital, our staff requested that Farmton provide a similar pledge of financial support from the Miami Corporation. Farmton Witness Underhill provided an affidavit to that effect. Mr. Underhill is Vice President of Operations for Farmton. He has also been Director of Operations of the Farmton property for the Miami Corporation for the last 25 years. Mr. Underhill further testified that the basis for his position that the Miami Corporation has the ability to provide for any of Farmton's capital needs is the value of the land which Miami Corporation owns free and clear. In addition, Mr. Underhill testified that Farmton has no expectations of any need for capital improvements, as there is no anticipated development of any significance within the proposed service territory. The only possibility of significant capital expenditures is for bulk raw water services. However, under Farmton's proposed service availability policy, a substantial amount of the capital cost will be paid by the proposed customer. Mr. Underhill believes that if any additional capital costs exist, those costs can easily be met from funding provided by Farmton's parent.

In its Brief, Farmton stated that none of the intervenors provided any evidence at hearing in support of the position that Farmton has not established financial ability. In its Brief, Titusville did not factually dispute that Farmton had financial ability. Instead, Titusville argued that Farmton's filing on financial ability was deficient because:

(1) Farmton did not provide a detailed financial statement required by Rule 25-30.033(1)(r), Florida Administrative Code, even though it has been in existence for over a year;
(2) Rule 25-30.033(1)(r), Florida Administrative Code, does not allow for the substitution of a parent's financial statement for that of the utility;

(3) The one page summary of Farmton Management LLC's assets and liabilities is not sufficiently detailed to make a determination of financial ability; and

(4) The affidavits of support provided by Farmton's parents are not competent evidence because they are hearsay and not enforceable.

In support of Titusville's argument that the one page summary of the assets and liabilities of Farmton's parent company is not sufficiently detailed for us to determine whether Farmton, or its parent, has the financial ability to operate the water systems proposed in the application in a safe and reliable manner, it cited Order No. PSC-01-0992-PAA-WU, issued April 20, 2001, in Docket No. 001049-WU, In Re: Application for original water certificate in Charlotte County by Little Gasparilla Water Utility, where we conducted a detailed review of a recent tax return, balance sheet, and profit and loss statement.

The requirement for a showing of financial ability for Farmton's application falls under Rule 25-30.033(1)(e), Florida Administrative Code, not Rule 25-30.033(1)(r), Florida Administrative Code. With respect to the detailed financial statement required by Rule 25-30.033(1)(r), Farmton's application contained a statement that it has no detailed balance sheet, statement of financial condition, or operating statement because it cannot charge for service until we approve its rates and charges. Although at least one fiscal year has passed since Farmton was established, Farmton's authority to charge for service is still pending before us.

With respect to the substitution of a parent's financial statement for that of the utility, it has been our practice to accept a statement of the parent's financial ability in original certificate cases where the utility has not yet established a financial history.[3] In addition, we have traditionally recognized the vested interest of a parent in the financial stability of the utility.[4] Farmton provided a statement of assets and liabilities of Farmton Management LLC which indicated that the parent has sufficient assets, without debt, to cover over half of the capital cost of constructing the utility facilities. In addition, Witness Underhill testified that the value of the land, which Miami Corporation owns free and clear, should demonstrate that it has the financial ability to provide for any of Farmton's capital needs.

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[3] See, Order No. PSC-02-0179-FOF-WS, issued February 11, 2002, in Docket No. 010859-WS, In re: Application for original certificate to operate water and wastewater utility in Sumter County by North Sumter Utility Company, L.L.C., and Order No. PSC-01-1916-FOF-WS, issued September 24, 2001, in Docket No. 990696-WS, In re: Application for original certificates to operate a water and wastewater utility in Duval County and St. Johns Counties by Nocatee Utility Corporation

[4] See, Order PSC-03-0787-FOF-WS, issued July 2, 2003, in Docket No. 020991-WS, In re: Application for transfer of majority organizational control of Service Management Systems, Inc., holder of Certificates Nos. 517-W and 450-S in Brevard County, from Petrus Group, L.P. to IRD Osprey, LLC d/b/a Aquarina Utilities, and Order PSC-03-0518-FOF-WS, issued April 18, 2003, in Docket No. 020382-WS, In re: Application for transfer of facilities and Certificate Nos. 603-W and 519-S in Polk County from New River Ranch, L.C. d/b/a River Ranch to River Ranch Water Management, LLC.

Rule 25-30.033(1)(e) is silent on the specific information necessary for a showing of financial ability. In the order cited by Titusville, the evidence of financial ability was a corporate tax return along with a balance sheet and profit and loss statement for a utility that was already in existence and charging rates. As previously stated, Farmton has provided an explanation why it does not yet have a financial statement.

In its brief, Titusville asserts that the affidavits of Farmton's parent companies are not competent evidence of a commitment to provide financial support to Farmton. Therefore, Titusville asserts that the affidavits cannot be used as evidence of the matters asserted in the documents because hearsay evidence cannot be considered except to corroborate other non-hearsay evidence. Titusville argues that Farmton failed to offer any non-hearsay evidence of financial commitments by its parent companies. The affidavits corroborate Farmton Witness Underhill's testimony at the hearing. Mr. Underhill, employed by Miami Corporation as the Director of Operations for Farmton, provided testimony that Farmton does have the financial ability to provide service and stated that Farmton Management, LLC has ample resources to fund the utility's needs and has pledged to do so.

As noted, Brevard's position is that Farmton Water Resources, LLC is a limited liability company with no directors or officers and it has produced no financial statements or tax returns. The only evidence on financial ability is a third party's representation that Farmton would receive financial backing. We agree with Brevard that Farmton is a limited liability company. With respect to Brevard's remaining statements, we believe that they have been addressed above.

Based upon the financial statement provided for Farmton Management LLC, the pledges of financial support by Farmton's parent and grandparent, and the corporate longevity and holdings of the Miami Corporation, we find that Farmton has demonstrated the financial ability to serve the requested territory.

TECHNICAL ABILITY

Section 367.045(1)(b), Florida Statutes, and Rule 25-30.033(1)(e), Florida Administrative Code, require a utility applying for an original certificate to provide information showing that it has the technical ability to provide service in the area requested. Technical ability usually refers to the utility's operations and management abilities, and whether it is capable of providing service to the development in question.

Farmton witnesses Underhill, Drake, and Hartman testified that Farmton has the technical ability to provide the service proposed in its application. In addition to Mr. Underhill's extensive experience in managing water resources and knowledge of those issues, the services of Hartman & Associates, as consulting engineers, and other regulatory experts will be enlisted to assist in operating the utility. The same personnel who have operated the water facilities for many years in the past will continue to operate those in the future, simply working for the utility instead of

the landowner. The utility will employ competent, experienced persons in utility areas for those purposes. Farmton believes that since there was no evidence to the contrary, we should find that it has sufficient technical ability to serve the requested territory.

Titusville believes that there is not competent substantial evidence that Farmton has the technical ability to operate the utility in a manner that will provide safe and reliable water service. According to the evidence, Farmton's only experience is with agricultural operations. It has no experience with the types of potable water facilities identified in the application. Farmton's vice president of operations has no experience managing a public water utility. Pursuant to Ordinance 03-032, Brevard County believes that by failing to apply to the District board for consent and construction plan approval, we cannot find that Farmton has the technical ability to provide potable water service. Volusia County takes no position.

The utility has represented that it will employ competent, experienced persons for the technical purposes of operating a utility. With the continued services of Hartman and Associates, coupled with the existing experience of the Farmton employees, we see no indication that a high level of technical ability cannot be maintained by the utility. Also, as previously stated, certification does not deprive the counties of any authority. This includes Brevard County's use of Ordinance No. 03-032 to approve the construction of a water or sewer system. We have no reason to believe that the utility will not adhere to that ordinance when it is appropriate for it to do so. Therefore, we find that the utility has the existing and potential technical ability to serve all the needs of the requested territory. This is consistent with our decisions in other original certificate applications.[5]

PLANT CAPACITY

Farmton believes that the application and the testimony of its witnesses clearly demonstrate that it has sufficient capacity in the existing or proposed facilities, and that there was no evidence to the contrary. According to Farmton's application, the retail potable water treatment facilities will be located near the proposed customers. One existing well will be used for retail service and six will be constructed. The facilities necessary for the provision of the fire protection water supply will consist of two existing, and the development and construction of 10 additional, fire protection wells. The utility believes that these wells, which will be strategically located throughout the service area, will enhance the fire fighting capabilities for Miami Corporation. During Phase I, the utility plans for the development and construction of seven bulk raw water supply wells and the associated equipment and water transmission mains. Eight additional water supply wells will be constructed during Phase II. The bulk raw water service will consist of pumping water from wells and delivering it to the entities in need of such water

[5] PSC-02-0179-FOF-WS, issued February 11, 2002, in Docket No. 010859-WS, In re: Application for original certificate to operate a water and wastewater utility in Sumter County by North Sumter Utility Company, L.L.C.; PSC-96-0124-FOF-WU, issued January 24, 1996, in Docket No. 950120-WU, In re: Application for certificate to provide water service in Manatee and Sarasota Counties by Braden River Utilities, Inc.

for treatment to potable drinking water standards. Farmton anticipates that nearby water utilities will be in need of additional bulk raw water. Farmton witnesses Drake and Hartman contend that the application and supporting documents reflect that Farmton has the capacity to serve all of the needs for existing services and are in the best position to obtain additional capacity needed for the other proposed services.

Titusville points out that Farmton has requested this Commission to certificate a 50,000 acre territory. However, the wells proposed are small and not interconnected, and therefore will not provide sufficient capacity to serve the territory. Brevard County believes that there is no dispute that Brevard County has enacted Ordinance 03-32 creating a water and sewer district, and that Farmton has not applied to the District for consent to construct facilities. Volusia County took no position in the matter.

We find Farmton's position persuasive. Mr. Hartman testified that Farmton either has or is taking appropriate measures to ensure sufficient plant capacity to provide the proposed service. Pursuant to section 367.031, Florida Statutes, a utility must obtain a certificate of authorization from the Commission prior to being issued a permit by the DEP for the construction of a new water or wastewater facility or prior to being issued a consumptive use or drilling permit by a water management district. We believe that Farmton is correct in pursuing a PSC certificate prior to approaching the DEP, WMD, Brevard County, or any other entity that may require authorization to construct the facilities necessary to provide water service. We believe that the utility has shown that it is has the financial and technical ability to efficiently provide sufficient existing and potential capacity for all services needed in the proposed service area. In reference to Brevard County's Ordinance 03-032, it was previously noted that certification does not deprive the counties of any authority they have to oversee urban sprawl on the Farmton properties. This includes Brevard County's use of Ordinance No. 03-032 to approve the construction of a water or sewer system. We believe that the utility will adhere to that ordinance when it is appropriate for it to do so. Therefore, we find that Farmton has sufficient existing and potential capacity for all services needed in the proposed service area.

LAND

Rule 25-30.033(1)(j), Florida Administrative Code, requires evidence that the utility owns the land upon which the utility treatment facilities are, or will be, located or a copy of an agreement which provides for the continued use of the land. Parties have stipulated, noting that Volusia, Brevard, and Titusville took no position, that Farmton has provided evidence that it has continued use of the land upon which the utility treatment facilities are or will be located. Accordingly, the utility shall file an executed and recorded copy of its lease with the Miami Corporation by October 21, 2004.

NOTICING AND FILING REQUIREMENTS

Rules 25-30.030 and 25-30.033, Florida Administrative Code, set forth the filing and noticing requirements for this Application. Farmton contends that Witness Hartman provided testimony concerning the noticing requirements of our rules and specifically stated that Farmton's noticing complies with the rules and statutes. Titusville asserts that Farmton failed to meet the filing requirements by filing incomplete and incorrect information. According to Titusville, it is difficult to understand the service Farmton proposes because Farmton has prepared many exhibits changing its proposed service, but has never amended its Application. While it is true that Farmton filed multiple exhibits changing its proposed service, there is no rule requirement that Farmton amend its application. Titusville further asserts that Farmton failed to provide any credible evidence of need, any financial statement, proof of financial ability, proof of technical ability, and proof of public interest. We disagree. Based on the evidence in the record, Farmton has provided this information in accordance with our rules. Accordingly, we find that Farmton has met the filing and noticing requirements set forth in Rules 25-30.030 and 25-30.033, Florida Administrative Code.

GRANTING OF CERTIFICATE NO. 622-W

Based on the above, we find that Farmton has demonstrated: 1) that there is a need for service; 2) that the application will not be in competition with, or duplication of, any other system; and 3) that it has the financial and technical ability to provide for service along with the ability to pursue the steps necessary to obtain sufficient plant capacity. In addition, we believe that granting of a certificate to Farmton will not deprive the counties of their ability to control development under their comprehensive plans or ordinances. As such, we find that Farmton has proven that its application is in the public interest. Accordingly, Certificate No. 622-W shall be issued to Farmton Water Resources LLC to serve the territory described in Attachment A, attached hereto, and to charge the rates approved herein.

RETURN ON EQUITY

Rule 25-30.033(3), Florida Administrative Code, provides that the return on common equity be established using the current equity leverage formula established by order of the Commission pursuant to section 367.081(4), Florida Statutes, unless there is competent substantial evidence supporting the use of a different return on common equity. Farmton has projected a capital structure of 40% equity and 60% debt. Therefore, we find a return on equity for Farmton of 11.40%, with a range of plus or minus 100 basis points, is consistent with the current leverage graph formula found in Order No. PSC-04-0587-PAA-WS and a 40% equity ratio, and is hereby approved.

RATES AND CHARGES

Pursuant to Rule 25-30.033, Florida Administrative Code, Farmton filed proposed initial rates for retail potable, fire protection, and bulk raw water. None of the parties have disputed the

actual rates and charges. Instead, Titusville disputes the need for the rates and charges. Brevard and Volusia Counties have taken no position.

Rate Base Farmton's projected rates are based on the rate base calculations shown on Schedule No. 1. The projected rate base for retail potable water, fire protection, and bulk raw water services is $7,616, $495, and $1,773,568, respectively, based on the utility's projected costs at 80% of the design capacity of Phases I and II, which is expected to be reached in 2009 or eight years from start-up.

We find that Farmton's projected rate base for retail potable water, fire protection, and bulk raw water services are reasonable and are hereby approved. Projected rate base is established only as a tool to aid us in setting initial rates and is not intended to formally establish rate base.

Cost of Capital Farmton's projected capital structure, shown on Schedule 2, consists of 40% equity and 60% debt. Farmton had originally proposed cost of capital of 9.00% based on a return on equity of 11.10%. As previously discussed, return on equity is 11.40% pursuant to the current leverage graph formula in Order No. PSC-04-0587-PAA-WS. The utility's projected cost of debt is 7.60%, which we find to be reasonable. As such, we find that the utility's initial rates shall reflect an overall cost of capital of 9.12% based on 40% equity at 11.40% and 60% debt at 7.60%.

Return on Investment The projected return on investment is shown on Schedule 3 as net operating income. Based on the projected rate base for each system in Schedule 1 and the projected overall cost of capital of 9.12%, we find that the return on investment for retail potable water, fire protection, and bulk raw water shall be $695, $45, and $161,749, respectively.

Revenue Requirements The projected revenue requirement, operating and maintenance expenses, depreciation and amortization, and taxes other than income are shown on Schedule 3. The utility's proposed operating and maintenance expenses at 80% of design capacity, including purchased power, contractual services, and rent royalties for use of the land, appear reasonable. As a limited liability company, Farmton has no income tax expense. Therefore, revenue requirements for retail potable water, fire protection, and bulk raw water services of $8,164, $4,192, and $553,403, respectively, are reasonable and are hereby approved.

Rates and Rate Structure The approved rates for retail potable water, fire protection and bulk raw water service, shown on Schedule 4, are based on the utility's proposed revenue requirements, adjusted to reflect the return on equity. The approved monthly retail potable water rates for residential and general service customers include a base facility charge based on meter size and a uniform charge per 1,000 gallons of usage. Farmton's Exhibit 41 included a separate base facility charge of $83.00 per month for each 2 inch well used by the hunt camp based on expected demand at each well. Farmton Witness Hartman clarified that it was Farmton's intent

to bill based on meter size and not ERCs. Therefore, we find that the hunt camp customers shall be billed using the base facility charge based on meter size, and not a charge based on demand (per ERC). The proposed rates for fire protection include a monthly base facility charge per well. The proposed bulk raw water rate structure includes an annual base charge per 0.5 MGD of committed capacity, a take or pay gallonage charge per 1,000 gallons of committed capacity, and a gallonage charge for usage above the committed capacity.

Miscellaneous Service Charges Rule 25-30.460, Florida Administrative Code, defines four categories of miscellaneous service charges. Farmton's proposed miscellaneous service charges, shown on Schedule 4, are consistent with this rule and are hereby approved.

Farmton shall file revised tariff sheets containing the rates and charges approved herein by October 21, 2004. The tariff shall be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475, Florida Administrative Code. Farmton is hereby put on notice that it shall charge the rates and charges in its approved tariff until authorized to change by the Commission.

SERVICE AVAILABILITY CHARGES

Pursuant to Rule 25-30.580(1), Florida Administrative Code, the maximum amount of contributions-in-aid-of-construction, net of amortization, should not exceed 75% of the total original cost, net of depreciation, of the utility's facilities and plant when the facilities and plant are at their designed capacity.

Farmton believes the appropriate service availability charges are those contained in Exhibit 3. Titusville believes that the service availability charges in Farmton's initial application are inappropriate because Farmton never sought to include the changes in Exhibit 41 in its application. Brevard and Volusia have no position.

Farmton originally requested approval of the following service availability charges

Service	System Capacity Charge	CIAC Level
Retail potable, per ERC (350 GPD)	$ 356.65	75%
Fire protection, per well	$2,640.00	100%
Bulk raw water, per ERC (350 GPD)	$ 421.51	60%
per Gallon	$ 1.2044	

Retail Potable Service

Farmton's proposed system capacity charge for retail potable water service of $356.65 per ERC is based on the estimated capital costs for construction of its retail potable water wells and associated facilities. Farmton's proposed service availability policy and charges will result in contributions-in-aid-of-construction (CIAC) for retail potable water service in the amount of 75% of its capital cost. According to its proposed service availability policy, Farmton will be responsible for the construction and ownership of all proposed water facilities, including all wells, treatment, and distribution facilities up to the point of delivery of service to the customer.

Fire Protection

Farmton's proposed system capacity charge for fire protection service of $2,640 per well is based on the estimated capital costs for the construction of the wells and associated facilities. Farmton proposes to recover 100% of the cost of its fire protection facilities through CIAC. According to its proposed service availability policy, Farmton will be responsible for construction and ownership of all proposed fire protection wells and facilities up to the point of delivery of service to the customer.

Bulk Raw Water

Farmton's proposed system capacity charge for bulk raw water service of $421.51 per ERC ($1.20443 per gallon) is based on the estimated capital costs for its bulk raw water wells and facilities. Farmton proposes to collect 60% of its capital costs in CIAC. According to its proposed service availability policy, Farmton will be responsible for construction and ownership of all wells and facilities up to the point of delivery of service to the customer. The point of delivery for raw bulk water is described to be at the boundary of Farmton's service territory. The customer will be responsible for construction and ownership of all facilities beyond the point of delivery.

Titusville has taken the position that Farmton's service availability charges are inappropriate because it never sought to amend its application to include the revisions in Exhibit 41. Farmton argued that Titusville did not provide any evidence or witness, nor did it elicit any evidence on cross-examination in support of its position that Farmton's service availability charges were inappropriate.

We believe that neither Exhibit 38 nor Exhibit 41 modify Farmton's proposed service availability charges. Exhibit 38 redistributed the capital costs for retail potable service based upon a different meter configuration than originally proposed. However, the total capital cost upon which service availability charges were calculated remained unchanged. Exhibit 41 removed income tax expense from the revenue requirement, but the capital costs and ERCs used to calculate service availability charges were not changed.

Although the proposed system capacity charge for fire protection is designed to allow Farmton to recover 100% of its capital investment associated with those assets, Farmton also

proposes to limit the collection of CIAC to 60% of its investment in bulk raw water facilities. In the aggregate, Farmton's projected CIAC level at design capacity for retail potable water, fire protection, and bulk raw water facilities is expected to be approximately 60%.

Accordingly, we find that Farmton's proposed service availability policy and charges as set forth herein are consistent with the guidelines of Rule 25-30.580, Florida Administrative Code, and are hereby approved. The charges shall be effective for connections made on or after the stamped approval date on the tariff sheets.

ALLOWANCE FOR FUNDS USED DURING CONSTRUCTION (AFUDC)

Rule 25-30.033(4), Florida Administrative Code, allows utilities obtaining initial certificates to accrue allowance for funds used during construction (AFUDC) for projects found eligible pursuant to Rule 25-30.116(1), Florida Administrative Code.

The leverage graph formula in Order No. PSC-04-0587-PAA-WS generates a return on equity of 11.40% at Farmton's proposed 40% equity ratio. This return on equity results in an annual AFUDC rate of 9.12% and a discounted monthly rate of 0.7596837%. We find that these rates are hereby approved and shall apply to the qualified construction projects beginning on or after the date the certificate of authorization is issued.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Farmton Water Resources LLC's application for an original water certificate is hereby granted to serve the territory set forth in Attachment A. It is further

ORDERED that Certificate No. 622-W shall be issued to Farmton Water Resources LLC, 1625 Maytown Road, Osteen, Florida, 32764. It is further

ORDERED that all matters contained herein, whether set forth in the body of this Order or in the schedules attached hereto are incorporated herein by reference. It is further

ORDERED that Farmton Water Resources LLC initial rates and charges shall be those set forth in the body of this Order. It is further

ORDERED that a return of equity of 11.40%, with a range of plus or minus 100 basis points, is hereby approved for Farmton Water Resources LLC. It is further

ORDERED that Farmton Water Resources LLC shall file tariffs which reflect the rates and charges approved in this Order. It is further

ORDERED that an allowance for funds used during construction for Farmton Water Resources LLC of 9.12% and a monthly discounted rate of 0.7596837% shall be applied to qualified construction projects beginning on the date the certificate of authorization is issued. It is further

ORDERED that Farmton Water Resources LLC shall file revised tariff sheets containing the approved rates and charges by October 21, 2004. It is further

ORDERED that Farmton Water Resources LLC shall file an executed and recorded copy of its lease with Miami Corporation by October 21, 2004. It is further

ORDERED that the rates and charges set forth herein shall be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, Florida Administrative Code. It is further

ORDERED this docket shall be closed administratively after the time for filing an appeal has run, upon verification that the utility has filed an executed and recorded copy of its lease, and upon the filing and approval of the revised tariff sheets.

By ORDER of the Florida Public Service Commission this 8th day of October, 2004.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(SEAL)

KEF

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

ATTACHMENT A

Farmton Water Resources, LLC.
Water Territory

TOWNSHIP 18 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA

ALL OF SECTIONS 13 AND 14
THE EAST 1/2 OF SECTIONS 15 AND 22
ALL OF SECTIONS 23, 24, 25, 26, 27, 28, 31, 32, 33, 34, 35 AND 36.

TOWNSHIP 19 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA

ALL OF SECTIONS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29

LESS AND EXCEPT THE SOUTHWEST ¼ OF THE SOUTHWEST ¼ OF THE SOUTHWEST ¼ OF SECTION 5

LESS AND EXCEPT THE EAST ½ OF THE SOUTHWEST ¼ OF THE NORTHWEST ¼; AND THE SOUTHWEST ¼ OF THE SOUTHWEST ¼ OF THE SOUTHWEST ¼ OF SECTION 6

LESS AND EXCEPT THE WEST ½ OF THE NORTHWEST ¼ OF THE SOUTHWEST ¼; AND THE WEST ½ OF THE EAST ½ OF THE SOUTHWEST ¼ OF THE SOUTHWEST ¼; AND THE EAST ¾ OF THE NORTHEAST ¼ OF THE SOUTHWEST ¼; AND THE WEST ½ OF THW SOUTHWEST ¼ OF THE SOUTHEAST ¼; AND THE WEST ¾ OF THE NORTHWEST ¼ OF THE SOUTHEAST ¼; AND THE WEST ¼ OF THE NORTHEAST ¼ OF THE SOUTHEAST ¼; AND THE WEST ¼ OF THE SOUTHEAST ¼ OF THE NORTHEAST ¼; AND THE EAST ½ OF THE SOUTHWEST ¼ OF THE NORTHEAST ¼ OF SECTION 7

LESS AND EXCEPT THE EAST ½ OF THE SOUTHWEST ¼ OF THE SOUTHEAST ¼; AND THE EAST ½ OF THE WEST ½ OF THE SOUTHEAST ¼ OF THE SOUTHEAST ¼; AND THE SOUTHEAST ¼ OF THE SOUTHEAST ¼ OF THE SOUTHEAST ¼ OF SECTION 8

LESS AND EXCEPT THE NORTH ½ OF THE NORTHEAST ¼ OF SECTION 16

LESS AND EXCEPT THAT PART OF SECTION 18 DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHWEST CORNER OF SECTION 18, TOWNSHIP 19 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY FLORIDA; THENCE RUN N.89°23'07"E., FOR A DISTANCE OF 1,486.51 FEET; THENCE RUN S.01°21'39"E., FOR A DISTANCE OF 515.09 FEET TO THE POINT OF BEGINNING; THENCE RUN S.89°33'37"E., FOR A DISTANCE OF 521.14 FEET; THENCE RUN S.00°32'06"W., FOR A DISTANCE OF 150.63 FEET; THENCE RUN S.89°20'51"W., FOR A DISTANCE OF 515.94 FEET; THENCE RUN N.01°21'39"W., FOR A DISTANCE OF 160.55 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THAT PART OF SECTION 18 DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHWEST CORNER OF SECTION 18, TOWNSHIP 19 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY FLORIDA; THENCE RUN N.89°23'07"E., FOR A DISTANCE OF 1,487.87 FEET; THENCE RUN S.00°44'27"E., FOR A DISTANCE OF 253.23 FEET TO THE POINT OF BEGINNING; THENCE

ATTACHMENT A

RUN N.89°51'24"E., FOR A DISTANCE OF 50.00 FEET; THENCE RUN S.00°44'47"E., FOR A DISTANCE OF 100.76 FEET; THENCE RUN S.88°59'51"W., FOR A DISTANCE OF 50.01 FEET; THENCE RUN N.00°44'27"W., FOR A DISTANCE OF 101.51 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THAT PART OF SECTION 18 DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHWEST CORNER OF SECTION 18, TOWNSHIP 19 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY FLORIDA; THENCE RUN N.89°23'07"E., FOR A DISTANCE OF 1,643.36 FEET; THENCE RUN S.00°52'09"E., FOR A DISTANCE OF 1,185.77 FEET TO THE POINT OF BEGINNING; THENCE RUN N.89°16'13"E., FOR A DISTANCE OF 49.07 FEET; THENCE RUN S.00°40'06"E., FOR A DISTANCE OF 99.13 FEET; THENCE RUN S.89°33'32"W., FOR A DISTANCE OF 48.72 FEET; THENCE RUN N.00°52'09"W., FOR A DISTANCE OF 98.89 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THAT PART OF SECTION 18 DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHWEST CORNER OF SECTION 18, TOWNSHIP 19 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY FLORIDA; THENCE RUN N.89°23'07"E., FOR A DISTANCE OF 1,704.56 FEET; THENCE RUN S.00°20'35"E., FOR A DISTANCE OF 1,482.69 FEET TO THE POINT OF BEGINNING; THENCE RUN N.89°18'56"E., FOR A DISTANCE OF 52.32 FEET; THENCE RUN S.01°22'15"E., FOR A DISTANCE OF 99.28 FEET; THENCE RUN S.89°28'14"W., FOR A DISTANCE OF 54.10 FEET; THENCE RUN N.00°20'35"W., FOR A DISTANCE OF 99.13 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THAT PART OF SECTION 18 DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHWEST CORNER OF SECTION 18, TOWNSHIP 19 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY FLORIDA; THENCE RUN N.89°23'07"E., FOR A DISTANCE OF 1,916.36 FEET; THENCE RUN S.00°55'35"E., FOR A DISTANCE OF 883.67 FEET TO THE POINT OF BEGINNING; THENCE RUN N.89°29'23"E., FOR A DISTANCE OF 70.19 FEET; THENCE RUN S.00°50'18"E., FOR A DISTANCE OF 100.39 FEET; THENCE RUN S.89°23'11"W., FOR A DISTANCE OF 70.04 FEET; THENCE RUN N.00°55'35"W., FOR A DISTANCE OF 100.51 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THAT PART OF SECTION 18 DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHWEST CORNER OF SECTION 18, TOWNSHIP 19 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY FLORIDA; THENCE RUN N.89°23'07"E., FOR A DISTANCE OF 2,099.62 FEET; THENCE RUN S.01°01'27"E., FOR A DISTANCE OF 763.77 FEET TO THE POINT OF BEGINNING; THENCE RUN N.89°29'50"E., FOR A DISTANCE OF 71.22 FEET; THENCE RUN S.01°01'23"E., FOR A DISTANCE OF 105.02 FEET; THENCE RUN S.89°35'52"W., FOR A DISTANCE OF 71.22 FEET; THENCE RUN N.01°01'27"W., FOR A DISTANCE OF 104.89 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THAT PART OF SECTION 18 DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHWEST CORNER OF SECTION 18, TOWNSHIP 19 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY FLORIDA; THENCE RUN N.89°23'07"E., FOR A DISTANCE OF 2,343.64 FEET; THENCE RUN S.01°14'33"E., FOR A DISTANCE OF 1,359.09 FEET TO THE POINT OF BEGINNING; THENCE RUN N.89°11'54"E., FOR A DISTANCE OF 53.60 FEET; THENCE RUN S.00°38'10"E., FOR A DISTANCE OF 104.13 FEET; THENCE RUN S.89°35'27"W., FOR A DISTANCE OF 52.50 FEET; THENCE RUN N.01°14'33"W., FOR A DISTANCE OF 103.77 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THAT PART OF SECTION 18 DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHWEST CORNER OF SECTION 18, TOWNSHIP 19 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY FLORIDA; THENCE RUN N.89°23'07"E., FOR A DISTANCE OF 3,011.48 FEET; THENCE RUN S.01°14'00"E., FOR A DISTANCE OF 1,059.93 FEET TO THE POINT OF BEGINNING; THENCE

ATTACHMENT A

RUN N.89°11'46"E., FOR A DISTANCE OF 98.01 FEET; THENCE RUN S.00°53'04"E., FOR A DISTANCE OF 105.26 FEET; THENCE RUN S.89°37'56"W., FOR A DISTANCE OF 97.38 FEET; THENCE RUN N.01°14'00"W., FOR A DISTANCE OF 104.52 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THE WEST ½ OF THE SOUTHWEST ¼; AND THE SOUTHWEST ¼ OF THE NORTHWEST ¼ OF SECTION 19

LESS AND EXCEPT THE EAST ½ OF THE NORTHEAST ¼ OF THE NORTHEAST ¼ OF SECTION 20

LESS AND EXCEPT A PORTION OF SECTION 21, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHEAST CORNER OF SECTION 21, TOWNSHIP 19 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA; THENCE RUN S.01°54'33"E., ALONG THE EAST LINE OF SAID SECTION 21 FOR A DISTANCE OF 996.18 FEET; THENCE RUN S.01°54'21"E., FOR A DISTANCE OF 364.58 FEET TO THE POINT OF BEGINNING; THENCE RUN S.01°54'36"E., FOR A DISTANCE OF 1,325.86 FEET; THENCE DEPARTING SAID EAST LINE, RUN S.89°30'18"W., FOR A DISTANCE OF 1,316.67 FEET; THENCE RUN N.02°18'23"W., FOR A DISTANCE OF 266.34 FEET; THENCE RUN S.89°42'43"W., FOR A DISTANCE OF 497.23 FEET; THENCE RUN N.01°57'48"W., FOR A DISTANCE OF 1,047.99 FEET; THENCE RUN N.89°11'44"E., FOR A DISTANCE OF 1,816.46 FEET TO A POINT IN THE AFOREMENTIONED EAST LINE AND THE POINT OF BEGINNING.

LESS AND EXCEPT THE WEST ½ OF THE SOUTHWEST ¼ OF THE SOUTHWEST ¼ OF THE NORTHEAST ¼ OF SECTION 22

LESS AND EXCEPT THE EAST 12 CHAINS OF THE SOUTH 10 CHAINS OF THE NORTHEAST ¼ OF THE NORTHWEST ¼; AND THE SOUTHEAST ¼ OF THE NORTHWEST ¼; AND THE SOUTHWEST ¼ OF THE NORTHEAST ¼ OF SECTION 23

LESS AND EXCEPT THE WEST ½ OF THE NORTHWEST ¼ OF THE NORTHEAST ¼ OF SECTION 27

TOGETHER WITH THE EAST ½; THE EAST ½ OF THE NORTHWEST ¼; AND ALL THAT PART OF THE SOUTHWEST ¼ OF SECTION 30, LYING EAST OF THE ST. JOHNS RIVER

TOGETHER WITH ALL OF THAT PART OF THE NORTHEAST ¼ LYING NORTH OF THE ABANDONED FLORIDA EAST COAST RAILROAD; THE NORTHEAST ¼ OF THE NORTHWEST ¼; AND THE SOUTH 13.67 CHAINS OF THE SOUTHEAST ¼ OF THE NORTHWEST ¼ LYING NORTH AND EAST OF THE RIVER IN SECTION 31

TOGETHER WITH ALL OF SECTIONS 32, 33, 34 AND 35 LYING NORTH OF THE ABANDONED FLORIDA EAST COAST RAILROAD RIGHT-OF-WAY

LESS AND EXCEPT THE SOUTHWEST ¼ OF THE NORTHEAST ¼ OF SECTION 34 LYING NORTH OF THE ABANDONED FLORIDA EAST COAST RAILROAD RIGHT-OF-WAY

ALL OF SECTION 36.

ATTACHMENT A

TOWNSHIP 20 SOUTH, RANGE 33 EAST VOLUSIA COUNTY, FLORIDA

ALL OF SECTIONS 1, 12, 13 AND 24

TOWNSHIP 19 SOUTH, RANGE 34 EAST, VOLUSIA COUNTY, FLORIDA

ALL OF SECTIONS 5, 6, 7, 8, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, AND 33

LESS AND EXCEPT THE WEST ½ OF THE SOUTHEAST ¼ OF THE NORTHWEST ¼; AND THAT PART OF THE SOUTHEAST ¼ OF THE SOUTHEAST ¼ OF THE NORTHWEST ¼ LYING WITHIN THE RAILROAD RIGHT-OF-WAY; AND THAT PART OF THE SOUTHEAST ¼ OF THE SOUTHWEST ¼ LYING NORTH OF THE SOUTHERLY RAILROAD RIGHT-OF-WAY LINE; AND THE SOUTHWEST ¼ OF THE SOUTHEAST ¼ OF SECTION 30

TOWNSHIP 20 SOUTH, RANGE 34 EAST, BREVARD COUNTY, FLORIDA

ALL OF SECTION 4, 5, 6, 7, 8, 17, 18, 19 AND 20

TOWNSHIP 20 SOUTH, RANGE 34 EAST AND TOWNSHIP 21 SOUTH, RANGE 34 EAST, BREVARD COUNTY, FLORIDA; AND TOWNSHIP 21 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA

ALL OF SECTIONS 6, 7, 8, 10, 11, 12, 25, 26, 27; A PORTION OF SECTION 13 AND 24 VOLUSIA COUNTY AND A PORTION OF SECTION 37 OF THE PLAT OF INDIAN RIVER PARK SUBDIVISION OF THE BERNARDO SEQUI GRANT RECORDED IN PLAT BOOK 2, PAGE 33 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS.

BEGINNING AT THE SOUTHEAST CORNER OF SECTION 20, TOWNSHIP 20 SOUTH, RANGE 34 EAST THENCE N78°15'40"E, A DISTANCE OF 2,203.90 FEET; THENCE S18°04'14"E, A DISTANCE OF 5,203.03 FEET; THENCE S78°28'51"W, A DISTANCE OF 650.12 FEET; THENCE S18°04'14"E, A DISTANCE OF 650.06 FEET; THENCE N78°28'51"E, A DISTANCE OF 650.12 FEET; THENCE S18°04'14"E, A DISTANCE OF 650.06 FEET; THENCE S78°28'51"W, A DISTANCE OF 1,300.24 FEET; THENCE S18°04'14"E, A DISTANCE OF 5,850.53 FEET; THENCE N78°28'51"E, A DISTANCE OF 1,300.24 FEET; THENCE S18°04'14"E, A DISTANCE OF 650.06 FEET; THENCE S78°28'51"W, A DISTANCE OF 1,300.24 FEET; THENCE S18°04'14"E, A DISTANCE OF 1,300.12 FEET; THENCE S78°28'51"W, A DISTANCE OF 1,300.24 FEET; THENCE S18°04'14"E, A DISTANCE OF 650.06 FEET; THENCE N78°28'51"E, A DISTANCE OF 2,600.48 FEET; THENCE S18°04'14"E, A DISTANCE OF 650.06 FEET; THENCE S78°28'51"W, A DISTANCE OF 21,437.63 FEET TO THE SOUTHWEST CORNER OF SECTION 37, TOWNSHIP 21 SOUTH, RANGE 33 EAST; THENCE N09°25'57"W, A DISTANCE OF 3,351.19 FEET; THENCE S89°42'37"E, A DISTANCE OF 4,129.52 FEET; THENCE N00°57'50"W, A DISTANCE OF 5,354.01 FEET; THENCE N01°00'59"W, A DISTANCE OF 5,235.95 FEET; THENCE N01°22'29"W, A DISTANCE OF 2,576.62 FEET; THENCE N78°15'40"E, A DISTANCE OF 10,900.37 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THE SOUTHWEST ¼ OF THE SOUTHWEST ¼ OF THE NORTHWEST ¼ OF SECTION 24.

FARMTON WATER RESOURCES LLC
Schedule of Rate Base
At 80% of Design Capacity

Schedule No. 1

DESCRIPTION	POTABLE WATER	FIRE PROTECTION	BULK RAW WATER	TOTAL
Utility Plant in Service	$ 45,650	$ 26,400	$ 5,520,300	$ 5,592,350
Accumulated Depreciation	$ (18,441)	$ (9,655)	$ (1,173,178)	$ (1,201,274)
Contributions-in-aid-of-Construction (CIAC)	$ (34,238)	$ (26,400)	$ (3,312,180)	$ (3,372,818)
Accumulated Amortization of CIAC	$ 13,831	$ 9,655	$ 703,907	$ 727,393
Working Capital Allowance	$ 814	$ 495	$ 34,719	$ 36,028
RATE BASE	$ 7,616	$ 495	$ 1,773,568	$ 1,781,679

FARMTON WATER RESOURCES LLC Schedule No. 2

Schedule of Cost of Capital
At 80% of Design Capacity

DESCRIPTION	AMOUNT	WEIGHT	COST RATE	WEIGHTED COST
Common Equity	$ 712,672	40.0%	11.40%	4.56%
Long and Short-Term Debt	1,069,008	60.0%	07.60%	4.56%
Customer Deposits		00.0%	00.00%	0.00%
Totals	$1,781,680	100.0%		9.12%

Range of Reasonableness	High	Low
Return on Common Equity	12.40%	10.40%

FARMTON WATER RESOURCES LLC
Schedule of Operating Revenues
At 80% of Design Capacity

Schedule No. 3

DESCRIPTION	POTABLE WATER	FIRE PROTECTION	BULK RAW WATER	TOTAL
Operating Revenues	$ 8,164	$ 4,192	$ 553,403	$ 565,759
Operating and Maintenance	$ 6,512	$ 3,960	$ 277,750	$ 288,222
Net Depreciation Expense	$ 590	$ -0-	$ 89,005	$ 89,595
Taxes Other Than Income	$ 367	$ 187	$ 24,899	$ 25,453
Income Taxes	$ -0-	$ -0-	$ -0-	$ -0-
Total Operating Expense	$ 7,469	$ 4,147	$ 391,654	$ 403,270
Net Operating Income	$ 695	$ 45	$ 161,749	$ 162,489
Water Rate Base	$ 7,616	$ 495	$ 1,773,568	$ 1,781,679
Rate of Return	9.12%	9.12%	**9.12%**	9.12%

FARMTON WATER RESOURCES LLC
Schedule of Rates and Charges

Schedule No. 4

RETAIL POTABLE WATER SERVICE
GENERAL AND RESIDENTIAL SERVICE
MONTHLY

5/8" x 3/4"	$ 3.58
1"	8.95
1.5"	17.90
2"	28.64
3"	57.28
4"	89.50
6"	179.00
8"	286.40
All Meter Sizes	Gallonage Charge

FIRE PROTECTION SERVICE
MONTHLY

All Meter Sizes	Base Facility Charge

All Meter Sizes	Charges and Rates
Base Charge (per 0.5 MGD)	$ 54,473.40
Take or Pay Gallonage Charge (per 1,000 gallons demand capacity)	$0.3043 x Committed Capacity

Initial Connection Fee	$ 15.00
Normal Reconnection Fee	$ 15.00
Violation Reconnection Fee	Actual Cost
Premises Visit Fee (In lieu of disconnection)	$ 10.00