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January 10, 1999

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

**VIA HAND DELIVERY**

Re: Docket No. 990489-WS  
Application by Florida Cities Water Company, holder of Certificate Nos. 027-W and 024-S in Lee County and 007-W and 003-S in Brevard County, and Poinciana Utilities, Inc., holder of Certificate Nos. 146-W and 103-S in Polk and Osceola Counties, for transfer of facilities to Florida Governmental Utility Authority and cancellation of Certificates Nos. 027-W, 024-S, 007-W, 003-S, 146-W, and 103-S.

Dear Ms. Bayo:

This letter is a report as to the status of the transfer of the water facilities located within the Town of Ft. Myers Beach from Florida Cities Water Company to Lee County.

On April 15, 1999, Applicants filed with this Commission their Application for Transfer of Facilities to Governmental Authority ("Application"). On that date, the Poinciana facilities and the FCWC Brevard County facilities were transferred to the GUA, pursuant to Contract. (A copy of the Utility System Asset Acquisition Agreement ("Contract") transferring the water and wastewater facilities to GUA is attached to the Application as Appendix "A").

The FCWC Lee County facilities were also transferred on April 15, 1999, except for the facilities located in and serving customers within the Town of Ft. Myers Beach ("the Town System"). The Town System was excluded from the Application because of pending litigation brought by the Town of Fort Myers Beach against Lee County, which resulted in delay of validation of the bonds to be used to acquire the Town System. In order to proceed with the

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FPSC-RECORDS/REPORTING

closing, the parties entered into an Assignment, dated April 7, 1999, wherein GUA assigned its right to purchase the Ft. Myers System to Lee County. Additionally, the parties entered into an Addendum to Utility System Asset Acquisition Agreement Concerning the Fort Myers Utility System, dated April 7, 1999 ("Addendum"). The Addendum set a deferred closing date for the Town System, which is based upon resolution of the Town of Fort Myers Beach litigation in Lee County Case No. 99-1753CA-JBR. (Both the Assignment and Addendum are referenced in the Application, and attached as part of Appendix "A" thereto). Pursuant to Contract and Assignment, the FCWC facilities excluding the Town System have been conveyed to Lee County.

With regard to the Town System, on September 27, 1999, an order was rendered by Judge Jay B. Rosman, Lee County Circuit Judge, Twentieth Judicial Circuit, which validated and confirmed \$3,500,000 Lee County, Florida Water and Sewer Revenue Bonds, 1999 Series B, to be issued by Lee County to, inter alia, pay all or part of the cost of acquisition of the FCWC water system located within the boundaries of the Town of Fort Myers Beach. The Judge ruled that the consent of the Town of Fort Myers Beach is not required for the acquisition to occur, and denied all motions to dismiss the bond validation proceeding. (Copy of Final Judgment, Lee County, Florida v. The State of Florida, et. al., Case No. 99-3534-CA-JBR (Fla. 20th Cir. Ct. Sept. 24, 1999), attached hereto as Appendix "A"). A Notice of Appeal was filed by Raymond P. Murphy, a citizen of the Town of Ft. Myers Beach, on October 25, 1999. The substantive issues in Case No. 99-3534-CA-JBR are essentially identical to those raised by the Town of Fort Myers Beach in the Lee County Circuit Court case Town of Fort Myers Beach v. Lee County, Case No. 99-1753-CA-JBR.

A closing date on the Town System has not yet been set since Case No. 99-1753-CA-JBR has not yet been summarily or otherwise dismissed, nor has the Florida Supreme Court ruled on the validation of the Town bonds. The Town System is currently operating in the same manner as it will operate after the closing. As set forth in Section 4 of the Addendum, Lee County and FCWC entered into a bulk service agreement for the provision of potable water services to the Town System. The County and Avatar Utility Services, Inc. are parties to the Fort Myers System Utility Operations, Billing and Customer Service Agreement.

The appeal on the validation of the Town bonds is pending before the Supreme Court of Florida, Raymond P. Murphy v. Lee County, Florida, et al., Case No. 96,997. Briefs have been filed by the Appellant and Appellee. The Appellant's answer brief is due in twenty days.

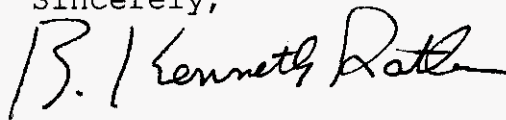
Letter to Blanca S. Bayo  
January 10, 2000  
Page 3 of 3

The court will set oral argument, probably in May 2000. The court considers bond validation on an expedited basis and its opinion should be issued by August 2000. Presumably, the bonds would be issued and the closing would immediately follow thereafter.

Please acknowledge receipt of the foregoing by stamping the enclosed extra copy of this letter and returning same to my attention. Thank you for your assistance.

Thank you.

Sincerely,

A handwritten signature in black ink that reads "B. Kenneth Gatlin". The signature is written in a cursive style with a large, stylized initial "B".

B. Kenneth Gatlin

BKG/ldv  
Enclosure

cc: Tim Vaccaro  
Cheryl Johnson

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT, IN AND FOR LEE COUNTY, FLORIDA

CASE NO. 99-3534-CA-JBR

LEE COUNTY, FLORIDA, a political subdivision of the State of Florida,

Plaintiff,

vs.

THE STATE OF FLORIDA, and the Taxpayers, Property Owners and Citizens of Lee County, Florida, including non-residents owning property or subject to taxation therein, and all others having or claiming any right, title or interest in property to be affected by the issuance of the Bonds, herein described, or to be affected thereby,

VALIDATION OF NOT EXCEEDING \$3,500,000 LEE COUNTY, FLORIDA WATER AND SEWER REVENUE BONDS, 1999 SERIES B

Defendants.

FINAL JUDGMENT

THIS CAUSE having come to be heard on the 7th day of September, 1999, at the County Courthouse in Fort Myers, Lee County, Florida, in the Twentieth Judicial Circuit of Florida, on the Complaint of Lee County Florida (the "County") for the validation of not exceeding \$3,500,000 Lee County, Florida Water and Sewer Revenue Bonds, 1999 Series B, pursuant to a Notice and Order to Show Cause heretofore issued by this Court requiring the Defendants to show cause at said time and place why the Bonds, the proceedings theretofore taken by the County, all as described in



the Complaint, should not be validated and confirmed as prayed for in such Complaint. Copies of said Order to Show Cause and of the Complaint were properly served on the State of Florida by serving the State Attorney of this Twentieth Judicial Circuit of Florida, as required by law; and said State Attorney has filed an answer in response thereto. Raymond J. Murphy, a citizen of the Town of Fort Myers Beach, has intervened in this matter and filed a motion. Evidence having been introduced and the cause submitted for consideration and decision, the Court having heard and determined all of the questions of law and fact of this cause, finds as follows:

1. The Complaint filed herein fully complies with all of the requirements of Chapter 75, Florida Statutes and this Court has jurisdiction in this cause and of the subject matter hereof and of the parties hereto.

2. Proper notice of this validation proceeding has been given by timely publication of the Order to Show Cause in a newspaper of general circulation in Lee County, Florida as required by law.

3. All of the material allegations of the Complaint filed herein are true and the issuance of the Bond has been duly authorized.

4. The County is a political subdivision of the State of Florida, duly organized and validly existing under the laws of the State of Florida and its County Charter.

5. The County is authorized by the Constitution of the State of Florida, Chapter 125, Florida Statutes, and its home rule powers (collectively, the "Act") to, among other things, provide and regulate water and sewage services. Further, the County is authorized to issue bonds, revenue certificates and other evidence of indebtedness for the purpose of using the proceeds thereof to (a) pay all or part of the cost of acquisition of a privately owned water system located within the boundaries of the Town of Fort Myers Beach, Florida (the "1999B Project"), as more particularly described in Exhibit A to the Bond Resolution (as defined herein), (b) fund a debt service reserve account, if necessary, and (c) pay costs associated with the issuance of the Bonds.

6. The 1999B Project is located within the municipal boundaries of the Town of Fort Myers Beach, Florida, and shall be acquired through the purchase from the Owner thereof (a private corporation) by the County under the authority of Chapter 125, Florida Statutes, and the home rule powers of the County. Inasmuch as the acquisition of the 1999B Project is not being made or financed pursuant to Chapter 153, Florida Statutes, but rather pursuant to Chapter 125, Florida Statutes, the consent of the Town of Fort Myers Beach is not required. Nor is the consent of the

Town required for such acquisition under any other provisions of Florida law. Upon acquisition, the 1999B Project shall become part of the Lee County Utilities System and will be (a) owned by the County, and (b) operated in accordance with the policies and procedures of Lee County.

7. The County has determined to issue not exceeding \$3,500,000 of its Lee County, Florida Water and Sewer Revenue Bonds, 1999 Series B (the "1999B Bonds") pursuant to the Act and Resolution Nos. 93-06-40 and 93-06-41, both duly adopted on June 30, 1993, as amended and supplemented, in particular by Resolution No. 99-03-22, duly adopted on March 23, 1999 and Resolution No. 99-04-3 of the County, duly adopted on April 6, 1999 (collectively, the "Bond Resolution"), for the principal purposes set forth above, all in the manner and as more particularly described in the Bond Resolution, which, as certified, was attached to the Complaint. The Bond Resolution is valid and enforceable in accordance with its terms.

8. Pursuant to Chapter 163, Florida Statutes, and a certain Interlocal Agreement dated as of February 1, 1999 (the "Interlocal Agreement"), the County joined together with other political subdivisions of the State of Florida to create the Florida Governmental Utility Authority (the "GUA"). The Interlocal Agreement entered into was for the purpose of acquiring and operating water and wastewater facilities owned by a private

company, the Avatar Corporation or its several subsidiaries (the "Avatar Facilities"), one of which is a certain water and sewer facility owned by Florida Cities Water Company located in Lee County, Florida (the "Fort Myers System").

9. On January 26, 1999, the County, through its elected Board of County Commissioners, at a duly called and publicly noticed meeting, adopted Lee County Resolution No. 99-01-31, which approved the Interlocal Agreement and the summary of acquisition conditions for the Avatar Facilities, including the Fort Myers System. A certified copy of Resolution 99-01-31 was attached to the Complaint as Exhibit B and is valid and enforceable in accordance with its terms.

10. Pursuant to the terms of the Interlocal Agreement, the County retained the right to purchase separately that portion of the Avatar Facilities which was within its boundaries. On January 26, 1999, the County held a duly noticed public hearing pursuant to the requirements of section 125.3401, Florida Statutes. Following the conclusion of the public hearing, the Board of County Commissioners adopted Resolution No. 99-01-30 which exercised this right to purchase and approved and authorized the County's acquisition of the Fort Myers System. The Resolution further expressly found that the acquisition of the Fort Myers System was (i) consistent with the considerations outlined in section 125.3401, Florida Statutes, (ii) authorized pursuant to section



125.01, Florida Statutes, (iii) served a public purpose, (iv) was in the public's interest, and (v) was to the public's benefit. The County has fully complied with the requirements of section 125.3401, Florida Statutes. A certified copy of Resolution No. 99-01-30 was attached to the Complaint as Exhibit C and is valid and enforceable in accordance with its terms.

11. On March 16, 1999, at a duly called and publicly noticed meeting, the County adopted Resolution No. 99-03-18, which accepted the assignment of the right to purchase the Fort Myers System from the GUA and authorized the immediate acquisition of that System. Additionally, such Resolution approved an addendum to the Acquisition Agreement relating to the Avatar Facilities, which separated the acquisition of the Fort Myers System into two distinct projects. The initial project consisted of that portion of the Fort Myers System located within the unincorporated area of Lee County (the "1999A Project"). The other project consisted of that portion of the Fort Myers System located within the municipal boundaries of the Town of Fort Myers Beach, Florida (the "1999B Project"). Resolution No. 99-03-18 also made various legislative findings that the separation of the Fort Myers System into the 1999A Project and the 1999B Project would not detrimentally impact either the 1999A Project or the 1999B Project. These findings are neither arbitrary nor capricious. Resolution No. 99-03-18 further established the purchase price of both the 1999A Project and 1999B

Project. A certified copy of Resolution No. 99-03-18 was attached to the Complaint as Exhibit D and is lawful and enforceable in accordance with its terms.

12. The Bond Resolution provides that the principal of, the redemption premium, if any, and interest on the 1999B Bonds, and all other payments provided for in the Bond Resolution will be paid solely from the Pledged Funds, as provided for in the Bond Resolution; and that the 1999B Bonds shall neither constitute general indebtedness of the County nor a pledge of its full faith and credit and taxing power within the meaning of any constitutional or statutory provision or limitation; that no holder or holders of any 1999B Bonds issued pursuant to the Bond Resolution shall ever have the right to require or compel the exercise of the ad valorem taxing power of the County to pay such 1999B Bonds or the interest thereon or to make any other payment provided in the Bond Resolution; and that the Bonds and the indebtedness evidenced thereby shall not constitute a lien upon the System (as defined in the Bond Resolution) or on any other property of the County, but shall constitute a lien on and pledge of the Pledged Funds solely, in the manner provided in the Bond Resolution.

13. The Bond Resolution additionally determines that the 1999B Bonds shall mature on such date or dates and in such years, in such amounts, and containing such redemption provisions and

other terms as shall be fixed by subsequent resolution of the Plaintiff adopted prior to the sale of the 1999B Bonds. The Bond Resolution provides that the 1999B Bonds shall bear interest at such rate or rates, not to exceed the maximum rate permitted by law, and shall have such registrar and paying agents as the Plaintiff shall determine by subsequent resolution. The 1999B Bonds may be secured by a letter of credit or municipal insurance policy.

14. The acquisition of the 1999B Project serves a valid public purpose, including, but not limited to, that: (i) it will consolidate water and sewer service within the Town of Fort Myers Beach, Florida, since the County already provides sewer services within its boundaries of the Town, (ii) it will consolidate County water and sewer billing for the County, as well as allow one point of contact for all County water and sewer utility matters within the County, (iii) the inclusion of the 1999B Project within the Lee County Utilities Water and Sewer System will help diffuse and mitigate any future impacts due to significant system repair, replacement or upgrade costs for regulatory compliance because any such increased costs will be spread over a significantly increased customer base, (iv) the proposed acquisition will provide customers with increased opportunities for providing input into the decisions made regarding levels of utility services and rates, (v) public ownership of the 1999B Project will provide that customer payments

be applied solely towards the operation, maintenance, rehabilitation and expansion of the County's utility system, rather than for the taxes and guaranteed profits of a private utility, (vi) future economy of scale will save the customer expenses for system expansion, (vii) further economy of scale will be realized through the consolidation of utilities management, planning, engineering and operational functions, (viii) public ownership of both water and wastewater utility facilities will advance and better coordinate both short and long term planning and better facilitate service and development of water and sewer infrastructure in the County, and (ix) the acquisition will provide a more reliable long term water supply from multiple potable water well fields and regional water treatment plants.

15. The County is authorized under the authority of Chapter 75, Florida Statutes, to file the Complaint in this Court in order that the power of the County to issue the 1999B Bonds for the purposes stated herein could be determined and in order that said 1999B Bonds could be validated and confirmed.

16. The Court has carefully considered the Answer of the State Attorney and finds no basis why the relief requested by the Complaint should not be granted and discloses no irregularity or illegality in the proceedings set forth in the Complaint.

17. The Court has fully considered the motions of the Intervenor. The Court finds that the Complaint for Validation does

state a cause of action. Further, the Court finds that all the parties necessary for the resolution of these issues are properly before the Court and that the Town of Fort Myers Beach is not an indispensable party. Therefore, the Motions to Dismiss of Defendant, Raymond J. Murphy are denied.

18. The County's acquisition of the system is not contrary to the requirements of Article VIII, Section 4 of the Constitution of the State of Florida. The Court has further considered the remaining argument of the Intervenor made at the hearing of this matter and finds them without merit.

19. All requirements of law incident to the authorization of the acquisition and operation and maintenance of the 1999B Project, the pledge of the Pledged Funds and the authorization and issuance of the 1999B Bonds have been duly and legally met and complied with and all necessary and proper procedures have been followed in the adoption of the Bond Resolution. Further, the County has complied with all necessary procedural requirements in the adoption of the Bond Resolution.

20. The 1999B Bonds, upon issuance, shall be valid and binding limited obligations of the County. The 1999B Bonds, being revenue bonds, do not require approval by a vote of the taxpayers, property owners or citizens of Lee County.

21. All requirements of the Constitution and laws of the State of Florida and the Court pertaining to these proceedings and the issuance of the 1997 B Bonds have been fully complied with.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Bonds and the legality of the covenant agreements in said proceedings and performance by the County of its obligations thereunder is for a proper and lawful public purpose and is fully authorized by law and the 1999 B Bonds and the proceedings heretofore taken and the same are hereby validated and confirmed.

There shall be provided on said Bonds a statement substantially of the following form:

This Bond is one of the series of bonds which were validated by Judgment of the Circuit Court of the Twentieth Judicial Court, in and for Lee County, Florida, rendered on September 7, 1999.

DONE AND ORDERED at Fort Myers, Lee County, Florida, this 24 day of September, 1999.

**S/ JAY B. ROSMAN**

JAY B. ROSMAN  
Circuit Judge  
Twentieth Judicial Circuit

Copies provided to:  
All Counsel of Record

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