

ORIGINA

LAW OFFICES

MARTIN, ADE, BIRCHFIELD & MICKLER, P.A.

ONE INDEPENDENT DRIVE - SUITE 3000
JACKSONVILLE, FLORIDA 32202

MAILING ADDRESS:
POST OFFICE BOX 59
JACKSONVILLE, FLORIDA 32201

TELEPHONE (904) 354-2050
TELECOPIER (904) 354-5842

BARBARA CHRISTIE JOHNSTON
MAUREEN MCKINLEY HAZEN
ROBERT O. MICKLER
JOHN D. MILTON, JR.
JAMES A. NOLAN, III
DANIEL B. NUNN, JR.
SCOTT G. SCHILDBERG
ALLAN E. WULBERN

OF COUNSEL
LEWIS S. LEE

RALPH H. MARTIN (1917-1999)
L. PETER JOHNSON (1942-1988)

00 JUN -8 AM 8:27
MAIL ROOM

JAMES L. ADE
LYNDA R. AYCOCK
W. O. BIRCHFIELD
TIMOTHY A. BURLEIGH
JASON E. CAMPBELL
CHARLES L. CRANFORD
STEPHEN H. DURANT
W. BRAXTON GILLAM, IV
T. WILLIAM GLOCKER
MICHAEL E. GOODBREAD, JR.
STEPHEN D. HALKER
SHARON ROBERTS HENDERSON
LISA A. JETER

000610

June 6, 2000

Via Facsimile No. (850) 413-6237

Mr. Jason Fudge
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Application Regarding Service Availability Charges and Policies by United Water Florida Inc. For Duval, Nassau and St. Johns Counties, Florida

Dear Mr. Fudge:

In our telephone conversation yesterday, you inquired whether United Water Florida Inc. ("United Water Florida") had a position on St. Johns County's assertion that United Water Florida had denied connection for the Ponte Vedra Municipal Service District ("MSD"). You also provided me with a May 4, 2000, letter from Suzanne Brownless, attorney for St. Johns County, on this issue which alleges that:

[t]he MSD residents have approached United Water and requested that United Water construct a sewer transmission line to serve the MSD. United Water Florida has refused, stating that construction of such a line will violate its approved service availability policies.

This statement is incomplete and misleading. United Water Florida's position on this issue is that United Water Florida will provide wastewater service to the residents of the MSD who apply for service, but, consistent with United Water Florida's tariff on file with the Florida Public Service Commission ("Commission"), such applicants must pay for the extension of the collection system needed to provide such service.

- APP _____
- CAF _____
- CMP _____
- COM _____
- CTR _____
- ECR _____
- LEG _____
- OPC _____
- PAI _____
- RGO _____
- SEC I
- SER _____
- OTH _____

As set forth in United Water Florida's Wastewater Tariff ("Tariff"), the purpose of United Water Florida's service availability policy is as follows:

.... to establish a method which will be uniform and non-discriminatory among all customers and prospective customers of United Water Florida Inc. (hereinafter the "Service Company" or

DOCUMENT NUMBER-DATE

06998 JUN-88

FPSC-RECORDS/REPORTING

Mr. Jason Fudge
June 6, 2000
Page 2

the "Utility Company") to apportion between Service Company and prospective customers, property owners, builders or developers (hereinafter the "Property Owners") the investment in new wastewater utility facilities of all kinds that may be necessary to provide services to said Property Owners.

Tariff, Sheet No. 28.1, Rule A.1. The Tariff requires individual residential property owners to make contributions, which include, but are not limited to, the following:

1. Contribution to Utility Plant. Utility Company shall collect the contribution charges from an individual residential lot owner as provided in the Service Agreement and in Utility Company's tariff on file with the Commission.
2. Service Lateral Extensions. In addition to the above described contributions, Property Owner shall pay to Utility Company the full cost associated with constructing individual service laterals from the closest mains of Utility Company to the Point of Delivery in compliance with Utility Company's engineering standards and specifications.
3. Main Extensions. In addition to the above described contributions and lateral costs, if the wastewater collection mains of Utility Company are not located perpendicular to the Point of Delivery, the Property Owner requesting the service shall pay to Service Company the full cost associated with constructing an extension of said main or mains to a point perpendicular to the Point of Delivery.

Tariff, Sheet No. 28.7, Rules B.1, B.2, and B.3.

Pursuant to the Tariff, the Property Owner must make the required contributions. Accordingly, the residents of the MSD or the MSD, if it seeks to stand in the place of the residents, must pay the full cost of the extension of the mains and laterals to serve the residents. Even if MSD were a developer, it still would be required to pay for the offsite and onsite facilities under the Tariff.

Mr. Jason Fudge
June 6, 2000
Page 3

Tariff, Sheet No. 28.10, Rule C.6 provides that the construction or upgrade of all wastewater lines and mains, valves, appurtenances, manholes and lift stations necessary, in the discretion of Utility Company, to serve the development is to be done at the developer's cost. The rule also provides that the developer is to "advance the cost of construction or upgrading." Tariff, Sheet No. 28.10, Rule C.7 provides in part that:

It is Utility Company's policy to apportion the cost of off-site main transmission, collection or distribution lines and other facilities prorata to the developer owning property receiving service from such lines located outside of Developer's property. Since each Developer draws from the capacity of such lines, each Developer shall pay its property's share of the cost of the off-site main transmission, collection or distribution lines and other facilities through which service is rendered to Developer's property. This portion of Utility Company's Service Availability Policy is referred to herein as "Developer's Line Demand Cost."

It is United Water Florida's understanding that the only development to be served by the offsite facilities to the MSD would be the MSD, and, therefore, the entire cost would be allocated to the MSD.

Moreover, the Tariff provides that:

Utility Company reserves the right to refuse connection and to deny the commencement of service to any Property Owner seeking to be connected to portions of the wastewater collection system of Utility Company until such time as the provisions of this Service Availability Policy and the Service Agreement have been fully met by Property Owner.

Tariff, Sheet No. 28.1, Rule A.4.

Therefore, until such contributions have been made and the other provisions of the service availability policy and the service agreement have been met, United Water Florida can and should refuse connection to the MSD.

Mr. Jason Fudge

June 6, 2000

Page 4

Even before the contributions are made, the MSD has to file an “[a]pplication for new services... in writing... on forms provided by Utility Company.” Tariff, Sheet 28.2, Rule A.5. United Water Florida is not aware of any such application from the MSD since the time it rescinded all of its actions as required related to its Sunshine law violations as discussed later in this letter. Furthermore, as set forth in its Tariff, United Water Florida “shall be obligated to furnish wastewater service to a Property Owner only as a result of and under the terms of a properly executed Service Agreement.” Tariff Sheet No. 28.1, Rule A.3. The MSD has not entered into a service agreement with United Water Florida.

United Water Florida has sought to help the MSD and its residents in this matter. At the MSD's request, United Water Florida has met with representatives of the MSD and spoken at public meetings of the MSD. The MSD has asked United Water Florida to consider using a long term lease instead of an outright transfer of facilities after the payment and installation of the facilities by the MSD. United Water Florida has said it will consider the use of such a lease, but that it would probably request approval of the lease approach from the Commission through the filing of a special service availability contract. Throughout its discussions with the MSD, however, United Water Florida has consistently advised the MSD that the MSD or its residents would need to pay for the extension of the collection system.

The MSD sewer project has been controversial in St. Johns County and has suffered from several setbacks as well as dividing the community. Nine (9) newspaper articles are attached hereto as Exhibits 1 through 9 for demonstration purposes. In 1999, trustees of the MSD were found to have violated the Sunshine Law and the MSD was required by the State Attorney to and did in fact rescind “actions related to the sewer project, which included meeting with representatives of United Water Florida....” See Exhibit 1. The Attorney General for the State of Florida has held that the MSD does not have the authority to assess its residents to pay for the sewers because it is not a municipality. See Exhibit 2. The MSD has experienced fighting among trustees, attacks from citizens groups, and resignations of trustees. See Exhibits 3, 4, 5, 6, and 8. St. Johns County has surveyed the MSD residents on the issue of whether to pursue the sewer project. See Exhibits 7 and 8. While the majority of the responding MSD residents support the project, such support is clearly not unanimous. Despite the vote in favor of the sewer project, St. Johns County has now stopped the procedures for establishing tax assessments to provide for the funding of the sewer project. See Exhibit 9. St. Johns County has instead decided to try to force the Commission to require United Water Florida to pay for the sewer project. See Exhibit 9.

Mr. Jason Fudge
June 6, 2000
Page 5

There is no service agreement or developer agreement with United Water Florida for the MSD sewer project. A large number of the residents of the MSD do not want to pay for the sewer project. The MSD, the entity which has been pursuing the sewer project in the past, had to rescind many of its actions and apparently does not have the legal authority to impose assessments to pay for the project. The County, which apparently has such authority, has ceased its proceedings to establish such assessments. Until the County, the MSD, the residents, or some combination of the three entities provide the necessary funding, enter into a binding and enforceable service agreement with United Water Florida, and comply with the provisions of the service agreement and the Tariff, United Water Florida can not and should not construct a wastewater collection system to serve the MSD.

I trust that this letter is sufficient for your needs. If you need additional information, please do not hesitate to call me.

Sincerely yours,



Scott G. Schildberg

SGS/cwb/arh
Enclosures

cc: Mr. Walton Hill
Mr. Gary R. Moseley
Mr. Jack Schreyer
Mr. Todd Mackey
Ms. Rosanne Gervasi
Ms. Suzanne Brownless