

ORIGINAL

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OF COUNSEL

DOUGLAS STENSTROM
KENNETH W. McINTOSH
RETIRED

THOMAS E. WHIGHAM
(1952-1988)

January 3, 2003

FEDERAL EXPRESS

Agency Clerk
Florida Public Service Commission
C/O Harold McLean, Esquire, General Counsel
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: City of Palm Coast's Response to Motion to Dismiss

Dear Public Service Commission Agency Clerk:

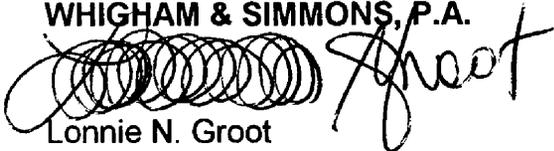
Please find enclosed the City of Palm Coast's Response to the Motion to Dismiss filed in this action.

We will appreciate your office and the Commission taking appropriate action relative to this Response.

Please feel free to call with questions and to let me know if I can be of assistance in this matter or in any other way. Thank you for your attention to this matter.

Sincerely,

STENSTROM, McINTOSH, COLBERT,
WHIGHAM & SIMMONS, P.A.



Lonnie N. Groot

Enclosure

cc: Richard Kelton, City Manager
Ms. Clare Hoeni, Deputy Clerk
William L. Colbert, Esquire, City Attorney
Virginia Cassady, Esquire

I:\Lng\Cities\2002\Palm Coast\PSC FGUA\Ltr to Agency Clerk encl resp to motion.wpd

2003 JAN -6 AM 9:50
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OTH _____

DOCUMENT NUMBER DATE

00121 JAN-68

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition to Initiate Rulemaking to Capital)
Charges filed by City of Palm Coast.)

Docket No. 021188-WS
Filed: January 3, 2003

CITY OF PALM COAST'S RESPONSE TO MOTION TO DISMISS

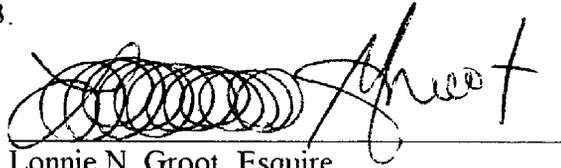
COMES NOW the Petitioner, CITY OF PALM COAST ("City"), and responds to the Motion to Dismiss filed in this proceeding by Florida Water Services Corporation ("FWSC") and requests the Commission to deny the Motion and, in support thereof, states as follows:

- (1) The City is a customer of FWSC. See copies of attached bills. The City has standing both as a customer and a local government with constitutionally vested powers relating to serving and protecting the citizens of the City.
- (2) The City has standing as a representative of the citizens of the City of Palm Coast under the provisions of Article VIII, Section 2 of the *Constitution of the State of Florida* and Chapter 166, *Florida Statutes*. Article VIII, Section 2(a) of the *Constitution of the State of Florida* provides, in pertinent part, that "[m]unicipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise **any power for municipal purposes except as otherwise provided by law.**" (Emphasis added). Section 166.021(1), *Florida Statutes*, provides that "[a]s provided in s. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise **any power for municipal purposes, except when expressly prohibited by law.**" (Emphasis added). Section 166.021(b), *Florida Statutes*, defines the term "municipal purpose" as meaning "... **any activity or power which may be exercised by the state or its political subdivisions.**" (Emphasis added).
- (3) The City, acting through its City Council has the right and obligation to take any and all administrative and legislative actions that it deems appropriate and in the public interest in order to protect the citizens of the City of Palm Coast and the economic well being of the businesses within the City.
- (4) The City, under the provisions of Article VIII, Section 2, *Constitution of the State of Florida*, and Chapter 166, *Florida Statutes*, has any and all powers of local government not prohibited by general law.

- (5) The movant, FWSC, acknowledges in paragraph 3 of its Motion that it does not seek dismissal on the basis of this Commission's statutory and rulemaking authority to promulgate the proposed rule. Florida counties have express statutory authority to participate in administrative proceedings on behalf of citizens/consumers residing within the jurisdictional limits of counties while Florida municipalities, under the provisions of Article VIII, Section 2 of the *Constitution of the State of Florida* and Chapter 166, *Florida Statutes*, may exercise all local government powers on behalf of its citizens unless prohibited by law. Although counties, to some extent, may need to obtain express legislative approval to take certain actions, municipalities are constitutionally entitled to operate within the entire and plenary range and spectrum of local government powers absent an express constitutional or statutory prohibition. There is no such prohibition relative to municipalities initiating rulemaking proceedings on behalf of its citizens or itself. Indeed, the reference in footnote 3 to FWSC's Motion to Section 120.52(12)(d), *Florida Statutes*, indicates that the power granted to counties by that statute is a local governmental power in a general sense that municipalities have not been prohibited from exercising by constitutional or statutory provision.
- (6) The Commission has the overarching substantive and procedural powers to promulgate, in the public interest, the Rule requested by the City.
- (7) The City has the overarching obligation to protect the rights and interest of the citizens of the City.

WHEREFORE, for the foregoing reasons, the City respectfully requests the Commission to deny the Motion to Dismiss filed by FWSC.

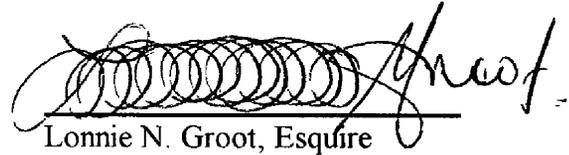
DATED this 3rd day of January, 2003.



Lonnie N. Groot, Esquire
Florida Bar No. 266094
STENSTROM, McINTOSH, COLBERT,
WHIGHAM & SIMMONS, P.A.
200 West First Street, Suite 22
Post Office Box 4848
Sanford, FL 32772-4848
(407) 322-2171
Attorneys for Petitioner City of Palm Coast.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the City of Palm Coast's Response to Florida Water Services Corporation's Motion to Dismiss was furnished by U.S. Mail, this 3rd day of January, 2003, to the following:



Lonnie N. Groot, Esquire

Samantha Cibula, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 370
Tallahassee, Florida 32399-0850

Kenneth A. Hoffman, Esquire
RUTLEDGE, ECENIA, PURNELL & HOFFMAN
Post Office Box 551
Tallahassee, Florida 323701-1841

I:\Lng\Cities\2002\Palm Coast\PSC FGUA\2nd Response to Motion to Dismiss.wpd



Palm Coast

Incorporated as a City on December 31, 1999
32,600 Acres (51 Square Miles)
Provision for 44,000 RSF Homes / 33% Developed
2002 Population = 38,348

cph



City Limits

cph



FLORIDA WATER SERVICES
P.O. BOX 608520
ORLANDO, FL 32860-8520
Call Toll Free 1-800-432-4501

CUSTOMER NUMBER
010021104

SERVICE ADDRESS
284 NE PALM COAST PARKWAY

CITY OF PALM COAST
P O BOX 354610
PALM COAST FL 32135-4610

CURRENT CHARGES DUE BY 11/22/02
TOTAL AMOUNT \$ 109

Bill Date 10/23/02 Plant 3001
Location Number 0000090010

WATER Rate Code-533
Billing Period 8/15/02 TO 10/18/02
Days in Billing Period: 62
Meter Readings:
Present Previous Usage
613860 597540 16320 Gal
Meter Size: 1"
Meter Number 47744154 3
Connect 5/16/00

SEWER Rate Code-533
Connect 5/16/00

PREVIOUS BALANCE 109.71
PAYMENT RECEIVED ON 8/30/02 THANK YOU 109.71CR

.00

WATER
BASE FACILITY CHARGE 30.03
GALLONAGE CHARGE WATER CHARGES 54.34

TOTAL WATER 84.37

SEWER
BASE FACILITY CHARGE 25.20
GALLONAGE CHARGE SEWER CHARGES 54.68

TOTAL SEWER 79.88

MISC
PREVIOUS EST WATER BILL CREDIT 27.16CR
PREVIOUS EST SEWER BILL CREDIT 27.32CR

TOTAL MISC 54.48CR

7926/110102

CURRENT CHARGES DUE BY 11/22/02 \$ 101
TOTAL AMOUNT DUE \$ 109

Free sewer cleanout cap! If your sewer cleanout cap is broken or missing, call our Customer Care Department at 1-800-432-4501 to request a replacement. A Utility Systems Technician will install it free of charge. This will help us reduce excess water flows into the wastewater collection system from rain, stormwater runoff, and high groundwater levels. Your cooperation in this project is greatly appreciated.

For additional information about Florida Water Services, Corp. and water conservation tips please visit our WEB site www.florida-water.com

Florida Water's bill payment address has changed effective September 2002. Please use the envelope enclosed with this bill. If you are using an online payment service, please update the payment address to avoid a processing delay. Visit our website www.florida-water.com for all the payment options we offer.

RECEIVED
NOV 28 2002

BY: _____

----- WATER USE -----
Daily Average Water Use:
Current Month 263 Gal/Day
Same Month Last Yr 244 Gal/Day
Daily Average Water Cost: \$ 1.36

PLEASE BRING ENTIRE BILL WHEN PAYING IN PERSON



FLORIDA WATER SERVICES
P.O. BOX 809520
ORLANDO, FL 32880-9520
Call Toll Free 1-800-432-4501

CUSTOMER NUI
010034034

SERVICE ADDRESS
22 UTILITY DRIVE

CITY OF PALM COAST
PO BOX 354610
PALM COAST FL 32135-4610

CURRENT CHARGES DUE BY 11/22/02
TOTAL AMOUNT \$ 23.

Bill Date 10/23/02 Plant 3001
Location Number 0000087670

WATER Rate Code-533
Billing Period 9/16/02 TO 10/16/02
Days in Billing Period: 30
Meter Readings:
Present Previous Usage
162980 159570 3410 Gal
Meter Size: 3/4" x 3/4"
Meter Number 30971303 1
Connect 10/01/00

PREVIOUS BALANCE	22.66
PAYMENT RECEIVED ON 9/30/02 THANK YOU	22.66CR
	<u>.00</u>
WATER	
BASE FACILITY CHARGE	12.00
GALLONAGE CHARGE 3410 Gal @ \$ 003330	11.36
TOTAL WATER	<u>23.36</u>
CURRENT CHARGES DUE BY 11/22/02	\$ 23
TOTAL AMOUNT DUE	\$ <u>23.</u>

Free sewer cleanout cap! If your sewer cleanout cap is broken or missing, call our Customer Care Department at 1-800-432-4501 to request a replacement. A Utility Systems Technician will install it free of charge. This will help us reduce excess water flows into the wastewater collection system from rain, stormwater runoff, and high groundwater levels. Your cooperation in this project is greatly appreciated.

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7927/110102

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BY:-----

----- WATER USE -----
Daily Average Water Use:
Current Month 114 Gal/Day
Same Month Last Yr 5 Gal/Day
Daily Average Water Cost: \$.78

PLEASE BRING ENTIRE BILL WHEN PAYING IN PERSON



FLORIDA WATER SERVICES
P.O. BOX 809520
ORLANDO, FL 32880-9520
Call Toll Free 1-800-432-4501

CUSTOMER NU
010034035

SERVICE ADDRESS
US ROAD DEPT SITE
APT# 1

CITY OF PALM COAST
PO-BOX 354610
PALM COAST FL 32135-4610

CURRENT CHARGES
DUE BY
11/22/02
TOTAL AMOUNT
\$ 69.

Bill Date 10/23/02 Plant 3001
Location Number 000090140
WATER Rate Code-533
Billing Period 9/16/02 TO 10/16/02
Days in Billing Period: 30
Meter Readings:
Present Previous Usage
1014830 1007760 7070 Gal
Meter Size: 5/8" x 3/4"
Meter Number 41309000 1
Connect 10/03/00

SEWER Rate Code-533
Connect 10/03/00

PREVIOUS BALANCE 68.97
PAYMENT RECEIVED ON 9/30/02 THANK YOU 68.97CR
.00

WATER
BASE FACILITY CHARGE 12.00
GALLONAGE CHARGE 7070 Gal @ \$.003330 23.54
TOTAL WATER 35.54

SEWER
BASE FACILITY CHARGE 10.07
GALLONAGE CHARGE 7070 Gal @ \$.003350 23.68
TOTAL SEWER 33.75

CURRENT CHARGES DUE BY 11/22/02 \$ 69
TOTAL AMOUNT DUE \$ 69.

Handwritten note: 7928/11/01/02

Free sewer cleanout cap! If your sewer cleanout cap is broken or missing, call our Customer Care Department at 1-800-432-4501 to request a replacement. A Utility Systems Technician will install it free of charge. This will help us reduce excess water flows into the wastewater collection system from rain, stormwater runoff, and high groundwater levels. Your cooperation in this project is greatly appreciated.

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OCT 26 2002

BY: _____

WATER USE
Daily Average Water Use:
Current Month 236 Gal/Day
Same Month Last Yr 416 Gal/Day
Daily Average Water Cost: \$ 1.18

PLEASE BRING ENTIRE BILL WHEN PAYING IN PERSON



FLORIDA WATER SERVICES
P.O. BOX 609520
ORLANDO, FL 32060-9520
Call Toll Free 1-800-432-4501

CUSTOMER NUMBER
010033896

SERVICE ADDRESS
305 NE PALM COAST PARKWAY

CITY OF PALM COAST
PO BOX 354610
PALM COAST FL 32135-4610

CURRENT CHARGES DUE BY **11/22/02** TOTAL AMOUNT **\$ 151**

Bill Date 10/23/02 Plant 3001
Location Number 000087750

WATER Rate Code-533
Billing Period 9/16/02 TO 10/16/02
Days in Billing Period: 30
Meter Readings:
Present Previous Usage
971980 957510 14470 Gal
Meter Size: 1"
Meter Number 46740120 3
Connect 10/03/00

SEWER Rate Code-533
Connect 10/03/00

PREVIOUS BALANCE	148.69
PAYMENT RECEIVED ON 9/30/02 THANK YOU	148.69CR
	<u>.00</u>
WATER	
BASE FACILITY CHARGE	30.03
GALLONAGE CHARGE 14470 Gal @ \$.003330	48.19
TOTAL WATER	<u>78.22</u>
SEWER	
BASE FACILITY CHARGE	25.20
GALLONAGE CHARGE 14470 Gal @ \$.003350	48.47
TOTAL SEWER	<u>73.67</u>
CURRENT CHARGES DUE BY 11/22/02	\$ 151
TOTAL AMOUNT DUE	\$ 151

7929/11/01/02

Free sewer cleanout cap! If your sewer cleanout cap is broken or missing, call our Customer Care Department at 1-800-432-4501 to request a replacement. A Utility Systems Technician will install it free of charge. This will help us reduce excess water flows into the wastewater collection system from rain, stormwater runoff, and high groundwater levels. Your cooperation in this project is greatly appreciated.

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WATER USE

Daily Average Water Use:
Current Month 482 Gal/Day
Same Month Last Yr 352 Gal/Day

Daily Average Water Cost: \$ 2.61

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OCT 28 2002

PLEASE BRING ENTIRE BILL WHEN PAYING IN PERSON



FLORIDA WATER SERVICES
 P.O. BOX 609520
 ORLANDO, FL 32860-9520
 Call Toll Free 1-800-432-4501

CUSTOMER NU
 010033891

SERVICE ADDRESS
 4751 BELLE TERRE PARKWAY

CITY OF PALM COAST
 PO BOX 354610
 PALM COAST FL 32135-4610

CURRENT CHARGES
 DUE BY
 11/22/02 **\$ 109**

Bill Date 10/23/02 Plant 3001
 Location Number 0000090150

WATER Rate Code-533
 Billing Period 9/16/02 TO 10/16/02
 Days in Billing Period: 30
 Meter Readings:
 Present Previous Usage
 343310 330250 13060 Gal
 Meter Size: 5/8" x 3/4"
 Meter Number 74170223 1
 Connect 10/03/00

SEWER Rate Code-533
 Connect 10/03/00

PREVIOUS BALANCE	154.47
PAYMENT RECEIVED ON 9/30/02 THANK YOU	154.47CR
	<u>.00</u>
WATER	
BASE FACILITY CHARGE	12.00
GALLONAGE CHARGE 13060 Gal @ \$.003330	43.49
TOTAL WATER	<u>55.49</u>
SEWER	
BASE FACILITY CHARGE	10.07
GALLONAGE CHARGE 13060 Gal @ \$.003350	43.75
TOTAL SEWER	<u>53.82</u>
CURRENT CHARGES DUE BY 11/22/02	\$ 10
TOTAL AMOUNT DUE	\$ 109

7930/110102

Free sewer cleanout cap! If your sewer cleanout cap is broken or missing, call our Customer Care Department at 1-800-432-4501 to request a replacement. A Utility Systems Technician will install it free of charge. This will help us reduce excess water flows into the wastewater collection system from rain, stormwater runoff, and high groundwater levels. Your cooperation in this project is greatly appreciated.

For additional information about Florida Water Services, Corp. and water conservation tips please visit our WEB site www.florida-water.com

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 OCT 28 2002

----- WATER USE -----
 Daily Average Water Use:
 Current Month 435 Gal/Day
 Same Month Last Yr 575 Gal/Day
 Daily Average Water Cost: \$ 1.85

PLEASE BRING ENTIRE BILL WHEN PAYING IN PERSON BY:



FLORIDA WATER SERVICES
P.O. BOX 609520
ORLANDO, FL 32860-9520
Call Toll Free 1-800-432-4501

CUSTOMER NUM
010071308-1

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OCT 21 2002

SERVICE ADDRESS
PALM COAST COMMUNITY PARK

CITY OF PALM COAST
ATT LORI SIEGLER
264 PALM COAST PARKWAY
PALM COAST FL 32137

CURRENT CHARGES DUE BY
11/17/02

TOTAL AMOUNT
\$ 108.1

Bill Date 10/18/02 Plant 3001
Location Number 000073570
WATER Rate Code-533
Billing Period 9/10/02 TO 10/11/02
Days in Billing Period: 31
Meter Readings:
Present Previous Usage
3513890 3500880 13010 Gal
Meter Size: 1/2" x 1/2"
Meter Number 47947057 1
Deposit \$ 50.00
Connect 10/16/01
SEWER Rate Code-533
Deposit \$ 50.00
Connect 10/16/01

Table with columns for item description, quantity, and amount. Includes rows for PREVIOUS BALANCE, WATER GALLONAGE CHARGE, SEWER GALLONAGE CHARGE, and TOTAL AMOUNT DUE.

Handwritten note: 0877/11/02

Free sewer cleanout cap! If your sewer cleanout cap is broken or missing, call our Customer Care Department at 1-800-432-4501 to request a replacement.

For additional information about Florida Water Services, Corp. and water conservation tips please visit our WEB site www.florida-water.com

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WATER USE
Daily Average Water Use:
Current Month 420 Gal/Day
Daily Average Water Cost: \$ 1.78

PLEASE BRING ENTIRE BILL WHEN PAYING IN PERSON



FLORIDA WATER SERVICES
P.O. BOX 809520
ORLANDO, FL 32860-9520
Call Toll Free 1-800-432-4501

CUSTOMER NO
010068919

SERVICE ADDRESS
268 NE PALM COAST PARKWAY
APT# B

CITY OF PALM COAST
284 PALM COAST PKWY NE
PALM COAST FL 32137-8217

CURRENT CHARGES
DUE BY
11/22/02
TOTAL AMOUNT
\$ 118

Bill Date 10/23/02 Plant 3001
Location Number 0000131320

WATER Rate Code-533
Billing Period 9/16/02 TO 10/16/02
Days in Billing Period: 30
Meter Readings:
Present Previous Usage
46960 32480 14480 Gal
Meter Size: 5/8" x 3/4"
Meter Number 51576905 1
Connect 9/21/01

SEWER Rate Code-533
Connect 9/21/01

PREVIOUS BALANCE 33.96
PAYMENT RECEIVED ON 9/30/02 THANK YOU 33.96CR
.00

WATER
BASE FACILITY CHARGE 12.00
GALLONAGE CHARGE 14480 Gal @ \$.003330 48.22
TOTAL WATER 60.22

SEWER
BASE FACILITY CHARGE 10.07
GALLONAGE CHARGE 14480 Gal @ \$.003350 48.51
TOTAL SEWER 58.58

CURRENT CHARGES DUE BY 11/22/02 \$ 11
TOTAL AMOUNT DUE \$ 118

Handwritten: 7892/110102

RECEIVED
OCT 24 2002
BY: _____

Free sewer cleanout cap! If your sewer cleanout cap is broken or missing, call our Customer Care Department at 1-800-432-4501 to request a replacement. A Utility Systems Technician will install it free of charge. This will help us reduce excess water flows into the wastewater collection system from rain, stormwater runoff, and high groundwater levels. Your cooperation in this project is greatly appreciated.

For additional information about Florida Water Services, Corp. and water conservation tips please visit our WEB site www.florida-water.com *****IMPORTANT MESSAGE*****

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WATER USE
Daily Average Water Use:
Current Month 483 Gal/Day
Same Month Last Yr 30 Gal/Day
Daily Average Water Cost: \$ 2.01

PLEASE BRING ENTIRE BILL WHEN PAYING IN PERSON



AN ALLETE COMPANY

FLORIDA WATER SERVICES
P.O. BOX 608520
ORLANDO, FL 32860-8520
Call Toll Free 1-800-432-4501

CUSTOMER NUMBER
900010256

SERVICE ADDRESS
264 PALM COAST PKWY (CTHM)

CITY OF PALM COAST
264 PALM COAST PKWY
PALM COAST, FL 32137

CURRENT CHARGES DUE BY 11/22/02
TOTAL AMOUNT \$ 41.

Bill Date 10/23/02 Plant 3001
Location Number 0300104086

WATER Rate Code-533
Billing Period 9/17/02 TO 10/16/02
Days in Billing Period: 29
Meter Readings:
Present Previous Usage
9000 200 8800 Gal
Meter Size: 3/4"
Meter Number 70067189 2
Deposit \$ 535.00
Connect 9/17/02

Table with columns for description, amount, and total. Includes rows for PAYMENT RECEIVED ON 8/23/02, CREDIT BALANCE CARRIED FORWARD, WATER charges (BASE FACILITY CHARGE, GALLONAGE CHARGE), MISC charges (NEW CONNECTION FEE), and TOTAL AMOUNT DUE.

Free sewer cleanout cap! If your sewer cleanout cap is broken or missing, call our Customer Care Department at 1-800-432-4501 to request a replacement. A Utility Systems Technician will install it free of charge.

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*****IMPORTANT MESSAGE*****

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Handwritten signature: 7900/110102

RECEIVED
OCT 25 2002

BY:

WATER USE
Daily Average Water Use:
Current Month 303 Gal/Day

Daily Average Water Cost: \$ 1.42

PLEASE BRING ENTIRE BILL WHEN PAYING IN PERSON