

**RESOLUTION NO. 02- 09**

**A RESOLUTION OPPOSING THE UTILITY SYSTEM ASSET ACQUISITION AGREEMENT BETWEEN FLORIDA GOVERNMENT UTILITY AUTHORITY AND FLORIDA WATER SERVICES CORPORATION**

**WHEREAS**, the Florida Government Utility Authority ("FGUA") will consider a Utility System Asset Acquisition Agreement ("Agreement") with Florida Water Services Corporation ("FWSC") at a public hearing scheduled for May, 2, 2002, and,

**WHEREAS**, the FGUA Board of Directors intends to make a determination as to whether the Agreement is in the individual and collective interests of the people within the jurisdictions affected by the Agreement, and,

**WHEREAS**, the Agreement provides for the transfer of the Marco Island utility system from FWSC to the FGUA for the allocated purchase price of \$109,680,551, and,

**WHEREAS**, the City of Marco Island City Council, on behalf of the citizens and utility customers, has studied the negotiation process and the terms and conditions of the proposed Agreement, and,

**WHEREAS**, the City of Marco Island supports the concept of public ownership of the utility assets serving the residents of Marco Island which ownership may take the form of the acquisition of the utility system assets of FWSC by the FGUA, and,

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of Marco Island, Florida, that:

1. The Agreement, and the transaction which it represents, is found not to be in the public interest of the citizens and utility customers on Marco Island.
2. The Agreement is not fair and reasonable and is not in the public interest for the following reasons:
  - A professionally prepared Opinion of Value, dated January 2001, determined the value of the Marco Island system to be \$82 million, while the allocated purchase price is more than 30% higher than the system's value.
  - Without a completed financial and engineering due diligence report, the Board of Directors cannot and should not make a reasoned and informed decision as to the price, terms, and conditions of the Agreement.

- Questions prevail as to the validity and accuracy of the five-year capital program used to calculate the Projected Statement of Cash Flows for the twelve systems.
- The approach used to value the individual systems did not consider accepted condemnation valuation methods. The acquisition price favors the utility seller, over the utility buyers (public customers).
- The cash flows are projected for a period of four years rather than a five-year period as previously committed by the FGUA. Insufficient information and thin cash flows suggest that rate increases may be necessary to support the acquisition purchase price.
- No competitive proposals have been received for the operations contract, and inadequate due diligence has been conducted to determine the accuracy of the projected operating expenses by the proposed system operator, even though the operations contract is estimated to be \$37 million.
- The Agreement does not provide a sufficient purchase price adjustment provision upon the discovery of system deficiencies in the due diligence process.
- The Agreement does not provide a list of the assets to be acquired, and allows real estate to be excluded from the acquisition even after the Agreement has been entered into.
- Representatives from four counties are attempting to acquire assets, provide utility service, and generate utility revenues in other jurisdictions without their consent.
- The acquisition price substantially exceeds the regulated value of the statewide assets of FWSC, resulting in substantial profit gain and substantial overpayment by the FGUA, to the detriment of current and future utility customers.
- The affected utility customers and the elected representatives from the various jurisdictions have not been extended membership in the FGUA, contrary to the intent of the Florida Interlocal Cooperation Act, and have not had meaningful input into the price, terms, and conditions of the sale.

3. The Board of Directors of the FGUA reject the proposed Agreement.

4. The Board of Directors direct its system manager and legal advisors to proceed to negotiate an acquisition purchase price of less than \$470 million, based on the allocation purchase price schedule with an assumed five percent bond interest rate.

5. That representatives of the City of Marco Island and other affected jurisdictions be permitted the opportunity for additional review and input as to the purchase price and terms and conditions of the sale.

Passed in open and regular session of the City Council of the City of Marco Island, Florida, this 29th day of April 2002.



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E. Glenn Tucker, Chairman

Attest:



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A. William Moss, City Manager/City Clerk