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April 27, 1998

Ms. Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Betty Easley Conference Center  
Room 110  
Tallahassee, Florida 32399-0850

**HAND DELIVERY**

Re: Docket No. 980261-WS

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Florida Water Services Corporation are the following documents:

1. Original and fifteen copies of Florida Water's Response to Lake Suzy Utilities, Inc.'s Motion for Protective Order; and

ACK     

2. A disk containing a copy of the document in Word Perfect 6.0.

AFA     

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

APP     

CAF     

CMU     

Thank you for your assistance with this filing.

CTR     

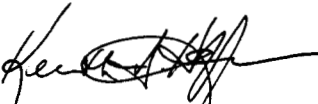
EAG     

Sincerely,

LEG   1  

LIN   3  

OPC     

  
Kenneth A. Hoffman

RCH     

SEC   1   KAH/rl

WAS      Enclosures

OTH     

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

04645 APR 27 88

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for	)	
amendment of certificate nos.	)	Docket No. 980261-WS
570-W and 496-S in Charlotte	)	
County by Florida Water Services	)	Filed: April 27, 1998
Corporation	)	
	)	

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**FLORIDA WATER SERVICES CORPORATION'S**  
**RESPONSE TO LAKE SUZY UTILITIES, INC.'S**  
**MOTION FOR PROTECTIVE ORDER**

COMES NOW, Florida Water Services Corporation ("Florida Water"), by and through its undersigned attorney, and pursuant to Rule 25-22.037(2)(b), Florida Administrative Code, files its Response to the Motion for Protective Order, served April 13, 1998, by Lake Suzy Utilities, Inc. ("Lake Suzy"). In support hereof, Florida Water states as follows:

1. Lake Suzy's Motion for Protective Order rests on the single erroneous premise that **if** in Docket No. 970657-WS<sup>1</sup> the Commission grants Lake Suzy's application for amendment/original

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<sup>1</sup>Lake Suzy filed an Application for Amendment of Certificates Nos. 480-W and 416-S to Add and Delete Territory in Charlotte and DeSoto Counties on June 3, 1997. At the direction of the Commission staff, Lake Suzy filed an Application for Certificates to Operate a Water and Wastewater Utility in Charlotte and DeSoto Counties on September 11, 1997. These two Lake Suzy applications are pending in Docket No. 970657-WS and request certain territory in Charlotte County adjacent to, abutting and, as originally filed, in part, overlapping Florida Water's existing Deep Creek service area. This "disputed area" is known as the Links Subdivision. On March 4, 1998, Florida Water filed its Objection and Petition for Leave to Intervene in Docket No. 970657-WS.

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PSC-RECORDS/REPORTING

certificate as to the disputed area, Florida Water's competing application to include the disputed area in its territory is moot.<sup>2</sup> Lake Suzy's Motion, based on this defective premise, must be denied.

2. Though certificates of authorization are intended as grants of exclusive territory for Commission regulated utilities, Chapter 367 does not preclude Commission approval of one utility's territory amendment simply because the territory requested is also requested by another utility in a pending proceeding or is within the existing territory of another utility, provided the Commission finds: (1) it is in the public interest to approve one utility's request over the interests of the other utility,<sup>3</sup> (2) there will be no duplication of existing facilities, and (3) the existing facilities, if there will be a duplication of facilities, are inadequate or the person operating the facilities is unable, refuses, or neglects to provide reasonable and adequate service. Section 367.045(5)(a), Florida Statutes; St. Johns North Utility Corp. v. Fla. Pub. Serv. Comm'n, 549 So.2d 1066 (Fla. 1<sup>st</sup> DCA 1989), see City of Mount Dora v. JJ's Mobile Homes, 579 So.2d 219 (Fla. 5<sup>th</sup> DCA 1991).

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<sup>2</sup>On March 20, 1998, Lake Suzy served its objection to Florida Water's Application in the instant docket, thereby voluntarily subjecting itself to discovery.

<sup>3</sup>Florida Water maintains that a utility also must not have run afoul of the Commission's and the statute's certification requirements. See Section 367.045(2), Florida Statutes.

Further, the Commission indisputably has the power to delete territory from a regulated utility's certificate, and, contrary to the contentions of Lake Suzy, the Commission does not process certification filings on a first-filed-first-served basis:

[I]t is Commission policy to determine competing applications, not with reference to which applicant filed first, but on the basis of which utility is better qualified to provide service, and the Commission's statutory duty to determine issues in accordance with the "public interest."

549 So. 2d 1066, 1069 (citation omitted).

3. Nowhere in its Motion for Protective Order does Lake Suzy even attempt to gainsay the foregoing legal principles or, for that matter, attempt to support with argument or authority its contention that Florida Water's application should be considered moot. In its Response to Florida Water's Motion to Consolidate ("Response"), Lake Suzy attempts to distinguish/limit the holding of St. Johns North v. PSC, supra, in such a misguided way as to do Lake Suzy's position more harm than good.

a. Lake Suzy's Response assigns significance to the now obsolete "advance notice" mechanism<sup>4</sup> for territory expansion employed by one of the two competing utilities in St. Johns North v. PSC, while ignoring the Commission's ruling that use of this mechanism made no difference to the question of competing

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<sup>4</sup>See section 367.061, Florida Statutes (1985).

territory requests.

By virtue of its notice of extension, to which no one timely protested, **St. Johns North should be no more insulated from competing claims to serve an area than a utility which already has such area included in its certificated territory.**

. . . .

[St. Johns North's] Notice of extension in no way foreclosed commission consideration of a subsequent competing application. A hearing was required to resolve such competing requests to serve the disputed territory.

88 F.P.S.C., 6:41, 46, 64 (emphasis added). The advance notice mechanism was removed from Chapter 367 in 1989. However, the statute has never been changed in such a way as to preemptively foreclose competing claims for the same territory.<sup>5</sup>

b. Lake Suzy's Response also assigns significance to its service commitment(s) with landowner(s) in the disputed area, again, while turning a blind eye to the Commission's ruling that such commitments are "not binding on the Commission." 88

F.P.S.C. 6:41, 60. Any suggestion that a utility can sign a

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<sup>5</sup>Section 367.061(4), Florida Statutes (1985), provided in part, "An application to amend a certificate shall be made at anytime within one year following notice . . . . The Commission shall issue an amended certificate describing . . . the additional territory served by such extension. (Emphasis added.) The Utility which employed the advance notice mechanism, therefore, was effectively granted the territory noticed if no protests were received because the utility was required to file an amendment application within a year and the Commission was commanded to issue amended certificates for said territory.

document with a prospective customer which trumps the Commission's police power for determining the public interest must be summarily rejected.

4. As set forth above, Florida Water's application will not be mooted by a prior ruling on Lake Suzy's competing application. The instant Motion for Protective Order is merely an attempt to stall and withhold information clearly relevant to the Commission's consideration of this matter.<sup>6</sup>

5. A discovery request claimed to be unduly burdensome must be viewed in relation to the case itself, and the objecting party must quantify in detail the manner in which the discovery is unduly burdensome. See e.g. Cabrera v. Evans , 322 So.2d 559 (Fla. 3<sup>rd</sup> DCA 1975) and First City Developments of Florida, Inc. v. Hallmark of Hollywood Condominium Assoc., Inc., 545 So.2d 502 (Fla. 4<sup>th</sup> DCA 1989). In its one page motion, Lake Suzy has clearly failed to meet the applicable standard for showing that the discovery Florida Water served is unduly burdensome, electing instead to rely on a faulty premise based on a contingency (the Commission's granting Lake Suzy the disputed area) which may never occur. Ironically, Lake Suzy maintains on the one hand that it has the technical and financial ability to provide service, but on the other hand claims that it is unduly

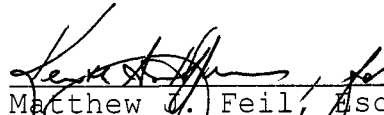
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<sup>6</sup>Any other objection Lake Suzy may have to the discovery served should now be considered waived as not having been timely made.

burdensome to produce the financial statements, maps, and consent order documentation which clearly speak to its technical and financial ability. Lake Suzy's arguments are completely without merit and have no basis in law.

WHEREFORE, Florida Water Services Corporation requests that the Prehearing Officer issue an order denying Lake Suzy's Motion for Protective Order.

Respectfully submitted,

  
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Matthew C. Feil, Esq.  
Florida Water Services Corporation  
P. O. Box 609520  
Orlando, FL 32860-9520  
(407) 880-0058

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Florida Water's Motion to Consolidate was furnished by hand delivery (\*) and U.S. Mail to the following this 27th day of April, 1998:

Lake Suzy Utilities, Inc.  
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Charlotte County  
c/o County Attorney  
Attn: Ms. Martha Young Burton  
18500 Murdock Circle  
Port Charlotte, FL 33948

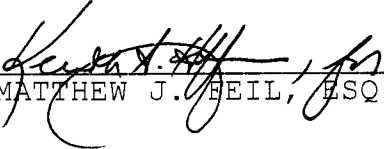
Florida Public Service Comm.  
Ms. Bobbie L. Reyes, Esq.\*  
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MATTHEW J. HEIL, ESQ.