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June 14, 1999

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Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Betty Easley Conference Center, Room 110  
Tallahassee, Florida 32399-0850

**HAND DELIVERY**

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JUN 14 PM 4:50  
RECORDS AND REPORTING

Re: Docket Nos. 950495-WS and 980744-WS

Dear Ms. Bayo:

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

1. Original and fifteen copies of Florida Water's Motion for Approval of New Offer of Settlement and Proposal for Disposition of Mandate on Remand; and
2. A disk in Word Perfect 6.0 containing a copy of the Motion.

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

Thank you for your assistance with this filing.

Sincerely,

*Kenneth A. Hoffman*  
Kenneth A. Hoffman

KAH/rl

Enclosures

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DOCUMENT NUMBER-DATE

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APP	_____
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ORC	_____
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SEC	1
TRW	_____
OTH	_____

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Application by Southern )  
States Utilities, Inc. for rate )  
increase and increase in service )  
availability charges for Orange- )  
Osceola Utilities, Inc. in )  
Osceola County, and in Bradford, )  
Brevard, Charlotte, Citrus, Clay, )  
Collier, Duval, Highlands, )  
Lake, Lee, Marion, Martin, )  
Nassau, Orange, Osceola, Pasco, )  
Polk, Putnam, Seminole, St. Johns, )  
St. Lucie, Volusia and Washington )  
Counties. )

Docket No. 950495-WS

In re: Investigation into ratemaking )  
considerations of gain on sale from )  
sale of facilities of Florida Water )  
Services Corporation to Orange )  
County. )

Docket No. 980744-WS

Filed: June 14, 1999

**MOTION OF FLORIDA WATER SERVICES CORPORATION  
FOR APPROVAL OF NEW  
OFFER OF SETTLEMENT AND PROPOSAL FOR  
DISPOSITION OF MANDATE ON REMAND**

Florida Water Services Corporation ("Florida Water") hereby requests the Florida Public Service Commission ("Commission") to approve this New Offer of Settlement And Proposal For Disposition of Mandate on Remand set forth below, to resolve outstanding issues on remand in Docket No. 950495-WS and take other actions to resolve and close Docket No. 980744-WS.

**BACKGROUND FACTS**

1. Florida Water filed an Application for Increased Water and Wastewater Rates, Allowance for Funds Prudently Invested and Service Availability Charges addressing revenue

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requirements for 96 water and 43 wastewater service areas with the Commission in Docket No. 950495-WS on June 28, 1995.

2. By letter dated July 10, 1995, the Commission Staff advised Florida Water of alleged deficiencies in Florida Water's Application and required Florida Water to include water and wastewater service areas situated in Hernando, Hillsborough and Polk Counties ("non-jurisdictional counties") in Florida Water's Application for rate relief.

3. By Order No. PSC-95-1043-FOF-WS, the Commission determined that the exclusion of Hernando, Hillsborough and Polk Counties from Florida Water's Application constituted a deficiency and required Florida Water to include the three non-jurisdictional counties in its Application for rate relief.

4. Florida Water filed an Amended and Restated Application for Increased Water and Wastewater Rates, Allowance for Funds Prudently Invested and Service Availability Charges in the above-captioned docket on August 2, 1995, such date reflecting the official date of filing, adding a total of 11 water and wastewater service areas situated in the three non-jurisdictional counties to the request for rate relief.

5. The Commission subsequently removed the additional 11 water and wastewater service areas located in the three non-jurisdictional counties from Florida Water's Amended Application for rate relief pursuant to Order No. PSC-95-1385-FOF-WS.

6. Following extensive discovery, customer service hearings and a formal evidentiary hearing, the Commission, pursuant to Sections 367.081(6) and 367.084, Florida Statutes, rendered its final order on the revenue requirements and rate structure/service availability charge issues at Special Agenda Conferences held on July 31, 1996 and August 15, 1996, respectively.

7. Tariffs reflecting Florida Water's final rates and charges approved by the Commission became effective on September 20, 1996.

8. The Commission issued Final Order No. PSC-96-1320-FOF-WS on October 30, 1996.

9. In response to Motions for Reconsideration, the Commission issued an Order on Motions for Reconsideration, Order No. PSC-97-0613-FOF-WS on May 29, 1997.

10. Florida Water appealed to the First District Court of Appeal numerous revenue requirement determinations made by the Commission and reflected in the Final Order.

11. In Southern States Utilities v. Florida Public Service Commission, 714 So.2d. 1046 (Fla. 1<sup>st</sup> DCA 1998) ("Southern States"), the First District Court of Appeal reversed the Commission in various respects, and accepted the Commission's confession of error on several issues affecting Florida Water's revenue requirements and allowance for funds prudently invested charges.

12. On August 21, 1998, the First District Court of Appeal issued the Mandate in Case No. 96-4227, returning jurisdiction over the above-captioned rate case to the Commission.

13. On remand, the Commission appropriately corrected certain matters which the court had addressed. It approved an increase in rates (the "Category I increase") to reflect: (1) reversal of the Commission's failure to afford 100% used and useful treatment for reuse facilities, (2) reversal of the Commission's recognition in this rate proceeding of the unlawful imposition of one-sided refunds which had been ordered in another Commission proceeding (and which itself was subsequently reversed by the court<sup>1</sup>), and (3) the Commission's confession of error in failing to use

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<sup>1</sup>Southern States Utility, Inc. v. Florida Public Service Commission, 704 So.2d 555 (Fla. 1<sup>st</sup> DCA 1997).

the average daily flows in the maximum month ("MMADF") in the calculation of the used and useful investment for three wastewater treatment plants. It also ordered Category I surcharges totalling approximately \$2.4 million to date necessary to restore approved revenue requirements.<sup>2</sup> On January 11, 1999, tariffs became effective reflecting an annual revenue increase of approximately \$1.1 million for the Category I increase.

14. Other matters in the Final Order which the court reversed, however, have been set for further hearing before the Commission.<sup>3</sup> These include the court's reversal of the Commission's use of average annual daily flows ("AADF") in the numerator of the calculation of used and useful for four wastewater treatment plants,<sup>4</sup> and the Commission's use of the lot count method in determining the level of used and useful investment in water transmission and distribution and wastewater collection facilities ("Category II issues"). The court held that both of these determinations constituted a departure from established Commission policy which were not supported by record evidence. Southern States, 714 So. 2d at 1056-57.

15. On October 2, 1998, Florida Water, on behalf of itself and its Marco Island customers, filed a Joint Offer of Settlement and Proposal for Disposition of Mandate on Remand ("First Settlement Offer"). The First Settlement Offer reflected a compromise on the part of Florida Water in terms of revenue requirements and surcharges at stake on remand and was intended to halt

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<sup>2</sup>Order No. PSC-99-0093-FOF-WS issued January 15, 1999, at 10-12 and 25-27. The appropriate methodology for recovery of the surcharges ordered by the Commission remains at issue due to a protest filed by Sugarmill Woods Civic Association, Inc.

<sup>3</sup>Order No. PSC-99-0093-FOF-WS, at 13-14, and Order No. PSC-99-0181-PCO-WS issued January 29, 1999.

<sup>4</sup>Those plants are Buenaventura Lakes, Citrus Park, Marco Island and Marco Shores.

the continuing accumulation of surcharges and avoid the incurrence of additional rate case expense on remand from the Southern States decision and any subsequent appeal of a Commission decision on remand.

16. In response to concerns raised by the Commission Staff, on November 12, 1998, Florida Water filed Modifications to the First Settlement Offer ("Second Settlement Offer"). Florida Water offered an additional modification to its Second Settlement Offer at the November 13, 1998 Agenda Conference ("Third Settlement Offer"). Florida Water's Third Settlement Offer was denied on a three to two vote at the November 13, 1998 Agenda Conference.

17. On Florida Water's motion, the hearing and further proceedings on the remand have been abated pending the disposition of Florida Water's Motion to Enforce Mandate filed with the First District Court of Appeal on May 3, 1999. See Order No. PSC-99-0800-PCO-WS issued April 21, 1999. Florida Water's Motion to Enforce Mandate challenges three Commission orders issued in April 1999 addressing the scope of discovery and the issues for final hearing on remand.

18. Under GTE Florida, Inc. v. Clark, 668 So.2d 971 (Fla. 1996), Florida Water is entitled to collect surcharges from customers of Florida Water in an amount compensating Florida Water for the revenue requirements unlawfully excluded from rate recovery by the Commission's Final Order as reflected in the Southern States decision.

19. Florida Water, the Amelia Island Community Association, Inc., et al. and the City of Marco Island recognize that additional Commission and appellate proceedings will be costly, time consuming, lengthy and disruptive to efficient and appropriate utility operations and customer relations. Therefore, Florida Water, the Amelia Island Community Association, Inc., et al. and Marco Island have undertaken again to resolve the issues pending on remand from this 1995 rate

case to effect a fair and equitable settlement which will bring rate stability to Florida Water's customers and is in the public interest.

**CURRENT PROPOSED OFFER OF SETTLEMENT**

20. Florida Water proposes the following new offer of settlement:

A. Reduction in prospective Category II rate increase - Florida Water proposes to settle the Category II prospective rate increase for \$966,167, or approximately one-half of the amount remaining at issue. This results in approximately a 1.7% average increase in rates. The increase in rates would be implemented within sixty days after the Commission vote approving this Settlement Offer.

B. No Surcharges - Florida Water proposes that both Category I and II surcharges be booked as a regulatory asset in the amount of \$8.5 million (including interest) as of August 1, 1999 and the Commission shall authorize recovery of such regulatory asset (to be amortized over 30 years or a shorter period if the Commission deems appropriate) in the Company's next rate case based on the same surcharge methodology previously ordered for Category I surcharges in Order No. PSC-99-0093-FOF-WS. No amortization of the asset would occur until it is included in rates.<sup>5</sup>

C. 3 Year Stayout - Florida Water proposes a 3 year stayout for both rate filings by the Company and earnings investigations by the Commission for all service areas in this docket. Indexing and pass-throughs would be allowed. Under this proposal, Florida Water would forego the

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<sup>5</sup>The total estimated surcharge through August 1, 1999 assuming approval of this settlement offer is \$8.5 million (including interest). The regulatory asset to be booked will be calculated based upon the effective date of the Category II rate increase. If remand hearings go forward and an appeal is filed, a virtual certainty, the surcharge is estimated to grow to \$13.5 million through August 1, 2001.

filing of an application for increased rates, either pursuant to Section 367.081(6) or 367.0822, Florida Statutes, for a period running to Friday, June 28, 2002. For the same period, Florida Water would not be subject to an earnings investigation by the Commission or a petition or complaint to decrease Florida Water's water or wastewater rates or charges. If Florida Water experiences earnings in excess of the top of the range of its authorized return on equity for the calendar years 1999, 2000, 2001 or 2002<sup>6</sup> such excess earnings would be shared between Florida Water and its customers on a one-third/two-thirds basis, one-third to be retained by Florida Water and two-thirds to be refunded to Florida Water's customers.<sup>7</sup>

D. Close Orange County Docket No. 980744-WS - Florida Water's shareholders would retain in full the gain on sale of Florida Water's Orange County land and facilities. In sufficient time prior to Commission consideration of this settlement proposal, the Commission would provide notice in the Florida Administrative Weekly of its intent to close Docket No. 980744-WS in recognition of this settlement. Any and all issues concerning Florida Water's gain on sale of its Orange County land and facilities shall not be revisited or reconsidered by the Commission.

E. Rate Case Expense - Accrued rate case expense relating to reconsideration, appeals and the remand would be deferred and considered in Florida Water's next rate case. The total actual appeal and remand expense to date is approximately \$450,000 and the total estimated

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<sup>6</sup>The prospect of Florida Water earning in excess of its authorized return on equity is extremely unlikely given the fact that Florida Water earned approximately a 5% return on water and wastewater operations per its 1998 annual report.

<sup>7</sup>A similar sharing proposal was recently approved by the Commission for Florida Power & Light Company pursuant to Order No. PSC-99-0519-AS-EI issued March 17, 1999 in Docket No. 990067-EI.



through hearings and appeals is \$1.1 million.

F. Interim Rate Refunds - There would be no interim rate refunds. This issue applied only to Lehigh and Marco Island wastewater customers. While Florida Water continues to believe the refund requirement was unlawful, these refunds are eliminated as a result of the Category I rate increase and surcharges approved by the Commission and the Category II rates and surcharges reflected in this Settlement Offer.

G. No Change in AFPI Rates - The Company proposes no change in Allowance for Funds Prudently Invested (AFPI) rates and termination of the existing escrow.

H. The resolution of the revenue requirements and rate issues as proposed herein shall not be construed to reflect Commission precedent or policy and shall not be revisited or reconsidered by the Commission.

I. This Settlement Offer is not severable, divisible or subject to modification and shall be deemed withdrawn in the event the Commission does not vote to approve this Offer of Settlement and Proposal for Disposition of Mandate on Remand in its entirety.

21. Florida Water's Settlement Offer is in the public interest and should be approved by the Commission. When compared with Florida Water's prior settlement offers, this Settlement Offer brings the following additional benefits:

a) The overall water and wastewater revenue requirement increase (Categories I and II combined) which would be reflected in monthly rates is reduced from \$2.8 million to \$2.0 million.

b) Out-of-pocket, cash payments of surcharges are eliminated. Category I surcharges currently total approximately \$2.4 million to date, with interest containing to accrue.

Total potential Category I and II surcharges assuming an appellate process through August 1, 2001 (a conservative estimate), with interest, are estimated to be \$13.5 million. Cash payments of approximately \$13.5 million of surcharges are eliminated, replaced by approximately \$8.5 million of surcharges (as of August 1, 1999) booked as a regulatory asset as described above.

c) The Company stays out of rate cases affecting the service areas in this docket until at least June 28, 2002.

d) This Settlement Offer has a net present value benefit of approximately \$1.9 million to Florida Water's customers compared to Florida Water's prior offers.

e) Rate case expense of approximately \$650,000 is eliminated and all rate case expense related to reconsideration of the final order, the appeals and the remand process is deferred until Florida Water's next rate case.

f) The potential for higher rates and additional rate case expense of approximately \$1.7 million associated with another rate case is deferred until at least June 28, 2002 due to the 3 year stay-out.

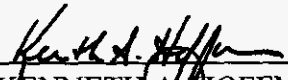
g) While Florida Water maintains that application of Commission precedent to the Orange County gain on sale would not result in any sharing of the gain, if one assumes *arguendo* that the full gain is factored into Florida Water's earnings, amortization of the pre-tax \$7 million gain over five years would not cause Florida Water to earn in excess of its authorized rate of return and, therefore, no rate reduction could be imposed. The 1998 return on equity of approximately 5% would increase less than 1.5% to approximately 6.5%.

22. Counsel for Florida Water has conferred with counsel for the parties to these proceedings and is authorized to represent that Florida Water's current Settlement Offer outlined

herein is supported by the City of Marco Island and the Amelia Island Community Association, Inc., et al. (Florida Water's Nassau County customers).

WHEREFORE, Florida Water Services Corporation respectfully requests that the Commission enter a final order approving this new Offer of Settlement and Proposal for Disposition of Mandate on Remand.

Respectfully submitted,

  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U. S. Mail to the following on this 14th day of June, 1999:

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