

RUTLEDGE, ECENIA, UNDERWOOD, PURNELL & HOFFMAN

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A. ECENIA
KENNETH A. HOFFMAN
THOMAS W. KONRAD
MICHAEL G. MAIDA
J. STEPHEN MENTON
R. DAVID PRESCOTT
HAROLD F. X. PURNELL
GARY R. RUTLEDGE
R. MICHAEL UNDERWOOD
WILLIAM B. WILLINGHAM

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788
TELECOPIER (850) 681-6515

OF COUNSEL:
CHARLES F. DUDLEY

GOVERNMENTAL CONSULTANTS:
PATRICK R. MALOY
AMY J. YOUNG

December 5, 1997

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. 920199-WS

Dear Ms. Bayo:

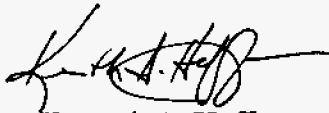
Enclosed herewith for filing in the above-referenced docket on behalf of Florida Water Services, Inc. ("Florida Water") are the following documents:

1. Original and fifteen copies of Florida Water's Motion for Continuance and Request for Deferral; 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

1 KAH/rl
Enclosures
cc: All Parties of Record

DOCUMENT NUMBER-DATE

12506 DEC-56

004931

FPSC-RECORDS/REPORTING

ACK _____
AFA _____
AFP None
CAF _____
CMI _____
CPL _____
EIS _____
FIS _____
GAS _____
HIS _____
JIS _____
KIS _____
LIS _____
MIS _____
NIS _____
OIS _____
PIS _____
RIS _____
SIS _____
TIS _____
UIS _____
VIS _____
WIS _____
XIS _____
ZIS _____

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of)
Southern States Utilities,)
Inc. and Deltona Utilities,)
Inc. for Increased Water and)
and Wastewater Rates in Citrus,)
Nassau, Seminole, Osceola, Duval,)
Putnam, Charlotte, Lee, Lake,)
Orange, Marion, Volusia, Martin,)
Clay, Brevard, Highlands,)
Collier, Pasco, Hernando, and)
Washington Counties.)
)
)
)

Docket No. 920199-WS

Filed: December 5, 1997

FLORIDA WATER SERVICES CORPORATION'S
MOTION FOR CONTINUANCE OR
REQUEST FOR DEFERRAL

Florida Water Services Corporation ("Florida Water"), by and through its undersigned counsel, moves for a Continuance or Deferral of the December 15, 1997 Special Agenda Conference, and as grounds therefor, states as follows:

1. Florida Water adopts and incorporates by reference the grounds for continuance or deferral of the December 15, 1997 Special Agenda Conference set forth in the motion filed by Charlotte County on November 26, 1997. With respect to Charlotte County's Motion, Florida Water would add that it understands that a motion for rehearing in the quo warranto action filed against the Commission by St. Jude's Catholic Church remains pending before the Marion County Circuit Court as of this date. Florida Water maintains that there are additional grounds for continuance or deferral of the December 15 Special Agenda as set forth below.

2. Pursuant to Order No. PSC-97-1290-PCO-WS issued October 17, 1997, Florida Water was required to provide a Notice to Customers approved by the Commission and included in the aforesaid

DOCUMENT NUMBER-DATE

12506 DEC-55 7404

FPSO-RECORDS/REPORTING

Order. Pursuant to the Notice to Customers approved by the Commission and timely mailed by Florida Water, customers were notified of their right to submit written comments and letters to the Commission regarding the refund and surcharge issues and impacts which have arisen in this proceeding. Upon information and belief, approximately 3,000 of Florida Water's customers responded to the Customer Notice with letters, phone calls and other forms of correspondence directed to the Commission concerning the potential refund and surcharge issues and impacts in this proceeding. Florida Water has not been provided copies of such correspondence, however, Florida Water has on this date submitted a public records request to secure copies of such correspondence so that such correspondence can be reviewed prior to the Commission's disposition of the refund and surcharge issues in this proceeding. A copy of Florida Water's public records request is attached hereto as Exhibit A.

3. Over the course of the last week and as recently as December 4, 1997, five additional parties facing significant potential surcharges petitioned for leave to intervene in this proceeding (Charlotte County, Florida United Methodist Children's Home, Inc., Sugar Mill Association, Inc., Best Western Deltona Inn and Sugar Mill Country Club, Inc.). Florida Water maintains that all parties must be given the opportunity to review and analyze customer letters and input prior to disposition of the issues on remand in this proceeding.

4. In its brief filed on November 5, 1997, Florida Water requested that certain additional procedural due process requirements be adhered to in this proceeding to ensure fairness and due process to all parties. Specifically, Florida Water requested that:

a. A prehearing conference be held so that all issues may be identified;

b. A formal evidentiary hearing be conducted for the introduction of evidence addressing financial impacts, interest rates, recovery periods, customer base and other issues arising out of potential refunds and surcharges;

c. All customers, including existing customers and customers who continue to seek intervention, receive notice of all issues being addressed in this proceeding and are given adequate time to prepare for hearing; and

d. The parties be given an opportunity to file briefs addressing all issues after the evidentiary hearing is concluded.

5. It is clear from the magnitude of customer response and input on the refund and surcharge issues that Florida Water's customers are interested and concerned that all issues in this proceeding be thoroughly analyzed by the Commission prior to the Commission's decision. The Commission cannot ignore the rights of substantially affected parties (such as Florida Water and the customers who face potential surcharges) to participate in an evidentiary hearing where all parties would have the opportunity to address, under oath, through fact and opinion testimony, including

expert testimony, the various potential refund/surcharge proposals and financial impacts thereof. Without an evidentiary hearing, the Commission may render a decision on December 15 approving a refund and surcharge scenario, including refund and surcharge issues affecting the Spring Hill service area, without one shred of evidence which supports refund/surcharge mechanism approved by the Commission or the financial impacts thereof.

6. The staff recommendation dated December 4, 1997 clearly supports Florida Water's position that an evidentiary hearing should be conducted to address any refund/surcharge mechanism. On pages 56-58 of the Staff Recommendation, Staff lists 21 issues, any number or all of which (among others) need to be addressed through an evidentiary hearing focusing on proposals for a refund/surcharge mechanism. In all likelihood, additional issues will be raised by the time the evidentiary hearing takes place.

7. The staff recommendation confirms the need for an evidentiary hearing. However, the recommendation inexplicably limits the scope of the hearing to the establishment of a refund/surcharge mechanism, while apparently excluding issues related to both a no refund/no surcharge determination and the Spring Hill facilities. In its recommendation, staff has laid out arguments which would support a determination of a no refund/no surcharge order and arguments which would support a refund/surcharge mechanism. Staff recommends that a hearing be conducted only if the Commission rejects a no refund/no surcharge determination. Worse, the staff appears to recommend that the

hearing exclude refund and surcharge issues related to the Spring Hill service area. Staff has the cart before the horse. A hearing should be conducted to allow the presentation of evidence and opinion testimony addressing the host of factual, policy and legal issues which arise on remand in connection with:

- (a) a no refund/surcharge determination;
- (b) the various possible refund/surcharge mechanisms; and
- (c) refund/surcharge issues and additional issues related to the Spring Hill service area including the relationship and impacts of the settlement with Hernando County on the issue of potential refunds.

8. The appropriate course of action for the Commission is to address all factual, policy and legal issues before making any decision in this proceeding. The Commission should employ its established procedural requirements for a formal administrative hearing, including:

- a. Holding an Issues Identification Conference;
- b. Filing of prefiled testimony;
- c. Authorization for discovery by the parties;
- d. Holding a prehearing conference;
- e. Conducting a final hearing; and
- f. Filing of posthearing briefs.

9. The alternative would be for the Commission to issue a proposed agency action order as it did in the GTE remand proceeding. See In Re: Application for a rate increase by GTE Florida Incorporated, Order No. PSC-96-0667-FOF-TL issued May 17,

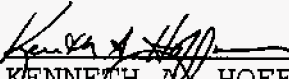
1996. However, with the virtual certainty that any proposed agency action order would be protested by one or more parties, Florida Water submits that the most efficient course of action would be to continue or defer the December 15 Special Agenda Conference and establish a procedural schedule consistent with that set forth above.

10. Finally, the staff recommendation fails to address the incredible impact on future utility ratemaking which would result from the precedent established by an order requiring refunds and surcharges. The Commission need look no further than the pending appeal of the Commission-imposed modified stand-alone capband rate structure in Docket No. 950495-WS which was approved without any evidentiary support for a demonstration of how such an order would impact future proceedings. Further exploration of such adverse impacts and precedent through an evidentiary hearing is in the best interests of the Commission, the parties and all utilities regulated by the Commission.

WHEREFORE, for the foregoing reasons, Florida Water respectfully requests that the Commission continue or defer the Special Agenda Conference scheduled for December 15, 1997 and establish a procedural schedule, with all applicable procedural

requirements, for a final hearing on all issues in this remand phase of this proceeding.

Respectfully submitted,


KENNETH A. HOFFMAN, ESQ.
RUTLEDGE ECENIA, UNDERWOOD,
PURNELL & HOFFMAN, P.A.
P. O. Box 551
Tallahassee, FL 32302-0551
(904) 681-6788

and

BRIAN P. ARMSTRONG, ESQ.
Florida Water Services Corporation
1000 Color Place
Apopka, Florida 32703
(407) 880-0058

Attorneys for Florida Water Services
Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail this 5th day of December, 1997 to the following:

Lila Jaber, Esq.
Division of Legal Services
Florida Public Service
Commission
2540 Shumard Oak Boulevard
Room 370
Gerald L. Gunter Building
Tallahassee, FL 32399-0850

Michael A. Gross, Esq.
Assistant Attorney General
Department of Legal Affairs
Room PL-01, The Capitol
Tallahassee, FL 32399-1050

Susan W. Fox, Esq.
MacFarlane, Ferguson
P. O. Box 1531
Tampa, Florida 33601

Michael B. Twomey, Esq.
Route 28, Box 1264
Tallahassee, Florida 31310

Michael S. Mullin, Esq.
P. O. Box 1563
Fernandina Beach, Florida 32304

John Roger Howe, Esq.
Charles J. Beck, Esq.
Office of Public Counsel
111 W. Madison Street
Room 812
Tallahassee, FL 32399-1400

Larry M. Haag, Esq.
County Attorney
111 West Main Street
Suite B
Inverness, Florida 34450-4852

Ms. Anne Broadbent
Sugarmill Woods Civic
Association
91 Cypress Boulevard West
Homassasa, Florida 34446

Joseph A. McGlothlin, Esq.
Vicki Gordon Kaufman, Esq.
117 South Gadsden Street
Tallahassee, FL 32301

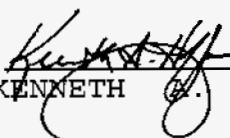
Darol H. M. Carr, Esq.
Farr, Farr, Emerich, Sifrit,
Hackett & Carr, P.A.
2315 Aaron Street
Port Charlotte, FL 33949

Arthur Jacobs, Esq.
P. O. Box 1110
Fernandina Beach, FL 32305-1110

Charles R. Forman, Esq.
320 Northwest 3RD Avenue
Ocala, FL 34475

John R. Marks, III, Esq.
215 South Monroe Street
Suite 130
Tallahassee, FL 32301

Renee Lee, Esq.
Charlotte County
18500 Murdock Circle
Port Charlotte, FL 33948-1094

By: 
KENNETH W. HOFFMAN, ESQ.

RUTLEDGE, ECENIA, UNDERWOOD, PURNELL & HOFFMAN

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A. ECENIA
KENNETH A. HOFFMAN
THOMAS W. KONRAD
MICHAEL G. MAIDA
J. STEPHEN MENTON
R. DAVID PRESCOTT
HAROLD F. X. PURNELL
GARY R. RUTLEDGE
R. MICHAEL UNDERWOOD
WILLIAM B. WILLINGHAM

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788
TELECOPIER (850) 681-6515

OF COUNSEL:
CHARLES F. DUDLEY

GOVERNMENTAL CONSULTANTS:
PATRICK R. MALOY
AMY J. YOUNG

December 5, 1997

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. 920199-WS

Dear Ms. Bayo:

As you know, Florida Water Services Corporation ("Florida Water") is a party to the above-referenced docket. Florida Water understands that thousands of letters and other documents or forms of correspondence have been received by the Commission from customers of Florida Water concerning potential refund and surcharge issues and impacts that have arisen in this proceeding as a result of the First District Court of Appeal's decision in Southern States Utilities, Inc. v. Florida Public Service Commission, 22 Fla.L.Weekly D1492, Florida 1st DCA, June 17, 1997.

Pursuant to Section 119.07(1)(a), Florida Statutes (Supp. 1996), Florida Water requests that it be provided copies of all letters, correspondence, written phone messages, e-mail and other documents provided by Florida Water's customers to the Commission addressing or concerning potential refund and/or surcharge issues. We will call your office within the next day or so to coordinate the arrangements for copying and production of the aforesaid documents.



7412

Ms. Blanca S. Bayo, Director
Page 2
December 5, 1997

Thank you for your consideration and attention to this request.

Sincerely,



Kenneth A. Hoffman

KAH/rl

cc: All Parties of Record