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February 23, 1999

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

RECEIVED-PPSC
99 FEB 23 PM 1:30
RECORDS AND REPORTING

Re: Docket No. 950495-WS

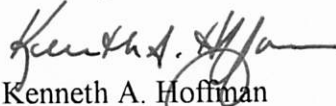
Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Florida Water Services Corporation ("Florida Water") are the original and fifteen copies of Florida Water's Response to Staff's Proposed Issues List.

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

- ACK _____
- AFA 3 _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG 3 _____
- LIN 5 _____
- OPC _____
- RCH _____
- SEC 1 _____
- WAS 3 _____
- OTH _____

KAH/knb
Enclosures
cc: Parties of Record
Trib.3

DOCUMENT NUMBER-DATE
02345 FEB 23 99
FPSC-RECORDS/REPORTING

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

Filed: February 23, 1999

**FLORIDA WATER SERVICES CORPORATION'S
RESPONSE TO STAFF'S PROPOSED ISSUES LIST**

Florida Water Services Corporation ("Florida Water"), by and through its undersigned counsel, hereby responds to the List of Proposed Issues provided by Staff by memorandum dated February 19, 1999 as follows:

1. Following an Issues Identification Meeting on the morning of February 19, 1999, Staff faxed the parties a copy of a Proposed Issues List. Staff's February 19, 1999 memorandum containing Staff's Proposed Issues is attached hereto as Exhibit A.

2. Florida Water concurs with Staff's Proposed Issues 3-8 under Part I and Issues 9-11 under Part II.

3. Florida Water objects to the wording of Staff's Proposed Issue 1. Staff's Proposed Issue 1 ignores the holding of the court in Southern States Utilities v. Florida Public Service Commission, 714 So.2d 1046 (Fla. 1st DCA 1998) ("Southern States II"). With respect to the level of used and useful investment in Florida Water's Buenaventura Lakes, Citrus Park, Marco Island and

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FPSC-RECORDS/REPORTING

Marco Shores wastewater treatment plants, the court held that the Commission unlawfully departed from its established policy of using average flows in the maximum month in the used and useful calculation. The court remanded the case to the Commission to give the Commission the opportunity to justify, if it can, the departure from the long-standing policy of using the average flows in the peak month in the numerator of the used and useful calculation. Southern States II, 714 So.2d at 1056. Accordingly, in response to the court's holding, Issue 1 on remand should be worded as follows:

Issue 1: What grounds justify departure from Commission policy of using average daily flow in the peak month in the calculation of the level of used and useful investment for Florida Water Services Corporation's Buenaventura Lakes, Citrus Park, Marco Island and Marco Shores wastewater treatment plants?

4. The same rationale applies to Staff's Proposed Issue 2. Staff Proposed Issue 2 states: "In mixed use areas, for the water distribution and wastewater collection systems, must the Commission use equivalent residential connections in the numerator of the used and useful equation?" In Southern States II, the court found that the Commission's "conceded change of method," i.e., the Commission's application of the lot count method to calculate used and useful for water transmission and distribution lines and wastewater collection lines serving mixed use areas was not supported by record evidence. Accordingly, the court remanded this issue to the Commission with the following admonition:

For this policy shift, too, the PSC must give a reasonable explanation on remand and adduce supporting evidence, if it can, to justify a change in policy required by no rule or statute. That failing, the PSC should adhere to its prior practices in calculating used and useful percentages for water transmission and distribution systems and wastewater collection systems serving mixed use areas. (Footnote

omitted).

Southern States II, 714 So.2d at 1057.

Clearly, in response to the court's holding, the issue on remand is not whether the Commission must use equivalent residential connections in the numerator of the used and useful equation but whether the Commission can justify, by record evidence, departure from its policy of rejecting the use of the lot count method to calculate used and useful for water transmission and distribution and wastewater collection lines serving mixed use areas. Accordingly, Florida Water proposes the following language for Issue 2:

Issue 2: What grounds justify departure from Commission policy of rejecting the use of the lot count method for calculating the level of Florida Water Services Corporation's used and useful investment in water transmission and distribution and wastewater collection lines for areas served by meters larger than 5/8" x 3/4" meters?

5. Finally, Florida Water submits that the following additional issue must be resolved on remand:

Additional Issue: If the used and useful calculations result in used and useful percentages lower than those allowed in previous rate cases, which percentages should be used?

In appealing the Commission's use of average annual daily flows in calculating used and useful for wastewater treatment plants and the Commission's use of the lot count method for calculating used and useful for water transmission and distribution and wastewater collection lines, Florida Water raised both the evidentiary and constitutional infirmities in the Commission's conclusions. With respect to both issues, the court agreed with Florida Water that the record lacked

competent substantial evidence to support the Commission's policy shift and remanded both issues for further proceedings. Having reversed on the evidentiary deficiencies undermining the Commission's used and useful determinations, the court found it "unnecessary to address any of the constitutional questions Florida Water raises." Southern States II, 714 So.2d at 1059.¹

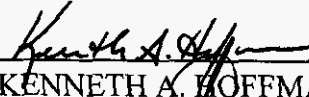
On remand, the Commission must address the issue of whether an existing level of used and investment may be lowered by importing a new used and useful methodology. This issue raises questions of fact, policy and constitutional law which are integrally tied to the used and useful determinations which will be made by the Commission on remand.² By ignoring this issue, the Commission invites a piecemeal approach to the issues on remand, potentially requiring additional appeals, Commission hearings and unnecessary additional expenditure of the time and resources of the parties, the Commission and the courts.

WHEREFORE, for the foregoing reasons, Florida Water respectfully requests that Issues 1 and 2 be revised in accordance with the language proposed above by Florida Water and that Florida Water's additional issue be included for disposition on remand in this proceeding.

¹The court did require the Commission to explain, on remand, any deviations from prior Commission determinations that Florida Water's water transmission and distribution and/or wastewater collection lines were 100% used and useful because the "pipes were of the minimum size necessary to supply the existing customers." Southern States II, 714 So.2d at 1057, fn. 9.

²At the Issues Identification Meeting on February 19, 1999, the Office of Public Counsel agreed that Florida Water's proposed additional issue was an appropriate legal issue on remand and counsel for the City of Marco Island agreed that Florida Water's proposed additional issue may be addressed within the context of Issues 1 and 2.

Respectfully submitted,



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and

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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 23rd day of February 1999:

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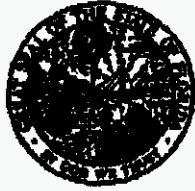
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State of Florida



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: February 19, 1999
TO: All Parties of Record
FROM: Rosanne Gervasi, Staff Counsel *RG*
RE: Docket No. 950495-WS - Application for rate increase and increase in service availability by Southern States Utilities, Inc. 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, Putnam, Seminole, St. Johns, St. Lucie, Volusia, and Washington Counties.

As discussed at our meeting earlier today, here is an updated version of staff's issues. We have excluded the utility's Issue 3, and kept staff's issue 10 for now. The Prehearing Officer has indicated that the issues and their appropriate wording should be placed before the Commission for their consideration at the March 16 Agenda Conference.

Please read all issues carefully, as staff has included a few additional suggested changes that we made after this morning's meeting. Please fax me your suggested language for all issues by noon on Tuesday, February 23, 1999. My fax number is (850) 413-6225.

PART I

- ISSUE 1:** What flows should be used in the numerator of the used and useful equation to calculate used and useful plant for Florida Water Service Corporation's Buenaventura Lakes, Citrus Park, Marco Island and Marco Shores wastewater treatment plants?
- ISSUE 2:** In mixed use areas, for the water distribution and wastewater collection systems, must the Commission use equivalent residential connections in the numerator of the used and useful equation?
- ISSUE 3:** What is the appropriate provision for reconsideration, appellate, and remand rate case expense for this proceeding?
- ISSUE 4:** What are the appropriate final water and wastewater revenue requirements?



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- ISSUE 5:** What are the appropriate water and wastewater rates for Florida Water Services Corporation?
- ISSUE 6:** What is the appropriate amount by which rates should be reduced four years after the established effective date to reflect the removal of the amortized rate case expense as required by Section 367.0816, Florida Statutes?
- ISSUE 7:** Should any portion of the interim increase granted be refunded, and if so, what is the amount?
- ISSUE 8:** Based on the changes to the used and useful percentages, what are the appropriate allowance for funds prudently invested charges, and are any refunds of the charges collected required?

PART II

- ISSUE 9:** What is the appropriate action that should be taken with regard to surcharges?
- ISSUE 10:** Should the utility be allowed to collect interest on the surcharges, and, if so, how should interest be calculated?
- ISSUE 11:** Should the utility be required to file tariff sheets and a proposed customer notice reflecting approved surcharges?

RG/lw

cc: Division of Water & Wastewater (All Water and Wastewater Managers)
Division of Records & Reporting

l:ssumemo.rg