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April 19, 1999

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
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HAND DELIVERY

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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 following documents:

1. Original and fifteen copies of Florida Water's Objections to Office of Public Counsel's Second Set of Interrogatories and Third Request for Production of Documents on Remand; and
2. A disk in Word Perfect 6.0 containing a copy of the Objections.

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

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Enclosures

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: April 19, 1999

**FLORIDA WATER SERVICES CORPORATION'S
OBJECTIONS TO OFFICE OF PUBLIC COUNSEL'S
SECOND SET OF INTERROGATORIES AND THIRD
REQUEST FOR PRODUCTION OF DOCUMENTS ON REMAND**

Florida Water Services Corporation ("Florida Water"), by and through its undersigned counsel, and pursuant to Rule 28-106.206, Florida Administrative Code, Rules 1.280(b) and 1.350(b), Florida Rules of Civil Procedure and Order No. PSC-99-0181-PCO-WS, at 2, hereby files its Objections to the Office of Public Counsel's ("OPC") Second Set of Interrogatories and Third Request for Production of Documents on Remand. In support of its Objections, Florida Water states as follows:

INTRODUCTION

This case stems from an application for increased water and wastewater rates filed by Florida Water in 1995. The final hearing was held on April 29 through May 10, 1996. The Commission entered its final order on October 30, 1996. Following appeals by Florida Water and other parties, on June 10, 1998, the First District Court of Appeal issued its opinion in Southern States Utilities

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

v. Florida Public Service Commission, 714 So.2d 1046 (Fla. 1st DCA 1998) ("Southern States II").¹

In Southern States II, the court reversed the Commission and accepted the Commission's confession of error on a multitude of issues affecting Florida Water's revenue requirements and allowance for funds prudently invested charges. On remand, in accordance with the Southern States II decision, the Commission approved an increase in rates in response to the court's reversal of the Commission's: (1) failure to afford 100% used and useful treatment for reuse facilities; (2) unlawful reduction to Florida Water's equity due to the one-sided refund order issued in Docket No. 920199-WS subsequently reversed by the court; and (3) confession of error in failing to use the average flows in the maximum month in the calculation of the used and useful investment for three wastewater treatment plants. Surcharges also were ordered by the Commission in connection with the increased revenue requirements as a result of these reversals; however, that issue remains pending due to a protest filed by Sugarmill Woods Civic Association, Inc.

In addition to the above issues, the court reversed the Commission's use of average annual daily flows in the numerator of the calculation of used and useful for four wastewater treatment plants 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. The court held that both of these determinations constituted departure from Commission policies that were not supported by record evidence. The court authorized the Commission, on remand, to adduce evidence, if it can, to support the Commission's departure from established policies.

In challenging the Commission's determinations of used and useful for the four wastewater

¹A motion for rehearing was denied by the court on July 5, 1998.

treatment plants, Florida Water argued before the court that the Commission had departed from established Commission policy without adequate record support, that the new policy produced used and useful levels below those previously authorized by the Commission, and that the lowering of previously established used and useful investments was a departure from Commission precedent, in violation of the doctrine of administrative finality and constituted an unconstitutional confiscation of Florida Water's property. The court reversed the Commission on the ground that the Commission's new policy was not supported by record evidence in violation of applicable statutory requirements under Chapter 120, Florida Statutes, and applicable decisions thereunder.

In remanding the case to the Commission, the court held:

[b]ecause this policy shift was essentially unsupported by "expert testimony, documentary opinion or other evidence appropriate to the nature of the issue involved," ... (citation omitted), the PSC must, on remand, give a reasonable explanation, if it can, supported by record evidence (which all parties must have an opportunity to address) as to why average daily flow in the peak month was ignored.

Southern States II, 714 So.2d at 1056. Having reversed on this ground, the court did not address the additional grounds for reversal urged by Florida Water. See Southern States II, 714 So.2d at 1059.

As previously stated, Florida Water also challenged the Commission's use of the lot count method in calculating the level of used and useful investment in water transmission and distribution and wastewater collection facilities. As with the wastewater treatment used and useful issue, Florida Water asserted that the use of the lot count method was an unsupported departure from prior Commission rejections of the lot count method, unlawfully lowered previously established used and useful levels, and unconstitutionally confiscated Florida Water's property. The court reversed on the basis that the Commission had failed to provide adequate record support for its employment of

the new lot count method. The court held:

The PSC's conceded change of method in calculating used and useful percentages for distribution and collection systems is another "policy shift... essentially unsupported 'by expert testimony, documentary opinion, or other evidence appropriate to the nature of the issue involved,' (citation omitted)." 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.

Florida Water objects to providing documents and information responsive to a number of OPC's Second Set of Interrogatories and Third Request for Production of Documents on Remand because these requests fall outside of the scope of the remand from the court's decision in Southern States II and, therefore, are not reasonably calculated to lead to the discovery of admissible evidence. See Rule 1.280(b)(1), Florida Rules of Civil Procedure. In addition, a number of OPC's discovery requests seek information and documents from Florida Water which do not exist. Consistent with Commission precedent, Florida Water is not required to create new documents, undertake new analyses, or create new studies or reports to respond to a discovery request² particularly where, as here, the requests exceed the scope of the remand from the Southern States II decision and the test year used for ratemaking purposes in this rate case.

²See, e.g., Order No. PSC-92-0819-PCO-WS issued August 14, 1992.

OPC'S SECOND SET OF INTERROGATORIES ON REMAND

Interrogatory No. 17 states:

Provide the rationale and work papers which justify the Company's "mixed use areas" determination.

Florida Water objects to the production of work papers or any other documents in response to an interrogatory propounded pursuant to Rule 1.340, Florida Rules of Civil Procedure, and Rule 28-106.206, Florida Administrative Code. Any request for work papers must be pursued pursuant to a request for production of documents served in accordance with Rule 1.350, Florida Rules of Civil Procedure, and Rule 28-106.206, Florida Administrative Code.

Interrogatory No. 18 states:

Provide the build-out ERC numbers for those water and wastewater systems serving "mixed use areas" and the associated engineering work papers for the build-out ERC calculation.

Florida Water objects to the production of work papers or any other documents in response to an interrogatory propounded pursuant to Rule 1.340, Florida Rules of Civil Procedure, and Rule 28-106.206, Florida Administrative Code. Any request for workpapers must be pursued pursuant to a request for production of documents served in accordance with Rule 1.350, Florida Rules of Civil Procedure, and Rule 28-106.206, Florida Administrative Code. With respect to the requested "build-out ERC" data, Florida Water does not object to providing a response to this interrogatory consistent with Florida Water's response to Staff Interrogatory No. 5. However, Florida Water does object to OPC Interrogatory No. 18 to the extent OPC seeks to use "build-out ERC" data to inappropriately attempt to expand the scope of this remand proceeding beyond the minimum filing requirements ("MFRs") which form the basis for rate relief in the final order and must continue to

do so on remand. The "build-out ERC numbers" are irrelevant to an evaluation of test year used and useful lines or wastewater treatment plant. The record in this proceeding includes Florida Water's MFRs which include projected ERC numbers for the projected 1996 test year. As Florida Water stated in response to Staff Interrogatory No. 5, no projections, other than the F Schedules filed with the MFRs, exist which show projected ERCs at "build-out." The parties must be limited to the information provided in the MFRs. This remand proceeding should not be construed as a true-up proceeding or an avenue for interveners or staff to attempt to obtain additional adjustments beyond and outside the scope of the two limited used and useful determinations which were reversed by the court.³

OPC'S THIRD REQUEST FOR PRODUCTION OF DOCUMENTS ON REMAND

Document Request No. 12 states:

To the extent not previously provided, please provide all DEP construction permits issued since 1990 for the following wastewater treatment plants: Buenaventura Lakes, Citrus Park, Leisure Lakes, Marco Island and Marco Shores.

Florida Water objects to OPC Document Request No. 12 to the extent OPC seeks construction permits issued by DEP after the conclusion of the final hearing in this rate case.⁴ In

³Florida Water recognizes that its objections to similar discovery requests propounded by the Commission Staff (Staff Interrogatory No. 5) and OPC (OPC Interrogatory Nos. 2 and 3) were denied pursuant to Order Nos. PSC-99-0612-PCO-WS and PSC-99-0708-PCO-WS; however, Florida Water intends to challenge those rulings before the First District Court of Appeal.

⁴Florida Water recognizes that its objections to similar discovery requests propounded by OPC seeking post-test year information and permits (OPC Interrogatory Nos. 6 and 7 and OPC Document Request Nos. 3 and 4) were denied pursuant to Order No. PSC-99-0708-PCO-WS; however, Florida Water intends to challenge that ruling before the First District Court of Appeal.

addition, Florida Water objects to the production of any DEP operating permits related to the Leisure Lakes wastewater treatment plant on the ground that consideration of the level of Florida Water's used and useful investment in the Leisure Lakes wastewater treatment plant is outside the scope of the Southern States II remand.⁵

Document Request No. 13 states:

To the extent not previously provided, please provide all DEP operating permits issued since 1990 for the following wastewater treatment plants: Buenaventura Lakes, Citrus Park, Leisure Lakes, Marco Island and Marco Shores.

Florida Water objects to OPC Document Request No. 13 to the extent OPC seeks operating permits issued by DEP after the conclusion of the final hearing in this rate case.⁶ In addition, Florida Water objects to the production of any DEP construction permits related to the Leisure Lakes wastewater treatment plant on the grounds that consideration of the level of Florida Water's used and useful investment in the Leisure Lakes wastewater treatment plant is outside the scope of the Southern States II remand.⁷

⁵Florida Water recognizes that previous objections to OPC discovery requests concerning the Leisure Lakes wastewater treatment plant were denied pursuant to Order No. PSC-99-0708-PCO-WS; however, Florida Water intends to challenge that ruling with the First District Court of Appeal.

⁶Florida Water recognizes that its objections to similar discovery requests propounded by OPC seeking post-test year information and permits (OPC Interrogatory Nos. 6 and 7 and OPC Document Request Nos. 3 and 4) were denied pursuant to Order No. PSC-99-0708-PCO-WS; however, Florida Water intends to challenge that ruling before the First District Court of Appeal.

⁷Florida Water recognizes that previous objections to OPC discovery requests concerning the Leisure Lakes wastewater treatment plant were denied pursuant to Order No. PSC-99-0708-PCO-WS; however, Florida Water intends to challenge that ruling with the First District Court of Appeal.

Document Request No. 16 states:

Provide any and all analyses and workpapers prepared by or for the Company which examine the peak flows of Buenaventura Lakes, Citrus Park, Leisure Lakes, Marco Island and Marco Shores treatment plants relative to average annual daily flows.

Florida Water objects to OPC Document Request No. 16 to the extent this document request seeks: (1) documents concerning the Leisure Lakes wastewater treatment plant (for the reasons stated above); and (2) any analyses or work papers prepared in anticipation of litigation and at the direction of Florida Water's counsel which constitute privileged and protected work product.

Document Request No. 17 states:

To the extent not previously provided, please provide any and all analyses and workpapers prepared by or for the Company which compares the use of the lot count to lot count methodology versus the ERC to lot count methodology for the purpose of calculating the used and usefulness of water transmission and distribution lines and wastewater collection lines.

Florida Water objects to OPC Document Request No. 17 to the extent this document request seeks any analyses or work papers prepared in anticipation of litigation and at the direction of Florida Water's counsel which constitute privileged and protected work product.

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 19th day of April 1999:

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