

RUTLEDGE, ECENIA, UNDERWOOD, PURNELL & HOFFMAN

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PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A. ECENIA
KENNETH A. HOFFMAN
THOMAS W. KONRAD
MICHAEL G. MAIDA
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

GOVERNMENTAL CONSULTANTS
PATRICK R. MALOY
AMY J. YOUNG

TELEPHONE (904) 681-6788
TELECOPIER (904) 681-6515

April 28, 1997

HAND DELIVERY

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

Re: Docket No. 970328-SU

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 Response to the Office of Public Counsel's First Motion to Compel; and

2. A disk containing a copy of the docket in Word Perfect 6.0 entitled "Compel-1.Rsp."

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

ACK _____
AFA _____
APP _____
CAF _____
CMU _____
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OPC _____
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SEC 1 _____
WAS _____
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KAH/rl
cc: All Parties of Record

Trib. 3

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DOCUMENT NUMBER-DATE
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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition to Establish)
 Rates for a New Class of Service)
 for Residential Wastewater Only)
 (RWO) Service in All Jurisdiction-)
 al Service Areas Included in)
 Docket No. 950495-WS and Currently)
 Without Authorized RWO Rates by)
 Florida Water Services Corporation)

Docket No. 970328-SU

Filed: April 28, 1997

FLORIDA WATER SERVICES CORPORATION'S
RESPONSE TO THE OFFICE OF PUBLIC COUNSEL'S
FIRST MOTION TO COMPEL

FLORIDA WATER SERVICES CORPORATION, formerly Southern States Utilities, Inc. (hereinafter "Florida Water" or "Utility"), by and through its undersigned counsel and pursuant to Rule 25-22.037(2)(b), Florida Administrative Code, hereby files its response in opposition to the Office of Public Counsel's First Motion to Compel. In support of this response, Florida Water states as follows:

1. In its First Motion to Compel ("Motion"), the Office of Public Counsel ("OPC") has failed to establish how the level of revenue increase approved in Docket No. 950495-WS, as calculated by the Utility and/or its parent, has a reasonably calculated causal connection to possible evidence relevant to the issues in the pending action.¹ Therefore, OPC's Motion must be denied. See Calderbank vs. Cazares, 435 So.2d 377 (Fla. 5th DCA 1983) and Krypton Broadcasting vs. MGM-Pathe Communications Co., 629 So.2d

¹ OPC has withdrawn interrogatory number 2 and document request number 2. Only interrogatory number 1 and document request number 1 remain at issue, and both of these concern the level of increase approved in Docket No. 950495-WS.

DOCUMENT NUMBER-DATE

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852 (Fla. 1st DCA 1994).

2. As anticipated, OPC relies on sophistry, rather than a reasonably calculated causal connection, in an attempt to justify its discovery. Florida Water refers the Prehearing Officer to the arguments raised in its Motion for Protective Order filed April 7, 1997, which is hereby incorporated by reference, and particularly to the following assertion therein:

Even if establishing RWO rates in this docket yielded any measurable revenue whatsoever, the amount of revenue generated has absolutely no bearing at all on how Florida Water or its parent calculated the amount of a revenue increase in a completely separate docket.

Motion for Protective Order at pp 4 - 5. OPC's Motion evades this point with deficient reasoning.

3. Florida Water filed a Petition to Establish Residential Wastewater Only Rates (the "Petition") to establish a new class of service for residential wastewater only ("RWO") service in all Florida Water service areas currently under the Commission's jurisdiction which do not currently have RWO rates (except for Polk County). In Docket No. 950495-WS, the Commission established RWO rates for service areas which had current RWO customers as reflected in the minimum filing requirements ("MFRs"). The Commission neither accepted nor rejected Florida Water's filed RWO rates for service areas which did not have RWO customers at the time of the MFRs.² Although not directly stated in the Petition,

² Reconsideration of the Commission's Final Order in Docket No. 950495-WS was not sought because the revenue impact of the subject RWO rates was de minimis, even if estimable, and a separate new class of service filing could be easily made. Florida Water's Petition initiating this docket was filed March 18, 1997, the date

the Petition gives every indication that RWO rates are sought for and limited to these service areas which do not have existing RWO customers, based on anticipated need for the service.³

4. OPC's premise that Florida Water is "raising rates" and the companion insinuation that Florida Water would somehow impermissibly raise revenues are utterly flawed. Florida Water seeks to establish a new class of service for customers who were not receiving that service at the time of Docket No. 950495-WS and were not eligible for service under any other existing service classification. The new RWO service and rates are designed to ensure (1) that customers who request RWO service receive the service, (2) that RWO customers pay the appropriate cost for providing the RWO service, and (3) that other wastewater customers will not carry the cost of providing RWO service absent an RWO rate. Even if new revenue were generated, the new revenue is designed specifically to cover the cost of providing the new service. The cost of providing currently available services and

the Commission voted on the parties' and its own motions for reconsideration in Docket No. 950495-WS. In Docket No. 950495-WS, the Commission reconsidered on its own motion the establishment of certain private fire protection rates. See Order No. PSC-97-0374-FOF-WS, at 21. The circumstances of that issue were, in Florida Water's view, identical to those for the RWO rates issue, *i.e.*, Florida Water requested private fire protection rates for all service areas based on actual service and prospective need but the Commission's prior vote and Final Order failed to address the latter request. After it became clear the Commission would not reconsider on its own motion the RWO rates as it did the private fire protection rates, Florida Water filed the Petition.

³ In the last several months, Florida Water has received requests for RWO service in several of the service areas for which no prior RWO rates existed. At this time, Florida Water estimates that no more than one dozen customers are affected.

the revenues generated therefrom, particularly as each have been determined in a prior case, are not relevant. Even in Docket No. 950495-WS, when the Commission approved on its own reconsideration motion private fire protection charges for Florida Water service areas without current private fire protection customers, the Commission did not reassess the revenue increase impact the new rates would have. Accordingly, the Commission should reject OPC's antithetical suggestion that a revenue increase reassessment or, more accurately, a reconciliation, is somehow a relevant inquiry in the context of the new RWO rates at issue here.

5. Even if new RWO rates generate a revenue increase and that revenue increase must for some reason be evaluated against that allowed by the Commission in a prior case involving other services, as OPC argues, OPC's argument relies upon the curious premise that the Utility's mere perception of the revenue increase is pertinent to whether or not the Utility would in fact exceed the revenue requirement. If this premise were true, then it is equally permissible for Florida Water to obtain discovery in this docket of OPC's perception of the revenue increase and any revenue adjustments made in the prior case.⁴ The Commission staff's perception on these points would be discoverable as well,⁵ as would

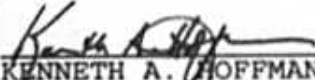
⁴ OPC's annual reports to the Legislature typically make claims that OPC saved the customers from having to pay higher revenue requirements with little or no explanation as to how those savings were calculated.

⁵Indeed, the Commission's calculation of the revenue increase should be of equal, if not more, interest to OPC in its current pursuit.

the perception of any other party to the case. Aside from illustrating the ridiculousness of OPC's argument, Florida Water's point is simply this. If a party stated that the revenue increase in the prior case was higher or lower than that stated in the Final Order, the party's statement would make no difference whatsoever on the question of whether the total revenue requirement **as determined by the Commission** would in fact be exceeded or not exceeded by revenues generated with a new service.

WHEREFORE, for the reasons stated herein, Florida Water Services Corporation requests that the Prehearing Officer deny the Office of Public Counsel's First Motion to Compel.

Respectfully submitted,


KENNETH A. HOFFMAN, ESQUIRE
Rutledge, Eckenia, Underwood,
Purnell & Hoffman, P.A.
P. O. Box 551
Tallahassee, FL 32302-0551
(904) 681-6788

and

MATTHEW 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 was furnished by the U. S. Mail to the following this 29th day of April, 1997:

Tim Vacarro, Esq.
Division of Legal Services
Gerald L. Gunter Building
2540 Shumard Oak Boulevard
Room 370
Tallahassee, FL 32399-0850

Charles Beck, Esq.
Office of Public Counsel
Claude Pepper Building
111 W. Madison Street
Room 812
Tallahassee, FL 32399-1400



KENNETH A. HOFFMAN, ESQUIRE