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ADMINISTRATIVE LAW  
GOVERNMENTAL LAW  
PUBLIC UTILITY LAW

May 17, 2001

BY HAND DELIVERY

Blanca Bayo  
Director, Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399

Docket No. 991666-WU

Re: Application for amendment of Certificate No. 106-W to  
add territory in Lake County by Florida Water  
Services Corporation.

Dear Ms. Bayo:

Enclosed for filing are the original and fifteen copies of  
Response in Opposition to Motion for Summary Final Order and  
Motion Requesting Oral Argument to be filed in this docket on  
behalf of the City of Groveland.

Please stamp a copy and return to us for our records.

Very truly yours,

Suzanne Brownless  
Attorney for City of Groveland

APP	_____
CAF	_____
CMP	_____
COM	3 _____
CTR	_____
ECR	_____
LEG	1 _____
OPC	_____
PAI	_____
RGO	_____
SEC	1 _____
SER	_____
OTH	_____

DOCUMENT NO.
06233-01

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application for amendment of )  
Certificate No. 106-W to add territory ) DOCKET NO. 991666-WU  
in Lake County by Florida Water )  
Services Corporation. )  
\_\_\_\_\_)

RESPONSE IN OPPOSITION TO  
MOTION FOR SUMMARY FINAL ORDER

The City of Groveland, Florida (City) by and through its undersigned counsel, and pursuant to Rule 28-106.204, F.A.C., files this Response in Opposition to Florida Water Services Corporation's (FWSC) Motion for Summary Final Order, and in support thereof states as follows:

1. On May 10, 2001, FWSC filed a Motion For Summary Final Order in which it essentially presented two arguments. First, FWSC contends that the City is arguing that the Commission reject FWSC's application based on the fact that the City has a prior right to serve the territory being requested by FWSC under Chapter 180. F.S. [FWSC's Motion at ¶ 5] It appears to be FWSC's contention that the "scope and effect of municipal actions under Chapter 180 are not within the Commission's jurisdiction." [FWSC's Motion at ¶ 6]. And thus, the Commission does not have the authority to "engage in an analysis or interpretation of the scope of a municipality's claims under Chapter 180." [FWSC's Motion at ¶ 12]

2. Second, FWSC argues that, based on the City's prefiled direct and rebuttal testimony, there is no duplication of, or competition with, the City's utility services in contravention of §367.045(5)(a), F.S., since there is no existing City system "adjacent to the development at issue." [FWSC's Motion at ¶ 13-14]

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3. The Motion for Summary Final Order must fail, as a matter of law, on both counts.

Chapter 180

4. The City agrees with FWSC that the Commission has no jurisdiction over municipal water and wastewater utilities. §367.022(2), F.S. As such, the Commission does not have the authority to interpret the provisions of Chapter 180, F.S. The Commission does have the authority to interpret the statutes that empower it, and to make rules and issue orders accordingly. Florida Public Service Comm. v. Bryson, 569 So.2d 1253, 1255 (Fla. 1990). However, the Commission has no such authority to interpret other statutes that do not fall within the ambit of its own empowering legislation.

5. The City strongly disagrees with the interpretation of §180.02(3), F.S., advanced by FWSC. [FWSC Motion at ¶ 6] However, the Commission is not the proper party to interpret the provisions of Chapter 180, F.S., or to apply its interpretation of the provisions of Chapter 180, F.S., to the facts presented in this case. And, contrary to the allegation of FWSC, the City is not requesting that the Commission do so. The City's prior right to serve is not at issue in this case. It is a fact like many others presented to the Commission necessary for the Commission's full understanding of this particular application.

6. Given the fact that Chapter 180, F.S., falls totally beyond the Commission's authority and beyond the reach of its empowering statutes, as a matter of law the Commission can not

grant the relief that FWSC has requested: that the Commission interpret §180.02(3), F.S., to exclude the establishment of an exclusive municipal five mile service area for the provision of retail water service and "on this basis alone" dismiss the City's objection. [FWSC Motion at ¶ 6].

Duplication of services

7. What is at issue in this case is the duplication of, and competition with, the City's water and wastewater utility systems by the granting of the service area requested by FWSC in this docket. §367.045(5)(a), F.S.

8. This issue has been timely raised in this docket and is set forth in Issues 10, 11A and 11B<sup>1</sup>. These issues have been agreed to and addressed by all parties and Commission Staff in prehearing statements filed in this docket on February 8 and February 9, 2001. FWSC admits that these issues are appropriately considered by this Commission. [FWSC Motion at ¶¶ 13-14]

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<sup>1</sup> Issue 10: "Will the extension of Florida Water Services Corporation territory in Lake County duplicate or compete with the City of Groveland's utility system?"; Issue 11A: "If the granting of the territory which Florida Water Services Corporation seeks to add to its PSC certificate will result in an extension of a system which would be in competition with, or a duplication of the City of Groveland's system or a portion of its system, is the City of Groveland's system inadequate to meet the reasonable demands of the public or is the City unable, refusing or neglecting to provide reasonably adequate service to the proposed territory?"; Issue 11B: "Does the Commission have the statutory authority to grant an extension of service territory to Florida Water Service Corporation which will be in competition with, or a duplication of, the City of Groveland's system(s), unless factual findings are made that the City's system(s) or a portion thereof is inadequate to meet the reasonable demands of the public or that the City is unable, refuses or has neglected to provide reasonably adequate service to the proposed service territory?"

Notwithstanding this fact, however, FWSC states that the City's prefiled testimony does not constitute duplication of services under FWSC's interpretation of the Commission's previous decisions. [FWSC Motion at ¶ 15]

9. As the Commission is aware, a motion for summary order is the administrative equivalent of a motion for summary judgment under Rule 1.510, F.R.C.P. Motions for summary judgment can only be granted if "there is no genuine issue as to any material fact" such that the "moving party is entitled to a judgment as a matter of law." Rule 1.510(c), F.R.C.P. Such is not the case here.

10. With regard to the duplication of services issue, the City's testimony indicates, as FWSC acknowledges, that existing water service is approximately 2 1/2 miles from the proposed development at issue in this docket. [FWSC Motion at ¶ 14] Whether or not that constitutes "duplication of services" for the purposes of §367.045(5)(a), F.S., is for the Commission, not FWSC to decide.

11. Further, the City is currently extending its water lines past the Cherry Lake terminus referenced in the prefiled testimony to a development immediately opposite the development at issue in this docket. That extension should be completed by the currently scheduled hearing date of July 11-12, 2001. The City's expansion plans, like those of FWCS are dynamic, and change with time. The City is entitled to present this testimony to the Commission at hearing. It is both relevant to identified issues in this docket and a legitimate supplement to the City's timely prefiled

testimony.

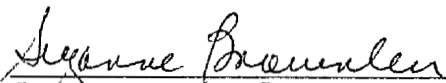
12. Unlike FWSC seems to suggest, the City is not limited to introducing at hearing only the information presented in its objection or prefiled testimony, but is free to develop its case with any additional information which comports with the rules of evidence and Florida administrative procedures.

13. Without a doubt there are "genuine issues" as to the material facts surrounding the issue of duplication of services and competition with the City's water and wastewater system. A summary final order on this issue cannot legally issue in this case.

14. Finally, the City would note that the City does not agree that FWSC has either the plant capacity to service the requested territory or that FWSC's application is consistent with the local comprehensive plan. [City's Prehearing Statement at 3, Issues 4 and 5] Again, there are "genuine issues" as to the material facts surrounding these agreed upon, legitimate issues as well.

WHEREFORE, the City of Groveland requests that the Commission deny Florida Water Services Corporation's Motion For Summary Final Order.

Respectfully submitted this 17th day of May, 2001 by:

  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing was furnished by Hand Delivery (\*) and regular U.S. Mail to the following on this 17th day of May, 2001:

J. L Yarborough, City Manager  
156 South Lake Avenue  
Groveland, FL 34736

(\*) Patricia Christensen, Esq.  
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Florida Public Service Comm.  
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\_\_\_\_\_  
Suzanne Brownless, Esq.

c: 3397