

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation of the Quality)
of Service Provided by Florida)
Water Services, Inc. to the)
Deltona Service Territory.)

Docket No. 010153-WU

Filed: May 18, 2001

CITIZENS' MOTION TO STRIKE
FLORIDA WATER SERVICES CORPORATION'S
ANSWER TO OFFICE OF PUBLIC COUNSEL'S
PETITION TO OPEN AN INVESTIGATION DOCKET

The Citizens of the State of Florida("Citizens"), by and through their undersigned attorney, file this Motion to Strike Florida Water Services Corporation's ("Florida Water", "Utility" or "Company") Answer to Office of Public Counsel's Petition to Open an Investigation of the Quality of Service Provided by Florida Water to the Deltona Service Territory, and state:

1. On February 1, 2001, the Citizens filed their Petition to Open an Investigation of the Quality of Service Provided by Florida Water to the Deltona Service Territory. The petition requested the Commission to open a docket to determine the cause of the red worm contamination found in the service territory; to determine the best solution to eliminate the contamination, and to verify the permanent elimination of the contamination.

2. The Commission established Docket No. 010153-WU to address the concerns expressed in the Citizens' Petition.

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3. On May 11, 2001, more than three months after the petition was filed, Florida Water filed its answer to the Citizens' Petition.

4. In its answer Florida Water provides a "General Response" which alleges what different people saw and heard concerning the presence of red worms at various houses. On page 5 of the answer, Florida Water states: "Ms. Barrios also told Mr. Smith (Tracy Smith, spokesperson for Florida Water) that she witnessed Ms. Hester (original complainant) giving her next door neighbor, Ms. Martinez, a larvae from her tub to place in the Martinez's toilet tank." On this same page of the answer Florida Water also alleges: "Ms. Berrios stated that Ms. Hester then sent the Health Department to Ms. Martinez's home to check for worms." This unsworn testimony attributed to others by Florida Water in its answer is presented apparently to help make the case that Ms. Hester has been seeding homes with the larvae in order to fan the controversy. Such unsworn testimony presented to the Commission by Florida Water does not promote the Commission's search for the truth, especially when the purported testimony is disavowed by all of the relevant people.

5. When the Citizens spoke to Ms. Berrios by phone she said she never saw Ms. Hester put any larvae in Ms. Martinez's toilet tank or anywhere else in the Martinez's home. Ms. Hester's seeding of larvae at the Martinez home was also denied

by Ms. Hester and the Martinez family,

6. At this time the Citizens do not know the cause of the contamination, but we seek the truth in this matter whatever it may prove to be. To borrow a phrase from a popular television program: the truth is out there! The best way to discover the truth is to collect all of the relevant information concerning this problem, including sworn testimony from the people who are experts on the subject and sworn testimony from the people who have first hand knowledge about the situation in the Deltona service territory. This search for the truth is not well served when parties offer unsworn potentially inaccurate hearsay evidence.

7. This docket should remain open first, to determine the true cause of the red worm contamination; second, to confirm that the best solution to the problem has been implemented; and thirdly, to verify that the contamination has been permanently eliminated.

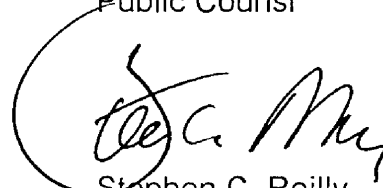
8. In paragraphs 5 and 6 of its answer, Florida Water argues that the Docket should not be opened. Docket No. 010153-WU is already open. It has been open for over three months. If Florida Water seeks to have this docket closed the appropriate pleading would be a Motion to Close the Docket. Since Florida Water did not file such a motion its arguments in paragraphs 5 and 6 are equivalent to a Motion to Dismiss the

Petition to Open the Docket. To the extent Florida Water's answer constitutes a Motion to Dismiss the Petition, it is improper, untimely and should be stricken. As required by the Model Rules, any Motion to Dismiss would have to have been filed on or before February 26, 2001 (25 days from the date the Petition was filed, 20 days plus 5 days because the petition was served by mail on Florida Water).

WHEREFORE, the Citizens respectfully request the Commission to strike any portion of the answer that seeks to dismiss the Citizens' Petition.

Respectfully submitted,

Jack Shreve
Public Counsel

A handwritten signature in black ink, appearing to read "Stephen C. Reilly", is written over a circular stamp or mark.

Stephen C. Reilly
Associate Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400

Attorney for the Citizens
of the State of Florida

**DOCKET NO. 010153-WU
CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the Citizens' Motion to Strike Florida Water's Answer has been furnished by hand delivery to the following parties this 18th day of May, 2001.

Jennifer Brubaker, Esq.
Division of Legal Services
Fla. Public Service Commission
2540 Shumard Oak Blvd.
Room 370
Tallahassee, FL 32399-0850

Kenneth A. Hoffman, Esq.
Martin P. McDonnell, Esq.
Rutledge, Ecenia, Purnell &
Hoffman, P.A.
P.O. Box 551
Tallahassee, FL 32302



Stephen C. Reilly
Associate Public Counsel