

**RUTLEDGE, ECENIA, PURNELL & HOFFMAN**

PROFESSIONAL ASSOCIATION  
ATTORNEYS AND COUNSELORS AT LAW

ORIGINAL

STEPHEN A. ECENIA  
JOHN R. ELLIS  
KENNETH A. HOFFMAN  
THOMAS W. KONRAD  
MICHAEL G. MAIDA  
MARTIN P. McDONNELL

POST OFFICE BOX 551, 32302-0551  
215 SOUTH MONROE STREET, SUITE 420  
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788  
TELECOPIER (850) 681-6515

J. STEPHEN MENTON  
R. DAVID PRESCOTT  
HAROLD F. X. PURNELL  
GARY R. RUTLEDGE  
GOVERNMENTAL CONSULTANTS  
MARGARET A. MENDUNI  
M. LANE STEPHENS

July 9, 2001

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-FPSC  
01 JUL -9 PM 3:35  
COMMISSION  
CLERK

Re: Docket No. 980744-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 Prehearing Statement; and
2. A disk in Word Perfect 6.0 containing a copy of the Prehearing Statement.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me.

Thank you for your assistance with this filing.

Sincerely,

Kenneth A. Hoffman

KAH/rl

Enclosures

cc: Counsel of Record

Bayo.709

APP  
CAF  
QMP  
GOM 3  
GTR  
EGR  
LEG  
OPC  
PAI  
RGO  
SEC  
SER  
OTH

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

08347 JUL-90

FPSC-RECORDS/REPORTING

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Investigation into ratemaking )  
considerations of gain on sale from sale )  
of facilities of Florida Water Services )  
Corporation to Orange County. )  
\_\_\_\_\_)

Docket No. 980744-WS

Filed: July 9, 2001

**FLORIDA WATER SERVICES CORPORATION'S  
PREHEARING STATEMENT**

Florida Water Services Corporation ("Florida Water") hereby files its Prehearing Statement in accordance with Order No. PSC-00-1170-PCO-WS issued on June 27, 2000, as revised by Order No. 00-1752-PCO-WS issued September 26, 2000 and Order No. 00-2141-PCO-WS issued November 9, 2000 and further revised by Order No. 00-2379-PCO-WS issued December 11, 2000 and Order No. 01-0230-PCO-WS issued January 24, 2001:

**A. Witnesses.**

Florida Water will offer the following witnesses in this proceeding:

- A. Hugh Gower, addressing issues 2, 6, 7 and 9 on direct and issues 2, 5, 6, 7, 8 and 9 on rebuttal.
- B. Charles A. Hughes addressing issues 2, 5, 6, 7 and 9.
- C. James A. Perry addressing issues 1, 2, 3, 4, and 5 on direct and issues 3, 5 and 6 on rebuttal.
- D. John Cirello addressing issues 1, 2, 3, 6 and 7.

**B. Exhibits**

Florida Water intends to present the following exhibits which are included with the prefiled and rebuttal testimony of Florida Water's witnesses:

DOCUMENT NUMBER-DATE

08347 JUL-98

FILED RECORDED & RETURNED

247

1. Charles A. Hughes

<u>Exhibit:</u>	<u>Title:</u>
CAH-1	Resume
CAH-2	1990 North Carolina Utilities Commission Order on the proposed sale of four systems owned by Carolina Water Services, Inc.
CAH-3	September 19, 1994 Order of the North Carolina Utilities Commission reversing its previous gain on sale policy

2. James Perry

<u>Exhibit:</u>	<u>Title:</u>
JAP-1	Resume
JAP-2	(Withdrawn)
JAP-3	(Withdrawn)
JAP-4	(Withdrawn)
JAP-5	Itemized calculation of the gain by Florida Water on the sale of its Orange County systems
JAP-6	Composite Exhibit of debit and credit entries for the sale of the Orange County systems

3. John Cirello

<u>Exhibit:</u>	<u>Title:</u>
JC-1	Resume
JC-2	(Withdrawn)
JC-3	(Withdrawn)

Florida Water reserves the right to utilize demonstrative exhibits and to introduce exhibits for cross examination, impeachment or any other purpose authorized by the applicable Florida Rules of Evidence or the rules of the Commission.

**C. Basic Position**

In Docket No. 971667-WS, the Commission approved Florida Water's application to transfer water and wastewater facilities in Orange County (the "Orange County Systems") to the County. The primary issue in this docket is whether the gain realized by Florida Water from the sale of its Orange County Systems which included Florida Water's customers, land and facilities, should be shared with ratepayers. Florida Water made a prudent business decision to sell its systems in Orange County in order to focus its business development activities in areas that held potential for greater future growth. The systems sold to the County had limited growth potential and had been net contributors to Florida Water's overall financial operations. The gain on the sale of the Orange County Systems is properly allocated completely to the shareholders whose capital financed the investments. Such a result is particularly justified in this case because the proceeds from the sale of the Orange County systems were reinvested by Florida Water in the purchase of Palm Coast Utility Corporation ("Palm Coast").

The appropriate and historic regulatory framework recognizes that "rate base" is a surrogate for investors' capital and assigns to investors the risk of gains or losses from sales of operating units or systems which represent the withdrawal of assets (capital) from the utility's service business. The sale of the Orange County Systems was a capital transaction which was effectively a partial liquidation. The resulting gains were not the result of operations but, instead, resulted from the transfer of integrated utility systems with their corresponding customer base. Failure to assign to

investors gains and losses on sales of this nature would be confiscatory, unfair and improper. It would also adversely affect a utility's ability to raise needed capital.

In this particular case, Florida Water and its parent corporation promptly reinvested the capital recovered through this sale into the purchase of two new systems with greater growth potential and contribution of recovery of common and allocated costs. Thus, the customer base was effectively broadened in a manner that enhanced the utility's financial prospects which inures to the benefit of all customers.

Florida Water relied upon the Commission's established precedent of allowing shareholders to retain gains on the sales of systems in reaching its determination to sell the Orange County Systems. The Commission's treatment of the gains from prior sales of systems recognized that those gains belonged to Florida Water's shareholders and not to the customers of other Florida Water systems. The fact that the Orange County Systems were subject to a uniform rate structure for a limited period of time during their ownership by Florida Water (and Florida Water's predecessor in ownership) provides no legal or factual basis for sharing the gain with Florida Water's remaining customers. Indeed, even if rate structure were a relevant factor in resolving the issue of whether Florida Water's remaining customers should share in the gain on the sale of the Orange County Systems, the fact is that the remaining customers under Commission jurisdiction contributed nothing to Florida Water's recovery of its costs of service for its Orange County Systems during the time uniform rates, modified stand alone rates and cap-band rates were in effect for the Orange County Systems.

**D. Positions on Issues:**

Issue No. 1: Was there a gain or loss on sale with respect to the sale to Orange County?

If so, what is the amount of gain or loss for resulting from the sale?

Position: There was a net gain as a result of the sale of the Orange County Systems in the amount of \$4,457,239.21.

Issue No.2: How should any gain on sale be allocated between the ratepayers and shareholders?

Position: The gain on the sale should be allocated solely to the shareholders whose capital financed the utility properties, business and stream of revenues. Assignment of the gain to customers who were not even served by the systems in question would be illogical, inconsistent with Commission precedent, unlawful and unconstitutional.

Issue No.3: What reduction in common and allocated costs occurred as a result of sale to Orange County?

Position: None. The reinvestment of the proceeds from the sale of the Orange County Systems expanded the Company's customer base thereby reducing the per customer amount of allocated and common costs.

Issue No. 4: How did Florida Water account for credit deferred taxes on the sale to Orange County?

Position: The credit deferred taxes were credited to income tax expense.

Issue No. 5: For all Orange County systems which have been included in any type of uniform rate: (a) identify the type of uniform rate and (2) identify how long the system was under that rate?

Position: Prior to September 1993, the Orange County Systems had stand-alone rates. From September 1993 through the date of sale in December 1997, the Orange County Systems were part of a uniform rate structure approved by the Commission (September 1993-January 1996); were then moved to modified stand-alone rates (January 23, 1996-September 1996); and finally were incorporated in a cap-band rate structure from September 20, 1996 through the date of sale. Thus, at no time have other Florida Water systems contributed to the recovery of Florida Water's (or its predecessors') investment in the Orange County Systems.

Issue No. 6: Is there a basis in this docket for the Commission to treat the sale of a utility system in a manner different from prior dockets without adoption of a rule or some prior articulation of a change in policy?

Position: No. In earlier rate cases, Florida Water has litigated the issue of whether a customer should share in the gain on the sales of systems. The Commission established a policy of allowing shareholders to retain the gains on the sales of systems recognizing that such gains belong to the shareholders and not the customers of other systems. Florida Water relied upon those prior commission rulings in determining to go forward with the sale of the Orange County systems and the subject purchase of Palm Coast.

New Issue No. 7: Would allowing the customers of Florida Water's other systems to share in the gain on the sale of the Orange County systems result in an unconstitutional taking of the utility's property?

Position: Yes. The property rights that rest in the ownership of utility assets are constitutionally protected. To deny this property interest would constitute an unconstitutional taking by the Commission. Customers pay for service, not the property used to render it. Ownership of

utility assets is vested in the utility's shareholders who bear the risk of loss of their investments. Because of the customers' lack of proprietary rights to the utility assets, the proceeds upon disposition belong to the investors whose capital financed the utility properties. It is only the shareholders who financed the investments, and who held the ownership interests and bore the risk of under-recovery and/or loss on such investments who lawfully and properly should retain the gain or bear the loss resulting from the liquidation of a utility system, such as Florida Water's sale of its Orange County Systems.

New Issue No. 8: Does the Commission have the statutory authority or jurisdiction to address the disposition of the gain or loss from the sale of a privately owned utility system regulated by the Commission to a governmental entity?

Position: No.

New Issue No. 9: Does Chapter 367, Florida Statutes, allow the Commission to depart from cost-based regulation so as to authorize the Commission to order Florida Water to allocate all or a portion of the gain on the sale of the Orange County Systems to customers of other Florida Water systems?

Position: No. The Commission is granted no such authority under Section 367.081, Florida Statutes, or otherwise under Chapter 367, Florida Statutes.

**E. Stipulated Issues:**

No issues have been stipulated at this point.

**F. Pending Motions:**

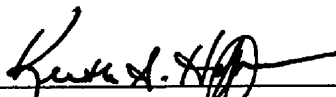
There are no pending motions at this time.



**G. Other Requirements:**

Florida Water believes that this Prehearing Statement is fully responsive to the requirements of the above-stated procedural Orders.

Respectfully submitted,



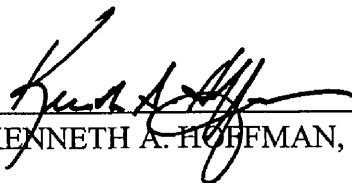
\_\_\_\_\_  
KENNETH A. HOFFMAN, ESQ.  
J. STEPHEN MENTON, ESQ.  
Rutledge, Ecenia, Purnell & Hoffman, P.A.  
P. O. Box 551  
Tallahassee, FL 32302  
(850) 681-6788 (Telephone)  
(850) 681-6515 (Telecopier)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was furnished by U. S. Mail to the following this 9<sup>th</sup> day of July, 2001:

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

Steve Burgess, Esq.  
Office of Public Counsel  
111 West Madison Street, Room 812  
Tallahassee, FL 32399-1400



\_\_\_\_\_  
KENNETH A. HOFFMAN, ESQ.

Orange\prehearing.sta