

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Request by St. Johns County,)
 Florida for declaratory statement)
 concerning a special service) DOCKET NO. 010704-SU
 availability contract with United)
 Water Florida, Inc.)
 _____)

RESPONSE IN OPPOSITION TO
UNITED WATER FLORIDA, INC.'S MOTION TO INTERVENE

St. Johns County, Florida, by and through its undersigned attorney, pursuant to Rule 28-106.204, F.A.C., file this Response in Opposition to United Water Florida, Inc.'s Motion to Intervene and in support thereof states as follows:

1. On May 8, 2001, St. Johns County, Florida filed its petition for declaratory statement as to whether the terms and conditions set forth in the petition required prior Commission approval as a special service availability contract and whether those terms and conditions discussed in the petition were acceptable to the Commission.

2. This petition was provided by United States mail to United Water Florida, Inc. (United Water) on that same date and received by United Water on May 10, 2001.

3. On July 10, 2001, 2 months after the receipt of the County's petition, United Water filed a Response to Petition For Declaratory Statement. This Response was considered by the Staff

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in the formulation of the Staff Recommendation in this docket filed on July 24, 2001 for consideration at the Commission's August 6, 2001 agenda conference.

4. On July 11, 2001, United Water filed its Motion For Leave

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to Intervene. This motion was provided by facsimile to the County's counsel the previous day, July 10, 2001.

Substantial Interest

5. The standard for intervention in Chapter 120, F.S., cases is set forth in North Ridge General Hospital, Inc. v. NME Hospitals, Inc., 478 So.2d 1138, 1139 (Fla. 1st DCA 1985), rev. den., 415 So.2d 1359 (Fla. 1982). The petitioner must meet a two prong test: show "1) injury in fact of sufficient immediacy, and 2) [that] the injury is of a type the proceeding is designed to protect, commonly referred to as the 'zone of interest' test". The two prongs of this test serve different purposes. "The first aspect of the test deals with the degree of injury. The second deals with the nature of the injury." Agrico Chemical Co. v. Dept. of Environmental Regulation, 406 So.2d 478, 482 (Fla. 2d DCA 1981), rev. den., 415 So.2d 1359 (Fla. 1982).

6. The purpose of a declaratory statement is to give an "agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances." §120.565(1), F.S. The question posed by the County to the Commission in its petition for declaratory statement is two part. First, do the terms as set forth in the petition, specifically the long term lease of the sewer force main by United Water throughout the County's financing term and the maintenance of that line during the financing period, at United Water's sole expense, constitute such a deviation from United Water's standard service availability policy that a special

service availability contract is needed. Second, would the Commission, under the circumstances presented, approve such terms and conditions.

7. Although the County has attached a lease agreement and special service availability contract to its petition, the County is not requesting that the Commission approve these documents as written. The County is simply asking whether the Commission can approve the general terms and conditions outlined above in light of Commission case law, rules, statutes and United Water's tariffs as more specifically detailed in the County's petition.

8. This declaratory statement, should it be issued, will apply to the County only, and can only be binding on the County to the extent that United Water subsequently agrees to the terms and conditions outlined above and addressed by the Commission. United Water has stated that it will not enter into the contracts as presented. At this time, United Water can have no substantial interests that are affected by their own admission.

9. United Water states that this petition will "establish precedents in the interpretation of United Water Florida's service availability policy" as a substantial interest. Every Commission decision interprets statutes, rules and orders which affect every person whose factual circumstances are the same as those considered in the decision. The Commission has previously recognized that this type of interest is not substantial enough to constitute substantial interest for intervention in a declaratory statement docket.

10. In In re: Petition of Monsanto Company for a declaratory statement concerning the lease financing of a cogeneration facility, Order No. 16581, issued Sept. 11, 1986, similar "substantial interests" to those raised by United Water were considered. Metropolitan Dade County (Metro Dade) sought to intervene on the grounds that since it had also used lease financing for its cogeneration plant, the Commission' decision would establish precedent which would be later applied to its cogeneration plant. Gulf Power Company (Gulf Power) also sought to intervene on the grounds that construction of the cogeneration facility would result in the loss of Monsanto's load, with attendant economic loss, and the requirement that Gulf would have to supply back-up and supplemental power to Monsanto.

11. The Commission denied both requests for intervention. With regard to Metro Dade the Commission found that "[p]otential adverse legal precedent does not constitute the 'substantial interest' needed for intervention under our rule." Order No. 16581 at 2. With regard to Gulf Power the Commission found that "[e]conomic damage alone does not constitute 'substantial interest'." Id.¹

12. United Water can show no "immediate harm" and can, therefore, not meet the first prong of the substantial interest

¹ The Commission did allow Gulf Power to submit a brief addressing the issues raised in Monsanto's declaratory statement. United Water has filed a response here which has been considered by the Staff. To the extent that the Commission wishes to accord United Water this same courtesy, it has already been done.

test necessary for intervention.

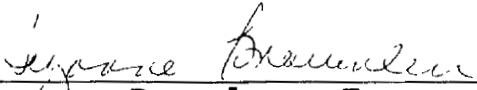
13. Neither can United Water meet the second prong of the substantial interest test. No one has questioned that United Water's service availability policies will be applied to the force main to be constructed by the County in the Ponte Vedra Beach MSD. No one has questioned that the facts presented are absolutely necessary for the County to finance the force main. No one has questioned the fact that the County will have to expend at least \$50,000 to process the preparation of the ad valorem property assessment of the Ponte Vedra Beach MSD residents or the timing necessary to accomplish this task this tax year.

14. One fundamental purpose of declaratory statements, like declaratory judgments, is to render practical assistance to one whose rights have not yet been violated. Jackson v. Federal Insurance Co., 643 So.2d 56 (Fla. 4th DCA 1994). United Water admits that once application is made, it must negotiate a service availability contract with the County. There is no question that the basic terms as outlined above must be included in such a contract for the County to be able to finance the force main. This declaratory statement is simply seeking to cut to the chase. If the Commission cannot approve these terms, the County will stop now and not expend any further energy or effort on this issue.

15. Thus, this proceeding binds only the County and renders practical assistance to the County regarding its rights under a specific set of conditions. The second prong of the substantial interest test is not met by United Water's stated interests.

For these reasons, the Motion For Leave To Intervene filed by United Water Florida, Inc. should be denied.

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



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided by U.S. Mail and (*)Hand Delivery to the persons listed below on this 17th day of July, 2001:

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