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August 31, 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

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COMMISSION
CLERK

Re: Docket No. 980744-WS

Dear Ms. Bayo:

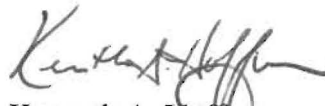
Enclosed herewith for filing in the above-referenced docket on behalf of Florida Water Services Corporation ("Florida Water") are the following documents:

1. Original and fifteen copies of Florida Water's Amended Prehearing Statement; and
2. A disk in Word Perfect 6.0 containing a copy of the Amended 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

APP	_____
CAF	_____
CMP	_____
COM	3 _____
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OTH	_____

KAH/rl
Enclosures
cc: Counsel of Record
Bayo.831

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER- DATE
10876 AUG 31 01
FPSC-COMMISSION CLERK

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: August 31, 2001

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

Florida Water Services Corporation ("Florida Water") hereby files its Amended Prehearing Statement in accordance with Order No. PSC-00-1170-PCO-WS issued June 27, 2000, as further revised by Order No. 00-1752-PCO-WS issued September 26, 2000, Order No. 00-2141-PCO-WS issued November 9, 2000, Order No. 00-2379-PCO-WS issued December 11, 2000, Order No. 01-0230-PCO-WS issued January 24, 2001, and Order No. PSC-01-1482-PCO-WS issued July 16, 2001:

A. Witnesses.

Florida Water will offer the following witnesses in this proceeding:

- A. Hugh Gower, addressing Issues 1, 3A, 4 and 6A on direct and Issues 1, 3A, 4, 5 and 6A on rebuttal.
- B. Charles A. Hughes addressing Issues 1, 3A, 4 and 6A .
- C. James A. Perry addressing Issue 1 on direct and Issue 3A on rebuttal.
- D. John Cirello addressing Issues 1, 3A and 4.

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

10876 AUG 31 01

FPSC-COMMISSION CLERK

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: How should any gain on sale be allocated between the ratepayers and shareholders?

Florida Water: 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 and whose rates contributed nothing to recovery of the cost of service for the Orange County systems would be illogical, inconsistent with Commission precedent, unlawful and unconstitutional.

Issue No. 2: If any portion of the gain on sale is allocated to the ratepayers, what is the appropriate regulatory treatment of that allocation?

Florida Water: No position at this time.

Issue No. 3A: Would the sharing in the gain on the sale of the Orange County Systems reflect a departure from prior Commission precedent or policy?

Florida Water: Yes.

Issue No. 3B: If so, is there a basis in this docket for the Commission to treat the sale of the Orange County Systems in a manner different from prior dockets without adoption of a rule or some prior articulation of a change in policy?

Florida Water: 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.

Issue No. 4: 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?

Florida Water: 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.

Issue No. 5: 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?

Florida Water: No.

Issue No. 6A: Would an allocation of all or a portion of the gain on the sale of the Orange County Systems to customers of other Florida Water systems constitute a departure from the regulatory framework for cost-based rate regulation?

Florida Water: Yes.

Issue No. 6B: If so, does the Commission have the authority to depart from cost-based regulation by allocating all or a portion of the gain on sale of the Orange County Systems to customers of other Florida Water systems?

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

E. Stipulated Issues:

1. There is an after-tax gain on sale of \$4,457,239 with respect to the sale of Florida Water's Orange County Systems to Orange County.
2. The sale of the lab is not material to these proceedings because there was a loss on the sale which should be treated as below the line for regulatory purposes.

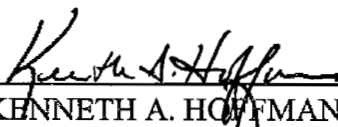
F. Pending Motions:

There are no pending motions at this time.

G. Other Requirements:

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

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by hand delivery to the following this 31st day of August, 2001:

Jennifer Brubaker, Esq.
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Steve Burgess, Esq.
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KENNETH A. HOFFMAN, ESQ.

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