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February 28, 2002

Via Facsimile & Overnight Mail

Ms. Blanca Bayo
Division of Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd., Room 370
Tallahassee, FL 32399-0850

Re: Docket No. 011344-WS

Dear Ms. Bayo:

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COMMISSION
CLERK

On behalf of Nassau County (the "County"), Florida, this letter is provided to state the County's opposition to the staff recommendation dated February 21, 2002 in which the staff has reversed its earlier recommendation that the Commission acknowledge the County's jurisdiction over the assets of Florida Water Services Corporation ("Florida Water") located in the County. Apparently, the staff's reversal of its prior recommendation is based on information contained in a second letter dated February 6, 2002 from the attorney for Florida Water. The County has reviewed both the December 7, 2001 and February 6, 2002 correspondence from Florida Water's attorney and notes that there is little to no substantive difference in the information provided.

Florida Water's reliance upon the Commission's order with respect to the St. Johns County Declaratory Statement in 1993 and the facts concerning United Water Florida, Inc. ignores the pertinent findings of the First District Court of Appeals in Hernando County v. Florida Public Service Commission, 685 So. 2nd 48 (Fla. 1st DCA 1997) which render such precedent meaningless.

In Hernando County, the court noted that the First District Court of Appeals opinion in Board of County Commissioners v. Beard, 601 So. 2nd 590 (Fla. 1st DCA 1992) which addressed the Commission's jurisdiction over United Water facilities "did not reach the question and is not controlling with regard to the issue of the meaning of "service" as used in section 367.171(7)." The Hernando County court quoted favorably from the "well-reasoned dissent" of Commissioner Deason and the court's earlier opinion in Citrus County v. Southern States Utilities, 656 So. 2d 1307 (Fla. 1st DCA 1995), finding that to satisfy the "service" requirement of section 367.171(7), the Commission must find that the systems

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are “operationally integrated, or functionally related, in . . . utility service delivery [rather] than fiscal management.” Specifically, the court quoted Commissioner Deason’s finding that “[t] here are 44 references to the word “service” in Chapter 367 with the connotation of a physical delivery of water and/or wastewater . . .” The court further noted the “legislative intent that the facilities and land forming a system must exist in close geographical proximity across a county border.”

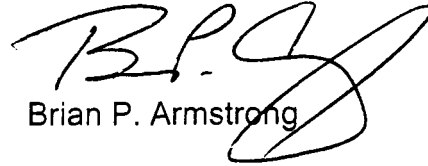
The correspondence submitted by Florida Water indicates only limited administrative and operational functions of a cross-county nature, none of which relate directly to every day “utility service delivery”. By the Company’s admission, the Nassau County facilities are a 30-40 minute drive from the Duval County facilities – certainly not the “close proximity” contemplated in Hernando County – and the facilities are not physically interconnected. Perhaps most important, however, is the fact that all water and wastewater equipment necessary to provide services and the operations personnel required to operate such equipment are located and provide “utility service delivery” solely within Nassau County. The mere periodic use of personnel from Duval County to “back-up and fill-in” for Nassau County operators, perform some maintenance activities on equipment in Nassau County (in addition to maintenance provided by the operators at the Nassau County sites) or assist in emergency repair situations are clearly insufficient to establish integrated “utility service delivery”, as required by the court. As the court recognized in Hernando County:

If the legislature had intended, the administrative and operational functions of a company to satisfy the cross-county activity necessary to support PSC jurisdiction under section 367.171(7), it could have simply used the word “system” instead of also referring to “service”. In other words, the legislature could have provided that the commission shall have exclusive jurisdiction over all utility systems which transverse county boundaries, or, even more expansively, which operate in multiple counties. We must presume that these limiting terms were deliberately included to restrict the exercise of PSC jurisdiction over utilities in non-jurisdictional counties.

The record of the Commission proceeding which the Court reviewed in Hernando County contained conspicuously similar allegations of cross-county integration as presented in the February 6 correspondence. The Court rejected such “limited examples of specific instances of facilities operating in tandem” as insufficient to deprive regulatory jurisdiction from a county which has taken the steps necessary to assume such jurisdiction. For these reasons, the County respectfully requests that the Commission issue an order consistent with staff’s initial recommendation in this matter thereby affirming the County’s right to regulate Florida Water. The failure to do so in light of the Hernando County decision can only result in the wasteful expenditure of time and resources litigating this matter.

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Very truly yours,



Brian P. Armstrong

BPA/gs

cc: Ms. Roseanne Gervasi, Esquire
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