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ORIGINAL

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 Sent: Monday, October 11, 2004 12:29 PM
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 Cc: CAROLYN MUMMERT; MIKE BURKE; WC HENRY
 Subject: Response To and Joinder In The Citizens of The State of Florida Motion To Relinquish Jurisdiction



Response To
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We respectfully request that the attached document (Bay County's Response To and Joinder In The Citizens of The State of Florida Motion To Relinquish Jurisdiction) be filed in Docket No. 030444-WS.

William C. Henry, Esquire
 Attorney for Intervenor Bay County
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Attached document to be filed: Bay County's Response To and Joinder In The Citizens Of The State of Florida Motion To Relinquish Jurisdiction Docket No. 030444-WS
 3 Pages

Thank you.

Donna Cole
 Legal Secretary to William C. Henry
 Burke, Blue & Hutchison, P. A.
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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of
BAYSIDE UTILITY SERVICES, INC.,
for an increase in water and wastewater
rates in Bay County, Florida

DOCKET NO. 030444-WS

**RESPONSE TO AND JOINDER IN THE
CITIZENS OF THE STATE OF FLORIDA
MOTION TO RELINQUISH JURISDICTION**

BAY COUNTY, a political subdivision of the State of Florida and an intervenor of record in this docket, by and through its undersigned counsel, hereby responds to and joins the motion filed by the Office of Public Counsel on October 4, 2004, and in support thereof says:

1. Clearly, this Commission has the authority to interpret statutes, to determine its jurisdiction, to make rules, and to issue orders accordingly. Florida Public Service Commission v. Bryson 569 So.2d 1253 (Fla. 1990).
2. This Commission is subject to the Florida Administrative Procedures Act, Chapter 120, Florida Statutes, and is an "agency" as defined in § 120.52(1)(b)4, Florida Statutes.
3. Although not directly applicable to this Commission, § 120.57(1), Florida Statutes provides agencies must not impose excessive regulatory costs on regulated persons {subsec (e)2.f}, and allows any party to move for relinquishment of jurisdiction {subsec (i)}.
4. Sec.120.542, Florida Statutes authorizes agencies, including this Commission, to grant variances and waivers to the requirements of agency rules when application of a rule would create a substantial hardship or violate principles of fairness.
5. This Commission retained its jurisdiction over Docket No. 030444-WS, pursuant to § 367.171(5), Florida Statutes, after Bay County rescinded its 1973 Resolution and reassumed jurisdiction to regulate water and wastewater utilities within its borders on September 7, 2004.

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FPSC-COMMISSION CLERK

6. Bay County is currently drafting an ordinance to adopt its regulatory standards.

7. The ratepayers of Bayside Utility Services, Inc., who have protested this Commission's proposed agency action in Docket No. 030444-WS, thus causing a formal hearing to be set, are likely to petition Bay County, under the new ordinance, to reduce their water and wastewater rates, regardless of what this Commission's final action is in this Docket.

8. Their protest and likely petition will generate additional litigation expenses to be ultimately borne by Bayside's ratepayers in the form of increases to their already disproportionately high rates, and impose additional unfair hardships upon them.

9. This Commission and other Florida agencies have inherent and statutory power to determine whether they should retain jurisdiction of a case, or otherwise dispose of a case, or seek to re-take jurisdiction of a case. See e.g. Bryson, supra. and Stuart v. State of Florida ex rel. Miller 629 So. 2d 288 (Fla. App 3 Dist 1993). There is no law which prohibits an agency from relinquishing its jurisdiction if it wishes.

10. The interests of fundamental fairness require that this Commission relinquish its jurisdiction in Docket No. 030444.WS to Bay County in order to avoid unnecessary litigation expenses and additional substantial hardship to the ratepayers of Bayside Utility Services, Inc.

WHEREFORE, BAY COUNTY joins in the Citizens' motion and respectfully requests the Commission dispose of this case by relinquishing its jurisdiction to Bay County.

BURKE, BLUE & HUTCHISON, P.A.
Bay County Attorneys

s/ William C. Henry

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P.O. Box 70
Panama City, Florida 32402
Attorney For Intervenor Bay County

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Response to Motion for Commission to Relinquish Jurisdiction has been furnished by U. S. Mail and Facsimile to the following parties this 11th day of October, 2004.

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s/William C. Henry
William C. Henry, Esq.