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May 24, 1996

ORIGINAL
FILE COPY

BY HAND DELIVERY

Ms. Blanca S. Bayó
Director, Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Hobe Sound Water Company
Docket No. 960192-WU

Dear Ms. Bayó:

Enclosed for filing on behalf of the Hobe Sound Water Company in the above referenced docket are the original and 15 copies of our Response to Motion to Intervene.

Very truly yours,

Richard D. Melson

Richard D. Melson

- ACK EDM/cc
- AFA Enclosure
- APP
- CAF cc: Parties of Record
- CMU
- CTR
- EAG
- Lr *Capelus*
- LIN
- OPC
- RCH
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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a)
limited proceeding to include)
groundwater development and)
protection costs in rates in)
Martin County by Hobe Sound)
Water Company)

Docket No. 960192-WU

Filed: May 24, 1996

RESPONSE TO MOTION TO INTERVENE

Hobe Sound Water Company (Hobe Sound) files this response to the Motion to Intervene filed by The Town of Jupiter Island ("Town") in this docket.

1. Hobe Sound does not object to intervention by the Town in its capacity as customer of the utility, although Hobe Sound notes that the impact of the proposed increase on the Town's water bills is only approximately \$150 per month.

2. Hobe Sound does object to intervention by the Town in a representative capacity. Under Section 120.52(12)(d), Florida Statutes, only counties and their agencies, departments and units are authorized to participate in a representative capacity as parties to an administrative proceeding. Under the principle of expressio unius est exclusio alterius, the legislature's grant to counties of a right to intervene to represent the interests of their residents demonstrates a legislative intent that a municipality has no similar authority to intervene in administrative proceedings in a representative capacity.

3. Since this is a limited proceeding and is being processed under the Commission's proposed agency action

procedures, Hobe Sound believes that it is unnecessary for the Commission to consider the "disputed issues of material fact" listed in paragraph 2 of the Town's motion at this stage in the proceeding. Nevertheless, Hobe Sound is attaching hereto a copy of a memorandum dated May 17, 1996, provided by the utility's consultants to the Commission staff, which responds to some of the unsupported allegations in the Town's motion.

RESPECTFULLY SUBMITTED this 24th day of May, 1996.

HOPPING GREEN SAMS & SMITH, P.A.

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Attorneys for
Hobe Sound Water Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed to the following parties this 24th day of May, 1996.

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& White
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MEMORANDUM

TO: Bob Crouch
Trisha Merchant

May 17, 1996

FROM: John F. Guastella

SUBJECT: Hobe Sound Water Company Limited Proceeding
Docket No. 960192-WU

The purpose of this memorandum is to address the issues raised by the Town of Jupiter Island in its May 10, 1996 Motion to Intervene in this proceeding.

You will recall that upon receipt of the Company's request for test year approval with respect to a full rate increase (nearly 30%), the FPSC Staff suggested and the Company agreed that at this time it would be more productive to instead file for a limited proceeding (15.7%) which would address only costs associated with the Company's source of supply problems. The limited proceeding would enable the Company to obtain rate relief more expeditiously and avoid the more costly proceeding with respect to a full rate increase. Both the Company and Staff recognized that the resultant improved earnings would enable the Company to then proceed with further plant improvements which could be incorporated, along with other cost increases not covered by the limited proceeding, in a

full rate increase filing in about a year. The company believes that the limited proceeding continues to be in the best interest of the customers and the Company, provided that the Staff and the Commission are able to address the issues raised by the Town of Jupiter Island without delaying the implementation of the rate increase or embarking on unnecessarily costly hearings. We trust that Staff will consider this memorandum in the preparation of its report to the Commission so that a complete and candid review of the Town's intervention will be considered when the Commission decides what is truly in the best interest of the Company and its customers.

The Town's Motion to Intervene is made on the basis that it is a customer of the Company. The Town is in fact a customer. The Town's motion also indicates, however, that "the bulk of the customers of the utility are residents and taxpayers in the Town of Jupiter Island and look to this applicant to represent their interest in matters such as this thereby increasing applicant's interest in this rate proceeding." The fact is that the bulk of the Company's customers are not residents and taxpayers in the Town of Jupiter Island; approximately two-thirds of the customers reside on the mainland. Moreover, the residents on the island did not look to the Town to intervene in any of the past rate increases over the last fifteen years despite the fact that those increases were significantly greater than the 15.7% requested in this limited proceeding. There has been no indication that any customer or group of customers on Jupiter Island petitioned the Town to intervene on their behalf.

It is also of interest to note that the Town's water bills are approximately \$1,000 per month. Accordingly, the proposed 15.7% increase would hardly have a financial impact on the Town. On the basis of available information, it appears that the Town has set aside \$140,000 with respect to hiring the law firm of Nason, Gildan, Yeager, Gerson & White and DUS Consultants in order to explore the acquisition of the Company by the Town. It is not certain whether \$35,000, as part of the \$140,000 or in addition to \$140,000, has been earmarked for the Town's intervention in this limited proceeding. Despite the accuracy of those figures, it is certain that the impact of the Town's intervention regardless of its success, will not result in any significant difference in the Town's water bills. The 15.7% increase represents only a \$150 per month impact, hardly worth a \$35,000 expenditure by the Town to intervene in a limited proceeding. What's missing from the Town's Motion to Intervene is the real reason for its intervention. As was recognized by customers at the March 20th customer meeting and as has been specifically stated at Town meetings, the real purpose of the Town's intervention is to try to depress the utility's earnings as part of the Town's strategy to acquire the utility at a price which is below market value.

We believe the Commission should examine every valid rate setting issue whether raised by the Town or any individual customer at any location. We also believe, however, that it is not in the best interest of the customers for the Company to be forced into a costly procedure to address issues which may be reasonably decided within the narrow scope of the limited proceeding.

The Town's Motion to Intervene lists issues a) through d). We will address them in order:

a) The Town states that the Company "gambled" that it could over pump its raw water supply and that it caused salt water intrusion. The Town makes absolutely no effort to address the exhaustive studies and analyses performed on behalf of the Company over the years regarding extremely complex source of supply problems. Instead, it quotes the word "gambled" which it took from a casual statement made by a member of Staff at the customer meeting¹, in a transparent attempt to simply denigrate the Company's comprehensive efforts regarding unavoidable problems with respect to source of supply, salt water intrusion and the related environmental impact on the wetlands. This type of posturing and lack of candor by the Town's attorneys and consultants must be recognized as being counter-productive.

A brief historical background will help place this issue into proper perspective. At the end of 1988, the year when the Company's last water use permit was issued, the Company's total original cost of plant in service was approximately \$2.0 million. As of June 1995, the Company's total utility plant in service was approximately \$6.8 million. In that relatively short period of time the Company had more than tripled its investment in utility plant in service. I am not aware of any large utility, let alone

¹Staff was attempting to explain in simple terms to the customers the complex and unavoidable problems associated with a source of supply which is near a major body of salt water on one side and wetlands on the other, and still meet extremely high customer demands for water.

a small water utility, that could accomplish such a feat. On average, the Company's individual residential customers on Jupiter Island probably use more water than any in the State of Florida. This Company's management has continually undertaken extraordinary efforts to obtain financing and to implement system improvements in order to meet the high water demands of those customers. It has done so by making cost-effective capital improvements and by keeping its operating expenses as low as possible. Its rates for service compare favorably to both municipal and other investor-owned utilities. The capital expenditures have included significant additions to source of supply and related pumping equipment which were absolutely critical in order to meet the water supply needs of its customers. The Company also expanded its treatment plant, including new storage facilities, without which it simply could not have met the maximum day demands of its customers. Moreover, it installed a second transmission main across the Intra-Coastal Waterway which was critical in order to ensure that it could reliably serve the customers within the Town of Jupiter Island. Nearly \$5 million of expenditures were made for top priority items, which I am sure you know is absolutely amazing for a small utility which started with a \$1.6 million rate base in 1988. In the meantime, the Company had undertaken complex engineering studies, financings and related applications for rate relief, all of which were essential in order to serve its customers. This small company also was among the first in Florida to implement a successful water conservation program, which included the establishment of innovative conservation rates. These actions

are indisputable evidence of the major efforts to best resolve the source of supply problems.

As part of its filing in this limited proceeding, the Company submitted a copy of the June 19, 1995 Consent Agreement with the South Florida Water Management District ("District"), Order No. 95-42, which includes copies of engineering studies by Universal Engineering Sciences and James N. Montgomery Consulting Engineers, Inc. The engineering firms submitted reports to the District in September 1989 and November 1991, respectively. These reports specifically addressed the issue of salt water intrusion raised in the July 14, 1968 permit issued by the District. Thus, the Company's management was not only successfully financing major capital improvements which required priority consideration, but it was also addressing the more long-term solutions regarding its source of supply and the potential for salt water intrusion. The abandonment of wells east of U.S. 1 in and of itself would not have resolved:

- 1) The need for more sources of supply.
- 2) The need to meet unusually high water demands in general and particularly during drought conditions during some of those years.
- 3) The need for additional treatment and storage to meet maximum day demands.
- 4) The reliability of the system to transmit water to Jupiter Island.

The Consent Agreement reflects Company management's continued commitment to undertake major improvements and ongoing operational

monitoring in what has been an outstanding effort over the years to meet the water demands of its customers, particularly those on Jupiter Island. In addition to monitoring for salt water intrusion, the Consent Agreement requires the monitoring of wetlands and the iron content with respect to wells to the west of U.S. 1 -- problems not contemplated at the time of the 1988 permit.

b) The costs incurred with respect to the Consent Agreement, the various monitoring and reporting programs, the installation of new wells and the interconnection with a neighboring utility were unavoidable. Those expenditures were necessary to address problems that would challenge the capability of the largest water utility with a staff of multi-disciplined experts. It is totally inappropriate and unfair for the Town's attorneys to belittle the magnitude of the problems and the extraordinarily aggressive and successful efforts by the Company's management (based on comprehensive engineering studies) by characterizing them as a "gamble."

It is also extremely important to realize that the Company now faces the problem of iron removal from the sources of supply west of U.S. 1, which will require filtration plant and equipment at a cost of about \$1 million. The Town's suggestion to deny rate relief for the costs included in the limited proceeding would have a dire consequence with respect to the Company's ability to attract the necessary capital for these new projects.

c) The Company has continually made conscientious efforts to limit the cost of rate regulation. Even when filing for full rate increases, it has opted for PAA proceedings in order to avoid costly hearings. The preparation of minimum filing requirements is

costly regardless of the size of the utility, and this small Company has made every effort to keep that cost to a minimum. The Company's estimate for the cost of the limited proceeding was less than half of the cost of its last rate case. Moreover, it is anticipated that its actual rate case expenses will be less than its estimate (about \$45,000 compared to its original estimate of \$60,000), unless, of course, the Town's intervention creates the need for unanticipated legal and consulting fee-.

d) The items raised by the Town regarding capital structure, depreciation and retirements are either inaccurate or are beyond the scope of the issues which are the subject of the limited proceeding. The fact is that if the Company had filed for a full increase, it would have been seeking nearly a 30% increase instead of the 15.7% increase. Consideration of all other issues would require nearly double the rate increase, and triple the rate case expenses.

I realize that Staff has been thoroughly involved with the Company and is familiar with the problems it has experienced over the years. Staff has recognized that salt water intrusion is not an easy problem to solve, and it is particularly difficult when also dealing with an environmental issue regarding wetlands. During the period in question, Florida, including Hobe Sound, experienced several drought years. Moreover, we now have a significant iron removal problem to solve. All of this had to be dealt with while meeting extremely high demands of residential customers on Jupiter Island. As the engineering studies discussed above show, the chloride content in the wells east of U.S. 1 at the

time of the 1988 permit as well as subsequent periods were not excessive, with one exception. The abandonment of wells would not have addressed the Company's need for additional storage and treatment, sources of supply and both raw and potable water transmission mains, particularly in light of the ongoing need to continue to provide safe and adequate service to the customers. The Company's efforts to serve its customers have been thorough and successful. The only impediment that would prevent the Company from continuing to meet the ongoing challenges it now faces would be to deny reasonable rate relief and place the Company in a financial position which prevents it from attracting the capital it needs for the immediate future.

Please advise is there is anything further you require.