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September 30, 1998

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

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RECORDS AND REPORTING

Re: Docket No. 950495-WS

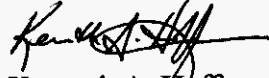
Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Florida Water Services Corporation ("Florida Water") are the original and fifteen copies of Florida Water's Response in Opposition to City of Marco Island's Petition to Intervene.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,

  
Kenneth A. Hoffman

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DOCUMENT NUMBER-DATE

10778 SEP 30 88

FPSC-RECORDS/REPORTING

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Application by Southern )  
States Utilities, Inc. for rate )  
increase and increase in service )  
availability charges for Orange- )  
Osceola Utilities, Inc. in )  
Osceola County, and in Bradford, )  
Brevard, Charlotte, Citrus, Clay, )  
Collier, Duval, Highlands, )  
Lake, Lee, Marion, Martin, )  
Nassau, Orange, Osceola, Pasco, )  
Polk, Putnam, Seminole, St. Johns, )  
St. Lucie, Volusia and Washington )  
Counties. )  
\_\_\_\_\_ )

Docket No. 950495-WS

Filed: September 30, 1998

**FLORIDA WATER SERVICES CORPORATION'S  
RESPONSE IN OPPOSITION TO  
CITY OF MARCO ISLAND'S  
PETITION TO INTERVENE**

Florida Water Services Corporation ("Florida Water"), by and through its undersigned counsel, hereby files its Response in Opposition to the Petition to Intervene filed by the City of Marco Island ("City"). The City's Petition to Intervene should be denied. As grounds supporting this Response, Florida Water states as follows:

1. The final hearing in this docket was held on April 29 and May 1-4, 6, and 8-11, 1996. The final order was issued on October 30, 1996, whereupon Florida Water and other parties to this docket timely filed appeals of the final order. On June 10, 1998, the First District Court of Appeal issued its decision in response to these appeals. Southern States Utilities, Inc. v. Florida Public Service Commission, 23 Fla.L. Weekly D1413 (Fla. 1<sup>st</sup> DCA, June 10, 1998).<sup>1</sup> On August 21, 1998, following the denial of a motion for rehearing, clarification and certification of the June 10 opinion,

<sup>1</sup>Corrected opinion mailed August 5, 1998.

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FPSC-RECORDS/REPORTING

the First District issued its mandate in the appeal.

2. The City cites its status as a customer of Florida Water and its belief that "it is in the best position to represent the interests of all of the Marco Island customers of the Utility in this proceeding" in support of its Petition to Intervene.<sup>2</sup>

3. Intervention in formal administrative proceedings before the Commission is governed by Rule 28-106.205, Florida Administrative Code. That rule requires that petitions for leave to intervene be filed at least twenty days before the final hearing. As such, the City's petition to intervene comes some two and a half years late.<sup>3</sup> The failure to timely comply with the governing intervention rule requires denial of a request for intervention. This has been standard Commission practice and precedent as evidenced, for example, by the denial of petitions to intervene filed by a number of customers in Florida Water's Docket No. 920199-WS rate case after the final hearing and issuance of the final order in that rate case.<sup>4</sup>

4. The City's Petition to Intervene is distinguishable from the petitions to intervene which were denied by the Commission as untimely but then reversed in Southern States Utility, Inc. v. Florida Public Service Commission, 704 So.2d 555 (Fla. 1<sup>st</sup> DCA 1997) ("Southern States"). In Southern States, customer groups sought intervention following the remand from the Citrus County<sup>5</sup>

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<sup>2</sup>City's Petition to Intervene, at par. 5 and 7.

<sup>3</sup>The same result obtains under the prior rule governing intervention, Rule 25-22.039, Florida Administrative Code, which required petitions for leave to intervene to be filed at least five days before the final hearing.

<sup>4</sup>See Order No. PSC-93-1598-FOF-WS issued November 2, 1993 in Docket No. 920199-WS.

<sup>5</sup>Citrus County v. Southern States Utilities, 656 So.2d 1307 (Fla. 1<sup>st</sup> DCA), cert. den., 663 So.2d 631 (Fla. 1995).

decision once it became clear that such customers faced potential surcharges under the then-recent Florida Supreme Court decision in GTE Florida Inc. v. Clark, 668 So.2d 971 (Fla. 1996) ("GTE Florida"). In reversing the Commission's denial of intervention to potentially surcharged customers, the First District limited its holding to the facts of that case:

We find that the PSC erred in denying these petitions as untimely in the circumstances of this case, where the issue of a potential surcharge and the applicability of the *Clark* case did not arise until the remand proceeding.

Southern States, 704 So.2d at 559.

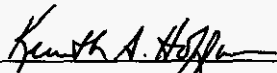
5. Here, the City was on notice of the February 29, 1996 GTE Florida decision requiring surcharges well before the final hearing in this docket. Accordingly, the Southern States decision is distinguishable from the facts in this case and does not provide legal support for the Commission to deviate from the applicable rule requiring the timely filing of a petition for leave to intervene. By granting the City's Petition to Intervene, the Commission will undermine the intervention rule and the administrative hearing process by establishing a precedent which essentially says that any affected party can take a belated second bite at the apple by waiting to pursue intervention only after a case has been reversed and remanded to an agency. Such a precedent is abhorrent to an efficient, administrative process, has no basis under Chapter 120, Florida Statutes, and undermines the governing rule on intervention.

6. The Marco Island customers already are represented in this rate case through two intervenors: the Office of Public Counsel and the Marco Island Fair Water Rate Defense Committee. As a matter of law, the City has no authority to represent citizens of the City who are customers of Florida Water in this proceeding because the City failed to allege and demonstrate that it has passed

a resolution authorizing the City to represent Florida Water's Marco Island water and wastewater customers in this proceeding. See Section 120.52(12)(d), Florida Statutes.

WHEREFORE, for the foregoing reasons, Florida Water respectfully requests that the Commission deny the Petition to Intervene filed by the City of Marco Island.

Respectfully submitted,

  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was furnished by U. S. Mail to the following on this 30th day of September, 1998:

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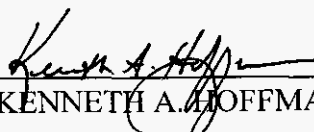
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