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November 3, 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

HAND DELIVERY

Re: Docket No. 950495-WS

Dear Ms. Bayo:

Enclosed for filing are an original and fifteen copies of this letter reflecting Florida Water Services Corporation's ("Florida Water") objections to the **second** deferral and postponement of the Commission's consideration of the action to be taken on remand from the First District Court of Appeal's decision reversing the Commission on numerous determinations in the Final Order as well as Florida Water's Offer of Settlement and Proposal for Disposition of Mandate on Remand ("Settlement Offer"), supported by the Marco Island customers. Florida Water was advised by Commission Staff counsel on October 29, that the most recent requests for deferral had been denied; however, on Friday afternoon, October 30 Florida Water was advised by Staff that the Commission had reversed its decision and would defer the Special Agenda Conference scheduled for November 2 2 to November 13, 1998. The result of this second deferral is the addition of approximately \$88,000 in additional surcharges due Florida Water if Florida Water's Offer of Settlement is approved.

At the September 1, 1998 Agenda Conference, the Commission considered some, but not all, of the issues that were reversed by the First DCA on appeal. Florida Water argued that the Commission must timely and expeditiously consider all issues reversed by the court to comply with the court's mandate and to terminate the mounting bill for surcharges which are due Florida Water, with interest. After extended discussion, the Commission deferred action and requested the parties to meet with the Commission staff to attempt to reach a fair and equitable settlement.

On September 11, 1998, at a settlement meeting attended by the parties and Commission staff, Florida Water outlined a settlement proposal for disposition of the mandate on remand. This settlement proposal, with one minor revision, was ultimately filed on October 2, 1998. Florida Water

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notes that at the September 16, 1998 settlement meeting of the parties, Rep. Argenziano, a non-party to this case, was permitted as a matter of courtesy to participate by telephone conference.

Consideration of the remand issues and Florida Water's Settlement Offer was scheduled for an October 13, 1998 Special Agenda Conference. Although no written request for deferral of the October 13 Special Agenda Conference was filed, the Commission deferred the October 13 Special Agenda Conference. We understand the October 13 Special Agenda was deferred at the request of Rep. Argenziano. Florida Water's objections to the deferral of the October 13 Special Agenda Conference are reflected by letter dated October 13, 1998, which emphasized that the delay would add on approximately \$240,000 of additional required surcharges under Florida Water's Settlement Offer, and that any continued delay would continue to commensurately increase the amount of surcharges recoverable by Florida Water under its proposal.

The most recent decision to defer the *Special Agenda Conference* at the request of the Office of Public Counsel and several legislators only adds to the burden of Florida Water's customers in the event Florida Water's Settlement Offer is approved. Florida Water was provided with copies of *ex parte* communications to Chairman Johnson from Rep. Argenziano and the Chairman of the Board of County Commissioners of Citrus County, neither of whom are parties to this case, requesting a deferral of the November 2 Special Agenda Conference. These *ex parte* letters were dated October 27, 1998. Florida Water also received a copy of an October 27, 1998 letter from the Office of Public Counsel requesting a deferral of the November 2 Special Agenda Conference on behalf of Senator Anna Cowin and Rep. Argenziano, rather than on behalf of Florida Water's customers, who now face an additional \$88,000 of surcharges due to the additional deferral. Of course, Senator Cowin is not a party to this case either. Florida Water understands that *additional legislators joined in this most recent deferral request*; however, if such requests were made in writing, copies of the requests were not served on counsel for Florida Water.

Florida Water has expended significant time and resources to comply with the Commission's request to effect a fair and equitable settlement on remand. The two deferrals result in the addition of \$328,000 in additional surcharges which must be recovered by Florida Water pursuant to Florida law. This adverse impact is emphasized in the Commission Staff memorandum dated October 28, 1998 recommending that the November 2, 1998 Special Agenda Conference not be deferred.¹

For these reasons, Florida Water must state its objections to this second deferral and advise that any further deferral will leave Florida Water with no alternative other than to pursue its legal remedies to enforce compliance with the court's mandate, implement full rate increases consistent with the court's reversal of the Commission on all issues outlined in the court's opinion, including

¹The Staff's October 28, 1998 memorandum states, in pertinent part: "... a surcharge is mounting each day and could be as much as \$240,000 a month." If Florida Water's Settlement Offer is not approved, the figures grow by the millions of dollars.

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surcharges and interest on such surcharges, and recovery of rate case expense, costs and attorneys' fees.

Respectfully submitted,



Kenneth A. Hoffman

KAH/rl

cc: All Parties of Record
Ralph Jaeger, Esq.
Brian P. Armstrong, Vice President and General Counsel, Florida Water Services Corp.
Mr. Joseph P. Cresse