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February 9, 1999

FEDERAL EXPRESS

Ms. Blanca Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Application by United Water Florida Inc. for
an Extension of Service Area in St. Johns
County, Florida, Docket No. 981637-WS

Dear Ms. Bayo:

In connection with the above-referenced matter, please find enclosed for filing an original and seven (7) copies of the Response in Opposition to St. Johns County's Motion for Acknowledgment of Party Status and/or Petition for Intervention ("Response"). Please file the original Response and distribute the copies in accordance with your usual procedures.

Also please find enclosed a double sided high density diskette, WordPerfect for Windows 6.1, containing the Response.

If you have any questions or comments regarding this matter, please do not hesitate to call.

Sincerely yours,

Scott G. Schildberg
Scott G. Schildberg

ACK _____

AFA _____

APP _____

CAF _____

CMU _____ SES:dws

CTR _____ Enclosures

EAG _____
LEG 1 cc: Mr. Gary R. Moseley
Mr. Randall W. Corbin
LIN 3 Ms. Samantha McRae
Ms. Rosanne Gervasi
OPC _____ Mr. Kenneth A. Hoffman
RCH _____ Ms. Suzanne Brownless
SEC 1 Mr. F. Marshall Deterding

WAS Redeman

OTH orig Hong done 2/12/99

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FPSC-RECORDS/REPORTING

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application by United Water)
Florida, Inc. for an Extension of)
Service Area in St. Johns County,)
Florida)
_____)

DOCKET NO. 981637-WS
DATE SUBMITTED FOR FILING:
February 9, 1999

**RESPONSE IN OPPOSITION TO ST. JOHNS COUNTY'S
MOTION FOR ACKNOWLEDGMENT OF PARTY STATUS
AND/OR PETITION FOR INTERVENTION**

Pursuant to Rule 28-106.204, Florida Administrative Code ("FAC"), United Water Florida Inc. ("United Water Florida") files this Response in Opposition of St. Johns County's Motion For Acknowledgment of Party Status and/or Petition for Intervention and in support thereof states as follows:

Background

1. On November 17, 1998, United Water Florida submitted for filing with the Florida Public Service Commission ("Commission") an Application for Extension of Service Area in St. Johns County ("Application"). On November 17, 1998, United Water Florida also provided copies of a Notice of the Application via certified mail to several entities, including St. Johns County. United Water Florida published the Notice of Application twice and the last date of publication was November 27, 1998.

2. Section 367.045(4), Florida Statutes (1997), provides a statutory time period of thirty (30) days from the last day that notice was mailed or published by an applicant for "the Public Counsel, a governmental authority, or a utility or consumer who would be substantially affected by the requested certification or

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FPSC-RECORDS/REPORTING

amendment [to file] a written objection requesting a proceeding pursuant to ss. 120.569 and 120.57...."

3. In a December 16, 1998 letter, William G. Young, the acting Director of Utilities, St. Johns County, requested the Director, Division Records and Reporting, to accept a resolution of the Board of County Commissioners of St. Johns County ("Resolution"). The letter enclosed the Resolution and three other attachments (collectively referred to as the "December 16 Letter"). The three other attachments were a letter from the St. Johns County School Board, a copy of the Notice of Application, and pages 4, 5, 6 and 7 of a September 1, 1998 letter to Herbert Van Per Mark from Camp Dresser & Mekee Inc. ("CDM Letter"). The December 16 Letter apparently referred to the 4 page excerpt of the CDM Letter as "a portion of our Utility master plan."

4. St. Johns County has not filed anything with the Commission in opposition to the Application prior to the expiration of the objection period except for its submittal of the December 16 Letter.

**St. Johns County's Failure
to Comply with Statutes and Rules**

5. On January 29, 1999, St. Johns County filed a Motion for Acknowledgment of Party Status and/or Petition for Intervention ("Motion"). As set forth in the Motion, "the time in which the County had to object to the amendment of United's certificated area and request a hearing ran on December 28, 1998," Motion, ¶2.

Therefore, the Motion was filed thirty-two (32) days after the last date for filing an objection.

6. The December 16 Letter did not comply with the statutory requirement to request "a proceeding pursuant to ss. 120.569 and 120.57." Section 367.045(4), Florida Statutes (1997).

7. The December 16 Letter did not comply with the requirements of Rule 28-106.201, FAC, or Rule 25-22.036, FAC, and lacked allegations regarding disputed issues of material facts; ultimate facts; a demand for relief; a request for a proceeding pursuant to Sections 120.569 and 120.57, Florida Statutes (1997); a statement of rules and statutes supporting its position; a statement of when and how St. Johns received notice, or how the substantial interests of St. Johns County would be affected. The Resolution contained a bare allegation that the county's utility department would be substantially affected by not serving an area.

8. Accordingly, St. Johns County did not timely file an objection to the Application which complied with the requirements of the Florida Statutes and the Florida Administrative Code. Therefore, St. Johns County should not be given party status because of its submittal of the December 16 Letter.

Limitation in Participation and Issues

9. To grant St. Johns County full status as a party in this matter without limitation is contrary to the statutory procedure established by the Florida Legislature in Section 367.045, Florida Statutes (1997). The Legislature provided a clear point of entry for entities to object to and request hearings on applications for

extensions of service area. St. Johns County did not meet the statutory and administrative requirements.

10. In the event that St. Johns County is allowed to participate in this docket, it should only be allowed to participate as an intervenor with reduced rights.

Generally speaking, an intervening party's rights are subordinate to the principal issues raised by the original parties to an administrative action, and the intervening party is limited to litigating only his interests as affected by the principal issues.

Lewis Oil Co., Inc. v. Alachua County, 496 So.2d 184, 188 (Fla. 1st DCA 1986).

11. Contrary to the discussion of the Resolution in the Motion, St. Johns County did not allege in the Resolution that United Water Florida's service to the additional area requested in the Application ("Application Area") would be inconsistent with any Local Comprehensive Plan. The Resolution refers to "1994's County Utility Master Plan." Nowhere in the Resolution or in the rest of the December 16 Letter is there any mention of a local comprehensive plan for a county or municipality.

12. St. Johns County's belated attempts to raise additional new issues such as alleged inconsistencies with its local comprehensive plan are too late. As set forth in Section 367.045(5)(b), Florida Statutes (1997),

When granting or amending a certificate of authorization, the commission need not consider whether the issuance or amendment of the certificate of authorization is inconsistent with the local comprehensive plan of a county or municipality unless a timely objection to the notice required by this

section has been made by an appropriate motion or application. If such an objection has been timely made, the commission shall consider, but is not bound by, the local comprehensive plan of the county or municipality.

St. Johns County did not raise the issue of possible inconsistencies with local comprehensive plans until after the time for objections had expired.

13. As set forth in Rule 28-22.039, FAC, "Intervenors take the case as they find it." With regards to intervention, the First District Court of Appeal has ruled:

[a]n intervenor must accept the record and pleadings as he finds them and cannot raise new issues, although he may argue the issues as they apply to him as a party.

National Wildlife Federation, Inc. v. Glisson, 531 So.2d 996, 998 (Fla. 1st DCA 1988).

In Docket No. 981637-WS, no issue of inconsistency with local comprehensive plans has been timely raised. Accordingly, St. Johns County's attempts to include such a issue after the objection period should be denied.

WHEREFORE, for reasons set forth above, United Water Florida requests that the Commission deny St. Johns County's Motion for Acknowledgment of Party Status. Furthermore, in the event that the Commission grants St. Johns County's petition for intervention, United Water Florida requests that St. Johns County's status be limited to intervenor status and that St. Johns County be prohibited from raising new issues, including, but not limited to, an issue that United Water Florida's service to the Application Area is inconsistent with St. Johns County's local comprehensive

plan, or arguing new issues like arguing that United Water Florida's service to the Application Area is inconsistent with St. Johns County's local comprehensive plan, or presenting evidence in support of its position on such issues.

Respectfully submitted this 9th day of February, 1999.

**MARTIN, ADE, BIRCHFIELD &
MICKLER, P.A.**

By: 

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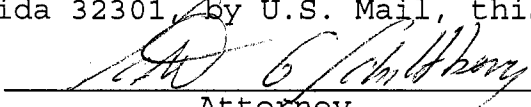
Jacksonville, FL 32202

Telephone: (904) 354-2050

**Attorneys for United Water
Florida Inc.**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the Response in Opposition to St. Johns County's Motion for Acknowledgment of Party Status and/or Petition for Intervention has been furnished by Federal Express this 9th day of February, 1999, to Blanca Bayo, Director, Division of Records and Reporting, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and a copy of the foregoing has been furnished to Samantha McRae, Attorney for the Staff of the Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, Kenneth A. Hoffman, Esquire, Rutledge Law Firm, Post Office Box 551, Tallahassee, Florida 32302, Suzanne Brownless, Esquire, Suzanne Brownless, P.A., 1311-B Paul Russell Road, Suite 201, Tallahassee, Florida 32301, Rosanne Gervasi, Esquire, Florida Public Service Commission, Division of Legal Services, Tallahassee, Florida 32399-0850, and F. Marshall Deterding, Esquire, Rose, Sundstrom & Bentley, LLP, 2548 Blairstone Pines Drive, Tallahassee, Florida 32301, by U.S. Mail, this 9th of February, 1999.



Attorney