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February 16, 1999

VIA HAND DELIVERY

RECORDS AND  
REPORTING

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

RE: Docket No. 981637-WS  
Application of United Water Florida, Inc. for an  
extension of service area in St. Johns County, Florida

Dear Ms. Bayo:

Enclosed please find for filing an original and seven copies  
of the Reply to United Water Florida, Inc.'s response in opposition  
to St. Johns County's motion for acknowledgment of party status  
and/or petition for intervention to be filed in the above-styled  
case.

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

Thank you for your assistance in this matter.

Very truly yours,



Suzanne Brownless  
Attorney for St. Johns County, Florida

RECEIVED & FILED

  
FPSC-BUREAU OF RECORDS

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_ c: 2663
- LEG \_\_\_\_\_ cc: All parties of record
- LIN 3 \_\_\_\_\_
- OPC \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC 1 \_\_\_\_\_
- WAS Pademaru \_\_\_\_\_
- OTH \_\_\_\_\_

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application by United Water )  
Florida, Inc. for an Extension of ) DOCKET NO. 981637-WS  
service area in St. Johns County, ) Date Filed:  
Florida. ) February 16, 1999  
\_\_\_\_\_ )

REPLY TO UNITED WATER FLORIDA, INC.'S RESPONSE  
IN OPPOSITION TO ST. JOHNS COUNTY'S MOTION  
FOR ACKNOWLEDGMENT OF PARTY STATUS AND/OR  
PETITION FOR INTERVENTION

Comes Now, St. Johns County, Florida (County) and files this reply to United Water Florida, Inc.'s Response In Opposition to St. Johns County's Motion For Acknowledgment of Party Status and/or Petition for Intervention and in support thereof states as follows:

Party status pursuant to §367.045(4), F.S.

1. In its response, United Water Florida, Inc. (United) argues that since in Resolution No. 98-226, filed with the Commission on December 17, 1998, the County did not follow to the letter the technical requirements of Rule 25-22.036, F.A.C., and §367.045(4), F.S., that statutory party status should not be conferred upon the County. The County, according to United, has merely stated "a bare allegation that the county's utility department would be substantially affected by not serving an area."

Response at ¶ 7.

2. While it is true that Resolution No. 98-226 does not sound all of the bells and whistles required by the Commission's procedural rules, it is far from correct that it consists merely of "a bare allegation" of "substantial affect". Paragraph ¶ 3 of the Motion for Acknowledgment details how the Resolution meets the most important technical requirements: objection to service of the area

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by United; establishment of the substantial interest of the County; and the proposed extension's conflict with the County Utility Master Plan, a part of the County's Comprehensive Land Use Plan approved by the Department of Community Affairs pursuant to §§163.3161-.3211, F.S.

Why should the County have to request a hearing on this issue, when a hearing at the Commission is the only way to resolve who will serve the area and at the time that the County filed its Resolution such a hearing had already been requested by Intercoastal Utilities, Inc., another party whose statutory party status is uncontested by United?

3. To hold the County to the technical letter of the law when the spirit of the law has clearly been timely met is contrary to common sense and the Commission's own treatment of scores of ratepayers and entities in similar circumstances.

4. The County should be granted party status pursuant to §367.945(4), F.S.

Limitation of party status

5. If granted party status by the Commission by either statutory right or compliance with the "substantial interest" intervenor standard<sup>1</sup>, United wants to limit the County's ability

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<sup>1</sup> The County has met the substantial interest standard required by Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981), rev. den. 415 So.2d 1359 (Fla. 1982), rev. den. 415 So.2d 1361 (Fla. 1982). That is, the County will suffer injury in fact (inability to serve the disputed service area) which is of sufficient immediacy to entitle it to a hearing and that injury is of the type or nature which the proceeding is designed to protect (award of service areas to utilities over whom the Commission has jurisdiction). In its Response, United does not dispute the fact that the County meets the Agrico substantial interest standard for intervention.

to raise the issue of inconsistency with the County's comprehensive land use plan. United is essentially arguing that the issue of inconsistency of United's extension application with the County's Comprehensive Land Use Plan can only be raised by the entities listed in §367.045(4), F.S., i.e., a county or municipality. Further, it is United position that inconsistency with comprehensive plans can only be raised by counties and municipalities in their initial objection to the extension application filed within 30 days of the last day that the notice of application was mailed or published, whichever is later. Response at ¶¶ 9, 12, 13. A closer examination of §367.045(4) and 367.045(5) (b), F.S., contradicts this view.

6. It is true that §367.045(4), F.S., states that counties and municipalities are granted standing to object to an extension on the basis that such an extension is inconsistent with their comprehensive land use plan. However, this language is preceded by the statement: "Notwithstanding the ability to object on any other ground".<sup>2</sup> The clear intent of this language is to give municipalities and counties the ability to become statutory parties even if the only interest they have to protect is consistency with

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<sup>2</sup> Section 367.045(4), states in part:  
"If, within 30 days after the last day that notice was mailed or published by the applicant, whichever is later, the commission receives from the Public Counsel, a governmental authority, or a utility or consumer who would be substantially affected by the requested certification or amendment a written objection requesting a proceeding pursuant to ss. 120.569 and 120.57, the commission shall order such proceeding conducted in or near the area of which application is made, if feasible. Notwithstanding the ability to object on any other ground, a county or municipality has standing to object on the ground that issuance or amendment of the certificate of authorization violates established local comprehensive plans developed pursuant to ss. 163.3161-163.3211. . . ."

their own comprehensive land use plans. Absent such language counties and municipalities who did not also wish to serve the disputed area would not be able to meet the "substantial interest" requirement of Rule 25-22.036, F.A.C., and §§120.57(1) and 120.569, F.S., since their interest in the comprehensive land use plans would be no greater than those of any other citizen of their respective municipality or county.

7. United points to the language of §367.045(5)(b), F.S.,<sup>3</sup> to support its proposition by noting that the commission "need not consider" the issue of inconsistency unless a timely objection to the notice has been made. Notice that the cited statute does not indicate who needs to raise this issue. Presumably a substantially affected consumer, Public Counsel or other utility could also do so. Section 367.045(5)(b), F.S., does not prohibit the Commission on its own motion from raising the issue or from considering the issue when raised by any other party to the docket. The statute allows the Commission to disregard the issue unless raised within 30 days of the published notice, it does not limit the Commission's ability to consider the issue when requested to do so by any substantially affected person.

8. United quotes the National Wildlife Federation case and

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<sup>3</sup> Section 367.045(5)(b), F.S., states:


"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 the 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."

Rule 28-22.039, F.A.C., for the proposition that an intervenor "takes the case as they find it." Response at ¶¶ 12, 13. This docket is at the very beginning of the Commission's litigation process, so much so that a final Case Assignment Scheduling Record (CASR) setting testimony filing, prehearing and hearing dates has not even been issued by the Commission. United is in no way harmed by the identification of the comprehensive land use plan inconsistency issue and its inclusion as an issue at this very early stage. United has the ability on this issue, like any other raised by Staff or the other parties to the docket, to prepare and file testimony on this issue.

9. The requirement to "take the case as they find it" is intended to prevent abuses by intervenors who come into a case late in the proceeding. It is not intended to prevent substantially affected parties from raising legitimate issues in accord with the Commission's own rules of practice and procedure. The County is "taking the case as they find it": at its initial issue identification stage. To preclude the County from exercising its full rights as a substantially affected party at this early stage of the proceeding is clearly contrary to the Commission's own rules on intervention, §§ 120.57(1) and 120.569, F.S., and a blatant denial of the County's right of due process.

WHEREFORE, for the reasons set forth above, St. Johns County requests that it be acknowledged as a statutory party in this proceeding and/or be allowed to intervene as a full party to this proceeding with the right to raise the issue of the inconsistency

of United Water Florida, Inc.'s request for extension with the County's comprehensive land use plan.

  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the following persons have been provided with a true and correct copy of the Reply to United Water Florida Inc.'s Response In Opposition To St. Johns County's Motion For Acknowledgment of Party Status and/or Petition for Intervention by United States Mail or Hand Delivery (\*) on this 16th day of February, 1999:

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Florida Public Service Comm.  
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Mr. Bill Young, Interim Director  
St. Johns County Utility Dept.  
P.O. Box 3006  
St. Augustine, Florida 32085-3006

  
Suzanne Brownless, Esq.

c:2656