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March 15, 1999

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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99 MAR 15 PM 4:05
RECORDS AND REPORTING

Re: Docket No. 950495-WS

Dear Ms. Bayo:

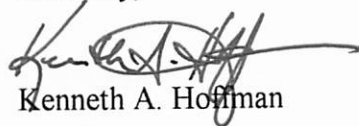
Enclosed herewith for filing in the above-referenced docket on behalf of Florida Water Services Corporation ("Florida Water") are the following documents:

1. Original and fifteen copies of Florida Water's Objections to Office of Public Counsel's First Set of Interrogatories and Second Request for Production of Documents on Remand and Motion for Protective Order; and
2. A disk containing a copy of this document in Word Perfect 6.0.

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

ACK _____
 AFA 2 _____
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DOCUMENT NUMBER-DATE
03270 MAR 15 99
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: March 15, 1999

FLORIDA WATER SERVICES CORPORATION'S OBJECTIONS TO OFFICE OF PUBLIC COUNSEL'S FIRST SET OF INTERROGATORIES AND SECOND REQUEST FOR PRODUCTION OF DOCUMENTS ON REMAND AND MOTION FOR PROTECTIVE ORDER

Florida Water Services Corporation ("Florida Water"), by and through its undersigned counsel, and pursuant to Rules 28-106.204 and 28-106.206, Florida Administrative Code and Rule 1.280(c), Florida Rules of Civil Procedure, hereby files its Objections to the Office of Public Counsel's ("OPC") First Set of Interrogatories and Second Request for Production of Documents on Remand and moves for the entry of a Protective Order providing that Florida Water is not required to respond to OPC's discovery requests as outline below. In support of its Objections and Motion for Protective Order, Florida Water states as follows:

INTRODUCTION

This case stems from an application for increased water and wastewater rates filed by Florida Water in 1995. The final hearing was held on April 29 through May 10, 1996. The Commission entered its final order on October 30, 1996. Following appeals by Florida Water and other parties,

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on June 10, 1998, the First District Court of Appeal issued its opinion in Southern States Utilities v. Florida Public Service Commission, 714 So.2d 1046 (Fla. 1st DCA 1998) ("Southern States II").¹

In Southern States II, the court reversed the Commission and accepted the Commission's confession of error on a multitude of issues affecting Florida Water's revenue requirements and allowance for funds prudently invested charges. On remand, in accordance with the Southern States II decision, the Commission approved an increase in rates in response to the court's reversal of the Commission's: (1) failure to afford 100% used and useful treatment for reuse facilities; (2) unlawful reduction to Florida Water's equity due to the one-sided refund order issued in Docket No. 920199-WS subsequently reversed by the court; and (3) confession of error in failing to use the average flows in the maximum month in the calculation of the used and useful investment for three wastewater treatment plants. Surcharges also were ordered by the Commission in connection with the increased revenue requirements as a result of these reversals; however, that issue remains pending due to a protest filed by Sugarmill Woods Civic Association, Inc.

In addition to the above issues, the court reversed the Commission's use of average annual daily flows in the numerator of the calculation of used and useful for four wastewater treatment plants and the Commission's use of the lot count method in determining the level of used and useful investment in water transmission and distribution and wastewater collection facilities. The court held that both of these determinations constituted departure from Commission policies that were not supported by record evidence. The court authorized the Commission, on remand, to adduce evidence, if it can, to support the Commission's departure from established policies. The hearing

¹A motion for rehearing was denied by the court on July 5, 1998.

currently scheduled for June 16-18, 1999 has been set in response to the court's reversal and remand on the wastewater treatment plant and lot count used and useful issues.

In challenging the Commission's determinations of used and useful for the four wastewater treatment plants, Florida Water argued before the court that the Commission had departed from established Commission policy without adequate record support, that the new policy produced used and useful levels below those previously authorized by the Commission, and that the lowering of previously established used and useful investments was a departure from Commission precedent, in violation of the doctrine of administrative finality and constituted an unconstitutional confiscation of Florida Water's property. The court reversed the Commission on the ground that the Commission's new policy was not supported by record evidence in violation of applicable statutory requirements under Chapter 120, Florida Statutes, and applicable decisions thereunder.

In remanding the case to the Commission, the court held:

[b]ecause this policy shift was essentially unsupported by "expert testimony, documentary opinion or other evidence appropriate to the nature of the issue involved," ... (citation omitted), the PSC must, on remand, give a reasonable explanation, if it can, supported by record evidence (which all parties must have an opportunity to address) as to why average daily flow in the peak month was ignored.

Southern States II, 714 So.2d at 1056. Having reversed on this ground, the court did not address the additional grounds for reversal urged by Florida Water. See Southern States II, 714 So.2d at 1059.

As previously stated, Florida Water also challenged the Commission's use of the lot count method in calculating the level of used and useful investment in water transmission and distribution and wastewater collection facilities. As with the wastewater treatment used and useful issue, Florida Water asserted that the use of the lot count method was an unsupported departure from prior

Commission rejections of the lot count method, unlawfully lowered previously established used and useful levels, and unconstitutionally confiscated Florida Water's property. The court reversed on the basis that the Commission had failed to provide adequate record support for its employment of the new lot count method. The court held:

The PSC's conceded change of method in calculating used and useful percentages for distribution and collection systems is another "policy shift... essentially unsupported 'by expert testimony, documentary opinion, or other evidence appropriate to the nature of the issue involved,' (citation omitted)." For this policy shift, too, the PSC must give a reasonable explanation on remand and adduce supporting evidence, if it can, to justify a change in policy required by no rule or statute. That failing, the PSC should adhere to its prior practices in calculating used and useful percentages for water transmission and distribution systems and wastewater collection systems serving mixed use areas. (Footnote omitted).

Southern States II, 714 So.2d at 1057.

Florida Water objects to providing documents and information responsive to a number of OPC's First Set of Interrogatories and Second Request for Production of Documents on Remand because these requests fall outside of the scope of the remand from the court's decision in Southern States II and, therefore, are not reasonably calculated to lead to the discovery of admissible evidence. See Rule 1.280(b)(1), Florida Rules of Civil Procedure. In addition, a number of OPC's discovery requests seek information and documents from Florida Water which do not exist. Consistent with Commission precedent, Florida Water is not required to create new documents, undertake new analyses, or create new studies or reports to respond to a discovery request² particularly where, as here, the requests exceed the scope of the remand from the Southern States II decision and the test

²See, e.g., Order No. PSC-92-0819-PCO-WS issued August 14, 1992.

year used for ratemaking purposes in this rate case.

OPC'S FIRST SET OF INTERROGATORIES ON REMAND

Interrogatory No. 2 states:

For each of the company's water and wastewater systems provide the build-out the ERC numbers or capacities for all of the water and wastewater lines included in this docket.

Florida Water object to OPC Interrogatory No. 2 on the ground that it requests information for all of Florida Waters' water and wastewater service areas, some of which are not included and, therefore, not at issue in this rate proceeding. In addition, Florida Water objects to this interrogatory on the ground that it seeks information outside the scope of the Southern States II remand. In Southern States II, the court allowed the Commission the opportunity, on remand, to justify its departure from its policy of rejecting the application of the lot count method to calculate used and useful percentages for water transmission and distribution lines and wastewater collection lines serving mixed use areas. Not all of Florida Water's service areas included in this rate proceeding are mixed use areas. Accordingly, the information requested by OPC exceeds the scope of the remand and is not reasonably calculated to lead to admissible evidence. More importantly, the "build-out ERC numbers or capacities" requested by OPC inappropriately attempt to expand the scope of this remand proceeding beyond the minimum filing requirements ("MFRs") which form the basis for rate relief in the final order and must continue to do so on remand. "Build-out ERC numbers of capacities" are irrelevant to an evaluation of test year used and useful lines or wastewater treatment plant. The record in this proceeding includes Florida Water's MFRs which include projected ERC numbers for the projected 1996 test year. The parties must be limited to the information provided in the MFRs. This remand proceeding should not be construed as a true-up

proceeding or an avenue for interveners or staff to attempt to obtain additional adjustments beyond and outside the scope of the two limited used and useful determinations which were reversed by the court.

Interrogatory No. 3 states:

Please provide the methodology utilized to produce the estimated build-out ERC numbers requested in Question 2.

Florida Water adopts and incorporates by reference its objections to OPC Interrogatory No. 2.

Interrogatory No. 4 states:

If the company can not furnish the estimated ERC numbers requested in Question 2, based upon a justifiable and verifiable methodology, then supply the best numbers with the best methodology available, regardless of the flaws.

Florida Water adopts and incorporates by reference its objections to OPC Interrogatory No. 2. In addition, Florida Water is not required to create new documents, undertake new analyses, or create new studies or reports to respond to OPC's discovery requests particularly where, as here, the request exceeds the scope of the remand from the Southern States II decision.

Interrogatory No. 5 states:

Please provide the permitted capacity, identifying the permit numbers and the basis of the capacity (i.e. annual average daily flow (AADF), maximum month average daily flow (MMADF) or three month average daily flow (3MADF) for the test years 1994-1996, for the Buenaventura Lakes, Citrus Park, Leisure Lakes, Marco Island and Marco Shores wastewater treatment plants.

Florida Water objects to the provision of this information for the Leisure Lakes Wastewater Treatment Plant based on its understanding that the level of used and useful investment for the Leisure Lakes Wastewater Treatment plant is not at issue in the remand stage of this proceeding and,

therefore, the requested information concerning the Leisure Lakes Wastewater Treatment plant is not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 6 states:

Please furnish the total annual water sold, by customer category (i.e., single family residential, multi-family residential, commercial, general service), identifying year end number of customers for each category, for every water system included in this docket for the test years 1994, 1995, 1996 and the years 1997 and 1998.

Florida Water objects to OPC Interrogatory No. 6 on grounds that the information requested exceeds the scope of the remand from the Southern States II decision and the test year used for ratemaking purposes in this rate case and is not reasonably calculated to lead to the discovery of admissible evidence. Although not relevant to the issues on remand, total annual water sold for the years 1994, 1995 and 1996 (projected for 1995 and 1996) was provided long ago to OPC in Florida Water's MFRs (consumption and billing data and/or F Schedules). Similar information for the years 1997 and 1998 are outside of the test year used to establish rates in this rate case. It would, in every sense, open the floodgates over the finite issues which the court remanded to the Commission for further evaluation, if factual information created after the final hearing on this matter were considered discoverable, let alone admissible evidence. Rather, the parties and staff should be put in the position they would have been in had the remand issues been lawfully determined in the first instance. As previously stated, this remand proceeding should not be construed as a true-up proceeding or an opportunity for interveners or staff to recommend additional adjustments outside the scope of the two limited used and useful determinations which were reversed by the court.

Interrogatory No. 7 states:

Utilizing the methodology proposed by the company, please identify the year end ERC numbers for each water system included in this docket, for the test years 1994,

1995, 1996 and for the years 1997 and 1998.

Florida Water adopts and incorporates by reference its objections to OPC Interrogatory No. 6 as such pertain to the requested provision of year end ERC numbers for each water system included in this docket.

Interrogatory No. 9 states:

Describe all differences between the lot count method adopted by the Commission in Docket No. 950495-WS and the lot count method proposed by the company in Docket No. 950495-WS.

Florida Water objects to Interrogatory No. 9 based on the incorrect statement underlying the interrogatory that Florida Water proposed a lot count method in this rate case for the determination of the level of used of useful investment in Florida Water's water transmission and distribution lines and wastewater collection lines.

Interrogatory No. 10 states:

For each of the company's water and wastewater systems, please provide the following information, if available. If the exact information is not available, but similar information is available, please provide the similar information.

- (a) The total number of lots where service is available as of December 31, 1994, December 31, 1995 and December 31, 1996.
- (b) The total number of lots connected as of December 31, 1994, December 31, 1995 and December 31, 1996.
- (c) The total number of single family residential lots where service is available as of December 31, 1994, December 31, 1995 and December 31, 1996.
- (d) The total number of single family residential connected as of December 31, 1994, December 31, 1995 and December 31, 1996.
- (e) The total number of commercial and general service lots where service is available as of December 31, 1994, December 31, 1995 and December 31, 1996.

- (f) The total number of commercial and general service lots connected as of December 31, 1994, December 31, 1995 and December 31, 1996.

Florida Water objects to OPC Interrogatory No. 10 on grounds that the information requested pertains to all of Florida Water's water and wastewater systems, some of which are not part of this rate case proceeding. OPC was provided with a copy of Florida Water's MFRs and accompanying maps which provide the actual number of connected lots for 1994 and projected connections for 1995 and 1996. To the extent OPC requests updates for 1995 and 1996, Florida Water objects. OPC may not use this remand proceeding as a vehicle to true-up the test year projections for the reasons stated above. In addition, any attempt to true-up projected test year information exceeds the scope of the remand from the Southern States II decision, leaving the information requested by OPC not reasonably calculated to lead to the discovery of admissible evidence. Moreover, information of the type requested in subparts (c)-(f), to the extent these subparts request identification of lot location by customer class, did not exist as of the dates of the final hearing in this matter, nor does it now exist. The MFRs contain the number of customers for each class of customer for historic 1994 and projected 1995 and 1996.

OPC'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS ON REMAND

Document Request No. 3 states:

Please provide the most recent DEP operating permits, and construction permits, if different, for the following wastewater treatment plants: Buenaventura Lakes, Citrus Park, Leisure Lakes, Marco Island and Marco Shores.

Florida Water adopts and incorporates by reference its objections to OPC Interrogatory Nos. 5 and 6 as such objections pertain to the documents requested in OPC Document Request No. 3.

Document Request No. 4 states:

Please provide the recent engineering and the design reports for the following wastewater treatment plants: Buenaventura Lakes, Citrus Park, Leisure Lakes, Marco Island and Marco Shores.

Florida Water adopts and incorporates by reference its objections to OPC Interrogatory Nos. 5 and 6 as such objections pertain to the documents requested in OPC Document Request No. 4.

Document Request No. 5 states:

Please provide any and all memoranda, letters, or other documents in the company's possession custody or control which addresses the deficiencies in the Commission's use of the average annual daily flow in the numerator of the used and useful calculation for wastewater treatment plants.

Florida Water objects to OPC Document Request No. 5 to the extent it requests documents prepared in anticipation of the final hearing which constitute and contain privileged attorney-client and/or work product information. Any documents which fall outside of such privileges, to the extent they exist, will be produced to OPC.

Document Request No. 6 states:

Please any and all memoranda, letters, and other documents in the company's possession, custody or control which addresses the deficiencies in the Commission's use of the lot count method for determining the used and usefulness of water transmission or distribution lines and wastewater collection lines which serve residential, commercial and general service systems.

Florida Water adopts and incorporates by reference its objections to OPC Document Request No. 5. Any documents which fall outside the protections of the attorney-client and/or work product privileges, to the extent they exist, will be produced to OPC.

Document Request No. 8 states:

Please provide all analyses, workpapers, memoranda, and other documents prepared by or for the company which address, discusses, or quantifies the impact of the

Commission's use of the lot count method for determining (sic) the used and usefulness of water transmission and distribution line and wastewater collection lines as compared to any other methodology.

Florida Water adopts and incorporates by reference its objections to OPC Document Request No. 5. Any documents responsive to this request which fall outside the attorney-client and/or work product privileges, to the extent they exist, will be produced to OPC.

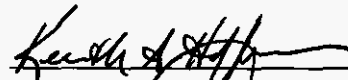
Document Request No. 10 states:

Please provide all analyses, workpapers and other documents prepared by or for the company which examines, addresses or evaluates the use of the lot count method for determining the used and usefulness of water transmission and distribution lines and wastewater collection lines and its impact upon mixed use systems (those serving residential, commercial and general service customers).

Florida Water adopts and incorporates by reference its objections to OPC Document Request No. 5. Any documents responsive to this request which fall outside the attorney-client and/or work product privileges will be produced to OPC.

WHEREFORE, for the reasons stated, Florida Water respectfully requests that the Commission enter a protective order providing that Florida Water is not required to respond to: (1) Interrogatory Nos. 2, 3, 4, 5 (but only as to the Leisure Lakes Wastewater Treatment Plant), 6, 7, 9 and 10 included in OPC's First Set of Interrogatories on Remand; and (2) Document Request Nos. 3 and 4 (but only as to the Leisure Lakes Wastewater Treatment Plant), 5, 6, 8 and 10 included in OPC's Second Request for Production of Documents on Remand.

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 15th day of March 1999:

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