



JACK SHREVE
PUBLIC COUNSEL

STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature
111 West Madison St.
Room 812
Tallahassee, Florida 32399-1400
850-488-9330

RECEIVED-~~FPSC~~ ORIGINAL
99 MAR 29 PM 4:50

RECORDS AND
REPORTING

March 29, 1999

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

RE: Docket No. 950495-WS

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of Citizens' Response to 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 for filing in the above-referenced docket.

Also enclosed is a 3.5 inch diskette containing the Citizens' Response to 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 in WordPerfect for Windows 6.1. Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

- ACK _____
- AFA 3 _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG 4 SCR/dsb
- LIN 5 Enclosures
- OPC _____
- RCH _____ C:\STEVE\950495RE\BAYO.LTR
- SEC 1 _____
- WAS Willis _____
- OTH _____

Sincerely,

Stephen C. Reilly
Associate Public Counsel

RECEIVED & FILED

FPSC BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

04018 MAR 29 99

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 950495-WS

Filed: March 29, 1999

CITIZENS' RESPONSE TO 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

The Citizens of the State of Florida ("Citizens") by and through their undersigned attorney file this Response to Florida Water Services Corporation's ("Florida Water") Objections to Office of Public Counsel's ("OPC") First Set of Interrogatories and Second Request for Production of Documents on Remand and Motion for Protective Order, and state:

GENERAL COMMENTS

On June 10, 1998, the First District Court of Appeal ("District Court"), in case number 96-4227, issued its opinion which reversed the Commission's initial Final Order No. PSC-96-1320-FOF-WS in several respects, with no opportunity for the Commission to take additional evidence to resolve the issues. However, for two issues, the District Court reversed the Commission's decision while granting it the discretion to reopen the record to take additional evidence on the issues, if it existed. The two issues dealt with the Commission's decision to use the annual average daily flow

DOCUMENT NUMBER-DATE

04018 MAR 29 99

FPSC-RECORDS/REPORTING

(AADF) in the numerator of the used and useful equation for eight wastewater treatment plants, and the use of the lot count method in determining the used and useful percentage of the water transmission and distribution and wastewater collection systems serving mixed use areas. By Order No. PSC-99-0093-FOF-WS (First Order on Remand), issued January 15, 1999, the Commission opted to reopen the record to take additional evidence on these two issues.

As to the first issue, the District Court “reversed the order under review because the PSC relied on a **new method** to determine the used and useful percentage of wastewater treatment plants, without adequate evidentiary support.” (Emphasis added) (District Court Order pg. 22) The District Court remanded the issue to permit the Commission to conduct a hearing to take additional evidence, if it can, to show that the Commission’s new methodology (use of AADF in the numerator of the used and useful fraction when the plant’s capacity in the denominator is expressed in terms of AADF) is preferable to the Commission’s prior practice. Consequently, the **scope** of this issue and the duty of the Commission on remand is to elicit at hearing **additional evidence** (not limited to the evidence presented in the first hearing) to support the **best method** to determine the appropriate used and useful percentage of the eight wastewater treatment plants on appeal at the end of the test year 1996.

As to the second issue, the District Court reversed the order because the “[e]vidence of record in the present case does not support or explain the PSC’s switch to the lot count **method** for evaluating systems with mixed use areas.” (Emphasis added) (District Court Order pg. 24) The District Court remanded the second issue to permit the Commission to conduct a hearing to adduce supporting evidence, if it can, to justify the change in methodology (use of the lot count method to determine the used and useful percentage of the water transmission and distribution and wastewater collection systems serving mixed use areas). Consequently, the **scope** of second issue and the duty

of the Commission on remand is to elicit at hearing **additional** evidence (not limited to the evidence presented in the first hearing) to support the best **method** to determine the appropriate used and useful percentage of the water transmission and distribution and wastewater collection systems serving mixed use areas; and the application of that method to determine the appropriate used and useful percentages for the above systems in mixed use areas at the end of the test year 1996.

Therefore, it is fully within the **scope** of the District Court's remand for the Commission to elicit and consider any additional evidence that will tend to validate or invalidate either methodology under consideration for resolving the used and useful questions posed in issues 1 and 2 on remand. Florida Water seeks to limit the evidence on remand to the information found in the **minimum** filing requirements and the evidence available or presented in the first hearing. If it can succeed in this effort it will greatly hamper the Commission's ability to respond to District Court's order to elicit **additional** evidence to support the best **method** to resolve the used and useful questions posed in issues 1 and 2 on remand. The Commission must be free to consider new evidence that will validate or invalidate the competing methodologies under consideration in this remand proceeding.

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 ERC numbers or capacities for all of the water and wastewater lines included in this docket.

Florida Water makes several objections to OPC's Interrogatory No. 2. First, Florida Water states that OPC requested information for all of Florida Waters' water and wastewater service areas, some of which are not included and, therefore, not at issue in this proceeding. To set the record straight, OPC did not ask for information for all water and wastewater systems, but only for those

included in this docket. Therefore, Florida Water's objection is moot. Second, Florida Water objects to providing the information requested for those systems that are not "mixed use" systems. OPC agrees with Florida Water that those systems which are not mixed use are not in dispute in this remand proceeding and that, in fact, it is undisputed that the lot count method is the appropriate methodology for these nonmixed use residential systems. Since the District Court never identified the "mixed use" systems, this remains an issue to be resolved on remand. For the purposes of Interrogatory No. 2 Florida Water should furnish the requested information only for those systems included in this docket that it deems are mixed use systems. Obviously, the Citizens reserve the right to test and challenge whether all of the systems identified by Florida Water should in fact be considered "mixed use" systems by the Commission. Third, Florida Water suggests that the "build-out ERC numbers of (sic) capacities" are irrelevant to the test year used and usefulness and that parties should be limited to the information provided in the MFRs. The Minimum Filing Requirements are just what they say they are the "minimum" information a utility is required to file with the Commission with an application for a rate increase. To suggest that the parties are limited to what is contained in the Utility's "minimum" filing requirements is simply wrong. Moreover, the Court did not limit what was discoverable evidence in this remand proceeding--only what the issues are. As stated previously, the District Court remanded the two issues to the Commission to take additional evidence beyond that which was taken in the first hearing. With this request, OPC does not seek to "true-up" or to develop adjustments beyond the scope of the proceeding. OPC intends to apply its recommended used and useful methodology to the projected test year as contained in the MFRs. Nevertheless, OPC has requested relevant information to test the reasonableness of the methodologies under consideration. The Court remanded this proceeding for the purposes of taking

of such evidence, if it exists, to support the Commission's preferred methodology. Any information requested which is relevant to the calculation of the used and useful methodologies on remand is fair game. To the extent that information is beyond the test year, or beyond what was contained in Florida Water's MFRs and it either refutes or adds credence to the methodologies under consideration, OPC has the right to discover that information. A good example of this type of critical information is the "build-out ERC numbers or capacities" which Florida Water complains is beyond of the scope of this remand proceeding. It is precisely this information that the Commission must have before it can determine the validity or appropriateness of the methodology proposed by Florida Water. To the extent the ECR build-out number is greater than the lot build-out number the utility's used and useful percentage will be unfairly overstated. Florida Water knows this only too well, and for this reason it is in Florida Water's interest to attempt to keep this information out of the record, and beyond the review of the Commission and ultimately the District Court. While it is understandable that Florida Water interposes these objections, it is critical that the Commission deny them and assure that we have a fully and adequately documented record to support the most appropriate methodology to resolve the used and useful issues on remand. Florida Water seeks to limit OPC to what was known at the time of the hearing, however, this "limitation" is only sought when it suits Florida Water's purposes. When such a limitation does not suit Florida Water's purposes, it willingly uses information outside what was known at the hearing to argue its position. (See discussion under Interrogatory No. 5 concerning Leisure Lakes.) Florida Water can not have it both ways. The Commission should reject Florida Water's objections and require Florida Water to provide the information requested in OPC Interrogatory No. 2, as clarified herein.

Interrogatory No. 3 states:

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

Florida Water adopted and incorporated by reference its objections to OPC Interrogatory No.

2. For this reason OPC adopts and incorporates by reference its response to Florida Water's objections to 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 adopted and incorporated by reference its objections to OPC Interrogatory No.

2. For this reason OPC adopts and incorporates by reference its response to Florida Water's objections to Interrogatory No. 2. In addition Florida Water complains that it should not be required to create new documents, undertake new analyses, or create new studies or reports to respond to this discovery request. OPC does not seek to require Florida Water to create new documents, undertake new analyses, or create new studies or reports for OPC. OPC seeks only relevant information which is already known to Florida Water.

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 information for the Leisure Lakes wastewater treatment plant because it believes the level of used and useful investment for this plant is no longer at issue in the remand stage of this proceeding. OPC did not appeal the Commission's Final Order concerning the used and useful percentage of the Leisure Lakes wastewater treatment plant. It was Florida Water that included (perhaps erroneously) the Leisure Lakes plant with seven other systems in its appeal to the District Court. Once Florida Water filed its appeal, the used and useful percentage of the Leisure Lakes wastewater treatment plant became an unresolved issue, and shall remain an issue until it is disposed by an order of the District Court or an order of the Commission on remand without an appeal, or by a timely voluntary dismissal by Florida Water.

In its Order, the District Court acknowledged the Commission's confession of error as to three of the eight systems (Beacon Hills, Holiday Haven and Jungle Den) included in Florida Water's appeal, because further investigation revealed that these systems were not permitted based upon AADF. The Commission, in its brief to the District Court, argued that since the Leisure Lakes plant was permitted on an AADF basis, the customer demand should also be expressed on an AADF basis. However, the Commission stated in its brief that it had inadvertently used the max month average daily flow (MMADF) in the numerator rather than the AADF when calculating Leisure Lakes' used and useful percentage in the schedule attached to and made a part of the final order. As a result of this Commission error, Florida Water erroneously (from the utility's perspective) appealed the Leisure Lakes wastewater treatment plant used and useful percentage. In response to this revelation, Florida Water could have dismissed the appeal as to Leisure Lakes prior to the District Court rendering its

decision, thereby allowing the Commission's Final Order No. PSC-96-1320-FOF-WS to stand unchallenged as to Leisure Lakes. However, Florida Water failed to take this action. Rather, Florida Water waited to receive the District Court's opinion. Unfortunately for Florida Water, the District Court, in its decision, made no mention of Leisure Lakes or the Commission's admission of making the inadvertent mistake in calculating that plant's used and useful percentage when issuing the initial final order. In its decision, the Court remanded the entire issue involving all eight systems back to the Commission to take such evidence (if it exists) that it is preferable to use the AADF to measure customer demand in the numerator when the plant's capacity in the denominator is expressly based upon AADF. Now that the entire matter has been remanded to the Commission, it is the Commission's duty to conduct a hearing to elicit the evidence (if it exists) to establish the preferable policy and to apply that policy to all eight systems. Thanks to Florida Water's appeal and the wording of the District Court's decision, the Commission has retained jurisdiction and has been granted a second chance to render a correct decision concerning Leisure Lakes. For this reason, the Commission should permit OPC to discover information about Leisure Lakes so that the Commission will have information presented to it at hearing that will support a correct used and useful determination for the Leisure Lakes wastewater treatment plant. The party who caused the used and useful percentage of Leisure Lakes wastewater treatment plant to remain an issue cannot now be heard to complain that it remains so.

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.

OPC adopts and incorporates by reference its response to Florida Water's objections to Interrogatory No. 2. OPC further states that consumption data is relevant to the issues on remand. If there is no discernable difference between the consumption patterns of different classes of customers, then any argument by Florida Water that the Commission's proposed lot count methodology ignores the larger sized lines needed for commercial or general service customers is without merit. The Commission should not limit OPC to what Florida Water feels is relevant. Any information which will refute or add credence to the used and useful methodologies under consideration should be considered discoverable by OPC. The information for 1997 and 1998 will help test the validity of the assumptions underlying the two competing methodologies. The information being sought is reasonably calculated to lead to the discovery of admissible evidence. Again, OPC has absolutely no intention to use the information to true-up adjustments in dispute on remand or to make additional adjustments inside or outside of the 1996 test year, beyond those that have remained unresolved as a direct result of Florida Water's appeal and the District Court's order on remand. The Commission should reject Florida Water's objections and order Florida Water to provide the information sought by OPC.

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 adopted and incorporated 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. For this reason, OPC adopts and incorporates by reference its response to Florida Water's objections to Interrogatories Nos. 2 and 6.

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 this request based on an alleged 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 and useful investment in Florida Water's water transmission and distribution systems and wastewater collection systems. Florida Water's MFRs, contain connected lots and number of lots, the ratio of which is used to calculate the used and useful percentage for water and wastewater lines. (See MFRs, F Schedules, pages 877 - 882.) If Florida Water is contending that the lots to lots methodology contained in the MFRs was not the methodology proposed by it in the instant docket, then OPC would like an explanation. It appears evident to OPC that Florida Water proposed a lot count methodology, with the exception of those systems where a hydraulic methodology was proposed. If Florida Water no longer endorses the methodology contained in its MFRs, then Florida Water can respond to the interrogatory in that manner. However, if Florida Water continues to endorse the methodology set forth in its MFRs, which contains "lot counts" in

both the numerator and denominator of the used and useful calculations, then Florida Water should be ordered to answer OPC's interrogatory as requested.

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 lots 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 makes several objections to OPC's Interrogatory No. 10. First, Florida Water states that OPC requested information for all of Florida Waters' water and wastewater service areas, some of which are not included and, therefore, not at issue in this proceeding. As stated previously, OPC is asking only for information about systems included in this docket. As to the issue of mixed versus nonmixed systems OPC discussed the solution of that problem in its response to Florida

Water's objection to Interrogatory No. 2. Next, Florida Water argues that OPC may not use this remand proceeding as a vehicle to true-up the test year projections. As stated in response to the objections to Interrogatory No. 2, this is not OPC's intent. OPC hereby adopts and incorporates its response to Florida Water's objection to Interrogatory 2 on this point as well. Third, Florida Water claims that the information sought in subparts (c)-(f), does not exist. This is not an objection, and Florida Water should merely answer the questions asked indicating that the requested information is not available. The Commission should reject Florida Water's objections, and order Florida Water to provide the information requested by OPC.

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 adopted and incorporated by reference its objection to OPC's Interrogatories Nos. 5 and 6 as such objections pertain to the documents requested in OPC's Document Request No. 3. For this reason, OPC adopts and incorporates by reference its responses to Florida Water's objections to OPC's Interrogatories Nos. 5 and 6 as such objections and responses pertain to the documents requested in OPC's 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 adopted and incorporated by reference its objections to OPC's Interrogatories Nos. 5 and 6 as such objections pertain to the documents requested in OPC's Document Request No. 4. For this reason OPC adopts and incorporates by reference its responses to Florida Water's objection to OPC's Interrogatories Nos. 5 and 6 as such responses and objections pertain to the documents requested in OPC's Document Request No. 4.

Document Requests Nos. 5, 6, 8, and 10.

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.

Document Request No. 6 states:

Please provide 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 and distribution lines and wastewater collection lines which serve residential, commercial and general service systems.

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 the used and usefulness of water transmission and distribution lines and wastewater collection lines as compared to any other methodology.

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 objects to OPC's Document Requests Nos. 5, 6, 8 and 10, to the extent they request documents prepared in anticipation of the final hearing which constitutes and contains privileged attorney-client and/or work product information. Florida Water claims that any documents which fall outside of such privileges, to the extent they exist, will be produced to OPC. OPC does not seek documents prepared in anticipation of the final hearing which constitute and contain privileged attorney-client and/or work product information. All documents requested in Document Requests Nos. 5, 6, 8 and 10 which are not protected by either privilege should be furnished to OPC.

WHEREFORE, for the reasons stated, the Citizens respectfully request the Commission to deny Florida Water's motion for Protective Order and require Florida Water to respond to all of OPC's First Set of Interrogatories and Second Request for Production of Documents as clarified in this response.

Respectfully submitted,



Stephen C. Reilly
Associate Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400

(850) 488-9330

Attorney for the Citizens
of the State of Florida

**CERTIFICATE OF SERVICE
DOCKET NO. 950495-WS**

I HEREBY CERTIFY that a correct copy of the foregoing Citizens' Response to 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 has been furnished by U.S. Mail or *hand delivery to the following party representatives on this 29th day of March, 1999.

Amelia Island Community Association
c/o Arthur Jacobs
P.O. Box 1110
Fernandina Beach, FL 32035-1110

Citrus County
County Attorney Larry Haag
111 W. Main Street, 3rd Floor
Inverness, FL 34450-4852

City of Marco Island
c/o John Jenkins, Esquire
Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, FL 32301

East County Water Control District
Mr. Fred Schlosstein
101 Construction Lane
Lehigh Acres, FL 33971

Florida Water Services
Brian P. Armstrong, Esquire
P.O. Box 609520
Orlando, FL 32860-9520

Harbour Woods Civic Association
Mr. David M. Mynatt
4523 Breakwater Row, West
Jacksonville, FL 32225

Marco Island Fair Water Defense
Fund Committee, Inc.
c/o Frederick Kramer, Esquire
950 N. Collier Blvd., #201
Marco Island, FL 34145

Marion Oaks Homes Association
c/o McWhirter Law Firm
McGlothlin/Kaufman
117 S. Gadsden Street
Tallahassee, FL 32301

Rosanne Gervasi, Esquire*
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Spring Hill Civic Association
President
Post Office Box 3092
Spring Hill, FL 34606

Sugarmill Woods Civic Association
Mr. Ronald Broadbent
6 Byrsonima Loop West
Homosassa, FL 34446

The Moorings and the Moorings
Homeowners Association
1400 Prudential Drive, Suite 4
Jacksonville, FL 32207

Mike Twomey, Esquire
8903 Crawfordville Road
Tallahassee, FL 32310

Kenneth A. Hoffman, Esquire
Rutledge, Ecenia, Purnell & Hoffman, P.A.
Post Office Box 551
Tallahassee, FL 32302

A handwritten signature in black ink, appearing to read "Stephen C. Reilly", written over a horizontal line.

Stephen C. Reilly
Associate Public Counsel