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RECORDS AND  
REPORTING

May 3, 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 Second Set of Interrogatories and Third Request for Production of Documents on Remand 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 Second Set of Interrogatories and Third Request for Production of Documents on Remand 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.

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

Sincerely,

Stephen C. Reilly  
Associate Public Counsel

- AFA 2
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  - CAF \_\_\_\_\_
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Enclosures
- CASTEVE\950495RE\BAYO5.LTR

DOCUMENT NUMBER-DATE

05564 MAY-3 99

FPSC-RECORDS/REPORTING

ORIGINAL

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: May 3, 1999

**CITIZENS' RESPONSE TO FLORIDA  
WATER SERVICES CORPORATION'S  
OBJECTIONS TO OFFICE OF PUBLIC COUNSEL'S  
SECOND SET OF INTERROGATORIES AND  
THIRD REQUEST FOR PRODUCTION OF DOCUMENTS ON REMAND**

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") Second Set of Interrogatories and Third Request for Production of Documents on Remand, 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

05564 MAY-3 88

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.

Interrogatory No. 17 states:

Provide the rationale and workpapers which justify the Company's "mixed use areas" determination.

Florida Water objects to providing workpapers with its response to Interrogatory No. 17. Florida Water invited OPC to file a separate production of documents request to obtain any workpapers to help explain the Company's rationale. On April 30, 1999, OPC filed a production of documents request to solicit these workpapers.

Interrogatory No. 18 states:

Provide the build-out ERC numbers for those water and wastewater systems serving “mixed use areas” and the associated engineering workpapers for the build-out ERC calculation.

Florida Water objects to providing the associated workpapers which helps explain how Florida Water determined their build-out ERC numbers for those water and wastewater systems serving “mixed use areas.” Florida Water invited OPC to file a separate production of documents request to obtain any such workpapers. On April 30, 1999, OPC filed a production of documents request to solicit these workpapers. Florida Water also objected to providing any build-out ERC data which is beyond that provided in the Company’s minimum filing requirements (“MFR’s”). Florida Water alleges that “build-out ERC numbers” are irrelevant to an evaluation of test year used and useful lines or wastewater treatment plant. Florida Water alleges that this proceeding must limit itself to the information provided in the MFR’s. 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.

### **OPC'S THIRD REQUEST FOR PRODUCTION OF DOCUMENTS ON REMAND**

Document Request No. 12 states:

To the extent not previously provided, please provide all DEP construction permits issued since 1990 for the following wastewater treatment plants: Buenaventura Lakes, Citrus Park, Leisure Lakes, Marco Island and Marco Shores.

Florida Water objects to providing any DEP construction permits issued after the conclusion of the final hearing in this rate case, and objects to providing any DEP permits for Leisure Lakes,

wastewater treatment plant. As stated previously, documents which validate or invalidate the methodologies being considered by the Commission should be discoverable information. The Commission should reject Florida Water's attempt to limit the Commission to the information provided in the minimum filing requirements.

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.



Document Request No. 13 states:

To the extent not previously provided, please provide all DEP operating permits issued since 1990 for the following wastewater treatment plants: Buenaventura Lakes, Citrus Park, Leisure Lakes, Marco Island and Marco Shores.

Florida Water's objections to Document Request No. 13 are identical to its objections to Document request No. 12. OPC adopts and incorporates by reference its response to Florida Water's objections to Document Request No. 12.

Document Request No. 16 states:

Provide any and all analyses and workpapers prepared by or for the Company which examines the peak flows of Buenaventura Lakes, Citrus Park, Leisure Lakes, Marco Island and Marco Shores treatment plants relative to average annual daily flows.

Florida Water objects to this document request to the extent it solicits documents concerning the Leisure Lakes wastewater treatment plant, and to the extent it solicits documents prepared in anticipation of litigation which constitute privileged protected work product. OPC adopts and incorporates by reference its response to Florida Water's objection to Document Request No. 12, as it relates to the Leisure Lakes Wastewater treatment plant. OPC does not seek documents prepared in anticipation of the final hearing which are privileged attorney-client or protected work product documents. All documents requested in Document Request No. 16 which are not protected by either privilege should be furnished to OPC.

Document Request No. 17 states:

To the extent not previously provided, please provide any and all analyses and workpapers prepared by or for the Company which compares the use of the lot count to lot count methodology versus the ERC to lot count methodology for the purpose of calculating the used

and usefulness of water transmission and distribution lines and wastewater collection lines.

Florida Water objects to OPC Document Request No. 17 to the extent this document request seeks any analyses or work papers prepared in anticipation of litigation and at the direction of Florida Water's counsel which constitute privileged and protected work product.

OPC does not seek documents prepared in anticipation of litigation which constitute and contain privileged attorney-client and protected work product information. All documents requested in Document Request No. 16 which are not protected by either privilege should be furnished to OPC.

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "S.C. Reilly", is written over a circular stamp or mark.

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 Second Set of Interrogatories and Third Request for Production of Documents on Remand has been furnished by U.S. Mail or \*hand delivery to the following party representatives on this 3rd day of May, 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  
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Tallahassee, FL 32301

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

Stephen C. Reilly  
Associate Public Counsel