

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: May 6, 1999

**FLORIDA WATER SERVICES CORPORATION's
OBJECTIONS TO OFFICE OF PUBLIC COUNSEL'S
FOURTH REQUEST FOR PRODUCTION
OF DOCUMENTS ON REMAND**

Florida Water Services Corporation ("Florida Water"), by and through its undersigned counsel, and pursuant to Rule 28-106.206, Florida Administrative Code, Rules 1.280(b) and 1.350(b), Florida Rules of Civil Procedure and Order No. PSC-99-0181-PCO-WS, at 2, hereby files its Objections to the Office of Public Counsel's ("OPC") Fourth Request for Production of Documents on Remand. In support of its Objections, 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 in the spring of 1996, and a final rate case order was entered by the Commission in October of that year. Florida Water appealed that order, and the court rendered its opinion on June 10, 1998, and subsequently denied rehearing. The court's decision reversed the Commission in various respects, and accepted the Commission's confession of error

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on a multitude of issues affecting Florida Water's revenue requirements and allowance for funds prudently invested charges.

On remand, the Commission appropriately corrected certain matters which the court had addressed. It approved an increase in rates to reflect: (1) reversal of the Commission's failure to afford 100% used and useful treatment for reuse facilities, (2) reversal of the Commission's unlawful imposition of one-sided refunds which had been ordered in another Commission proceeding (and which itself was subsequently reversed by the court¹), and (3) the Commission's confession of error in failing to use the average daily flows in the maximum month in the calculation of the used and useful investment for three wastewater treatment plants. (See Order No. PSC-99-0093-FOF-WS issued January 15, 1999, at 10-12). It also ordered surcharges necessary to restore approved revenue requirements. (*Id.*, at 25-27).²

Other matters in the Final Order which the court reversed, however, have been set for further hearing before the Commission. (Order No. PSC-99-0093-FOF-WS, at 13-14 and Order No. PSC-99-0181-PCO-WS issued January 29, 1999).³ These include the court's reversal of the Commission's use of average annual daily flows ("AADF") in the numerator of the calculation of used and useful for four wastewater treatment plants,⁴ and the Commission's use of the lot count method in determining the level of used and useful investment in water transmission and distribution

¹ *Southern States Utility, Inc. v. Florida Public Service Commission*, 704 So. 2d 555 (Fla. 1st DCA 1997).

² The appropriate methodology for recovery of these surcharges remains at issue, due to a protest filed by Sugarmill Woods Civic Association, Inc.

³ On Florida Water's motion, the hearing and further proceedings on the remand have been abated. Order No. PSC-99-0800-PCO-WS, issued April 21, 1999.

⁴ Those plants are Buenaventura Lakes, Citrus Park, Marco Island and Marco Shores.

and wastewater collection facilities. The court held that both of these determinations constituted a departure from established Commission policy which were not supported by record evidence. As to AADF, the court held that,

because this policy shift was essentially unsupported ... 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, 714 So. 2d at 1056. As to the lot count method, the court similarly held that this

is another "policy shift ... essentially unsupported" 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.

Southern States, 714 So. 2d at 1057 (citation and footnote omitted).

In challenging the Commission's determinations of used and useful for the four wastewater treatment plants, Florida Water had argued to the court not only that the Commission departed from established Commission policy without adequate record support, but that its 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 which constituted an unconstitutional confiscation of Florida Water's property. Having reversed on the ground of an unsupported policy shift, the court did not address these additional grounds for reversal. *Southern States*, 714 So. 2d at 1059 ("We find it unnecessary to address any of the constitutional questions Florida Water raises.").

OPC Document Request No. 19 states:

Please provide any and all documents, including engineering workpapers, which help substantiate or justify the company's build-out ERC numbers for those water and wastewater systems serving "mixed use areas."

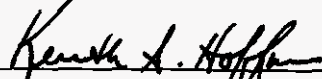
With respect to the requested documents substantiating or justifying build-out ERC numbers, Florida Water does not object to providing documents consistent with Florida Water's response to Staff Interrogatory No. 5, to the extent such documents exist. However, Florida Water does object to OPC Document Request No. 19 to the extent OPC seeks to use "build-out ERC" data to 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. The "build out ERC numbers" are irrelevant to an evaluation of test year used and useful lines or wastewater treatment plant. Accordingly, the documents requested by OPC fall outside of the scope of the remand and mandate from the court's decision in Southern States II and are not reasonably calculated to lead to the discovery of admissible evidence. See Rule 1.280(b)(1), Florida Rules of Civil Procedure.

The record in this proceeding includes Florida Water's MFRs which include projected ERC numbers for the projected 1996 test year. As Florida Water stated in response to Staff Interrogatory No. 5, no projections, other than the schedules filed with the MFRs, exist which show projected ERCs at "build-out."⁵ The parties must be limited to the information provided in the MFRs. This

⁵Florida Water is not required to create new documents, undertake new analyses or create new studies or reports to respond to a discovery request particularly where, as here, the request exceeds the scope of the remand and mandate from the Southern States II decision and the test year used for ratemaking purposes. See, e.g., Order No. PSC-92-0819-PCO-WS issued August 14, 1992.

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.⁶

Respectfully submitted,



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⁶Florida Water recognizes that its objections to similar discovery requests propounded by the Commission Staff (Staff Interrogatory No. 5) and OPC (OPC Interrogatory Nos. 2 and 3) were denied pursuant to Order Nos. PSC-99-0612-PCO-WS and PSC-99-0708-PCO-WS; however, Florida Water has challenged those rulings by filing a Motion to Enforce Mandate with the First District Court of Appeal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U. S. Mail to the following on this 6th day of May, 1999:

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