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99 MAY 18 PM 3:08

RECORDS AND
REPORTING

May 18, 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 Fourth Request for Production of Documents on Remand for filing in the above-referenced docket.

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 1 SCR/dsb
- APP _____
- CAF _____ Enclosures
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DOCUMENT NUMBER-DATE
06264 MAY 18 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: May 18, 1999

**CITIZENS' RESPONSE TO FLORIDA WATER
SERVICES CORPORATION'S OBJECTIONS TO
OFFICE OF PUBLIC COUNSEL'S FOURTH 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") Fourth 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 (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

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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 the 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 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."

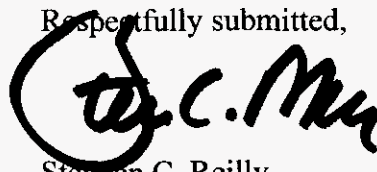
Florida Water objects to OPC Document Request No. 19 to the extent OPC seeks "build-out ERC" data beyond what was filed by Florida Water in its minimum filing requirements ("MFRs"). Florida Water alleges that "build out ERC numbers "are irrelevant to an evaluation of test year used and useful lines or wastewater treatment plant, and as such are outside the scope of the mandate of the remand from the District Court's decision.

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 ERC 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.

Wherefore, for the reasons stated, the Citizens respectfully request the Commission to require Florida Water to provide the documents requested in OPC's Document Request No. 19.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "S.C. Reilly", is written over the typed name.

Stephen C. Reilly
Associate Public Counsel

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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 Fourth Request for Production of Documents on Remand has been furnished by U.S. Mail or *hand delivery to the following party representatives on this 18th 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
117 S. Gadsden Street
Tallahassee, FL 32301

Rosanne Gervasi, Esquire*
Florida Public Service Commission
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Spring Hill Civic Association
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Spring Hill, FL 34606

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Mike Twomey, Esquire
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Kenneth A. Hoffman, Esquire
Rutledge, Ecenia, Purnell & Hoffman, P.A.
Post Office Box 551
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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