

ORIGINAL



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July 2, 1999

RECEIVED-FPSC  
53 JUL -2 PM 4:57  
RECORDS AND  
REPORTING

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 Motion for Reconsideration of Order No. PSC-99-1199-PCO-WS 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.

Sincerely,

Stephen C. Reilly  
Associate Public Counsel

- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CHS \_\_\_\_\_
- CTF \_\_\_\_\_
- EAC \_\_\_\_\_
- LEG \_\_\_\_\_
- MAN \_\_\_\_\_
- OPR \_\_\_\_\_
- REP \_\_\_\_\_
- SEC \_\_\_\_\_
- TRF \_\_\_\_\_
- OTF \_\_\_\_\_

SCR/dsb  
Enclosures

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DOCUMENT NUMBER-DATE  
08035 JUL-2 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: July 2, 1999

**CITIZENS' RESPONSE TO FLORIDA WATER SERVICES  
CORPORATION'S MOTION FOR RECONSIDERATION  
OF ORDER NO. PSC-99-1199-PCO-WS**

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") Motion for Reconsideration of Order No. PSC-99-1199-PCO-WS, and state:

1. Florida Water's motion for reconsideration is untimely and should be denied. Florida Water violated the requirements of Commission Rule No. 25-22.0376, Florida Administrative Code, by failing to file its motion for reconsideration within 10 days after the issuance of non-final Order No. PSC-99-1190-PCO-WS. Pursuant to the requirements of Commission Rule No. 25-22.0376 (3), Florida Administrative Code, failure to timely file a motion for reconsideration of a non-final order constitutes a waiver of the right to do so.

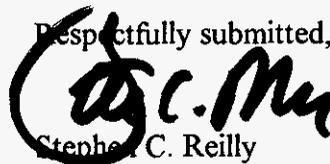
2. The motion should also be denied because it is without merit. Florida Water correctly cites the Diamond Cab Company of Miami v. King, 146 So. 2d 889, 891 (Fla. 1962) and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981) cases which hold that the purpose of a motion for reconsideration is to bring to the attention of the trial court, or in this instance the Prehearing Officer,

some point which he overlooked or failed to consider when he rendered his order in the first instance. The problem with the motion, however, is that the first point Florida Water suggests the Prehearing Officer overlooked was not overlooked; and the second point was simply not considered by him because the point was not raised by Florida Water or any party, and in fact did not exist at the time the Prehearing Officer rendered his decision. Therefore, the second point could not have been considered. There is no case law that holds that a motion for reconsideration is proper to bring to the attention to the administrative agency a fact which did not exist at the time the agency rendered its decision.

3. In his order the Prehearing Officer fully realized that not granting the motion to toll the time for service of responses to the Office of Public Counsel's second set of interrogatories and third requests for production of documents would require those unobjected to discovery responses to those discovery requests to be provided to Public Counsel in a timely manner. The Commission in its order acknowledged that those discovery requests were submitted to Florida Water on April 9, 1999, with the responses due on or before May 10, 1999. Florida Water did not file its motion to toll its submission of responses to those discovery requests until May 6, 1999, a mere two working days before the discovery requests were due to be provided to Public Counsel. The Commissioner rightly decided that tolling the time to provide these discovery requests would not enhance judicial economy. The Commissioner rightly rejected Florida Water's argument that the two days remaining to work on preparing these responses did not constitute "significant manpower and resources" to be saved while Florida Water continued to file its many motions. The Commissioner did not overlook the fact that discovery consists of requests and responses. The Commissioner ordered responses to be provided consistent with his judgment of judicial economy.

4. How can Florida Water seriously argue that the Prehearing Officer failed to consider a matter that was in no way a basis for Florida Water's motion to toll nor a matter brought to his attention by any of the parties, nor even a matter that existed at the time his decision was rendered? Does Florida Water contend that its motion for reconsideration should be sustained because the Prehearing Officer failed to consider or anticipate that Florida Water was going to later file a motion for approval of new offer of settlement? Florida Water's motion for a new offer of settlement was not filed until the day that the subject Prehearing Officer's Order No. PSC-99-1199-PCO-WS was actually published and filed. While the motion for approval of a new offer of settlement might have been the basis for a new motion to toll the time of discovery, it certainly is not a basis for a motion for reconsideration under the standard provided by the Diamond Cab Company of Miami v. King and Pingree v. Quaintance cases previously cited.

WHEREFORE, for the reasons stated above, Florida Water's Motion for Reconsideration of Commission Order No. PSC-99-1199-PCO-WS should be denied.

Respectfully submitted,  
  
Stephen C. Reilly  
Associate Public Counsel

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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 Motion for Reconsideration of Order No. PSC-99-1199-PCO-WS, has been furnished by U.S. Mail or \*hand delivery to the following party representatives on this 2nd day of July, 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

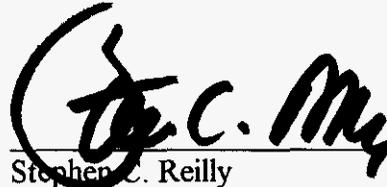
Spring Hill Civic Association  
President  
Post Office Box 3092  
Spring Hill, FL 34606

Sugarmill Woods Civic Association  
Mr. Ronald Broadbent  
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Homosassa, FL 34446

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Mike Twomey, Esquire  
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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 "S.C. Reilly", is written over a horizontal line. The signature is stylized and cursive.

Stephen C. Reilly  
Associate Public Counsel