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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In Re: Application for)
certificates to operate a water)
and wastewater utility in)
Charlotte and DeSoto Counties)
by Lake Suzy Utilities, Inc.)

DOCKET NO. 970657-WS

RECORDS AND REPORTING

In Re: Application for)
Amendment of Certificate Nos.)
570-W and 496-S in Charlotte)
County by Florida Water Services)
Corporation.)

DOCKET NO. 980261-WS

LAKE SUZY UTILITIES, INC.'S
MOTION TO EXPEDITE HEARING

LAKE SUZY UTILITIES, INC. ("Lake Suzy"), by and through its undersigned attorneys, moves this Commission to expedite the Final Hearing in this proceeding and in support thereof states:

1. This matter was originally scheduled for Final Hearing on January 13 and 14, 1999, but was continued when Lake Suzy and Florida Water Services Corporation ("Florida Water") believed they had reached a settlement.

2. On May 14, 1999, Lake Suzy advised the Commission that a settlement was not accomplished and requested that the matter be set for final hearing as soon as possible.

- AFA _____
- APP _____
- CAF _____
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3. The parties and Staff had worked together with scheduling of the Final Hearing for October 14 and 15, 1999 in anticipation of the settlement of another Florida Water proceeding which was scheduled for Final Hearing on those dates. Although the Florida Water proceeding settled, those dates are apparently not available for the Final Hearing in this Docket.

4. The undersigned was advised in a recent telephone conference with the Staff that the Final Hearing in this matter cannot be rescheduled until February, 2000. Such an inordinate delay prejudices Lake Suzy.

5. As this Commission is aware, pursuant to *City of Mount Dora v. JJ's Mobile Homes, Inc.*, 579 So.2d 219 (Fla. 5th DCA 1991), the first entity in time acquiring the right to provide utility service obtains the exclusive right to provide such service. There are certain requirements in order to obtain that right as set forth in *City of Mount Dora*, and that right is not without certain qualifications. *Lake Utility Services, Inc. v. City of Clermont*, 727 So.2d 984 (Fla. 5th DCA 1999). However, the courts are yet to rule on a situation like the instant case where first in right is obtained in one forum because of delaying action taken by that party in another forum. But for Florida Water's objection, Lake

Suzy's application would have been granted before DeSoto County took action in June, 1999. See Section 367.031, Florida Statutes.

6. If the Final Hearing is not held until February, 2000, then it would likely not be decided by the Commission until April, 2000. While Lake Suzy has challenged DeSoto County's grant of a franchise to Florida Water, it is likely that those challenges will be resolved, at least at the initial level, prior to April, 2000.

7. Since this Commission obtained jurisdiction of the territory in question at the time Lake Suzy's application was filed, it should make every effort to rule upon the entitlement to that territory in a timely manner in order to avoid a jurisdictional conflict.

8. If the scheduling problem is the result of this matter being assigned to the whole Commission, then Lake Suzy requests that this Docket be assigned a panel.

WHEREFORE, Lake Suzy Utilities, Inc. requests this Commission to expedite the Final Hearing in this matter, and to appoint a panel of Commissioners, if necessary, to such expedition of the Final Hearing.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Expedite Hearing has been furnished by U.S.

Mail to Matthew J. Feil, Esquire, Florida Water Services Corporation, P.O. Box 609520, Orlando, Florida 32860-9520, Ms. Charlotte L. Sopko, Haus Development, Inc., 603 North Eastwood Avenue, Mount Prospect, Illinois 60056-2007, John Marks, Esquire, Knowles, Marks & Randolph, 215 South Monroe Street, Tallahassee, Florida 32301, Anthony J. Pires, Jr., Woodward, Pires & Lombardo, P.A., 801 Laurel Oak Drive, Suite 710, Naples, Florida 34108 and by hand delivery to Tim Vaccaro, Esquire, Florida Public Service Commission, Legal Division, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850 this 8th day of September, 1999.

Respectfully submitted this 8th day of September, 1999, by:

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