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March 3, 2000

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

HAND DELIVERY

RECORDS AND REPORTING
03 MAR - 3 PM 4:41
RECEIVED-FPSC

Re: Docket No. 951056-WS

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Florida Water Services Corporation ("Florida Water") are the following documents:

- 1. Original and fifteen copies of Florida Water's Motion for Abatement and Continuance; and
2. A disk in Word Perfect containing a copy of the Motion.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,

[Handwritten signature of Kenneth A. Hoffman]

Kenneth A. Hoffman

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cc: All Parties of Record
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DOCUMENT NUMBER-DATE
02882 MAR-38

FPSC-RECORDS AND REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for rate )  
increase in Flagler County by )  
Palm Coast Utility Corporation )  
\_\_\_\_\_)

Docket No. 951056-WS

Filed: March 3, 2000

**FLORIDA WATER SERVICES CORPORATION'S  
MOTION FOR ABATEMENT AND CONTINUANCE**

Florida Water Services Corporation ("Florida Water"), successor in interest to Palm Coast Utility Corporation ("PCUC"), hereby moves for an abatement and continuance of this proceeding, and as grounds therefor, states as follows:

**BACKGROUND FACTS**

1. On December 27, 1995, PCUC filed an application for increased water and wastewater rates with the FPSC pursuant to Sections 367.081 and 367.032, Florida Statutes.
2. By Order No. PSC-96-0493-FOF-WS, issued April 9, 1996, the Commission approved interim rates for PCUC designed to generate \$5,491,391 in annual water revenues and \$3,432, 636 in annual wastewater revenues, subject to refund with interest.
3. On November 7, 1996, the Commission issued Order No. PSC-96-1338-FOF-WS ("Final Order"). On November 22, 1996, PCUC filed a timely Motion for Reconsideration of the Final Order and a Request for Oral Argument. On December 2, 1996, the Office of Public Counsel ("OPC") filed its timely response to PCUC's motion and request. On January 24, 1997, PCUC filed an additional Request for Oral Argument and an Amended Motion for Reconsideration or, Alternatively, Motion to Correct Computational Errors (Amended Motion). On January 31, 1997, OPC filed its response to PCUC's Amended Motion. On February 26, 1997, PCUC filed its Second Amended Motion for Reconsideration or, Alternatively, Amended Motion to Correction

Computational Errors. OPC filed its response to this Second Amended Motion on March 3, 1997.

4. By Order No. PSC-97-0388-FOF-WS, issued on April 7, 1997 (Reconsideration Order), the Commission granted in part and denied in part PCUC's Motion for Reconsideration, denied PCUC's Amended and Second Motions for Reconsideration and denied the requests for oral argument. As a result of this order, PCUC was ordered to refund a percentage of the interim water and wastewater revenues and lower certain water rates and all wastewater rates.

5. On April 11, 1997, PCUC filed its Motion for Stay Pending Judicial Review. By Order No. PSC-97-0655-FOF-SU, issued June 9, 1997, the Commission granted PCUC's Motion for Stay of Orders Nos. PSC-96-1338-FOF-WS and PSC-97-0388-FOF-WS.

6. On August 12, 1997, PCUC appealed the Final Order issued November 7, 1996. On May 10, 1999, the First District Court of Appeal issued its opinion on review of the Final Order. Palm Coast Utility Corporation v. FPSC, 24 Fla. L. Weekly D1182 (Fla. 1<sup>st</sup> DCA, May 10, 1999).

The Court reversed and remanded the Commission's unlawful:

- (a) use of a lot count methodology to reduce the level of used and useful water distribution and transmission and wastewater collection lines to be included in rate base;
- (b) exclusion of a fire flow allowance to reduce rate base;
- (c) use of average annual daily flows to reduce the level of used and useful wastewater treatment plant to be included in rate base;
- (d) use of an eighteen month margin reserve to reduce the level of used and useful wastewater plant to be included in rate base; and
- (e) imputation of contributions-in-aid-of-construction on the margin reserve based on proposed rather than actual service availability charges to further reduce rate base.

7. The Commission filed a Motion for Clarification on May 25, 1999, to determine whether further evidentiary proceedings were permissible on remand. The court issued a corrected opinion on October 14, 1999 authorizing further proceedings, including the introduction of additional evidence only on the issues concerning lot count methodology, fire flow allowance, and annual average daily flow. Palm Coast Utility Corporation v. FPSC, 24 Fla. L. Weekly D2269 (Fla. 1<sup>st</sup> DCA, Sept. 28, 1999).

8. On August 5, 1996, the Flagler County Board of County Commissioners (Flagler County) met and adopted Resolution No. 96-62 rescinding Commission jurisdiction in Flagler County effective immediately. Although that resolution was acknowledged in Order No. PSC-96-1391-FOF-WS, issued November 20, 1996, Section 367.171(5) states that "[w]hen a utility becomes subject to regulation by a county, all cases in which the utility is a party then pending before the commission, or in any court by appeal from any order of the commission, shall remain within the jurisdiction of the commission or court until disposed of." Therefore, the Commission still has jurisdiction over the Docket No. 951056-WS rate case currently before the Commission on remand.

9. Following the issuance of the Court's mandate and remand to the Commission, Florida Water filed an Application for Conditional Establishment of Water and Wastewater Rates ("Application") with the Flagler County Utility Regulatory Interim Authority ("FCURIA"). The Application essentially proposes to establish rates prospectively by increasing the final revenue requirements reflected in the Commission's Final Order by one-half of the total amount of revenue requirement at issue on remand, and offers many of the same elements included in Florida Water's modified offer of settlement (such as the three year stay-out) approved by the Commission in Docket No. 950495-WS. The Application seeks Flagler County's support for such a proposal in

consideration of a Joint Motion filed by Florida Water and Flagler County with this Commission requesting approval of an offer of settlement as previously described and reflected in the Application. The Application remains pending before FCURIA and Florida Water is in the process of responding to data requests served by FCURIA's consultants, Hartman & Associates.

10. In the meantime, on remand, the Commission has ordered Florida Water to increase the amount of its appeal bond on file with the Commission to \$1,622,122 to insure adequate protection for the Flagler County customers in the event this case proceeds to final hearing and any refunds are ordered.

11. Florida Water requests a full abatement and continuance of all scheduled proceedings, including abatement of discovery, to allow sufficient time for FCURIA to resolve Florida Water's Application and allow Florida Water and the parties to move forward with an offer of settlement or settlement agreement for resolution of the issues on remand and closure of this docket. Florida Water's proposal as reflected in the Application is reasonable, similar to the modified offer of settlement previously approved by the Commission in Docket No. 950495-WS, and would eliminate significant additional rate case expense arising out of the litigation of this remand proceeding through final hearing and, possibly, another appeal. In view of the desirability of settlement, and the prospect that such a settlement would eliminate the unnecessary expenditure of time and resources of the parties and the Commission, and significant additional rate case expense, Florida Water maintains that it is appropriate for the Commission to order an abatement and continuance of this proceeding for a period of six months to allow FCURIA to resolve Florida Water's Application and allow additional time to discuss settlement with the parties prior to moving forward with the filing of an offer of settlement or settlement agreement.

12. Counsel for Florida Water has conferred with counsel for intervenor Flagler County concerning this Motion. Flagler County was granted intervention as a customer of PCUC and in its "parens patriae role" on behalf of the remaining Flagler County customers.<sup>1</sup> Flagler County supports this Motion and the relief requested herein.

13. Counsel for Florida Water also has conferred with counsel for intervenor OPC concerning this Motion. OPC objected to the relief requested herein to the extent OPC wished to pursue discovery concerning Florida Water's Application and has requested Florida Water to agree to provide refunds for the period of the abatement. Florida Water has resolved the first issue with OPC but not the second issue as of the date of this filing. Florida Water and OPC have agreed that Florida Water will provide OPC with copies of its responses to the data requests propounded by FCURIA's consultant, Hartman & Associates, and Florida Water will informally respond to any remaining questions of OPC (reflected in an informal data request concerning the Application faxed by OPC to counsel for Florida Water on February 25, 2000, as well as limited follow-up questions) if the Application is ultimately approved by FCURIA. However, Florida Water will not agree to any refunds as such are inconsistent with Florida Water's **settlement proposal** reflected in its Application filed with FCURIA<sup>2</sup> which reflects significant compromises on the part of Florida Water consistent with those approved by the Commission in Docket No. 950495-WS. Finally, any and all refunds which may ultimately be ordered following a final hearing and appeals (and the rate case

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<sup>1</sup>See Petition of Flagler County for Leave to Intervene filed June 14, 1996 in Docket No. 951056-WS.

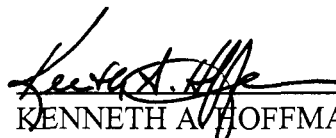
<sup>2</sup>The final water and wastewater revenue requirements reflected in the anticipated **settlement proposal** contained in Florida Water's Application are higher than current interim revenue requirements and, thus, there would be no refunds.

expense associated therewith) have been and will continue to be secured by Florida Water pursuant to Commission order.

WHEREFORE, for the foregoing reasons, Florida Water respectfully requests that the Prehearing Officer enter an Order:

- A. Granting an abatement and continuance of this proceeding for a period of six months, including an abatement of discovery;
- B. Cancelling the controlling dates, including final hearing dates, reflected in the current Case Assignment and Scheduling Record; and
- C. Substituting new controlling dates, including new final hearing dates, that are at least six months after the currently effective controlling procedural dates in the current Case Assignment and Scheduling Record.

Respectfully submitted,



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and

MATTHEW J. FEIL, ESQ.  
Florida Water Services Corporation  
P. O. Box 609520  
Orlando, Florida 32860-9520

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was furnished by hand delivery to the following this 3rd day of March, 2000:

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