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July 31, 2001

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**

Re: Docket No. 010153-WU

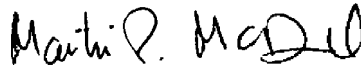
Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Florida Water Services, Inc. ("Florida Water") are the original and fifteen copies of Florida Water's Response In Opposition to Motion to Intervene filed on Behalf of Rosemarie Hester.

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

Thank you for your assistance with this filing.

Sincerely,



Martin P. McDonnell

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Investigation of the Quality )  
of Service Provided by Florida )  
Water Services, Inc. to the )  
Deltona Service Territory. )  
\_\_\_\_\_ )

Docket No. 010153-WU

Filed: July 31, 2001

**FLORIDA WATER SERVICES, INC.'S RESPONSE  
IN OPPOSITION TO MOTION TO INTERVENE  
FILED ON BEHALF OF ROSEMARIE HESTER**

Florida Water Services, Inc. ("Florida Water") by and through undersigned counsel, and pursuant to Rule 28-106.204(1), Florida Administrative Code, hereby files its Response in Opposition to the Motion to Intervene filed on behalf of Rosemarie Hester ("Hester"), and states as follows:

1. On February 1, 2001, the Office of Public Counsel ("OPC") filed a Petition to Open an Investigation Into Quality of Service Provided by Florida Water to the Deltona Service Territory. On May 11, 2001, Florida Water filed an Answer to OPC's Petition.
2. On July 24, 2001, Hester, a Florida Water customer in the Deltona service area in Volusia County, filed her Motion to Intervene.
3. The Motion to Intervene should be denied for its failure to comply with the provisions of the Florida Administrative Code governing intervention. Rule 25-22.039, Florida Administrative Code, states:

**Intervention.** Persons other than the original parties to a pending proceeding, who have a substantial interest in the proceeding, and who desire to become parties may petition the presiding officer for leave to intervene. Petitions for leave to intervene must be filed at least five (5) days before the final hearing, *must* conform with Rule 28-106.201(2), and must include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or the substantial interests of the intervenor are subject to termination or will be affected through the proceeding. Intervenors take the case as they find it. (emphasis added)

DOCUMENT NUMBER-DATE

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4. As stated in the above rule, a petition for intervention must conform to Rule 28-106.201(2). Hester's Motion to Intervene fails to comply with Rule 28-106.201(2) in a number of material respects. Rule 28-106.201(2) requires all petitions to contain:

- a) the name and address of each agency affected and each agency's file or identification number, if known;
- b) the name, address, and telephone number of the petitioner; the name, address and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- c) A statement of when and how the petitioner received notice of the agency decision;
- d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, and;
- g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

5. Hester's sparsely worded four paragraph Motion to Intervene alleges the following:

a. The proceeding initiated by OPC is based in part upon issues raised by Hester concerning the quality of service provided to her homestead property;

b. Hester is an interested party in the proceedings as her home is within the Deltona service territory;

c. Florida Water's general response that alleges that Hester attempted to get her neighbors to plant midgefly larvae at their residences is an effort to deter an investigation into the

source of the problems experienced by Hester. Hester maintains that Florida Water's allegations have been made with reckless disregard of the truth and are without merit and Florida Water has harassed Hester since this issue surfaced in the Fall of 2000;

d. Hester has at all times truthfully reported the presence of midge fly larvae at her home and has attempted to cooperate with Florida Water to determine the cause of the contamination; and

e. Hester continues to attempt to achieve a dialogue with Florida Water to bring this matter to a resolution.

6. Hester's Motion to Intervene fails to comply with subsections (a), (c), (d), (e), (f) and (g) of Rule 28-106.201(2) regarding petitions filed before this Commission and should therefore be denied.<sup>1</sup> As a result of Hester's failure to comply with Rule 28-106.201(2), allowing her intervention would prejudice Florida Water as Florida Water is unaware of:

(a) Hester's position regarding any disputed issues of material fact (*see* subsection (d) above);

(b) Hester's statement of the ultimate facts she alleges (*see* subsection (e) above);

(c) Hester's position regarding which specific rules or statutes, if any, support any relief she seeks (*see* subsection (f) above); and, perhaps most importantly,

(d) what action Hester urges the Commission to take with respect to OPC's Petition (i.e., what relief she seeks) (*see* subsection (g) above).

Based on the foregoing, Hester's Motion to Intervene should be denied.

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<sup>1</sup>See, e.g., Staff Recommendation dated July 26, 2001 in Docket No. 010827-EI, at 4-5.

7. In addition, Hester’s Motion to Intervene should be denied because her interests in the OPC Petition, even if properly plead in conformance with Rule 28-106.201(2), are adequately protected by OPC.<sup>2</sup>

8. In *Union Central Life Insurance Co. v. Carlisle*, 593 So.2d 505 (Fla. 1992) (*Union Central Life*), the Florida Supreme Court established a two-step analysis to decide if a trial court should grant a motion to intervene. The court wrote:

first, the trial court must determine that the interest asserted is appropriate to support intervention . . . once the trial court determines that requisite interest exists, it must exercise its sound discretion to determine whether to permit intervention.

9. In *Florida Wildlife Federation v. Board of Trustees of the Internal Improvement*, 707 So.2d 841 (Fla. 5<sup>th</sup> DCA 1998) (“*Florida Wildlife*”), the Fifth District applied the analysis established by the court in *Union Central Life*. In *Florida Wildlife*, the Florida Wildlife Federation and the Save Our St. Johns River, Inc. (“affected groups”), sought to intervene in a lawsuit over the ownership of approximately 250 acres of lakefront land in Brevard County. The original plaintiffs in the case, the Board of Trustees of the Internal Improvement Trust Fund (“Trustees”), is a state agency vested with title to all sovereignty lands underlying navigable water bodies held by the state in trust for the use and benefit of the public. The intervenors argued that they had a direct and immediate interest in the controversy and the Trustees could not adequately protect their interest. The trial court denied the affected groups’ Motion to Intervene. On appeal, the Fifth DCA held that although the court

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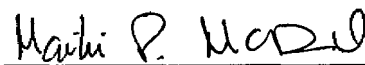
<sup>2</sup>On July 27, 2001, OPC filed a “Response” to Hester’s Motion to Intervene. OPC’s “Response” purports to provide additional grounds in support of Hester’s Motion to Intervene. OPC’s “Response” violates Rule 28-106.204(1), Florida Administrative Code, which authorizes only responses *in opposition to* motions. OPC’s tactic and “Response” (an unauthorized supplement to Hester’s Motion to Intervene) should be ignored by the Prehearing Officer.

determined that the affected groups showed a direct and immediate interest in the case, the trial court also found that the Trustees, a responsible governmental entity, could fully protect the affected groups' interests. 707 So.2d at 842.

10. Similarly, in the instant case, OPC is the public entity whose statutory duties include filing petitions before the Commission on behalf of Florida's citizens. In fact, Section 350.0611(1), Florida Statutes, authorizes OPC to provide legal representation for the people of Florida in proceedings before the Commission and to recommend to the Commission, by petition, the commencement of any proceeding or action or to appear, in the name of the state or its citizens, in any proceeding or action before the Commission and urge therein any position which he or she deems to be in the public interest. OPC is in a position to represent any conceivable interest of Hester before the Commission, and has requested the Commission, through its Petition, to ensure the quality of Florida Water's drinking water in the Deltona service area on behalf of all Deltona customers, including Hester.<sup>3</sup>

WHEREFORE, for the foregoing reasons, Florida Water respectfully requests that the Prehearing Officer deny Hester's Motion to Intervene.

Respectfully submitted,



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<sup>3</sup>See, e.g., OPC Petition, at ¶5, 6.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was furnished by U.S. Mail to the following this 31st day of July, 2001:

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