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November 8, 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

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COMMISSION
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RE: Docket No. 991666-WU
In re: Application for Amendment of Certificate No. 106-W to add territory in Lake
County by Florida Water Services Corporation

Dear Ms. Bayo:

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

- 1. The original and fifteen copies of Florida Water's Response in Opposition to The
City of Groveland's Motion to Reopen Hearing
2. A diskette containing the Motion formatted as a Word Perfect document.

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 attention to this matter.

Sincerely,

J. Stephen Menton
J. Stephen Menton

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cc: Counsel of Record (via telecopier and U.S. Mail)
Bayo.813

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14234 NOV-85

FPSC-BUREAU OF RECORDS COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application for amendment of )	
Certificate No. 106-W to add territory )	
in Lake County by Florida Water Services )	Docket No. 991666-WU
Corporation. )	
_____ /	Filed: November 8, 2001

**FLORIDA WATER SERVICE CORPORATION'S  
RESPONSE IN OPPOSITION TO THE CITY OF  
GROVELAND'S MOTION TO REOPEN HEARING**

Florida Water Services Corporation ("Florida Water") hereby files its Response in Opposition to Intervenor City of Groveland's Motion to Reopen Hearing (the "Motion") and urges that the Motion be denied. In support thereof, Florida Water states as follows:

1. As noted in the Motion, Florida Water filed the pending application for amendment of its territory in Lake County, Florida, on November 3, 1999. The City of Groveland ("the City") filed a protest to the application on November 23, 1999. The primary basis for the City's intervention (as set forth in its one page objection letter) was that the requested territory was located within an exclusive service district established by the City pursuant to Section 180.02(3), Florida Statutes.

2. In its objection to the Application, the City did not challenge the need for service to the requested territory. In its Prehearing Statement in this docket, the City acknowledged that there was a need for service to the requested territory. The City's Prehearing Statement filed February 8, 2001, provides as follows with respect to Issue 1:

Yes, there is a need for service in the area requested. The Developer of the Palisades subdivision originally requested service to commence by July 1, 2000, however, this date has been now been [sic] been

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FPSC-COMMISSION CLERK

rescheduled to a later date. The Developer has not yet requested any construction permits from the County.<sup>1</sup>

The City's Prehearing Statement did not specifically express any reservation about the need for service to the requested territory.

3. The Commission held a two-day hearing in Lake County on Florida Water's application on July 11-12, 2001. At the hearing, the Commission approved stipulations set forth in the Prehearing Order including a stipulation that there is a need for service. Staff Recommendation, p. 6, TR 6-7. Thus, the need for service is not an issue in this docket and the City should not be allowed to make it an issue two years after filing its objection and three months following the conclusion of the evidentiary hearing.

4. At the time the City filed its objection, the City's water lines terminated approximately five miles from the requested territory. As reflected by the evidence at the hearing, during the almost two years that this application has been pending, the City raced to extend its water lines in an effort to buttress its legal position that it had a preemptive right to serve.

5. After successfully delaying the certification of the new territory to Florida Water for two years, the City seeks to further delay this matter based upon the hearsay statements of a non-witness with no demonstrated connection to the issues in this docket and oblique references to the tragic events of September 11. The City has attached to its Motion a copy of a facsimile transmission to the City Manager which purports to be from an attorney who purports to be representing an individual who is purported to be a principle of the landowner of the property. The

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<sup>1</sup>As noted below, the evidence at the hearing demonstrated that the Developer had in fact requested construction permits with respect to the utility lines.

copy of the faxed letter from the attorney, who never entered an appearance in this docket, references purported discussions with the City wherein the attorney purportedly conveyed that his purported client had determined it was financially impossible to proceed with development for some unspecified time due to the economic climate following post-September 11, 2001.

6. The City's Motion must be denied as inadequate on its face. As indicated above, need has already been stipulated in this case. Moreover, the attachment to the City's Motion deals only with alleged discussions regarding the City's desire to provide service. There is no mention of Florida Water. Nothing in the Motion or the attachment thereto in any way abrogates or disclaims the Water Service Agreement for the Summit which was entered into between the Developer and Florida Water on February 25, 2000. That Developer Agreement was admitted into evidence and has been duly recorded in the public records of Lake County. The failure of the City's Motion to address the Agreement between Florida Water and the Developer precludes the granting of the relief sought.

7. Section 17 of the Water Service Agreement provides that it is subject to Commission approval of the territory expansion. While the Agreement indicates that there would be a need for service by July 2000, the City's initiation of a challenge to the Application effectively placed the Agreement on hold until the Commission issues its ruling. In the meantime, as noted on page 20 of the Staff Recommendation, the majority of the steps necessary for Florida Water and the Developer to move forward with the development have taken place. A water distribution permit has been obtained from DEP. Other major steps required by the permitting agencies for development have been completed or have been put in process.

8. In its post-hearing brief, the City raised a whole host of issues as to why it believed that the development would not proceed and argued that no viable date for service had been established in the record.<sup>2</sup> The alleged new evidence set forth in the City's Motion is simply an uncorroborated, hearsay addition to the laundry list of non-consequential arguments previously advanced by the City. For example, the City's post-hearing brief specifically raised the issue of alleged economic conditions which might affect the developer's ability to finance the project. The current Motion is a rehash of that prior argument which the Staff Recommendation correctly concludes should be rejected.

9. A party does not have a right to present evidence after the record is closed. Health Care and Retirement v. Department of Health and Rehabilitative Services, 498 So.2d 789, 792 (Fla. 1st DCA 1986). In Canova v. Florida National Bank, 60 So.2d 627 (Fla. 1952), the Supreme Court upheld a chancellor's discretionary action denying a request to reopen a case for the taking of further testimony. See also, In Re: BellSouth PSC, Inc., Order No. PSC-98-1165-FOF-TX in Docket No. 971056 TX issued August 27, 1998. The Commission clearly has the discretion to terminate its data-gathering function. Florida Bridge Company v. Bevis, 363 So.2d 799 (Fla. 1978); See also, United Telephone Company v. Mayo, 345 So.2d 648 (Fla. 1977). In this case, the parties have already had a chance to present their positions regarding the issues framed by the City's objection. After two years, it is time for a ruling on the issues raised.

10. The legal argument in the City's Motion lumps together two distinct concepts: "changed circumstances" and "newly discovered evidence." Neither concept is applicable here.

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<sup>2</sup>The issues raised by the City are discussed in detail on pages 12-14 of the Staff Recommendation.

There is no automatic right to reopen an evidentiary proceeding based on newly discovered evidence. Noor v. Continental Casualty Company, 508 So.2d 363 (Fla. 2nd DCA 1987). A quick review of the cases in which a new trial was granted based upon newly discovered evidence reveal that they usually involve fraud or the need to prevent a miscarriage of justice. See e.g., Regan v. Paramount Hudson, Inc., 434 So.2d 907 (Fla. 3rd DCA 1983). A mere change in circumstances is rarely, if ever, enough.

11. Some of the cases cited by the City actually support denial of its request to reopen the proceeding. For example, in City of Winter Haven v. Tuttle/White Constructors, Inc., 377 So.2d 829, 831 (Fla. 2nd DCA 1979), the appellate court reversed the trial court's decision to grant a new trial based upon alleged new evidence. The Court found that the alleged new evidence was not material to the central issue involved in the hearing. Likewise in the present case, the alleged new evidence from an unverified source is not relevant to the terms of the Water Service Agreement entered into between the Developer and Florida Water.

12. In sum, the purported new evidence offered in support of the City's Motion is, at a minimum, double hearsay that appears to relate to efforts by the City to provide service and, therefore, is irrelevant to the pending docket. The record in this proceeding confirms an on-going effort to delay and confuse on grounds that were not raised in the City's original objection. The Commission has already noted that the primary issue raised by the City in its objection is beyond the Commission's jurisdiction. How long can the City continue to delay approval of Florida Water's application? Florida Water is entitled to a determination by the Commission based upon the evidence presented at the hearing.

13. The Commission should deny the City's Motion. See, In Re Application for Original Certificates to Operate a Water and Wastewater Utility in Duval and St. Johns County by Nocatee Utility Corporation, Order No. PSC-01-1623-PCO-WS, in Docket No. 992040-WS issued August 8, 2001.

Dated this 8 day of November 2001.

Respectfully submitted,



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& HOFFMAN, P.A.  
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**CERTIFICATE OF SERVICE**

I HEREBY certify that a copy of the foregoing was furnished by Telecopier and U.S. Mail this 8 day of November, 2001 to:

Patricia Christensen, Esq.  
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