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July 25, 2002

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

VIA HAND DELIVERY

020006-WS

RECEIVED-FPSC
02 JUL 25 PM 3:24
COMMISSION CLERK

Re: Florida Water Services Corporation's Petition Protesting Proposed Agency Action Order No. PSC-02-0898-PAA-WS and Request for Formal Administrative Proceeding

Dear Ms. Bayo:

Enclosed herewith for filing on behalf of Florida Water Services Corporation ("Florida Water") is the original and fifteen copies of Florida Water Services Corporation's Petition Protesting Proposed Agency Action Order No. PSC-02-0898-PAA-WS and Request for Formal Administrative Proceeding.

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,

Kenneth A. Hoffman, Esq.

- AUS _____
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- SEC I Enclosures
- OTH None

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RECEIVED & FILED

DOCUMENT NUMBER-DATE

07826 JUL 25 02

FPSC-BUREAU OF RECORDS

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Water Services Corporation for a formal administrative proceeding on the proposed reestablishment of the leverage formula range of returns on common equity for water and wastewater utilities.

Docket No. 020006-WS

Filed: July 25, 2002.

**FLORIDA WATER SERVICES CORPORATION'S PETITION
PROTESTING PROPOSED AGENCY ACTION ORDER NO. PSC-02-0898-PAA-WS
AND REQUEST FOR FORMAL ADMINISTRATIVE PROCEEDING**

Petitioner, Florida Water Services Corporation ("Florida Water"), by and through its undersigned counsel and pursuant to Rule 28-106.201, Florida Administrative Code, hereby files this Petition Protesting Proposed Agency Action Order No. PSC-02-0898-PAA-WS (the "PAA Order") issued July 5, 2002 by the Florida Public Service Commission ("Commission"). The PAA Order proposes to reestablish the range of returns on common equity for water and wastewater utilities utilizing the leverage formula methodology for water and wastewater utilities that already have a Commission approved rate of return on common equity. For the reasons set forth herein, Florida Water seeks a formal administrative hearing to address the disputed issues of material fact and legal authority of the Commission to reestablish the authorized range of returns on common equity for utilities that already have a Commission approved rate of return on common equity. In support of its Petition, Florida Water states as follows:

DOCUMENT NUMBER DATE

07826 JUL 25 02

FPSC-COMMISSION CLERK

1. Petitioner is Florida Water. For purposes of this proceeding, the address and telephone number for Florida Water shall be that of its representatives:

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2. Florida Water is a Florida corporation and an investor owned utility that owns and operates 105 water systems and 47 wastewater systems located in 26 counties in the State of Florida. Of those systems, Florida Water owns and operates 86 water systems and 36 wastewater systems that are subject to Commission jurisdiction. The investments, expenses, revenues, return on common equity, overall rate of return, rates and charges of Florida Water's Commission regulated water and wastewater systems are subject to regulation and oversight by the Commission. Florida Water also files annual reports with the Commission as required by Rule 25-30.110, F.A.C., reflecting detailed financial information concerning Florida Water's water and wastewater systems that are subject to Commission regulation, including the Commission authorized and Florida Water's achieved overall rates of return and returns on commons equity. The effect of the PAA Order will be to reduce Florida Water's Commission approved range and rate of return on common equity. Accordingly, as a Commission regulated water and wastewater utility, Florida Water is substantially affected by the Commission's proposal to reestablish Florida Water's rate of return on common equity for its Commission regulated water and wastewater systems.

3. The affected agency is the Florida Public Service Commission, at the address of 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850. The Commission's docket number for this matter will be established upon the filing of this petition.

4. Pursuant to Section 367.081(4)(f), Florida Statutes, the Commission is authorized to establish, not less often than once each year, a leverage formula that reasonably reflects the range of returns on common equity for an average water or wastewater utility. The statute specifically states that the leverage formula return on equity established by the Commission may only be used to calculate a utility's authorized rate of return on equity "for any utility which otherwise would have no established rate of return on equity." Indeed, as further stated in the statute, the leverage formula return on common equity established annually by the Commission is an optional, default authorized rate of return on equity available to a utility "in lieu of presenting evidence on its rate of return on common equity...."

5. By this petition, Florida Water does not take issue with the methodology or actual range of returns on common equity established by the Commission in the PAA Order. Florida Water does challenge by this petition the Commission's attempt to reestablish Florida Water's previously authorized rate and range of return on common equity in violation of Section 367.081(4)(f), Florida Statutes, and established ratemaking principles.

6. By Order No. PSC-96-1320-FOF-WS issued October 30, 1996, the Commission established a return on common equity of 11.88% for Florida Water's Commission regulated water and wastewater systems, with a range of plus or minus 100 basis points.¹ Under the PAA Order, Florida Water's return on common equity would be reduced from 11.88% to 11.10%.

¹ The Order also reduced Florida Water's mid-point return on common equity by 50 basis points for a period of two years.

7. In the PAA Order, at 4, the Commission attempts to justify its proposed reestablishment of a utility's return on common equity by use of the leverage formula by referencing the Commission's authority to establish rates under Section 367.081(2)(a), Florida Statutes. The Commission admits that "a utility's ROE is (but) one factor that is used in determining rates." The PAA Order confirms the inequity and unfairness of the proposed reestablishment of a utility's rate of return on common equity. Water and wastewater rates are established based on a test year reflecting historical and/or projected investments, expenses, revenues, debt and return on common equity. The isolation and updating of one factor in the ratemaking equation ignores all of the other factors historically utilized by the Commission and required to be utilized by the Commission under Section 367.081(2)a.1, Florida Statutes, to establish rates.

8. The Commission also attempts to support its proposed reestablishment of rates of return on common equity by reference to orders where the Commission has reestablished returns on common equity for natural gas utilities. These orders are inapposite. Privately owned natural gas distribution utilities are regulated by the Commission pursuant to Chapter 366, Florida Statutes. There is no provision in Chapter 366 which provides for a default leverage graph return on common equity available at the option of the utility and only where the utility does not have a previously authorized return on common equity. For example, in Order No. PSC-94-024-FOF-GU cited in the PAA order, the natural gas utility simply made a voluntary offer to reduce its return on equity to avoid a hearing on the issue. That is quite different than a situation such as here where the Commission proposes to mandate a reduction in common equity in violation of the statute which limits the terms and conditions for application of the leverage graph return on common equity and

provides no authority for the Commission to unilaterally substitute the leverage graph return on common equity.

9. The Commission also notes in the PAA Order, at 3, that its proposed reestablishment of authorized rates of return on equity for water and wastewater utilities that currently have authorized returns on equity “would not be done annually (but) only when there have been significant changes in the capital markets.” There is no statutory authority under Section 367.081(4)f, Florida Statutes, for such arbitrary and speculative action by the Commission. The Commission’s proposed action will have detrimental effects on the planning, budgeting and risk associated with Commission regulated water and wastewater utilities. Heretofore, a utility could plan its investments and expenses, together with its revenue estimates, with knowledge of its authorized return on common equity, thereby giving it a reasonable tool to forecast whether certain investments, expenses and/or revenues would lead to under-earning or over-earning. Under the PAA Order, planning and budgeting utilized by a utility based on justifiable reliance on its Commission approved return on common equity will be cast aside. Further, the stability of an authorized return on common equity and the mitigation of risks associated therewith would be undermined by the uncertainty and lack of standards inherent in the Commission’s forecast of potential further annual reestablishments of authorized returns on common equity when there are “significant changes in the capital markets.”

10. Disputed issues of material fact and law in this proceeding include the following:
 - a. Whether the Commission has the legal authority under Section 367.081(4)(f), Florida Statutes, to reestablish a utility’s rate of return on common equity by the leverage

graph formula where a utility already has a rate of return on common equity established by the Commission.

b. Whether the Commission has the legal authority under Section 367.081(4)(f), Florida Statutes, to mandate the use of the annual leverage graph range of returns on common equity in lieu of granting a utility the opportunity to present evidence concerning an appropriate rate of return on common equity.

c. Whether the Commission's proposed reestablishment of the range of returns on common equity for water and wastewater utilities as set forth in the PAA Order violates Section 367.081(2)a, Florida Statutes.

d. Whether the Commission's proposed reestablishment of the range of returns on common equity for water and wastewater utilities violates or is inconsistent with Commission rules and/or policies for establishing rates and/or analyzing whether a utility is under-earning or over-earning.

e. Whether the Commission's proposed reestablishment of the range of returns on common equity for water and wastewater utilities as set forth in the PAA Order is arbitrary, capricious or speculative.

f. Whether the Commission's proposed reestablishment of the authorized range of returns on common equity for water and wastewater utilities as set forth in the PAA Order adversely effects utility planning and budgeting.

g. Whether the Commission's proposed reestablishment of range of returns on common equity for water and wastewater utilities as set forth in the PAA Order increases the risks and/or financing costs for Commission regulated water and wastewater utilities.

h. Whether the Commission's proposed reestablishment of the range of returns on common equity for water and wastewater utilities as set forth in the PAA Order will adversely affect a utility's ability to attract capital funds needed to meet its services demands and to maintain financial integrity.

i. Whether there are other methods or avenues available to the Commission that are consistent with the Commission's authority under Chapter 367, Florida Statutes, to reestablish a utility's rate of return on common equity.

11. Florida Water maintains that the Commission should rescind, withdraw or reverse that portion of the PAA Order proposing to mandate the reestablish of the range of returns on common equity for water and wastewater utilities regulated by the Commission.

12. The ultimate facts entitling Florida Water to relief include, but are not limited to, the following:

a. The Commission's proposed mandated reestablishment of the range of returns for common equity under the leverage graph formula for water and wastewater utilities violates Section 367.081(2)a, Florida Statutes, and Section 367.081(4)f, Florida Statutes.

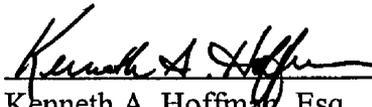
b. The Commission's proposed mandated reestablishment of the range of returns on common equity as set forth in the PAA Order adversely affects utility planning and budgeting and creates additional uncertainty and risk that would adversely affect a utility's ability to provide quality service at the lowest possible costs.

WHEREFORE, Petitioner, Florida Water, requests the Commission:

a. To grant Florida Water's Petition for a Formal Administrative Hearing;

- b. To enter a final order rescinding, withdrawing or reversing that portion of the PAA Order proposing to mandate the reestablishment of the range of returns on common equity for water and wastewater utilities by use of the leverage graph formula as set forth in the PAA Order; and
- c. To grant such further relief as may be deemed just and proper.

RESPECTFULLY submitted this 25th day of July, 2002.



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