

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Application for Limited )  
Proceeding to Recover Costs of Water ) Docket No. 992015-WU  
System Improvements In Marion County )  
By Sunshine Utilities of Central Florida, ) Filed: September 13, 2002  
Inc. )  
\_\_\_\_\_ /

**SUNSHINE UTILITIES OF CENTRAL FLORIDA, INC.'S  
REQUEST FOR ORAL ARGUMENT ON ITS  
MOTION IN LIMINE AND MOTION TO STRIKE CERTAIN  
PORTIONS OF THE PREFILED DIRECT TESTIMONY OF  
TED L. BIDDY AND KIMBERLY H. DISMUKES**

Petitioner, Sunshine Utilities of Central Florida, Inc. ("Sunshine"), by and through undersigned counsel, pursuant to Rule 25-22.058, Florida Administrative Code, hereby submits this Request for Oral Argument on its Motion in Limine and Motion to Strike Certain Portions of the Prefiled Direct Testimony of Ted L. Biddy and Kimberly H. Dismukes which it is filing contemporaneously herewith. In support of its Request for Oral Argument, Sunshine states:

1. On May 14, 2002, the Florida Public Service Commission (the "Commission") issued in this docket its Notice of Proposed Agency Action Order Approving In Part and Denying in Part A Limited Proceeding for Increased Water Rates, Order No. PSC-02-0656-PAA-WU (the "PAA Order"). The PAA Order memorializes the Commission's April 23, 2002 vote on 19 separate issues identified in Commission staff's recommendation dated April 11, 2002.

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2. On June 4, 2002, Sunshine filed a Petition for Expedited Limited Formal Proceeding protesting three limited issues addressed in the PAA Order:

- i. The proposed reduction in the 2001 salary of Sunshine's president from \$91,731 to \$45,233;
- ii. The proposed disallowance of \$27,239 in legal fees incurred by Sunshine in participating in the proceeding that resulted in the issuance of the PAA Order; and
- iii. The impact of the proposed salary reduction and the proposed disallowance of legal fees on the proposed revenue requirements and monthly rates for Sunshine.

3. Also on June 4, 2002, the Citizens of the State of Florida (the "Citizens") filed a Petition on Proposed Agency Action protesting the following two issues identified in the April 11, 2002 staff recommendation, which were voted on by the Commission and memorialized in the PAA Order:

Issue 1: Should the Commission approve Sunshine's requested limited proceeding to increase its rates for all customers to interconnect five of its water systems?

Issue 13: What is the appropriate amount of rate case expense for this docket?

4. Section 120.80(13)(b), Florida Statutes, states:

Notwithstanding ss. 120.569 and 120.57, a hearing on an objection to proposed action of the Florida Public Service Commission may only address the issues in dispute. Issues in the proposed action which are not in dispute are deemed stipulated.

Thus, all issues in the PAA Order other than those disputed in the Petitions filed by Sunshine and the Citizens on June 4, 2002, are deemed stipulated.

5. Since filing their Petition on Proposed Agency Action, the Citizens have served discovery requests on Sunshine that purport to request information beyond the scope of the issues raised in the protests to the PAA Order. The Citizens have also prefiled direct testimony of its witnesses, Ted L. Bidy and Kimberly H. Dismukes, portions of which address stipulated issues not protested by either Sunshine or the Citizens; contain hearsay; and recommend that the Commission take action that may be appropriate in a full-blown rate case, but is beyond the scope of this limited proceeding.

6. Moreover, the Citizens failed to timely file a prehearing statement, which according to the Order Establishing Procedure, Order No. PSC-02-0852-PCO-WU, issued in this docket on June 20, 2002, “shall be a waiver of any issue not raised by other parties or by the Commission . . . .” and “shall preclude the party from presenting testimony in support of its position. . . .” [Order Establishing Procedure at 4 (emphasis added)].

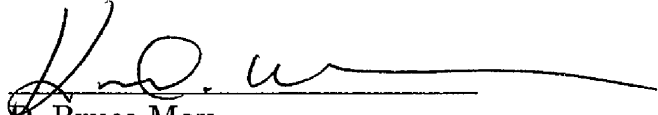
7. Sunshine has moved the Commission for entry of an order consistent with Section 120.80(13)(b), Florida Statutes, limiting the evidence to be presented at hearing and the scope of discovery in this limited proceeding to those issues raised in timely-filed protests to the PAA Order. Sunshine has also moved the Commission to strike the testimony of Ted L. Bidy and Kimberly H. Dismukes in its entirety, or alternatively, to strike

those portions of the prefiled direct testimony addressing issues not protested, and therefore, deemed stipulated pursuant to Section 120.80(13)(b); containing inadmissible hearsay; and requesting relief beyond the scope of this limited proceeding.

8. Oral argument would be beneficial in aiding the Commission in understanding the scope of the timely protests to the PAA Order and the effect of Section 120.80(13)(b) on the hearing to be conducted in this limited proceeding. Oral argument will also allow Sunshine to show the Commission how portions of the testimony of the Citizens' witnesses impermissibly address matters in this docket which are deemed stipulated by operation of law, contain hearsay not within any exception to the hearsay rule, and evidence the Citizens' attempt to turn this limited proceeding into a full-blown rate case which is clearly beyond the scope of this proceeding.

WHEREFORE, Sunshine respectfully requests that the Commission grant this request for oral argument on its Motion in Limine and Motion to Strike Portions of the Prefiled Direct Testimony of Ted L. Bidy and Kimberly H. Dismukes.

Respectfully submitted this 13<sup>th</sup> day of September, 2002.

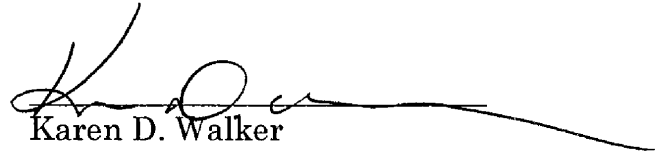


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**Attorneys for Sunshine Utilities of  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by hand delivery to Stephen C. Reilly, Associate Public Counsel, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400; and to Ralph Jaeger, Esquire, Florida Public Service Commission, Division of Legal Services, Room 370, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850 all on this 13<sup>th</sup> day of September, 2002.



Karen D. Walker