

RUTLEDGE, ECENIA, PURNELL & HOFFMAN

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

ORIGINAL

STEPHEN A. ECENIA
RICHARD M. ELLIS
KENNETH A. HOFFMAN
THOMAS W. KONRAD
MICHAEL G. MAIDA
MARTIN P. McDONNELL
J. STEPHEN MENTON

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788
TELECOPIER (850) 681-6515

R. DAVID PRESCOTT
HAROLD F. X. PURNELL
MARSHA E. RULE
GARY R. RUTLEDGE
GOVERNMENTAL CONSULTANTS
MARGARET A. MENDUNI
M. LANE STEPHENS

November 15, 2002

Ms. Blanca Bayo, Director
Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

HAND DELIVERY

RECEIVED FPSC
02 NOV 25 PM 4:30
COMMISSION
CLERK

Re: Docket No. 021066-WS

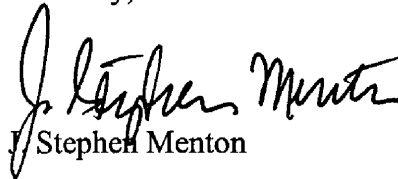
Dear Ms. Bayo:

Enclosed with this letter on behalf of Florida Services Corporation ("Florida Water") are the original and fifteen copies of Florida Water's Objections and Response to the Office of Public Counsel's First Set of Requests for Production of Documents.

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,


J. Stephen Menton

JSM/knb

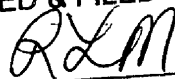
Enclosures

cc: All Parties of Record

021066\Bayo.1125

- AUS _____
- CAF _____
- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- MMS _____
- SEC 1
- OTH _____

RECEIVED & FILED



FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

12964 NOV 25 02

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into proposed sale of)
Florida Water Services Corporation)
_____)

Docket No. 021066-WS
Filed: November 25, 2002

**FLORIDA WATER SERVICES CORPORATION'S
OBJECTIONS AND RESPONSE TO THE
OFFICE OF PUBLIC COUNSEL'S
FIRST SET OF REQUESTS
FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rule 28-106.206, Florida Administrative Code, and Rule 1.350, Florida Rules of Civil Procedure, Florida Water Services Corporation ("Florida Water") hereby submits its Objections and Response to the First Set of Requests for Production of Documents of the Office of Public Counsel ("OPC") filed November 8, 2002.

GENERAL OBJECTIONS

1. This docket was opened to investigate the proposed sale of Florida Water's water and wastewater assets to the Florida Water Services Authority ("Authority"), a governmental entity created pursuant to Chapter 163, Florida Statutes.

2. As recognized by prior Commission precedent, an entity such as the Authority created under Chapter 163, Florida Statutes, constitutes a governmental authority for purposes of Chapter 367, Florida Statutes. See Order No. PSC-00-2351-FOF-WS issued December 2, 2000 in Docket No. 990484-WS. Section 367.022, Florida Statutes, states in pertinent part:

The following are not subject to regulation by the Commission as a utility nor are they subject to the provisions of this chapter, except as expressly provided:

* * *

DOCUMENT NUMBER - DATE

12964 NOV 25 02

FPSC-COMMISSION CLERK

(2) Systems owned, operated, managed or controlled
by governmental authorities....

Based on this statute and Commission precedent, the Authority is not subject to Commission regulation.

3. Section 163.01(7)(g)(2), Florida Statutes, provides a legislative recognition that accomplishment of the conversion of privately owned utility assets to public ownership by an entity created under Chapter 163 accomplishes a public purpose. That statute provides:

The accomplishment of the authorized purposes of a legal entity created under this paragraph is in all respects for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions.

4. Florida law dictates that the transfer of Florida Water's assets to a governmental entity must be approved by the Commission as a matter of right. Specifically, Section 367.071(4)(a), Florida Statutes, states in pertinent part:

The sale of facilities, in whole or in part, to a *governmental authority shall be approved as a matter of right* [.]

5. The scope and parameters of this Docket are framed by the statutory presumption of public purpose and the directive that the sale is to be approved as a matter of right.

6. OPC's First Set of Requests for Production of Documents (the "Requests") seek a number of documents that are not relevant to any issue within the jurisdiction of the Commission. Florida Water objects to the Requests to the extent that they seek documents that are outside the lawful regulatory authority of the Commission.

7. In addition, many of the Requests are premature since the parties to the proposed sale are still in negotiations and due diligence has not been completed. Subsequent to the service of the

Requests, the Authority conducted a public hearing in Orlando, Florida on November 18, 2002 to take public comment and testimony and to determine whether to proceed with the transaction. Simultaneous with filing these Objections, Florida Water is providing OPC and Commission staff a copy of the written documentation submitted to the Authority at that meeting (with the exception of engineering and other documents related to the Florida Water assets in Hernando County, which is a non-jurisdictional county). A transcript of that proceeding is being prepared and will be submitted when it is available. At the November 18 hearing, the parties to the sale confirmed that they are actively involved in the due diligence process and additional negotiations over possible changes to the Asset Purchase Agreement based upon engineering due diligence results and other investigations are possible. Moreover, Florida Water and the Authority are in the midst of discussions with bond underwriters and credit enhancers over the possible financing arrangements for the sale. All of these efforts are at a critical juncture. Until all of the terms and conditions of the sale are finalized, it is premature and potentially harmful to divulge business and attorney records that reflect negotiation positions and confidential business strategy.

8. Florida Water must point out that no application is even pending before the Commission at this time. Nonetheless, in response to a request for information from Commission staff, Florida Water produced to the parties in this Docket, including OPC, on November 12, 2002, documentation demonstrating the status of the Authority as a governmental entity. That prior production, along with the supplemental documents produced contemporaneous with these Objections, respond to many of OPC's Requests.

9. It is important to recognize the proposed sale involves utility assets located in more than 26 counties around the state and includes more than 150 different plant facilities. The

Commission has regulatory jurisdiction over only a portion of those assets. More importantly, as set forth above, the Commission's jurisdiction over the sale of such assets to a governmental entity is established by statute and prior precedent. To the extent OPC is seeking to require Florida Water to produce additional documents that relate to matters beyond the Commission jurisdiction or that relate to matters that are part of ongoing business negotiations, Florida Water objects.

10. Florida Water also objects to the Requests to the extent that they seek to impose conditions or obligations that exceed the scope of Rule 28-106.206, Florida Administrative Code and/or Rule 1.350, Florida Rules of Civil Procedure. In particular, Florida Water objects to the Requests to the extent that they seek to compel production of documents from consultants, agents, representatives and attorneys who are not employees of the company.

11. Florida Water further objects to the Requests to the extent that they seek information that is privileged or otherwise exempt from discovery, including but not limited to documents that are protected by the attorney-client privilege, the work-product doctrine, or the trade-secrets doctrine. For example, certain of the Requests seek production of drafts of agreements or notes of meetings prepared by or that include notations made by counsel for Florida Water. Such documents incorporate the mental impressions of counsel and are protected by the attorney/client and work product privileges.

12. Florida Water also objects to the Requests to the extent they seek production of documents from the Authority which is not subject to Commission jurisdiction.

13. Subject to its General Objections set forth above, Florida Water's response to the individual Requests are set forth in the corresponding paragraphs below. These responses incorporate additional specific objections to the particular Requests. Many of the specific objections

that Florida Water raises are applicable to more than one of OPC's Requests. For this reason, Florida Water provides the following definitions of those objections, and where applicable, repeats only the defined term in stating their specific objections.

a. Relevance - The Request seeks information (through production of documents) that is not reasonably calculated to lead to the discovery of information relevant to the sale of Florida Water's assets to the Authority which must be approved as a matter of right.

b. Unlawful - The Request seeks information (through production of documents) that is not relevant to any specific or potential position, claim or decision of the Commission that is within the Commission's lawful regulatory jurisdiction concerning the sale of Florida Water's assets to the Authority which must be approved as a matter of right.

c. Unduly burdensome - The Request is unduly burdensome in that providing the requested data (i) would require an unreasonable expenditure of time and resources to search for documents or information, (ii) is cumulative and/or has only a limited likelihood of leading to the discovery of data relevant to the resolution of the specific issue and either (iii) (a) the value of providing the data is outweighed by the burden of production or (b) OPC has or can obtain the data through publicly available information.

d. Overly broad - The Request seeks a general category of information within which only certain portions of the information are reasonably related to the subject matter of this proceeding.

e. Vague and ambiguous - The Request is vague and ambiguous in that it does not describe the data sought with particularity or fails to convey with reasonable clarity what is being

requested and, as such, Florida Water cannot reasonably determine the intended meaning, scope or limits of OPC's Request.

SPECIFIC OBJECTIONS TO DOCUMENT REQUESTS

No. 1: Please provide all documents in your possession, custody, or control related to the asset purchase agreement between FWSC and FWSA dated as of September 19, 2002. This request includes, but is not limited to, all documents created before the asset purchase agreement dated as of September 19, 2002, such as earlier drafts of the agreement, notes related to any meeting regarding a possible sale to FWSA, recordings of any meetings related to the possible sale, and memos, letters or e-mails regarding a possible sale to FWSA.

Response: Florida Water objects to Document Request No. 1 on relevance grounds. In addition, the Request is overly broad, vague, ambiguous and unduly burdensome. Florida Water further objects to the Request to the extent it seeks the information that is privileged or otherwise exempt from discovery pursuant to attorney-client privilege, the work-product doctrine, or the trade-secrets doctrine. As set forth above, Florida Water has already produced an executed copy of the Asset Purchase Agreement and the amendment to that Agreement approved at the November 18 meeting of the Authority. Florida Water will make available copies of the exhibits and any additional contract amendments once they are finalized. Without waiving any of its objections, Florida Water states that it, to the best of its knowledge, the Company has not retained any drafts of the Asset Purchase Agreement. To the extent such drafts were retained by counsel, they are protected by the attorney/client privilege. Notes, emails, etc. regarding the transaction include confidential business information, the disclosure of which at this time would compromise ongoing negotiations and/or possible discussions with alternative purchasers in the event the proposed sale is not consummated.

No. 2: Please provide all documents in your possession, custody, or control related to a meeting held on or about August 19, 2002, with any of the following persons: Ed Gray, Buzz Eddy, Beverly Zimmern, and J. Lance Reese. This request includes, but is not limited to, all documents prepared in anticipation of the meeting, all documents reviewed by any person during the meeting, and all documents created after the meeting that review, discuss, or analyze anything related to the meeting.

Response: Florida Water objects to Document Request No. 2 on relevance grounds.

Florida Water also objects as the Request is overly broad, vague and ambiguous. Florida Water further objects to the Request to the extent it seeks information that is privileged or otherwise exempt from discovery, including but not limited to documents or information protected by the attorney-client privilege, the work-product doctrine, or the trade-secrets doctrine. Without waiving its objections, Florida Water states that documents related to meetings on August 19 have been located at Florida Water's corporate headquarters. Those records are being copied and transmitted to Tallahassee and will be produced at a mutually agreeable time and location.

No. 3: Please provide all documents in your possession, custody, or control related to a joint workshop of the Capital Trust Agency Board and Gulf Breeze City Council held on or about August 21, 2002. This request includes, but is not limited to, all documents prepared in anticipation of the workshop, all documents reviewed by any person during the workshop, and all documents created after the workshop that review, discuss, or analyze anything related to the workshop.

Response: Florida Water objects to Document Request No. 3 on relevance grounds.

Florida Water also objects as the Request is overly broad, vague and ambiguous. Florida Water further objects to the Request to the extent it seeks information that is privileged or otherwise exempt from discovery, including but not limited to documents or information protected by the attorney-client privilege, the work-product doctrine, or the trade-secrets doctrine. Without waiving its objections, Florida Water states that background information prepared and submitted to the Authority in conjunction with the August 21 meeting is being copied at Florida Water's corporate

headquarters. Those copies will be transmitted to Tallahassee and will be produced at a mutually agreeable time and location.

No. 4: Please provide all documents in your possession, custody, or control related to the formation of the FWSA. This request includes, but is not limited to, drafts of the interlocal agreement creating the FWSA, and all strategies related to the formation of the FWSC.

Response: Florida Water objects to Document Request No. 4 on relevance grounds.

Florida Water also objects as the Request is overly broad, vague and ambiguous. Florida Water further objects to the Request to the extent it seeks information that is privileged or otherwise exempt from discovery, including but not limited to documents or information protected by the attorney-client privilege, the work-product doctrine, or the trade-secrets doctrine. Without waiving its objections, Florida Water produced documents responsive to this Request on November 12.

No. 5: Please provide all documents in your possession, custody, or control related to providing public notice concerning the sale of FWSC to FWSA. This request includes, but is not limited to, all documents concerning the publication of notice and all document concerning ways to restrict the manner or timing of actual notice to customers currently served by FWSC or governments serving such customers.

Response: Florida Water objects to Document Request No. 5 on relevance grounds.

Florida Water also objects as the Request is unduly burdensome, overly broad and vague and ambiguous. Florida Water further objects to the Request to the extent it seeks information that is privileged or otherwise exempt from discovery, including but not limited to documents or information protected by the attorney-client privilege, the work-product doctrine, or the trade-secrets doctrine. Without waiving its objections, Florida Water produced documents responsive to this Request on November 12. Additional documents related to the November 18 meeting of the Authority have been produced with this Response.

No. 6: Please provide all documents in your possession, custody, or control related to the role played by the city of Milton or the city of Gulf Breeze regarding the purchase of FWSC. This request includes, but is not limited to, all documents regarding the power or authority of either city within the FWSA.

Response: Florida Water objects to Document Request No. 6 on relevance grounds.

Florida Water also objects as the request is overly broad, vague and ambiguous. Florida Water further objects to the request to the extent it seeks information that is privileged or otherwise exempt from discovery, including but not limited to documents or information protected by the attorney-client privilege, the work-product doctrine, or the trade-secrets doctrine. Without waiving its objections, Florida Water states that documents responsive to this Request were produced to OPC on November 12.

No. 7: Please provide all documents in your possession, custody, or control related in any manner to any agreements you have or Allete, Inc., has, with FWSA, the city of Gulf Breeze, the city of Milton, underwriters for the sale to FWSA, or bond counsel for the sale to FWSA.

Response: Florida Water objects to Document Request No. 7 on relevance grounds.

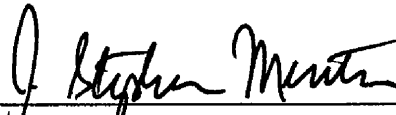
Florida Water also objects as the Request is overly broad, vague and ambiguous. Florida Water further objects to the request to the extent it seeks information that is privileged or otherwise exempt from discovery, including but not limited to documents or information protected by the attorney-client privilege, the work-product doctrine, or the trade-secrets doctrine. Without waiving its objections, Florida Water states that documents responsive to this Request were produced to OPC on November 12. Florida Water is reviewing its records to determine if any additional documents exist. If any non-privileged documents are located, they will be produced at a mutually convenient time and location.

No. 8: Please provide all drafts in your possession, custody or control of indentures, official statements, or other bond documents related to the sale to FWSA.

Response: Florida Water objects to Document Request No. 8 on relevance grounds.

Florida Water also objects to this request as premature since the parties are still in negotiations and discussions are in process with underwriters and credit enhancers, Florida Water further objects to the Request to the extent it seeks information that is privileged or otherwise exempt from discovery, including but not limited to documents or information protected by the attorney-client privilege, the work-product doctrine, or the trade-secrets doctrine. Without waiving these objections, Florida Water states that, because negotiations over the financing for the transaction are on-going, it is premature to disclose any preliminary documents.

Respectfully submitted,



KENNETH A. HOFFMAN, ESQUIRE
J. STEPHEN MENTION, ESQUIRE
RUTLEDGE, ECENIA, PURNELL & HOFFMAN, P.A.
P.O. BOX 551
TALLAHASSEE, FLORIDA
(850) 681-6788 (Telephone)
(850) 681-6515 (Telecopier)

Attorneys for Florida Water Services Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Florida Water Services Corporation's Objections and Responses to the Office of Public Counsel's First Set of Requests for Production of Documents was furnished as indicated, this 25th day of November, 2002, to the following:

John R. Marks, III, Knowles
Marks & Randolph, P.A.
215 S. Monroe Street, Suite 130
Tallahassee, Florida 32301

U.S. Mail

Lorena Holley, Esquire
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard, 1st Floor
Gunter Building
Tallahassee, Florida 32399-0850

Hand Delivery

Charles J. Beck
Deputy Public Counsel
Office of Public Counsel
c/o the Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400

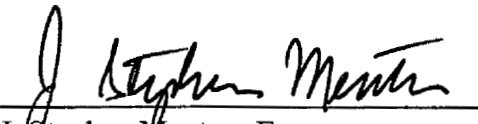
Hand Delivery

Thomas C. Palmer, Esquire
Collier County Board of Commissioner
3301 East Tamiami Trail
Administrative Building, 8th Floor
Naples, Florida 34112

U.S. Mail

Mr. Chuck Lewis
Hernando County Board of County Commissioners
20 North Main Street, Room 461
Brooksville, Florida 34601-2849

U.S. Mail



J. Stephen Menton, Esq.