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December 17, 2002

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COMMISSION
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Blanca S. Bayo, Director
Division of Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 021066-WS

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of Citizens' Motion to Compel. A diskette in Word format is also submitted.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Charles J. Beck

Charles J. Beck
Deputy Public Counsel

CJB:bsr

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

021066-WS-001
021066-WS-002
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021066-WS-005
021066-WS-006
021066-WS-007
021066-WS-008
021066-WS-009
021066-WS-010
021066-WS-011
021066-WS-012
021066-WS-013
021066-WS-014
021066-WS-015

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into Proposed)
Sale of Florida Water Services)
Corporation)

Docket no. 021066-WS

Filed December 17, 2002

MOTION TO COMPEL

The Citizens of Florida (Citizens), by and through Jack Shreve, Public Counsel, request the Prehearing Officer to issue an order requiring Florida Water Services Corporation (FWSC) to produce all of the documents requested in the Citizens' first set of requests for production of documents, and in support of this motion state the following:

1. The Florida Public Service Commission opened this docket on October 22, 2002, to investigate the proposed sale of FWSC to a newly created entity named Florida Water Services Authority (FWSA). The document opening the docket contains no qualification or limit on the scope of the investigation regarding the proposed sale. Indeed, information requests initiated by staff reflect a desire to seek a wide range of information regarding the proposed sale and suggest a broad scope for this docket.

2. Pursuant to section 367.071, Florida Statutes, no utility may sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control without determination and approval of the commission that the

proposed sale, assignment, or transfer is in the public interest. This statute gives the Commission abundant authority to investigate the proposed sale. Even in the case where the purchaser is a "governmental authority" entitled to approval as a matter of right, Commission approval must still be obtained, thus entitling the Commission to investigate the proposed sale. And at this early stage, it is not at all clear whether Florida Water Services Authority is a "governmental authority" entitled to approval of the transfer as a matter of right for the purposes of section 367.071(4), Florida Statutes.¹

2. Citizens' first set of requests for production of documents to Florida Water Services Corporation contains eight requests, and each of the requests relates to the proposed sale to the Florida Water Services Authority. As such, the requests seek documents relevant to the Commission's docket, notwithstanding the company's claim to the contrary.

3. In addition to the company's unfounded claim that the Commission may not investigate the proposed sale because it is not "relevant" to do so², Florida Water Services Corporation raises a number of other objections. Without pointing to any specific requests or documents³, Florida Water claims that it is premature and potentially harmful to divulge business and attorney records that reflect negotiation

¹ See section 367.021(7), Florida Statutes, which defines the term "governmental authority." The definition omits governmental entities created pursuant to chapter 163, Florida Statutes.

² Florida Water general objections, paragraph 6.

³ Florida Water general objections, paragraph 7.

positions and confidential business strategy. Commission rule 25-22.006, however, addresses claims of confidentiality and provides processes to protect confidential information from public disclosure. A claim of confidentiality by itself is insufficient to refuse to produce relevant documents.

4. Florida Water also objected to the requests to the extent that they sought to compel production of documents from consultants, agents, representatives and attorneys who are not employees of the company.⁴ The company reads the Florida Rules of Civil Procedure more narrowly than they are written. The scope of a request for documents includes documents in the possession, custody or control of a party, whether or not in the actual possession of an employee. See Rule 1.350(a), Florida Rules of Civil Procedure.

5. Florida Water also objects to discovery requests to the extent they seek information that is privileged or otherwise exempt⁵, and the company gives one example about attorney notes. Rule 1.280(b)(5), Florida Rules of Civil Procedure, requires parties to make such claims expressly and describe the nature of the documents not produced in a manner that enables other parties to assess the applicability of the privilege. Other than the notes described as one example, Florida Water describes no documents and did not provide a privilege log as is customarily done. The Commission should deny this objection except for the specific notations

⁴ Florida Water general objections, paragraph 10.

described in Florida Water's objections.

6. Florida Water next objects to the requests to the extent they seek documents from the Authority.⁶ Citizens' requests do not specifically seek documents from the authority; the requests seek documents in the possession, custody or control of Florida Water. As long as Florida Water provides all documents in its possession, custody or control, it will be in compliance with Citizens' discovery requests.

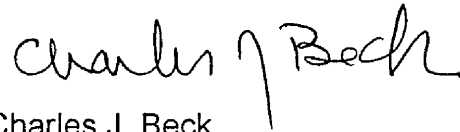
7. Florida Water raises specific objections to each of the requests for production of documents. For each of the eight requests, Florida Water objects to the relevance of the request. Paragraphs one and two of this motion respond to those claims. Privilege is also claimed with respect to each of the eight requests; paragraph five of this motion responds to those claims.

8. For requests numbered one through seven, Florida Water claims that the requests are overly broad, vague, ambiguous, and unduly burdensome. The company, however, provides no basis or explanation for any of these objections. The Prehearing Officer should reject these objections because the company fails to provide any support whatsoever backing up these claims or showing how these objections apply to the specific requests.

⁵ Florida Water general objections, paragraph 11.

⁶ Florida Water general objections, paragraph 12.

WHEREFORE, Citizens respectfully request the Prehearing Officer to issue an order requiring Florida Water Services Corporation (FWSC) to produce all of the documents requested by Citizens' first set of requests for production of documents.



Charles J. Beck
Deputy Public Counsel
Fla. Bar No. 217281

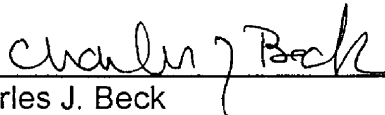
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(850) 488-9330

Attorney for Florida's Citizens

**DOCKET NO. 021066-WS
CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished
by U.S. Mail or hand-delivery to the following parties on December 17, 2002.


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