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July 22, 2003

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

HAND DELIVERY

Re: Docket No. 030542-WS

Dear Ms. Bayo:

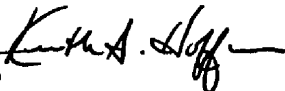
Enclosed for filing on behalf of Florida Water Services Corporation ("Florida Water") in the above-styled docket are the following documents:

1. Original and fifteen copies of Florida Water's Response in Opposition to American Beach Property Owners' Association, Inc.'s Amended Petition for Leave to Intervene; and
2. A disk in Word Perfect 6.0 containing a copy of the Response.

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,



Kenneth A. Hoffman

RECEIVED & FILED

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application by Florida Water Services)
Corporation for Acknowledgment of Transfer of)
Nassau County Land and Facilities to) Docket No. 030542-WS
Nassau County, and Cancellation of Certificate)
Nos. 171-W and 122-S.) Filed: July 22, 2003
_____.)

**FLORIDA WATER SERVICES CORPORATION'S
RESPONSE IN OPPOSITION TO AMERICAN
BEACH PROPERTY OWNERS' ASSOCIATION, INC.'S
AMENDED PETITION FOR LEAVE TO INTERVENE**

Florida Water Services Corporation ("Florida Water"), by and through its undersigned counsel, and pursuant to Rule 28-106.204, Florida Administrative Code, hereby files this Response in Opposition to the Amended Petition for Leave to Intervene filed by American Beach Property Owners' Association, Inc. ("ABPOA"). Florida Water maintains that ABPOA's Amended Petition for Leave to Intervene should be denied, and as grounds therefor, states as follows:

BACKGROUND

1. This proceeding arises as a result of Nassau County's condemnation of Florida Water's land and facilities in Nassau County. Nassau County initiated a condemnation proceeding in the Circuit Court, Fourth Judicial Circuit, in and for Nassau County, Florida, Case No. 03-113-CA. The condemnation proceeding ultimately resulted in the entry of a Stipulated Order of Taking and a Stipulated Final Judgment entered by the court on March 31, 2003. These facts are undisputed and acknowledged by ABPOA. ABPOA did not seek to intervene in the condemnation proceeding.

2. As a result of the condemnation proceeding, Nassau County is now the owner of the land and facilities formerly owned by Florida Water in Nassau County.

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FPSC-COMMISSION CLERK

3. On June 17, 2003, Florida Water filed its Application with the Commission for Acknowledgment of the condemnation of its land and facilities in Nassau County by Nassau County and cancellation of its certificates of authorization to provide water and wastewater services in Nassau County. Nassau County is a “governmental authority” as defined by Section 367.021(7), Florida Statutes. Accordingly, pursuant to Section 367.071(4)(a), Florida Statutes, the Application filed by Florida Water in this docket must be approved as a matter of right.

4. On July 15, 2003, ABPOA filed a Petition for Leave to Intervene in this docket. Two days later, ABPOA filed an Amended Petition for Leave to Intervene. ABPOA residents are provided water service by the American Beach Water System. At the request of certain residents of American Beach in April 1994, the Commission issued an order in July 1995 indicating the exempt status of the American Beach Water System pursuant to Section 367.022(6), Florida Statutes, for the purpose of providing water service to its motel and nine privately-owned homes.¹

5. ABPOA’s Amended Petition fails to cite any rule or appellate court decision that would even remotely support the notion that ABPOA’s interests are substantially affected by the relief sought by Florida Water in this proceeding which must be granted as a matter of right. Indeed, no statute, rule or case law supports the granting of intervention to APBOA in this proceeding. As discussed below, ABPOA lacks standing to intervene in this proceeding and its Amended Petition for Leave to Intervene must be denied.

¹See Order No. PSC-95-0899-FOF-WU issued July 26, 1995, affirmed on reconsideration, in Order No. PSC-95-1261-FOF-WU issued October 16, 1995.

ABPOA’S AMENDED PETITION FOR LEAVE TO INTERVENE

6. ABPOA’s Amended Petition claims that the substantial interests of the residents who comprise APBOA are substantially affected by the outcome of this proceeding because Florida Water has purportedly “committed to provide water and wastewater service to the residents of American Beach who are members of the ABPOA” and “as a result of the transfer of FWSC’s facilities to Nassau County, it is now questionable whether those commitments will be honored.”²

7. ABPOA cites no statute, rule, case law, Commission order or other precedent supporting the proposition that an alleged commitment to provide service to a group of residents confers standing to intervene where a Commission regulated utility is condemned by a governmental authority not regulated by the Commission. Not surprisingly then, ABPOA’s Amended Petition seeks no affirmative relief from the Commission (other than granting intervention) as the Commission’s authority in this proceeding is limited to granting Florida Water’s Application for acknowledgment of the condemnation of its facilities as a matter of right.

8. In any case, Florida Water notes that there were discussions with representatives of ABPOA concerning the potential provision of service to the residents of ABPOA in the late 2000/early 2001 time frame as reflected in correspondence attached to ABPOA’s Amended Petition for Leave to Intervene.³ Those discussions ultimately did not result in arrangements for Florida Water to extend its facilities to provide service to the residents of ABPOA. In fact, more recent correspondence from ABPOA to Florida Water dated August 9, 2002 confirms that ABPOA was no

²See ABPOA’s Amended Petition to Leave to Intervene at par. 14.

³See Exhibits A and B to ABPOA’s Amended Petition for Leave to Intervene.

longer interested in pursuing service arrangements with Florida Water but was instead contesting Florida Water's right to provide service within the alleged "service territory" of the American Beach Water System and further inquired as to Florida Water's interest in purchasing the American Beach Water system. See copy of letter dated August 9, 2002 from Michael B. Twomey to Kenneth A. Hoffman attached hereto as Exhibit A.

9. ABPOA alleges that there are three disputed issues of material fact in this proceeding.

a. ABPOA maintains that the Commission should determine whether Nassau County intends to honor (or whether Florida Water may avoid) the purported commitments of Florida Water to provide water and wastewater service to the residents of American Beach.⁴ The Commission lacks statutory authority over Nassau County and, therefore, has no power to require Nassau County to fulfill the asserted service obligations which were never consummated between Florida Water and ABPOA (and weren't even mentioned in the more recent August 9, 2002 correspondence from American Beach's representative attached hereto as Exhibit A).

b. ABPOA also maintains that the Commission should determine whether the transfer of Florida Water's Nassau County facilities is in the public interest. ABPOA misstates the law. The condemnation by Nassau County of Florida Water's Nassau County facilities is not subject to the public interest approval process under Section 367.071(1), Florida Statutes, but is instead subject to the approval as a matter of right provisions found in Section 367.071(4)(a), Florida Statutes.

10. It is a well-established principle of administrative law that:

. . . before one can be considered to have a substantial interest in the outcome of the proceeding he must show 1) that he will suffer an

⁴See ABPOA Amended Petition, at par. 17.

injury in fact which is of sufficient immediacy to entitle him to a section 120.57 hearing, and 2) that his substantial injury is of a type or nature which the proceeding is designed to protect. The first aspect of the test deals with the degree of injury. The second deals with the nature of the injury.

Agrico Chemical v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2nd DCA 1981).

11. ABPOA's Amended Petition for Leave to Intervene does not allege an injury in fact that meets the Agrico standard. In order to satisfy this first aspect of the Agrico standard, a petitioner must allege with specificity either: 1) an actual injury in fact at the time the petition is filed; or 2) that the petitioner is immediately in danger of sustaining some direct injury as a result of an agency's action. Village Park Mobile Home Assoc. Inc. v. Dept. of Business Regulation, 506 So.2d 426, 433 (Fla. 1st DCA 1987). The injury or threat of injury must be both real and immediate, not conjectural, hypothetical or abstract. Village Park, 506 So.2d at 433.

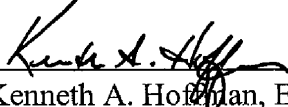
12. ABPOA residents receive water service from their own water system and their most recent correspondence gave no indication of any so-called "service commitment" on the part of Florida Water - - only a desire that Florida Water stay out of their "service territory" and consider the purchase of their system. The fictional "service commitment" claimed by ABPOA falls far short of any actual, immediate damage or loss that could potentially be sustained by the residents of ABPOA as a result of the approval of Florida Water's Application in this proceeding. Indeed, no damage or loss of any kind - - immediate or speculative - - is even alleged in ABPOA's Amended Petition.

13. ABPOA's Amended Petition also fails to allege any injury of the type or nature sought to be protected by a proceeding governed by Section 367.071(4)(a), Florida Statutes. Under

this statute, the Legislature has required the Commission to approve a sale of facilities to a governmental authority as a matter of right. In this case, the condemnation of Florida Water's Nassau County facilities by Nassau County must be approved as a matter of right. ABPOA's Amended Petition fails to set forth any injury that is designed to be protected in a proceeding such as this where approval of Florida Water's Application is mandatory and essentially administrative in nature.⁵

14. The Florida Supreme Court has confirmed that it is appropriate to dismiss a petition for leave to intervene that does not meet the two-pronged Agrico test. See Ameristeel v. Clark, 691 So.2d 473, 477 (Fla. 1997). The Commission has consistently adhered to the Agrico standard and denied petitions to intervene that do not satisfy the Agrico test. See, e.g., In re: Review of the retail rates of Florida Power & Light Company, Order No. PSC-02-0324-PCO-EI, 02 F.P.S.C. 3:29 (March 13, 2002). As ABPOA's Amended Petition for Leave to Intervene fails to satisfy the Agrico test, it must be dismissed.

Respectfully submitted this 22nd day of July, 2003.



Kenneth A. Hoffman, Esq.
J. Stephen Menton, Esq.
Rutledge, Ecenia, Purnell & Hoffman, P.A.
P. O. Box 551
Tallahassee, Florida 32302
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(850) 681-6515 (Facsimile)

⁵Consistent with the administrative nature of a Section 367.071(4)(a) proceeding, the Case Assignment and Scheduling Record issued in this docket has scheduled approval of Florida Water's Application by administrative order.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Florida Water Services Corporation's Response in Opposition to American Beach Property Owners' Association, Inc.'s Amended Petition For Leave to Intervene was furnished by Hand Delivery to the following this 22nd day of July, 2003:

Ralph Jaeger, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 370
Tallahassee, Florida 32399-0850

D. Bruce May, Esq.
Holland & Knight LLP
315 South Calhoun Street
P. O. Drawer 810
Tallahassee, Florida 32302-0810



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August 9, 2002

Kenneth A. Hoffman, Esquire
Rutledge, Ecenia
Post Office Box 551
Tallahassee, Florida 32302-0551

Re: Florida Water Service extension into American Beach area

Dear Mr. Hoffman: *Ken*

I want to follow-up on an earlier telephone conversation we had regarding the potential intrusion of Florida Water Services Corporation's ("Florida Water") Amelia Island operations into the service territory of Mr. Bobby Dollison's American Beach Water System ("American Beach").

American Beach was recognized by the Florida Public Service Commission in 1995 as being a "small system" exempt from Commission jurisdiction pursuant to Section 367.022(6), F.S. The system's water service territory was described in the Commission's order as consisting of "the American Beach Subdivision, located on Amelia Island, Florida." It is my understanding from a review of the Commission's water and wastewater service territory maps of Amelia Island that American Beach's service territory is shown as covering what is commonly considered the historic American Beach Subdivision, which service territory is also shown as being landlocked by Florida Water's Amelia Island service territory on three sides, while the fourth is bounded by the Atlantic Ocean. My examination of the service territory maps reveals what appears to be a clear delineation between the service territories of the two utilities.

It appears that Florida Water intends to provide both water and wastewater service to a "bed and breakfast" currently planned for construction at a location which is clearly in American Beach's service territory and fronting on the Atlantic Ocean. While Mr. Dollison and American Beach have no objection to Florida Water providing the wastewater service to this project, since American Beach has no wastewater facilities, Mr. Dollison does object to Florida Water's provision of water service since he believes he has both the legal right and sufficient water capacity to serve the needs of the bed and breakfast. It is Mr. Dollison's intention to file a petition with the Florida Public Service Commission seeking its order prohibiting Florida Water from providing water service within American Beach's service territory absent some other mutually acceptable resolution of the service area dispute between the parties. (It is my understanding that Nassau County has once again relinquished regulatory jurisdiction of these matters to the Commission and that it, thus, is clearly the appropriate agency.)



Mr. Dollison has indicated to me that he is interested in selling his service territory. While it is not inconceivable that another utility could provide both facilities-based water and wastewater service to the American Beach service territory, it appears the most efficient and cost-effective service to the territory could be provided by the surrounding Florida Water operations.

I don't know if you personally are aware of the circumstances surrounding this area, but I have toured the area, which I believe is close to 100 acres in size, and I suspect that the revenue potential of the service territory is likely to be very substantial in a relatively few years and at a relatively small expenditure of capital. I say this for a number of reasons: One, the American Beach community is surrounded to the North and South by extremely expensive beach resorts and related communities. Two, the area is relatively compact and its ultimate highest and best use is likely to result in high-density ERCs and correspondingly high revenues from relatively short lines. Three, I suspect that the current low-density occupancy, which is now reliant upon American Beach service or private wells in conjunction with septic tanks, is not likely to last much longer given the economic realities of the property's geographic location. Given Florida Water's experience in the area and its apparent contribution to the study to form a CRA, I assume your client has made some growth projection for the area.

Mr. Dollison has shown me earlier correspondence with Matthew Feil and Darin Levi of Florida Water stating some interest by Florida Water of acquiring the American Beach system. Mr. Dollison is interested in resuming those discussions if Florida Water still has an interest in American Beach. If so, please let me know. If not, please let me know as well so that we can investigate other potential purchasers, while also preparing a petition to file with the Commission.

Sincerely,



Michael B. Twomey
Attorney for Bobby Dollison and
American Beach Water System