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September 5, 2003

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

HAND DELIVERY

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COMMISSION
CLERK

Re: Docket No. 030542-WS

Dear Ms. Bayo:

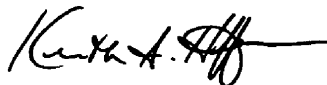
Enclosed for filing on behalf of Florida Water Services Corporation ("Florida Water") in the above-styled docket are the following documents:

1. Original and fifteen copies of Florida Water's Response in Opposition to American Beach Property Owners' Association, Inc.'s Motion for Reconsideration and Request for Oral Argument; 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

AUS _____
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CMP _____
COM _____
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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: September 5, 2003
_____.)

**FLORIDA WATER SERVICES CORPORATION'S
RESPONSE IN OPPOSITION TO AMERICAN
BEACH PROPERTY OWNERS' ASSOCIATION, INC.'S
MOTION FOR RECONSIDERATION
AND REQUEST FOR ORAL ARGUMENT**

Florida Water Services Corporation ("Florida Water"), by and through its undersigned counsel, and pursuant to Rules 28-106.204(1) and 25-22.060(1)(b), Florida Administrative Code, hereby files its Response in Opposition to American Beach Property Owners' Association, Inc.'s ("ABPOA") Motion for Reconsideration of Order No. PSC-03-0948-PCO-WS ("Order") denying ABPOA's Amended Petition for Leave to Intervene ("Amended Petition") and accompanying Request for Oral Argument, and states as follows:

1. The purpose of a motion for reconsideration is to identify a point of fact or law which was overlooked or which the Commission failed to consider in rendering its order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So.2d 162 (Fla. 1st DCA 1981). A motion for reconsideration is not an appropriate vehicle to reargue matters that have already been considered by the Commission. Sherwood v. State, 111 So.2d 96 (Fla. 3rd DCA 1959) citing State ex. rel. Jaytex Realty Co. v. Green, 105 so.2d 817 (Fla. 1st DCA 1958). Nor is a motion for reconsideration an appropriate vehicle to raise new matters or arguments that were not initially raised by the party seeking reconsideration. See, e.g., Order No. PSC-92-1032-FOF-TL issued March 31, 1992.

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FPSC-COMMISSION CLERK

Finally, a motion for reconsideration should not be granted “based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review.” Stewart Bonded Warehouse, *supra*, 294 So.2d at 317.

2. ABPOA’s Motion for Reconsideration fails to meet the standard for reconsideration as articulated by the Commission and the Florida appellate courts. This proceeding is governed by Section 367.071(4)(a), Florida Statutes. Accordingly, Florida Water’s Application for Acknowledgment of the condemnation of its Nassau County land and facilities must be approved as a matter of right. In denying ABPOA’s Amended Petition, the Prehearing Officer properly and lawfully rejected American Beach’s request to intervene in this proceeding. ABPOA’s dissatisfaction with this ruling, regurgitation of arguments not accepted by the Prehearing Officer, and last minute proffer of new legal theories provide no basis for reconsideration.

3. As previously noted by Florida Water in its Response to ABPOA’s Amended Petition, ABPOA failed to cite any rule or appellate court decision supporting 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. After considering ABPOA’s Amended Petition and Florida Water’s Response, the Prehearing Officer properly and lawfully concluded that ABPOA failed to satisfy the first prong for standing as articulated in Agrico Chemical Company v. Department of Environmental Regulation, 406 So.2d 478, 482 (Fla. 2nd DCA 1981), *rev. den.*, 415 So.2d 1361 (Fla. 1982) (“Agrico”), and further discussed in Village Park Mobile Home Assoc. Inc. v. Dept. of Business Regulation, 506 So.2d 426, 433 (Fla. 1st DCA 1987).¹

¹As noted in the Order, at 3, under the first prong of the Agrico test for standing, ABPOA was required to:

4. In its Amended Petition, ABPOA did not request intervention for the purpose of pursuing the denial of Florida Water's Petition to Acknowledge the condemnation of Florida Water's Nassau County land and facilities. No such relief could be granted as the approval sought by Florida Water must be granted as a matter of right. Instead, ABPOA simply sought to intervene and sought no specific relief, predicating its request for intervention on allegations that Florida Water had allegedly discussed the provision of water service to the American Beach residents in late 2000/early 2001, resulting in a letter complaint filed with the Commission on March 26, 2001. ABPOA went on to state in its Amended Petition that on April 18, 2001, the Commission responded to the complaint and that Florida Water stood prepared to investigate the possibility of expanding its service territory to determine the feasibility of providing water service to the American Beach residents.² In its Response to ABPOA's Amended Petition, Florida Water noted that it had never provided any form of "service commitment" to the American Beach residents and that the purported "service commitment" claimed by ABPOA based on the correspondence two years ago fell far short of any actual, immediate damage or loss that could potentially be sustained by the APBOA residents as a result of the application filed by Florida Water in this proceeding.³ As Florida Water

... 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 any agency's action.... The injury or threat of injury must be both real and immediate, not conjectural, hypothetical or abstract.

Village Park, 506 So.2d at 433.

²ABPOA Amended Petition, at 3-4.

³Florida Water Response to Amended Petition, at ¶12.

emphasized in its Response and the Prehearing Officer recognized in his Order, “no damage or loss of any kind - - immediate or speculative - - is even alleged in ABPOA’s Amended Petition.”⁴

5. After considering the allegations in ABPOA’s Amended Petition and Florida Water’s Response, the Prehearing Officer properly and lawfully concluded “that ABPOA has failed to demonstrate a possible injury that is real and immediate and not conjectural.”⁵ Accordingly, the Prehearing Officer denied ABPOA’s Amended Petition for failing to meet the first prong of the Agrico test.

6. Having failed to convince the Prehearing Officer that the communications between Florida Water and ABPOA concerning the potential provision of water service to the American Beach residents in late 2000/early 2001 were sufficient to satisfy the first prong of the Agrico test, ABPOA now improperly attempts to bring an expanded version of the same argument to the full Commission on reconsideration. At pages 3 and 4 of its Motion for Reconsideration, ABPOA once again argues that the discussions concerning the possible provision of service by Florida Water approximately two years ago are sufficient to confer standing in this proceeding. ABPOA’s rehashing of arguments intended to show a “real and immediate” injury as required by Agrico is inappropriate on reconsideration and hardly credible given ABPOA’s apparent satisfaction to take no action before the Commission concerning these so-called “service commitments” over the last two years. ABPOA’s unabashed attempt to reargue the allegations in its Amended Petition should

⁴Order, at 3.

⁵Order, at 3.

be summarily rejected.⁶

7. ABPOA also violates Commission precedent and the standard for reconsideration by attempting to raise new legal arguments in its Motion for Reconsideration. Specifically, ABPOA alleges, for the first time on reconsideration, that the Order denying ABPOA's Amended Petition violates Section 120.68(7)(e), Florida Statutes, because the Order supposedly deviates from prior agency practice. This argument should be rejected both because it is a new argument on reconsideration and because the Commission has no prior agency practice on this issue - - i.e., the Commission has never rendered any determination concerning any so-called "service commitments" on the part of Florida Water to the American Beach residents.

8. ABPOA's Request for Oral Argument also should be denied. ABPOA alleges "that oral argument would assist the Commission in addressing the implications of its past practices concerning American Beach in resolving these important matters." The Commission has no past practices concerning American Beach. ABPOA's attempt to secure oral argument so that it may reargue the allegations in its Amended Petition for Leave to Intervene should be denied.

9. Apart from the Prehearing Officer's legally correct conclusion that ABPOA's Amended Petition fails to satisfy the first prong of the Agrico test, 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 (including a condemnation by) a governmental authority as a matter of right. In this case, the condemnation of Florida Water's Nassau County

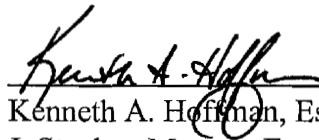
⁶Nor did ABPOA attempt to intervene in the condemnation proceedings to raise their concern with Florida Water.

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.

10. ABPOA's Motion for Reconsideration fails to meet the above-stated standard for reconsideration. Florida Water no longer owns or operates the Nassau County facilities in question. Florida Water's Application in this proceeding must be approved as a matter of right. ABPOA's request for reconsideration of the Prehearing Officer's denial of its Amended Petition should be denied.

WHEREFORE, for the foregoing reasons, Florida Water respectfully request that the Commission deny American Beach Property Owners' Association, Inc.'s Motion for Reconsideration and Request for Oral Argument.

Respectfully submitted this 5th day of September, 2003.



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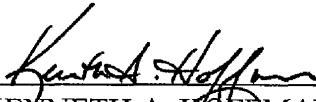
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Florida Water Services Corporation's Response in Opposition to American Beach Property Owners' Association, Inc.'s Motion for Reconsideration and Request for Oral Argument was furnished by United States Mail to the following this 5th day of September, 2003:

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