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Stephen C. Reilly  
Associate Public Counsel

October 4, 2004

Ms. Blanca S. Bayó, Director  
Division of the Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0870

RECEIVED - FPSC  
OCT - 4 PM 3:23  
COMMISSION  
CLERK

RE: Docket No. 030444-WS

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of a Motion for Commission to Relinquish Jurisdiction for filing in the above-referenced docket.

Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

Associate Public Counsel

- CMP \_\_\_\_\_
- COM 3
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
- GCL SCR/dsb
- OPC \_\_\_\_\_
- MMS \_\_\_\_\_
- RCA \_\_\_\_\_
- SCR \_\_\_\_\_
- SEC 1
- OTH ump

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DOCUMENT NUMBER-DATE  
10646 OCT-4 03  
FPSC-COMMISSION CLERK

*ok 10/6/04 for proof*

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Application for rate increase )  
in Bay County by Bayside Utility )  
Services, Inc. )  
\_\_\_\_\_ )

Docket No. 030444-WS  
Filed: October 4, 2004

**MOTION FOR COMMISSION TO RELINQUISH JURISDICTION**

The Citizens of the State of Florida, (“Citizens”), by and through the undersigned attorney, on behalf of the Office of Public Counsel (“OPC”), pursuant to Chapter 367.171(5), 367.081(8), Florida Statutes, and Rule 28-106.204, Florida Administrative Code, hereby file this motion for the Commission to relinquish its jurisdiction of the above rate case to Bay County, Florida and in support thereof states:

1. On September 7, 2004 the Board of County Commissioners of Bay County unanimously passed Resolution No. 2570, which rescinded the resolution it passed on July 10, 1973 conferring jurisdiction to the Florida Public Service Commission to regulate private water and wastewater utilities located in Bay County. Effective September 7, 2004 Bay County has reassumed regulatory jurisdiction over all private water and wastewater utilities operating in Bay County.

2. Notwithstanding Bay County reassuming jurisdiction as of September 7, 2004, Section 367.171(5), Florida Statutes, provides that cases pending before the Commission at the time a County reassumes jurisdiction shall remain within the jurisdiction of the Commission “. . . until disposed of in accordance with the law in effect on the day such case was filed by any party with the Commission.” This docket was pending with the Commission at the time Bay County assumed jurisdiction. Therefore, this Bayside

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Utility Services, Inc.'s ("Bayside", "Utility" or "Company") rate case shall remain within the jurisdiction of the Commission until *disposed of in accordance with the law*.

3. Section 367.081(8), Florida Statutes, provides that if the Commission's proposed action is protested, the *final decision* shall be rendered by the Commission within 8 months of the date the protest is filed. The Commission's PAA Order issued in this docket was protested by the OPC on September 13, 2004. In order to dispose of this case *in accordance with the law* the Commission must issue a *final decision*, a final agency action order that is sufficiently final that it would be subject to appellate review, within 8 months of the date the protest is filed. The Commission can meet its obligation to dispose of this case *in accordance with the law* in one of two ways. First, it can conduct a hearing and issue a *final decision* to resolve the case on the merits or secondly, it can issue a *final decision* or final agency action order that otherwise disposes of the case. Given the facts of this particular situation the final agency action which OPC believes would best serve the public interest would be for the Commission to issue a final order relinquishing jurisdiction of this case to Bay County. The Commission should relinquish jurisdiction of this case to Bay County, so that it can conduct such further proceedings to resolve this case on the merits, as prescribed by its rules and regulations. In either event the Commission is obligated to issue a final order within the eight months time period as prescribed by Section 367.081(8), Florida Statutes.

4. Any administrative hearing that will be held by either the Commission or Bay County to receive evidence to support a final order disposing of this case on the merits will involve disputed issues of material fact. For this reason, any hearing held by the Commission or Bay County to receive evidence to support a final decision on the merits

must be held in accordance with Chapter 120,, Florida Statutes, and Section 120.57(1), Florida Statutes, in particular. The term “final order” is expressly defined in the definitions section of Chapter 120, Florida Statutes, as follows

Section 120.52(7): “Final order” means a written final decision which results from a proceeding under s. 120.56, s. 120.565, s. 120.569, s. 120.57, s. 120.573, or s. 120.574 which is not a rule, and which is not excepted from the definition of a rule, and which has been filed with the agency clerk, and includes final agency actions which are affirmative, negative, injunctive, or declaratory in form. A final order includes all materials explicitly adopted in it. The clerk shall indicate the date of filing on the order.

This broad definition of the term “final order” permits the Commission to issue a *final decision* or final order that does not resolve the disputed issues of material fact in a case, but is nevertheless the agency’s final action with regard to the case upon filing the final order with the agency’s clerk.

5. Utilities, Inc. purchased Bayside in 1998. The purchase price was approximately 2/3 of Bayside’s book value and Commission established rate base. Presumably the bargain price was determined because of the need for Utilities, Inc. to immediately make improvements to correct a number of deficiencies with the system. When the Commission approved the transfer of certificate to Utilities, Inc. it did not make a negative acquisition adjustment to adjust Bayside’s rate base to account for Utilities, Inc.’s true investment in Bayside. The effect of this decision was to give Utilities, Inc a full return on equity of 11.21% per annum on approximately 1/3 of Bayside’s rate base, for which Utilities, Inc. has not invested one penny. This return on Utilities, Inc.’s “phantom investment” in real dollar terms permits Utilities, Inc. to permanently overearn at the expense of the ratepayers. This is especially true if the Commission or Bay County permits Utilities, Inc. to add to Bayside’s rate base investment that Utilities, Inc. makes to

correct the very problems which helped produce the bargain price in the first place. In September, 1999 when the Commission approved the transfer of Bayside to Utilities, Inc., there was no Commission rule on acquisition adjustments. However, in 2002, the Commission codified its policy on acquisition adjustments by adopting Rule 25-30.0371, Florida Administrative Code. The rule provides in part:

(b) Uncontested. If the purchase price is less than 80 percent of net book value, then the amount of the difference in excess of 20 percent of net book value shall be recognized for ratemaking purposes as a negative acquisition adjustment. The negative acquisition adjustment shall not be recorded on the books for ratemaking purposes or used for any earnings review unless the purchaser files for a rate increase pursuant to section 367.081(2), 367.0814, 367.0817 or 367.0822, F.S., that will be effective during the amortization period. The negative acquisition adjustments shall be amortized over a 5-year period from the date of issuance of the order approving the transfer of assets.

With the final order in this rate case being issued in 2005 the Commission's Rule 25-30.0371, Florida Administrative Code, also authorizes Utilities, Inc. to earn a full return on equity on approximately 1/3 of Bayside's ratebase.

6. Prior to enacting Resolution No. 2570 Bay County intervened in this rate case. Bay County has expressed concern about the poor quality of service and high rates being charged to the customers of Bayside and has criticized the above described Commission's policy on acquisition adjustments. While Bay County is statutorily obligated to grant Utilities, Inc. rates which are just, reasonable, compensatory and not unfairly discriminatory, there is no statutory obligation to compensate Utilities, Inc. for investment it never made in Bayside. It is OPC's considered opinion that upon Bay County's assumption of regulation of private water and wastewater utilities in the County, no such "phantom investment" will be recognized for ratemaking purposes.

7. Bayside is a small utility with few customers. For such utilities, rate case expense is always a material consideration in any contested Chapter 120.57(1), Florida Statutes, proceeding. If the Commission were to proceed and conduct a formal hearing and render a final decision on the merits in this case both the customers and the Utility would almost immediately have to bear the costs of an additional Chapter 120.57(1), Florida Statutes, proceeding to be conducted by the County. For the Commission to proceed to hearing on this case would be administratively inefficient and more costly to the Commission, to Bayside, and to Bayside's customers. In recent years the Commission Staff's resources to provide regulation to water and wastewater utilities have been constrained because of the greatly reduced regulatory assessment fees being collected from water and wastewater utilities under the Commission's regulation. It is not the best utilization of the Commission's finite resources to process a Chapter 120.57(1), Florida Statutes, formal hearing that will produce an order that is sure to be immediately revisited by another jurisdiction, with an overearnings investigation.

8. In the absence of a showing that the interests of the parties would not be adequately protected with the change in jurisdiction, a court or other tribunal, may exercise its judicial discretion to relinquish its jurisdiction in favor of another who also possesses jurisdiction to dispose of the case. Penn General Casualty Co. v. Pennsylvania Ex Rel. Schnader, Supreme Court of the United States, 294 US 189, 55 S. Ct. 386, 79 L. Ed 850. If it promotes the efficient administration of justice, it is within the discretion of the Florida Public Service Commission to relinquish its jurisdiction of a case in favor of a County that has properly reassumed jurisdiction of water and wastewater utilities located within the County, pursuant to Chapter 367.171, Florida Statutes.

9. The Citizens strongly urge the Commission to issue a final order, as quickly as possible, relinquishing jurisdiction to Bay County, so that Bay County will fix rates and charges for Bayside that are just, reasonable, compensatory and not unfairly discriminatory. Section 367.171(8), Florida Statutes, requires that each County which is excluded from the provisions of Chapter 367, Florida Statutes, shall regulate the rates of all utilities in that County which would otherwise be subject to regulation by the Commission pursuant to Sections 367.081(1), (2), (3), and (6), Florida Statutes. This statutory requirement guarantees that the interests of both the Utility and the customers to fix rates which are just, reasonable, compensatory and not unfairly discriminatory are assured by Florida Statute.

WHEREFORE, the Citizens respectfully request the Commission to issue a final order relinquishing jurisdiction to consider Bayside Utility Services, Inc.'s application for a rate increase to Bay County, Florida.

Respectfully submitted,

HAROLD MCLEAN  
Public Counsel

A handwritten signature in black ink, appearing to read "Stephen C. Reilly", is written over a circular stamp or seal.

Stephen C. Reilly  
Associate Public Counsel

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c/o The Florida Legislature  
111 West Madison Street, Room 812  
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Attorney for the Citizens  
of the State of Florida

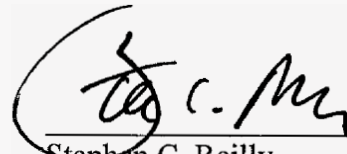
**CERTIFICATE OF SERVICE**  
**DOCKET NO. 030444-WS**

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Commission to Relinquish Jurisdiction has been furnished by U.S. Mail, \*hand-delivery or \*facsimile to the following parties this 4<sup>th</sup> day of October, 2004.

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\_\_\_\_\_  
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Associate Public Counsel