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April 10, 1998

Blanca S. Bayo, Director  
Division of Records & Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

HAND DELIVERY

Re: Docket No. 950387-SU

Application for a rate increase for North Ft. Myers Division  
in Lee County by Florida Cities Water Company - Lee County  
Division.

Dear Ms. Bayo:

Enclosed on behalf of Florida Cities Water Company is an  
original and 15 copies of a Motion for Stay Pending Judicial  
Review.

Please acknowledge receipt of the foregoing by stamping the  
enclosed extra copy of this letter and returning same to my  
attention. Thank you for your assistance.

Sincerely,

Wayne L. Schiefelbein

- ACK \_\_\_\_\_
- AFA 2
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG WLS/cas
- LEG Enclosures
- LIN 1
- OPC 3
- PCH \_\_\_\_\_
- TC 1
- S Willis

DOCUMENT NUMBER - DATE

04120 APR 10 98

REC'D DIVISION OF RECORDS & REPORTING

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a rate ) DOCKET NO. 950387-SU  
increase for North Ft. Myers )  
Division in Lee County by )  
Florida Cities Water Company -) Filed April 10, 1998  
Lee County Division.)

FLORIDA CITIES WATER COMPANY'S MOTION  
FOR STAY PENDING JUDICIAL REVIEW

Florida Cities Water Company (FCWC), pursuant to Rule 25-22.061(2), Florida Administrative Code, hereby files this Motion for Stay Pending Judicial Review, and as grounds states:

1. On April 3, 1998, Commissioner Joe Garcia, as Prehearing Officer, rendered an Order Establishing Procedure and Issues, Order No. PSC-98-0483-PCO-SU. This Order notes that pursuant to the remand of the First District Court of Appeal, the Florida Public Service Commission (PSC) has decided to reopen the record and schedule a hearing "on the issue of what flows should be used in the numerator of the used-and-useful equation when the Department of Environmental Protection (DEP) permits the plant on the basis of annual average daily flows," as well as additional issues related to FCWC's recovery of rate case expense.

2. FCWC will appeal Order No. PSC-98-0483-PCO-SU and any related order, through a Petition for Review of Non-Final Agency Action, pursuant to Sections 120.68(1) and (6)(b), Florida Statutes.

3. FCWC believes it is likely to prevail on appeal, as the Court did not authorize or "invite" the PSC to reopen the record;

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the PSC's decision is not consistent with the Court's directions; and the PSC is improperly pursuing "a second bite of the apple" on an issue on which all parties already have had an opportunity to address in this proceeding (i.e., what flows should be recognized in determining the extent to which plant is used and useful in providing service).

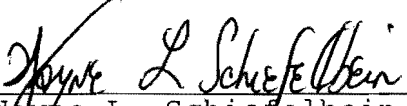
4. FCWC will suffer substantial harm if a stay is not granted, because absent a stay obtained from either the PSC or the Court, it will incur needless expense both in pursuing appellate relief and participating in the proceedings before the PSC. This unnecessary duplication of effort will also affect all other parties to this proceeding, and the PSC itself. Such needless burden and expense is contrary to the public interest. All required filing and hearing dates established by Order No. PSC-98-0483-PCO-SU should be cancelled pending final review by Court.

5. On November 20, 1996 FCWC posted a corporate undertaking in the amount of \$940,755, as security for potential refunds of the wastewater rates in effect. At the March 24, 1998 agenda conference, the PSC found that pending further proceedings before the PSC, the amount of security should not be modified. The First District Court of Appeal will hopefully address FCWC's Petition for Review of Non-Final Agency Action on an expedited basis; thus, the amount of existing security would appear to be adequate. In any event, FCWC requests that the PSC determine whether it will require

additional security as a condition of the requested stay.

WHEREFORE, FCWC requests that this Motion be granted.

Respectfully submitted,

  
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ATTORNEYS FOR FLORIDA CITIES  
WATER COMPANY

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Motion for Stay Pending Judicial Review has been served by hand-delivery to Rob Vandiver, General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850; Diana Caldwell, Associate General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850; Ralph Jaeger, Staff Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850; Harold McLean, Associate Public Counsel, Claude Pepper Building, 111 W. Madison Street, Room 812, Tallahassee, Florida 32399-1400; and by U.S. Mail to Cheryl Walla, 1750 Dockway Drive, North Fort Myers, Florida 33903, this 10<sup>th</sup> day of April, 1998.

  
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Wayne L. Schiefelbein

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