

RUTLEDGE, ECENIA, PURNELL & HOFFMAN

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

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STEPHEN A. ECENIA
JOHN R. ELLIS
KENNETH A. HOFFMAN
THOMAS W. KONRAD
MICHAEL G. MAIDA
J. STEPHEN MENTON
R. DAVID PRESCOTT
HAROLD F. X. PURNELL
GARY R. RUTLEDGE

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788
TELECOPIER (850) 681-6515

OF COUNSEL:
CHARLES F. DUDLEY
RECORDS AND
REPORTING
GOVERNMENTAL CONSULTANTS:
PATRICK R. MALOY
AMY J. YOUNG

March 1, 1999

HAND DELIVERY

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

Re: Docket No. 950495-WS

Dear Ms. Bayo:

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

1. Original and fifteen copies of Florida Water's Objections to Staff's First Set of Interrogatories and First Request for Production of Documents on Remand and Motion for Protective Order; 02593-99

2. Original and fifteen copies of Florida Water's Motion to Transfer Remand Proceeding to the Division of Administrative Hearings; and 02594-99

3. A disk containing a copy of each of these documents in Word Perfect 6.0.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,

[Handwritten Signature]
Kenneth A. Hoffman

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KAH/rl
Enclosures

cc: Parties of Record

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application by Southern)
 States Utilities, Inc. for rate)
 increase and increase in service)
 availability charges for Orange-)
 Osceola Utilities, Inc. in)
 Osceola County, and in Bradford,)
 Brevard, Charlotte, Citrus, Clay,)
 Collier, Duval, Highlands,)
 Lake, Lee, Marion, Martin,)
 Nassau, Orange, Osceola, Pasco,)
 Polk, Putnam, Seminole, St. Johns,)
 St. Lucie, Volusia and Washington)
 Counties.)
)
)
 _____)

Docket No. 950495-WS

Filed: March 1, 1999

**FLORIDA WATER SERVICES CORPORATION'S
 OBJECTIONS TO STAFF'S
 FIRST SET OF INTERROGATORIES AND
 FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
 ON REMAND AND MOTION FOR PROTECTIVE ORDER**

Florida Water Services Corporation ("Florida Water"), by and through its undersigned counsel, and pursuant to Rules 28-106.204 and 28-106.206, Florida Administrative Code and Rule 1.280(c), Florida Rules of Civil Procedure, hereby files its Objections to Staff's First Set of Interrogatories and First Request for Production of Documents on Remand¹ and moves for the entry of a Protective Order providing that Florida Water is not required to respond to Staff's discovery requests as outlined below. In support of its Objections and Motion for Protective Order, Florida Water states as follows:

¹Florida Water's Objections also are directed to the Office of Public Counsel's First Request for Production of Documents on Remand, Request No. 1, which requests copies of documents requested by Staff in Staff's First Request for Production of Documents.

DOCUMENT NUMBER-DATE

02593 MAR-1999

FPSC-RECORDS/REPORTING

INTRODUCTION

This case stems from an application for increased water and wastewater rates filed by Florida Water in 1995. The Commission entered its final order on October 30, 1996. Following appeals by Florida Water and other parties, on June 10, 1998, the First District Court of Appeal issued its opinion in Southern States Utilities v. Florida Public Service Commission, 714 So.2d 1046 (Fla. 1st DCA 1998) ("Southern States II").²

In Southern States II, the court reversed the Commission and accepted the Commission's confession of error on a multitude of issues affecting Florida Water's revenue requirements and allowance for funds prudently invested charges. On remand, in accordance with the Southern States II decision, the Commission approved an increase in rates in response to the court's reversal of the Commission's: (1) failure to afford 100% used and useful treatment for reuse facilities; (2) unlawful reduction to Florida Water's equity due to the one-sided refund order issued in Docket No. 920199-WS subsequently reversed by the court; and (3) confession of error in failing to use the average flows in the maximum month in the calculation of the used and useful investment for three wastewater treatment plants. Surcharges also were ordered by the Commission in connection with the increased revenue requirements as a result of these reversals; however, that issue remains pending due to a protest filed by Sugarmill Woods Civic Association, Inc.

In addition to the above issues, the court reversed the Commission's use of average annual daily flows in the numerator of the calculation of used and useful for four wastewater treatment plants and the Commission's use of the lot count method in determining the level of used and useful

²A motion for rehearing was denied by the court on July 5, 1998.

investment in water transmission and distribution and wastewater collection facilities. The court held that both of these determinations constituted departure from Commission policies that were not supported by record evidence. The court authorized the Commission, on remand, to adduce evidence, if it can, to support the Commission's departure from established policies. The hearing currently scheduled for June 16-18, 1999 has been set in response to the court's reversal and remand on the wastewater treatment plant and lot count used and useful issues.

In challenging the Commission's determinations of used and useful for the four wastewater treatment plants, Florida Water argued before the court that the Commission had departed from established Commission policy without adequate record support, that the new policy produced used and useful levels below those previously authorized by the Commission, and that the lowering of previously established used and useful investments was a departure from Commission precedent, in violation of the doctrine of administrative finality and constituted an unconstitutional confiscation of Florida Water's property. The court reversed the Commission on the ground that the Commission's new policy was not supported by record evidence in violation of applicable statutory requirements under Chapter 120, Florida Statutes, and applicable decisions thereunder.

In remanding the case to the Commission, the court held:

[b]ecause this policy shift was essentially unsupported by "expert testimony, documentary opinion or other evidence appropriate to the nature of the issue involved," ... (citation omitted), the PSC must, on remand, give a reasonable explanation, if it can, supported by record evidence (which all parties must have an opportunity to address) as to why average daily flow in the peak month was ignored.

Southern States II, 714 So.2d at 1056. Having reversed on this ground, the court did not address the additional grounds for reversal urged by Florida Water. See Southern States II, 714 So.2d at 1059.

As previously stated, Florida Water also challenged the Commission's use of the lot count method in calculating the level of used and useful investment in water transmission and distribution and wastewater collection facilities. As with the wastewater treatment used and useful issue, Florida Water asserted that the use of the lot count method was an unsupported departure from prior Commission rejections of the lot count method, unlawfully lowered previously established used and useful levels, and unconstitutionally confiscated Florida Water's property. The court reversed on the basis that the Commission had failed to provide adequate record support for its employment of the new lot count method. The court held:

The PSC's conceded change of method in calculating used and useful percentages for distribution and collection systems is another "policy shift... essentially unsupported 'by expert testimony, documentary opinion, or other evidence appropriate to the nature of the issue involved,' (citation omitted)." For this policy shift, too, the PSC must give a reasonable explanation on remand and adduce supporting evidence, if it can, to justify a change in policy required by no rule or statute. That failing, the PSC should adhere to its prior practices in calculating used and useful percentages for water transmission and distribution systems and wastewater collection systems serving mixed use areas. (Footnote omitted).

Southern States II, 714 So.2d at 1057.

Florida Water objects to providing documents and information responsive to a number of staff's First Set of Interrogatories and First Request for Production of Documents on Remand because these requests fall outside of the scope of the remand from the court's decision in Southern States II and, therefore, are not reasonably calculated to lead to the discovery of admissible evidence. See Rule 1.280(b)(1), Florida Rules of Civil Procedure. In addition, a number of staff's discovery requests seek information and documents from Florida Water which do not exist. Consistent with

Commission precedent, Florida Water is not required to create new documents, undertake new analyses, or create new studies or reports to respond to a discovery request³ particularly where, as here, the requests exceed the scope of the remand from the Southern States II decision and the test year used for ratemaking purposes in this rate case.

STAFF'S FIRST SET OF INTERROGATORIES ON REMAND

Interrogatory No. 1 states:

For all of the maps supplied for Document Request No. 1, please supply the customer growth projections from the base year ended December 31, 1995, up through the end of the projected test year ended December 31, 1997, by type of customer (i.e., residential, commercial, industrial, etc.). All growth projections supplied should tie to the total projections by service area in the utility's minimum filing requirements.

The staff requests customer growth projections "through the end of the projected test year ended December 31,1997, by type of customer...." The test year in this proceeding for the establishment of final rates ended December 31, 1996, not 1997. Actual data from post-test year or post-hearing periods should not be relevant to the issues to be decided on this remand. This remand proceeding should not be construed as a true-up proceeding or an avenue by intervenors or staff to attempt to obtain additional adjustments beyond and outside the scope of the two limited used and useful determinations which were reversed by the court. The customer growth projections requested by Staff are not reasonably calculated to lead to the discovery of admissible evidence and are outside the scope of the remand on the two used and useful issues.

³See, e.g., Order No. PSC-92-0819-PCO-WS issued August 14, 1992.

Interrogatory No. 4 states:

Please provide schedules of rate base, net operating income and capital structure reflecting the achieved water and wastewater rates of return earned by the utility for 1997 and 1998. These should be on a total water and total wastewater basis. Consistent with Section 367.082, Florida Statutes, please incorporate the regulatory adjustments and methodologies approved by the Commission in this docket and describe all adjustments to the per book amounts. For those issues that remain in dispute, please disclose the method used. Do not include additional rate case expense above the amount approved in the Final Order in this docket. If any major changes in plant, such as purchase or sale of assets, or any other operational changes that would impact earnings, have occurred that were not included in the Final Order, please disclose those changes and provide an explanation as to why those adjustments should be included or excluded in the ratemaking equation.

This request also is outside the scope of the Southern States II remand which is limited to used and useful determinations for four wastewater treatment plants and water transmission and distribution and wastewater collection lines based on the 1996 test year utilized by the Commission in this case. Information concerning rate base, net operating income and capital structure reflecting achieved water and wastewater rates of return earned by Florida Water for 1997 and 1998 are both outside of the test year and outside the scope of the remand. Information concerning any major changes in plant or any operational changes that were not included in the final order also are outside the scope of the limited issues on remand in this proceeding.

STAFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS ON REMAND

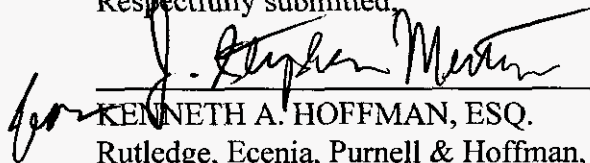
1. Staff's First Document Request states:

For all water and wastewater service areas with "mixed use," please provide a map of each service area, which designate connected lots and the equivalent residential connection (ERC) of each lot, as of December 31, 1995. The maps should also designate the zoning of the service area, i.e.; residential, commercial, industrial, etc.

Florida Water objects to staff's request. Florida Water submitted the "lot count" information required by the Commission in its originally filed minimum filing requirements. Post-test year or post-hearing actual data is not relevant or appropriate for Commission consideration in this remand. To open discovery in this docket to the investigation of actual results experienced post-hearing would expand the scope and breadth of this proceeding far beyond the scope ordered by the court when it reversed the Commission's lot count and average annual daily flow decisions.

WHEREFORE, for the reasons stated, Florida Water respectfully requests that the Commission enter a protective order providing that Florida Water is not required to respond to: (1) Interrogatory Nos. 1 and 4 in Staff's First Set of Interrogatories on Remand; and (2) Document Request No. 1 in Staff's First Request for Production of Documents on Remand.

Respectfully submitted,


KENNETH A. HOFFMAN, ESQ.
Rutledge, Ecenia, Purnell & Hoffman, P.A.
P. O. Box 551
Tallahassee, FL 32302
(850) 681-6788

and

BRIAN P. ARMSTRONG, SENIOR VICE PRESIDENT AND
GENERAL COUNSEL
MATTHEW J. FEIL, ESQ.
Florida Water Services Corporation
P. O. Box 609520
Orlando, Florida 32860-9520
(407) 880-0058

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U. S. Mail to the following on this 1st day of March, 1999:

Lila Jaber, Esq.
Division of Legal Services
2540 Shumard Oak Boulevard
Gerald L. Gunter Building
Room 370
Tallahassee, FL 32399-0850

Ms. Anne Broadbent
President
Sugarmill Woods Civic Asso.
91 Cypress Blvd., West
Homosassa, FL 34446

Charles J. Beck, Esq.
Office of Public Counsel
111 W. Madison Street
Room 812
Tallahassee, FL 32399-1400

Arthur I. Jacobs, Esq.
P. O. Box 1110
Fernandina Beach, FL
32305-1110

Michael B. Twomey, Esq.
P. O. Box 5256
Tallahassee, FL 32314-5256

Mr. Frank Kane
1208 E. Third Street
Lehigh Acres, FL 33936

Joseph A. McGlothlin, Esq.
Vicki Gordon Kaufman, Esq.
117 S. Gadsden Street
Tallahassee, FL 32301

John R. Jenkins, Esq.
Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, FL 32301

Mr. Paul Mauer, President
Harbour Woods Civic Association
11364 Woodsong Loop N
Jacksonville, FL 32225

Darol H.N. Carr, Esq.
David Holmes, Esq.
Farr, Farr, Emerich,
Sifrit, Hackett & Carr,
P.A.

Larry M. Haag, Esq.
111 West Main Street
Suite #B
Inverness, FL 34450

2315 Aaron Street
P. O. Drawer 2159
Port Charlotte, FL 33949

Charles G. Stephens, Esq.
1400 Prudential Drive, Suite 4
Jacksonville, FL 32207

Frederick C. Kramer, Esq.
Suite 201
950 North Collier Boulevard
Marco Island, FL 34145

By: *Kenneth A. Hoffman*
KENNETH A. HOFFMAN, ESQ.

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