

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Certificate to)
provide water service in Volusia)
and Brevard Counties by Farmton)
Water Resources, LLC)

Docket No. 021256-WU

**FARMTON'S' MOTION TO STRIKE
PREFILED DIRECT TESTIMONY**

FARMTON WATER RESOURCES, LLC ("Farmton"), by and through its undersigned attorneys, hereby files this Motion to Strike Titusville's Prefiled Direct Testimony filed April 20, 2004, and would state and allege as follows:

1. On April 20, 2004, the City of Titusville filed its Notice of Filing Prefiled Direct Testimony. The Order Establishing Procedure in this case, issued on March 18, 2003, specifically provided that Intervenor's Direct Testimony and Exhibits were due on August 22, 2003. Although the case has been continued since that date, and a subsequent Order Establishing Procedure issued on September 18, 2003, neither of those events affected the due date for the City of Titusville's testimony. There is no subsequent date provided in either Order Establishing Procedure which would allow Titusville to file testimony on April 20, 2004.

2. The City of Titusville's testimony, although it is labeled "direct", was actually filed after the date for the filing of Farmton's rebuttal in this case. Farmton has conducted its activities, including the sequence, timing and context of discovery, and the content of its rebuttal testimony, based upon its fair, reasoned, and reasonable assumption that no more testimony would be filed, particularly "direct" testimony. Farmton has no opportunity, and seeks no opportunity by this filing, to respond to such testimony.

3. It is impossible to know whether Farmton would have prepared its case in the same form or fashion had this testimony been filed in a timely manner over seven and a half months ago.

DOCUMENT NUMBER-DATE

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To allow the filing of the testimony now at the 11th hour in this litigation is disruptive, contrary to the Order Establishing Procedure, and a defacto violation of Farmton's due process rights. Farmton intentionally conducted its activities such that it would not be filing additional testimony, doing additional depositions, sending additional discovery, or engaging in additional strategizing involving its counsel and witnesses, at this late date. If Titusville's testimony is allowed, Farmton will be forced to engage in all of those activities despite its best efforts to avoid such last minute confusion and diversion of limited resources to "new" testimony or issues.

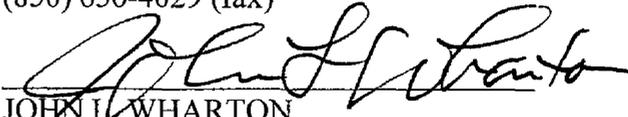
4. The Order Establishing Procedure requires that testimony and exhibits "shall" be prefiled with the Commission by the "date due". Obviously, Titusville's testimony fails to meet this clear and unambiguous requirement of the Order Establishing Procedure.

5. Titusville's testimony should be stricken. To allow the testimony now would require reactive testimony from Farmton (and possibly the Staff) and additional discovery, motion practice, exhibits, etc. The Order Establishing Procedure is clear that a party such a Titusville should not be filing direct testimony after the due date for the same, much less after the filing of rebuttal by the applicant.

WHEREFORE, and in consideration of the above, Farmton respectfully requests that the Prefiled Direct Testimony of Patrick Barnes filed by Titusville on April 20, 2004 be stricken.

Respectfully submitted on this 3rd day of May, 2004, by:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via Facsimile and U.S. Mail this 3rd day of May, 2004, to:

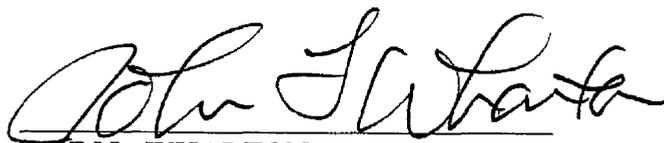
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