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December 22, 1997

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

HAND DELIVERY

Re: Docket No. 920199-WS

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Florida Water Services Corporation ("Florida Water") are the original and fifteen copies of Florida Water's Response in Opposition to Motion to Strike FWSC's Pleadings concerning Surcharge, to Disqualify Attorney Retained by FWSC and for Sanctions.

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

CAF _____ Thank you for your assistance with this filing.
CMU _____

Sincerely,


Kenneth A. Hoffman

OPC _____ KAH/rl
RCH _____

SEC 1 Enclosures

cc: All Parties of Record
Trib.3

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attorneys are moot now that the Commission voted on December 15, 1997 on all issues concerning potential refunds and surcharges following the remand from the decision in Southern States Utilities, Inc. v. Florida Public Service Commission, 22 Fla.L.Weekly D1492, Fla. 1st DCA, June 17, 1997.

2. Intervenors allege that Florida Water has taken an inconsistent position by urging the Commission to decline to order refunds and surcharges. The Intervenors, once again, misstate the facts. Dating back to November 23, 1993, at the agenda conference on Florida Water's motion to vacate the automatic stay, Florida Water advised the Commission that Florida Water was not putting itself at risk to make refunds to customers whose rates were higher under uniform rates in the event the uniform rates were reversed, and further, that there was no risk to Florida Water because the anticipated rate structure appeal was strictly revenue neutral to Florida Water. Florida Water reiterated the same position in its November 3, 1995 Motion for Reconsideration of Order No. PSC-95-1292-FOF-WS requesting that the Commission rescind any refund requirement and - - if and only if refunds were required - - that Florida Water be authorized to collect commensurate surcharges so that Florida Water's Commission and court approved final revenue requirement would not be impaired. Florida Water took the same position throughout the remainder of this proceeding and reflected such position in its brief on reconsideration of Order No. PSC-95-1292-FOF-WS filed on April 1, 1996; in its briefs and oral argument before the First District Court of Appeal in the Southern States

appeal; and, in its November 5, 1997 brief addressing potential refunds and surcharges. Florida Water's position has been consistent since the issue of potential refunds first arose over four years ago. Many of these Intervenors and certainly their counsel have participated in every step of this proceeding and are fully aware of Florida Water's oft-repeated, consistent position. Intervenors' last minute allegation of an inconsistent position is a sham and totally without merit.

3. Although Florida Water has taken the same position over the last four years before the Commission and the First District Court of Appeal that no refunds should be ordered and that any refunds must be accompanied by commensurate surcharges, Intervenors now allege, some four years after Florida Water's position was initially taken, that Florida Water has no stake in the potential refund and surcharge issues.¹ Having sat on this position for over four years, Intervenors have clearly waived any right to object to Florida Water's standing to participate on refund and surcharge issues in this proceeding.

4. Apart from the fact that Intervenors have waived such a position by failing to assert same over the course of the last four years, Florida Water clearly is substantially affected by the potential refund and surcharge issues in this proceeding. Prior to the Commission ruling on December 15 that there shall be no collection of surcharges and no payment of refunds (with the exception of refunds for Spring Hill customers for the period of

¹Intervenors' Motion, at ¶3.

January 23, 1996 through June 14, 1997), Florida Water's substantial interests were affected by any mechanism which could have been but was not ordered by the Commission for payment of refunds and any mechanism which could have been but was not ordered by the Commission for collection of surcharges. Implementation of any one of the various options for payment of potential refunds and surcharges entailed a whole host of issues raised by the Intervenors themselves (i.e., the suggestion that Florida Water secure significant loans for immediate repayment of refunds), by Florida Water in its November 5, 1997 brief and by the Commission staff on pages 56-58 of its December 4, 1997 staff recommendation.

5. Finally, Intervenors seek disqualification of Florida Water's attorneys. Disqualification of counsel is an extraordinary remedy and should be resorted to sparingly. Norton v. Tallahassee Memorial Hospital, 689 Fed.2d 938 (11th Cir. 1982). The test for disqualification of counsel was set forth by the First District Court of Appeal in Junger Utility & Paving Co., Inc. v. Myers, 578 So.2d 1117, 1119 (Fla. 1st DCA 1989), where the court held:

To disqualify a private law firm from representing a party whose interests are adverse, the former client need show only that an attorney-client relationship existed... and that the matter in which the law firm subsequently represented the interest adverse to the former client is the same matter or substantially similar to the matter in which it represented the former client.²

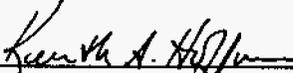
²See also, State Farm Mut. Auto. Ins. Co. v. K.A.W., 575 So.2d 630, 633-634 (Fla. 1991); University of Miami v. Dansky, 622 So.2d 613, 614 (Fla. 1st DCA 1993).

6. Intervenors have failed to even allege the requisite allegations for disqualification of Florida Water's counsel. As Intervenors's counsel, the Commission staff and the Commission are aware, counsel for Florida Water have represented only Florida Water since the initiation of this docket. Florida Water's counsel have never represented any of the Intervenors in this docket or in any other matter.

7. In addition, a request to disqualify counsel should be made with reasonable promptness after the moving party discovers the facts which purport to support the motion. Transmark U.S.A. v. Department of Insurance, 631 So.2d 1112, 1116 (Fla. 1st DCA 1994). Intervenors waited over four years to file their frivolous motion to disqualify counsel. Clearly, Intervenors hoped that by filing their motion on the day of the special agenda conference concerning the refund and surcharge issues, Intervenors would distract the Commission from the merits of the potential refund and surcharge issues. Intervenors' tactics failed. In any event, by sitting on their allegations purporting to support disqualification for over four years, Intervenors clearly waived any right to seek disqualification of Florida Water's counsel.

WHEREFORE, Florida Water respectfully requests that the Commission deny Intervenors' motion to strike Florida Water's pleadings concerning surcharge, disqualify attorney retained by Florida Water, and for sanctions.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail this 22nd day of December, 1997 to the following:

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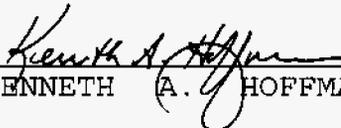
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