



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: February 18, 2000
TO: Division of Records and Reporting
FROM: Division of Water and Wastewater (Lingo) *HL*
RE: Docket No. 970409-SU, Initiation of limited proceeding to restructure wastewater rates for Florida Water Service Corporation's Tropical Isles service area in St. Lucie County

Please file the attached document in the above-referenced docket file. Thank you.

\FJL
 Attch: 2/09/2000 letter from FWSC/Feil to WAW/Lingo
 cc w/o Attch: Division of Water and Wastewater (Rieger)
 Division of Legal Services (Gervasi, Fudge)

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Florida Public Service Commission
Division of Water and Wastewater

February 9, 2000

Sent by fax & U.S. Mail

Jenny Lingo
Florida Public Service Commission
Water & Wastewater Division
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0865

Re: Docket No. 970409-SU -- Investigation into Appropriate Wastewater Rates for the Tropical Isles Facility of Southern States Utilities, Inc., in St. Lucie County

Dear Ms. Lingo:

In accordance with the request you made when we spoke on February 4, 2000, I write to briefly outline the reasons Florida Water Services Corporation ("Florida Water") opposes the changes which staff proposes to the Commission-approved Tropical Isle revenue requirement and, in particular, staff's proposed adjustment to impute contributions-in-aid-of-construction (CIAC).

I first note that staff unilaterally decided to expand the scope of this docket without the consent of Florida Water or authorization of the Commission. At the conclusion of Docket No. 950495-WS, the scope of the instant docket, as directed by the Commission's order, was to examine the viability of restructuring the Tropical Isle rates and/or establishing a vacation rate. Florida Water objects to the staff's attempt to expand scope of the docket when the Commission's final order in Docket No. 950495-WS identified the issues to be considered in this docket. None of the revenue requirement issues staff now wants reviewed were reconsidered or appealed by the parties or staff in the prior docket. It is unfair for the utility to have to re-litigate these issues in this proceeding when the Commission never intended this docket for that purpose.

As a matter of principle, Florida Water maintains that it would be dubious for the Commission to pick and choose single system revenue components and target those components for adjustment particularly when there is no overearning on a system or company basis. (Florida Water's position here is consistent with the position which it took on the issue of whether the Commission should force utilities to implement pass-through decreases.) Furthermore, the action staff contemplates here is made even more

offensive since, on the used and useful issue in particular, staff would make adjustments based on information outside the test year utilized in the rate case.

Florida Water is also concerned that any of the contemplated adjustments to the approved Tropical Isle revenue requirement calls into question the integrity of the settlement approved by the Commission in Docket No. 950495-WS. Though the Commission did not agree to refrain from initiating rate proceedings, Florida Water's three-year commitment to refrain from rate proceedings is contingent upon the Commission's initiating none. If the Commission accepts staff's proposal to adjust the Tropical Isle approved revenue requirement, Florida Water believes such action may be viewed as the Commission's initiating a rate proceeding, and, thus, be of far greater impact than just as to the Tropical Isle service area.

As to staff's proposed imputation of CIAC specifically, Florida Water maintains that, aside from the above reasons, such an adjustment would be improper under the law. As I understand the proposed adjustment, staff posits that the Commission made a mistake when it approved a grandfather certificate for the system without also approving service availability charges. Staff does not correctly apply the law pertaining to mistakes and administrative finality. Staff does not establish that a legitimate mistake of fact was made or by whom it was made when the grandfather certificate was granted. New rates and charges are not always approved when a grandfather certificate is issued. Staff second guesses the Commission's grandfather order and relies upon hypotheticals (that service availability charges of a certain level **could have been** approved, implemented, and collected) to amend a perceived inconsistency in the number of lots in the development that could be served. A legitimate mistake of fact may not be corrected if the time passed and circumstances are such that the order at issue can fairly be said to have passed beyond the agency's control. Florida Water maintains that even if there was a mistake here, the circumstances render it inappropriate to meddle with the grandfather order in the way staff proposes.

If you have any question regarding the above, please call me at (407) 598-4152.

Sincerely,

A handwritten signature in black ink that reads "Matthew Feil". The signature is written in a cursive, flowing style.

Matthew Feil, Esq.
Staff Attorney