BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of the Board of County Commissioners of Collier County, Florida, for Declaratory Statement Regarding the Florida Public Service Commission's Entitlement to Regulatory Assessment Fees Collected By Southern States Utilities, Inc. in Collier County, Florida, After February 27, 1996	DOCKET NO. 960806 FILED: August 12, 1996

RESPONSE OF THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA, IN OPPOSITION TO SOUTHERN STATES UTILITIES, INC.'S PETITION TO INTERVENE

The Board of County Commissioners of Collier County, Florida, ("Collier County") by and through their undersigned counsel, files its response in opposition to Southern States Utilities, Inc.'s ("SSU") July 29, 1996 Petition to Intervene in the instant proceeding. In support thereof, Collier County states:

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Summary of Position

1. This is a question of "standing." Declaratory statements serve the limited function of resolving a controversy or answering questions or doubts concerning the applicability of a statutory provision, rule or order as it applies, or may apply, to the "petitioner in his or her particular circumstances only." To intervene in a declaratory statement proceeding, or any administrative action, a person must show he has the standing to do so by demonstrating a "substantial interest in the proceeding." Narrowly drawn petitions for declaratory statements generally do not implicate the substantial interests of other persons and, therefore, usually preclude the intervention of others. The existence of a substantial interests to warrant intervention, and, thus, a Section 120.57, F.S. hearing, are measured by the Agrico Chemical[1]

[1] Agrico Chemical Co. V. Department of Envtl. Regulation, 406 So.2d 1112 (Fla. 2d DCA 1981)

requires both: (1) "injury-in-fact" and (2) "zone of interest." SSU, which cannot legally retain the regulatory assessment fees it is collecting in Collier County, has failed to meet either the legitimate "injury-in-fact" or "zone of interest" test and, thus, has failed to demonstrate the essential "substantial interest" required for intervention. Accordingly, SSU has no legal "standing" to participate in this proceeding and allowing it party status would constitute error on the Commission's part.

SSU Lacks The Party Status Necessary To "Respond" or "Answer"

2. In addition to its Petition to Intervene, SSU has filed a lengthy document it has styled its "Response and Answer." Rule 25-22.037(1), Florida Administrative Code, provides that "a respondent or intervenor may file an answer within twenty (20) days of service of the petition." It is Collier County's position that SSU is neither an "original party" respondent to the instant proceeding nor an "intervenor" and, thus, is not entitled to file a response or answer. Nonetheless, Collier County will address the assertions contained in SSU's Response and Answer, at least as they appear to argue for the existence of a "substantially affected interest."

SSU's Petition Fails To Assert A Recognizable "Substantial Interest"

3. The mere desire to thwart[2] a petitioner's attempt to remove doubt or answer

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[2] Collier County does not believe SSU's petition represents a good faith intervention. As reflected in the Attached Affidavit of D.E. "Blue" Wallace, SSU, to date, has collected some $230,000 in regulatory assessment fees from its customers in Collier County since the County's resumption of regulatory authority on February 27, 1996. Collier County has undertaken timely and commensurate action to fulfill its regulatory responsibilities by establishing and manning the Office of Utility Regulation. The issue of whether this Commission or Collier County has the ultimate jurisdiction to regulate SSU's operations in Collier County is the subject of a separate docket, which is awaiting resolution on appeal. Attempting to relitigate the "jurisdictional" issues in this proceeding is inappropriate. By refusing to remit the regulatory assessment fees, SSU achieves two, rather obvious, self-serving purposes: (1) it forces Collier County to utilize alternative funding sources to finance SSU's regulation and (2) it gives itself a large, interest free

unresolved questions in a declaratory statement proceeding, or to otherwise participate in any administrative proceeding, is not a legally sufficient basis for allowing a person "party" status. Participation in administrative proceedings as a "party" is governed by the Section 120.52(12), F.S. definitions of that term and the case law. Lacking a constitutional right, provision of statute, or provision of agency regulation entitling it to participate in whole or in part in this proceeding, SSU must demonstrate that it has a substantial interest that will be affected by the relief requested by Collier County before this Commission can allow SSU to participate as a party. As will be shown below, the test of demonstrating a substantial interest is akin to running a high hurdle race with two rather tall hurdles, both of which must be cleared. SSU can clear neither hurdle and, accordingly, must be denied intervention.

4. As noted by SSU, Florida Optometric v. Dept. of Pro. Reg., 567 So.2d 928 (Fla. 1st DCA 1990) states that the test for standing to intervene in agency declaratory statement proceedings is the same as the test for standing in all other proceedings involving agency actions affecting substantial interests. An important caveat in Florida Optometric, not stated by SSU, is the First District's observation that other persons' substantial interests are not generally involved in declaratory statement proceedings and, thus, that intervention in these cases is usually not appropriate. Specifically, the Court observed:

> In McDonald v. Department of Banking and Finance, 346 So.2d 569, 577 (Fla. 1st DCA 1977), we said,
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> > Except when an agency acts by formal rulemaking (Section 120.54) or by declaratory statement concerning the applicability of a statute, rule or order (Section 120.565), all agency action, on appropriate challenge, will mature into an order impressed with characteristics

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loan in the process.

of the APA's Section 120.57.

> McDonald, 346 So.2d at 577 (emphasis supplied). This language, which is followed by a discussion of the right of persons whose substantial interests are affected by agency action to a 120.57 hearing, means that Section 120.57 is generally not implicated in proceedings under Section 120.565. When a petition for declaratory statement is limited to a narrow question "as to the applicability of a specified statutory provision or of any rule or order of the agency as it applies to the petitioner in his particular set of circumstances only," Section 120.565 (emphasis supplied), there will normally be no person, other than the petitioner, who will be affected by the declaratory statement. Since a person who submits such a petition has no right to a 120.57 hearing on his petition, and since no one other than the petitioner will normally be affected by the declaratory statement, Section 120.57 is simply not applicable. However, where the question presented by the petition is not narrowly drawn, the substantial interests of other parties may be implicated. In the present case, the question presented clearly had the potential for affecting the substantial interests of persons other than the petitioners, and those persons were entitled to a clear point of entry to proceedings under Section 120.57. Therefore, it was the expansive nature of the question presented in the petition for the declaratory statement under review which made Section 120.57 and Rule 28-5.111 applicable.

Florida Optometric 567 So.2d at 936. It follows, then, that the question raised by the petition for declaratory statement must be examined to determine whether it is narrowly drawn to the petitioner's particular set of circumstances only, or whether it is so broadly drawn as to implicate the substantial interests of other persons. Collier County submits it is the former.

The Collier County Request is Narrowly Drawn

5. The specific relief sought by Collier County states:

> WHEREFORE, the Board of County Commissioners of Collier County, Florida, respectfully requests that the Florida Public Service Commission issue its declaratory statement in this docket stating: 1) that pursuant to Order No. PSC-96-0582-FOF-WS, Order Acknowledging Rescission of Commission Jurisdiction and Establishing Procedure For Cancellation of Certificates in Collier County, dated May 3, 1996 and Section 350.113, Florida Statutes, it has no entitlement to, nor will it make any claim against, regulatory assessment fees collected by Southern States Utilities, Inc. from its customers located in Collier County, Florida, for the period from February 28, 1996 until the date of any appellate

> decision in Docket No. 930945-WS favoring the resumption of Commission jurisdiction in Collier County; and 2) that the Commission's entitlement to regulatory fees collected by SSU in Collier County as the result of a favorable appellate decision in Docket No. 930945-WS will only be owing pro rata during the appropriate 6-month regulatory assessment period beginning on the date the issue of the Commission's jurisdiction over SSU's systems in Collier County is finally resolved.

Collier County Petition at page 8. On its face, the question presented by Collier County is extremely narrow. It confines itself to questions and doubts raised by a single order of the Commission and a single statutory provision. The order memorializes the Commission's acknowledgment of a single county's (Collier County's) action in removing itself from the provisions of Chapter 367, F.S. The question does not broadly seek a response regarding the status of any other statutory provision, orders, or any other counties' actions. While the cited Commission order addresses the jurisdictional status of some seven water/wastewater utilities located in Collier County, the question presented here is narrowly confined to the Commission's entitlement, if any, to regulatory assessment fees from a single utility, SSU. In the words of the Florida Optometric Court, this petition is limited because it addresses the narrow question of the applicability of a specified statutory provision (Section 350.113, the Commission's authority for collecting regulatory assessment fees) and a single order as applied to the Commission's entitlement to those fees in a single county. Accordingly, the question is not broad in scope and does not, in any sense, implicate the substantial interests of persons other than Collier County and this Commission itself.

SSU's Petition Does Not Meet the Agrico Chemical Test For Intervention

6. As noted by the Florida Optometric Court:

> A two-part test is applied in evaluating whether a person has alleged a "substantial

interest" sufficient to entitle such person to initiate a 120.57 proceeding or intervene in proceedings already pending. [footnote omitted]. The person must allege:

> (1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a section 120.57 hearing, and
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> (2) that his substantial injury is of a type or nature which the proceeding is designed to protect.

Florida Optometric 567 So.2d at 931, 932. This test was first announced in the seminal case of Agrico Chemical Co. V. Department of Envtl. Regulation, 406 So.2d 1112 (Fla. 2d DCA 1981), in which the Department of Environmental Regulation ("DEP") was reversed for improperly granting economic competitors intervenor status in a permitting proceeding. The resulting standard is that a person seeking the initiation of a 120.57 proceeding or intervention in a pending case must meet both prongs of Agrico Chemical. SSU has failed to meet either.

It is Reversible Error to Allow Intervention Where No Standing Is Shown

7. The facts in Agrico Chemical are instructive. Agrico Chemical Company ("Agrico") sought to lower the costs of its fertilizer operations in Tampa by switching from a process that utilized molten sulphur to one using less expensive, solid state "prill" sulphur. In connection with its construction of a prill handling terminal facility, Agrico filed applications with the DEP for both construction and operating permits. The permits were necessitated under Chapter 403, Florida Statutes, because the new terminal would constitute a potential pollution source. Two molten sulphur handling terminals objected to the permits and sought intervention in the proceedings on the basis of economic injury. The DOAH hearing officer granted the interventions on three grounds, including the adverse economic impact, and recommended denial

of one of the permits. The DEP denied the permit it its final order and the order was affirmed by the Commission of Environmental Regulation.

8. On appeal, the Second District Court of Appeal reversed and established the following test:

> . . . We believe that before one can be considered to have a substantial interest in the outcome of the proceeding he must show 1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a section 120.57 hearing, and 2) that his substantial injury is of a type or nature which the proceeding is designed to protect. The first aspect of the test deals with the degree of injury. The second deals with the nature of the injury.

Agrico Chemical 406 So. 2d at 481. The Court found that the petitioning terminal operators seeking intervention were able to "show a high degree of potential economic injury", but that they "were wholly unable to show that the nature of the injury was one under the protection of chapter 403." More specifically, the Court found:

> Chapter 403 simply was not meant to redress or prevent injuries to a competitor's profit and loss statement. Third-party protestants in a chapter 403 permitting procedure who seek standing must frame their petition for a section 120.57 formal hearing in terms which clearly show injury in fact to interests protected by chapter 403. If their standing is challenged in that hearing by the permit applicant and the protestants are then unable to produce evidence to show that their substantial environmental interests will be affected by the permit grant, the agency must deny standing and proceed on the permit directly with the applicant.

Agrico Chemical 406 So. 2d at 481. (Emphasis supplied). Accordingly, the Court found that the DEP had erred in allowing Agrico's economic competitors to intervene in the permit applications and reversed on "the ground that Agrico's business competitors were erroneously granted standing to interfere in DER's permitting procedure."

9. By contrast, Florida Optometric, supra., cited by SSU, demonstrates a factual and legal basis for a finding of substantial interests warranting intervention. In that case the Board of

Opticianry considered the petition for declaratory statement of an optician and opticians' professional organization asking whether opticians were permitted to use a Titmus Eye Tester to check a consumer's visual acuity. The question was asked in acknowledgment that Chapter 484, Florida Statutes, provided that it was unlawful, among other things, for opticians to "engage in the diagnosis of the human eyes." Ultimately, the optometrists filed a petition to intervene in the declaratory statement proceeding and asked for a Section 120.57(1) hearing alleging that their substantial interests would be determined by an affirmative answer to the opticians' question. Specifically, the optometrists argued that use of the Titmus Eye Tester would allow a determination of the refractive power of the human eyes, a determination within the scope of practice of optometrists, but specifically prohibited for opticians. The Board of Opticianry denied the optometrists' petition to intervene, finding, among other things, that the optometrists lacked standing. On appeal, the First District Court of Appeal reversed, finding that the optometrists had met the "zone of interest" prong of Agrico Chemical because they had "asserted an invasion of a statutorily delineated, exclusive area of practice" in connection with the resolution of the opticians' petition for declaratory statement. Specifically, the Court found that an affirmative response by the Board of Opticianry to the petition would have presumptively allowed the opticians to engage in a procedure statutorily prohibited to them and statutorily reserved to the optometrists.

SSU has failed to allege either "injury-in-fact" or "zone of interest"

10. At pages 8-10 of its Petition, SSU alleges it will face injury because (1) its state-wide system will be subject to the authority of more than one regulator, contrary to the Legislative intent of Section 367.171(7), Commission precedent, and the Jurisdictional Order; (2)

it will be subject to the authority of more than one regulator as to matters impacting its Collier County operations alone; and (3) it will owe regulatory assessment fees to this Commission and Collier County when both fees are designed to cover the same costs for the same period of time, but are due on different dates. None of these points address either prong of the Agrico Chemical test for establishing a substantial interest.

11. First, SSU has failed to establish any "injury-in-fact" that is not already the subject of other, distinct proceedings. Thus, while SSU discussed at some length its concern over not having the Commission exclusively regulate its so-called "state-wide" system, that question is removed from the Commission's jurisdiction and is properly before the First District Court of Appeal, which will make the determination whether counties can regulate or this Commission has exclusive jurisdiction over SSU's facilities throughout the state. Collier County thought it unquestioned that this Commission recognized the status quo as being in favor of county regulation through its actions in acknowledging Collier County's resumption of authority and, more importantly, by this Commission's act of removing SSU's facilities in Hillsborough, Polk and Hernando Counties from the pending rate case in Docket No. 950495-WS. Collier County's petition recognizes the Commission's determination in the Jurisdictional case, acknowledges that the result on appeal could take two dramatically different directions, and asks that the Commission remove doubt as to its entitlement to certain fees during the pendency of the appeal, pursuant to Section 350.113, Florida Statutes, dealing specifically with regulatory fees and the Commission's Trust Fund. In this regard, SSU has alleged no "injury-in-fact." Assuming the First District affirms the Commission's Jurisdictional Order, SSU has already "won" the issue on statewide regulation and relitigating here is not only inappropriate, but inefficient as well. SSU is

clearly not entitled to retain any of the regulatory assessment fees it has collected from its customers, and while the utility should legitimately be concerned with having duplicate demands made for those fees, it ignores the fact that this proceeding is aimed at preventing precisely such demands. Furthermore, SSU is a mere purse holder of the regulatory assessment fees and should have no say in who collects the fees, so long as the fees are not demanded of it twice. SSU's stated objections do not allege or demonstrate "injury-in-fact."

12. SSU also fails to meet the second Agrico Chemical prong of "zone of interest." Specifically, SSU's alleged concerns regarding statewide jurisdiction, and the other matters that are the subject of pending appeals, relate, by SSU's own admission, to the "Legislative intent of Section 367.171(7), Commission precedent, and the prior ruling of the Commission concerning SSU in the Order Determining Jurisdiction Over SSU" and not to the limited and specific question raised by Collier County regarding the Commission's claim, or lack thereof, for fees pursuant to Section 350.113, Florida Statutes. SSU cannot be allowed to rewrite Collier County's request so as to create either an "injury-in-fact" or "zone of interest" where neither exists. SSU has failed to demonstrate the necessary substantial interest and its petition for intervention should be denied.

SSU's "Response and Answer"

13. While maintaining that SSU has no party entitlement to either "respond" to or "answer" Collier County's Petition, Collier County offers the following comments to SSU's pleading.

No Ruling On Appellate Rules Requested Or Required

14. Despite SSU's assertions to the contrary, Collier County has not asked the Commission, either explicitly or implicitly, to interpret the applicability of Fla. R. App. P. 9.310(b)

(2) regarding automatic stays. Quite simply, Collier County noted in its Petition this Commission's own recitation in Order No. PSC-96-0582-FOF-WS, Order Acknowledging Rescission of Commission Jurisdiction and Establishing Procedure For Cancellation of Certificates in Collier County, that the Commission would cancel the certificates of the six utilities in Collier County with no "pending" cases, but would delay cancellation of SSU's Collier County certificates pending the outcome of the appeal of Docket No. 930945-WS. In this regard, the Commission ordered that the certificates held by SSU for its systems in Collier County would be returned for cancellation within 30 days of the conclusion of the appeal of Docket No. 930945-WS if the decision was that the Commission did not have jurisdiction over all of SSU's systems and, conversely, that the certificates would not be canceled if the Court determined that the Commission maintained jurisdiction over the SSU systems in Collier County. Collier County has not asked the Commission to interpret the automatic stay or the appellate rule providing for it.

15. The automatic stay of the Commission's final order in Docket No. 930945-WS, In re: Investigation into Florida Public Service Commission Jurisdiction over SOUTHERN STATES UTILITIES, INC. in Florida, (the "Jurisdictional Docket") is an existing fact, not a theory, and the Commission has recognized the same on a number of occasions. Most recently in the Order Acknowledging Rescission of Commission Jurisdiction and Establishing Procedure For Cancellation of Certificates in Collier County, the Commission recognized the need to await the outcome of the appeal in the Jurisdictional Docket prior to taking final action on SSU's Commission certificates in Collier County. Earlier, this Commission recognized the effect of the automatic stay, and the corresponding right of county governments to exercise regulatory authority over SSU's systems or facilities within their boundaries pending resolution of the appeal

in Docket No. 930945-WS, when it recognized that SSU's facilities located in Hillsborough, Hernando and Polk Counties were not subject to the pending rate case in Docket No. 950495-WS.[3] Whether SSU likes it or not, the final order in the Jurisdictional Docket is now stayed and SSU has done nothing to change that fact.

16. Without engaging in excessive debate on the stay issue, Collier County would point out that the final order in the Jurisdictional Docket was issued almost 13 months ago on July 21, 1995, was appealed shortly thereafter by the Counties involved with the result that an automatic stay was obtained. Collier County is not aware, nor does SSU suggest, that SSU sought to have the automatic stay vacated or otherwise modified at that time or since. Furthermore, Collier County is not aware that SSU sought the vacation of the same stay when, in an order issued November 7, 1995 in Docket No. 950495-WS, cited the automatic stay at the basis for removing Hillsborough, Polk and Hernando Counties from that rate proceeding. SSU has not suggested that it will, in fact, seek the vacation or modification of the automatic stay in question. Rather, it merely suggests, without more, that the Commission's resolution of the instant declaratory petition will somehow harm SSU's right to subsequently seek the automatic stay's modification. To this, Collier County would respond that the declaratory petition has no apparent bearing on SSU's ability, or lack of same, to address an automatic stay in an entirely separate appeal and would ask "When does SSU propose to seek such modification when it has not yet done so some 12 months into the appeal?"

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[3] Order No. PSC-95-1385-FOF-WS, issued November 7, 1995 (Attachment G to Collier County Petition.

17. As to the issue of maintaining the true status quo with respect to the automatic stay of the Jurisdictional Docket, SSU completely misses the point that the situation to be preserved is the statutory right of counties to opt-in and out of Chapter 367 pursuant to Section 367.171(1), F.S. and not the Commission's then extant jurisdiction over SSU's operations in Collier County.

18. SSU's suggestion that the Commission answering the instant declaratory petition is somehow prohibited because it would be inconsistent with a position the Commission expressed in a pleading in a General Development Utilities, Inc. case is without supporting citation and is far-fetched, at best. See Regal Kitchens v. Florida Dept. of Revenue, 641 So. 2d 158 (Fla. 1st DCA 1994), stating that a revenue department "technical assistance advisement" is not an expression of policy and, thus, not applicable to the rule that an administrative agency may not reject a widespread policy established by usage or stated by it and relied upon by the public. In the instant case, SSU has not alleged, nor can it, that the position expressed in the GDU pleading is a "widespread policy established by usage or stated by it and relied upon by the public." Even if SSU could make such an argument, it is not at all clear that answering Collier County's declaratory petition would constitute Commission "rejection" of whatever SSU is purporting the Commission stated in the GDU pleading.

19. SSU's statement that Collier County's petition is not ripe for determination has no bearing on SSU's purported substantial interests, is incorrect and is not supported by the citations offered. First, this point like the others discussed above, does not evidence either "injury-in-fact" or "zone of interest" demonstrating SSU's substantial interests. Secondly, Collier County has explicitly stated that it is in doubt about, and wants a Commission statement on, the agency's

claim against regulatory assessment fees being collected in Collier County by SSU. The Collier County request is made in the face of a letter from the Commission's General Counsel stating that, consistent with past practice, the Commission will make no demand for the regulatory assessment fees and SSU's reported assertion that it fears a duplicate demand for the regulatory assessment fees not withstanding the Commission's General Counsel's letter. There is nothing hypothetical about the factual circumstances raised in the declaratory petition. Either the Commission supports the stated position of its General Counsel that it will make no demand for the regulatory assessment fees during the pendency of the Jurisdictional Docket appeal, or it does not. In either event, the fees are presently being collected by SSU, are being demanded by Collier County and not paid, and in the face of a Commission communication that the agency will not make claim against them. Furthermore, it is a reasonable and necessary question for resolution for the Commission to state as of what date it will prospectively make a claim on regulatory assessment fees in the event it wins the Jurisdictional Docket appeal.

20. The two cases cited by SSU for the proposition that the instant declaratory statement is not ripe are both readily distinguishable on their facts and are, arguably, misleading to the Commission. The first, Sutton v. Department of Envtl. Protection, 654 So.2d 1047 (Fla. 5th DCA 1995), involved Sutton seeking a declaratory statement as to whether the submerged lands her neighbor had built a dock on were sovereign submerged lands of the State of Florida, which would require the neighbor to follow the appropriate DEP permitting processes and obtain a DEP consent of use for the dock. The DEP issued a final order dismissing Sutton's petition for declaratory statement, but notified the neighbor that the lands were being claimed as sovereign submerged lands and forced her to comply with the relevant statutory and DEP rule provisions to

obtain the consent of use. The Fifth District Court of Appeal found Sutton's petition for declaratory statement was moot since the DEP's notice gave her the relief she had been requesting. Here, unlike Sutton, there is no resolution, in any forum, telling Collier County what formal position the Commission takes with respect to the regulatory assessment fees so that Collier County's Petition could be considered moot.

21. SSU's second cited case, Couch v. State, 377 So.2d 32, (Fla. 1st DCA 1979) is similarly deficient. There, the parents of a child placed in foster care, prior to the filing of their petition for declaratory statement with the Department of Health and Rehabilitative Services ("HRS"), had commenced litigation in the Circuit Court concerning their rights to visitation with the child. The Circuit Court litigation remained pending throughout the filing and appeal of the petition for declaratory statement. In affirming the HRS's refusal to issue a declaratory statement, the First District found: (1) the petition contained no showing of bona fide doubt or dispute as to the HRS's activities incapable of resolution in the Circuit Court; (2) that the petitioners admitted that the Circuit Court had the power to finally determine the issues presented to the HRS in the petition for declaratory statement; and (3) it was not shown that any matter on which the HRS had been requested to provide a statement would resolve any issues concerning the petitioners' rights to family affiliation, visitation, or their claim of the right to be reunited with their child. In view of these findings, the Court found that the "deficiencies in the petition, coupled with petitioners' admission of the adequacy of the pending litigation are sufficient to preclude their request for a statement." The Court so found, in view of the principle that there had to be an actual, present and practical need for a declaratory statement, which need had not been met. Such is obviously not the case here. Collier County has stated bona fide issues of doubt or dispute

requiring resolution by the Commission. Furthermore, there is no pending litigation that will resolve the specific question that is now at issue, namely, whether the Commission is now, or will later, make a claim against the regulatory assessment fees SSU is collecting from its customers in Collier County. While resolution of the appeal in the Jurisdictional Docket will determine which body is to have jurisdiction over SSU's systems or facilities in Collier, and the other counties, on a prospective basis, it will not establish entitlement to the regulatory assessment fees collected by SSU during the pendency of the appeal.[4] Collier County's petition for declaratory statement is ripe and requires resolution to remove the doubts and unresolved questions contained therein. SSU's cited cases are not on point.

22. SSU has no standing to complain of the "flaws" it finds in Collier County's Petition. While it appears that the color of the ink on the affidavit of Thomas Palmer may have lead to the signatures not reproducing correctly on copies, the original on file with the Commission's Division of Records and Reporting bears the necessary signatures. SSU was not entitled to service of the petition for declaratory statement and received a copy as a courtesy.

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[4] Entitlement to the regulatory assessment fees has important and immediate practical consequences to Collier County. As reflected in the attached affidavit (Appendix I) of D.E. "Bleu" Wallace, Utility Regulation Coordinator of the Collier County Office of Utility Regulation, based on SSU's current rates, projected regulatory assessment fees due to Collier County from SSU are about $550,000 annually or some $46,000 per month. As of the date of his affidavit, Wallace calculated that SSU had collected from its customers some $230,000 of regulatory assessment fees, exclusive of interest, which it had retained for its own purposes and refused to remit to Collier County. Furthermore, as reflected in his Affidavit, Wallace stated that Collier County had established and manned the Office of Utility Regulation as reflected in Attachment B to his Affidavit.

Point of Entry

23. Notwithstanding that SSU has never previously demanded a "point of entry" with respect to the Commission's "agency action" in its Order Acknowledging Rescission of Jurisdiction, the utility now argues that neither Collier County nor the Commission can place any reliance on said order as being dispositive of any issues concerning SSU. In doing so, SSU either ignores or is ignorant of the process by which Florida Counties become subject to the provision of Chapter 367, F.S. It is Collier County's position that SSU has no basis for complaining that it was denied a point of entry into the proceeding in which the PSC recognized or acknowledged that Collier County had rescinded its earlier resolution granting the PSC authority to regulate utilities in Collier County. This is because the clear and unambiguous language of the Section 367.171(1), F.S. gave Collier County the unrestricted authority to revoke its earlier grant of authority after 10 continuous years of Commission jurisdiction by passage of its resolution. No Florida Statute required that Collier County seek the PSC's approval for the same. To the contrary, the act of "opting out" was within the sole discretion of the Collier County Board of County Commissioners. Section 367.171(1), F.S. merely requires that counties "opting out" of PSC jurisdiction "by resolution or ordinance rescind any prior resolution or ordinance imposing commission jurisdiction and thereby exclude itself from the provisions of [Chapter 367]." While Section 367.171(1) requires a county to "immediately notify the commission of its adoption and submit the resolution to the commission" when it is "opting-in" to Commission jurisdiction, there is no corresponding statutory requirement that a county opting out of Commission jurisdiction either notify the Commission of the new resolution or submit a copy of the resolution to the Commission. Of course, common courtesy and governmental efficiency dictate that counties

likewise notify the Commission of their resolutions excluding themselves from the provisions of Chapter 367, F.S., which is precisely what Collier County did in the instant case.

24. Collier County believes it is also instructive that both a county's acceptance of the provisions of Chapter 367 (and "jurisdictional" status) and its exclusion from such status are self-executing by the act of a county's governing board. Simply stated, the statute provides that Commission jurisdiction begins "on the day" of the resolution declaring the county subject to Chapter 367 and ends as of the date of the county resolution rescinding the earlier resolution. Section 367.171(2)(b) speaks in terms of "on the day this chapter becomes applicable to any county" without reference to any date differing from the resolution date. Likewise, Section 367.171(4) refers to the last day of commission jurisdiction in a county being "as of the day a utility is no longer regulated by the commission under this chapter" and does so without any reference to a date different than the date of the resolution excluding itself from the provisions of Chapter 367. In short, there is no statutory obligation or authority that either requires, or allows, this Commission to deliberate whether to accept jurisdiction over a county's water or wastewater utilities, or whether to give up that authority. This Commission's sole statutory obligation in these matters appears to be a determination that the "10 continuous years under the jurisdiction of the commission" requirement has been met. In any event, the Commission's practice of recognizing or acknowledging a county's change of jurisdictional status pursuant to Section 367.171(1), F.S. through the issuance of an order appears to be one of historical practice, but unrelated to any statutory requirement for doing so. Such orders do not constitute "agency action" by the Commission because the Commission has no decisional process to exercise. Accordingly, SSU was entitled to no "point of entry."

The Collier County Question Is Not A Question
of General Applicability Properly Addressed Only by Rule

25. The "narrowness" of Collier County's requested question is also highly dispositive of whether the question can be resolved in a declaratory petition proceeding or is a "question of general applicability" that must be considered in a Section 120.54, F.S. formal rulemaking proceeding. The Florida Optometric Court also addressed this concept, noting that "declaratory statements may not be used as a shortcut method of announcing a rule, thereby avoiding the rule adoption procedures of Section 120.54, Florida Statutes." While the Court found the question moot in Florida Optometric, it noted that the optometrists' claim of rule avoidance may have had merit because the question there was "limited to neither a particular petitioner, nor a particular set of circumstances." Despite finding the question moot, the Court stated:

> We do observe, however, that declaratory statements and rules serve clearly distinct functions under the scheme of Chapter 120. Although the line between the two is not always clear, it should be remembered that declaratory statements are not to be used as a vehicle for the adoption of broad agency policies. Nor should they be used to provide interpretations of statutes, rules or orders which are applicable to an entire class of persons. Declaratory statements should only be granted where the petition has clearly set forth specific facts and circumstances which show that the question presented relates only to the petitioner and his particular set of circumstances. Thus, petitions which provide only a cursory factual recitation or which use broad, undefined terms, such as "vision screening equipment" and "visual acuity," should be carefully scrutinized. Similarly, petitions by associations rather than individuals, should be inherently suspect. When an agency is called upon to issue a declaratory statement in response to a question which is not limited to specific facts and a specific petitioner, and which would require a response of such a general and consistent nature as to meet the definition of a rule, the agency should either decline to issue the statement or comply with the provisions of Section 120.54 governing rulemaking.

Again, the instant Petition involves an individual petitioner, not an association or entire class of persons. The instant Petition also clearly sets forth specific facts and circumstances showing the

question is related only to Collier County and its particular set of circumstances, and does not provide only a cursory factual recitation or use broad, undefined terms. Clearly, the Collier County Petition is not a shortcut method to avoid a rulemaking by this Commission. See Department of Professional Regulation, Bd. Of professional Engineers v. Florida Soc'y of Professional Land Surveyors, 475 So.2d 939 (Fla. 1st DCA 1985); Mental Health Dist. Bd., II-B v. Florida Dep't of Health and Rehabilitative Servs., 425 So.2d 160 (Fla. 1st DCA 1983); Department of Admin. v. Harvey, 356 So. 2d 323 (Fla. 1st DCA 1977) and Price Wise Buying Group v. Nuzum, 343 So.2d 115 (Fla. 1st DCA 1977).

There Being No Substantial Interest Shown, SSU's Intervention Must Be Denied

26. Its many and varied theories notwithstanding, SSU has not met the Agrico Chemical test of demonstrating a substantial interest justifying intervention in this declaratory statement proceeding. When all is said and done, it is clear that SSU is not entitled to the some $230,000 in regulatory assessment fees already collected from its Collier County. This Commission's resolution of Collier County's Petition will allow SSU to remit the regulatory assessment fees to the appropriate regulatory body without fear of subsequent duplicate demands on the monies. SSU has no entitlement to the regulatory assessment fees and it has no "injury-in-fact" basis for being concerned about which agency who collects the fees, so long as SSU is not liable for an attempted double collection of the fees. To date, SSU has rejected all efforts to resolve the issue of fees by Collier County's offer to enter into an agreement holding SSU harmless for this Commission's demand for the fees. SSU has offered no factual allegation that can plausibly be considered an "injury-in-fact" consistent with the case law defining that term.

27. SSU's assertion that it is entitled to have this Commission regulate all its facilities in the state is not for resolution here and is no basis for Collier County's question going unanswered. Whether or not SSU and this Commission will prevail on the jurisdictional issue is before the First District Court of Appeal and will be resolved there. The Jurisdictional Order is the subject of an automatic stay, which stay, after more than a year, has yet to be modified or vacated. The second prong of the Agrico Chemical test requires the demonstration of a "zone of interest" by the party seeking intervention. SSU's concerns regarding the issue of statewide jurisdiction have no place in this proceeding and, in any event, do not rise to the level of a "zone of interest" warranting intervention in this proceeding.

WHEREFORE, the Board of County Commissioners of Collier County, Florida, respectfully requests that the Florida Public Service Commission deny Southern States Utilities, Inc.'s Petition to Intervene in the instant Petition for Declaratory Statement proceeding.

Respectfully submitted,

Michael B. Twomey
Attorney for the Board of County
Commissioners of Collier County, Florida
Post Office Box 5256
Tallahassee, Florida 32314-5256
(904) 421-9530

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by hand delivery or U.S. Mail, postage prepaid, this 12 th day of August, 1996 to the following individual:

Kenneth A. Hoffman, Esquire
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
Post Office Box 551
Tallahassee, Florida 32302-0551

Attorney

AFFIDAVIT

STATE OF FLORIDA)
COUNTY OF COLLIER)

On this 6th day of August, 1996, before me personally appeared D. E. "Bleu" Wallace, being duly sworn upon his oath, did say:

1. I, the undersigned Affiant, D. E. "Bleu" Wallace, am the Utility Regulation Coordinator of the Collier County Office of Utility Regulation and have held this position since May 28, 1996.

2. This Affidavit is made in support of the Board of County Commissioners of Collier County's Response in Opposition to Southern States Utilities, Inc.'s ("SSU") Petition to Intervene in Docket No. 960806-WS filed with the Florida Public Service Commission for and on behalf of Collier County.

3. All statements of fact herein are based on the personal knowledge of the undersigned Affiant.

4. Effective on February 27, 1996, pursuant to Section 367.171(1), Florida Statutes, the Board of County Commissioners of Collier County adopted Collier County Resolution No. 96-104 to thereby cause Collier County to be excluded (become non-jurisdictional) from the provisions of Chapter 367, Florida Statues. The effect of this resolution was subsequently recognized by the Florida Public Service commission in its Order No. PSC-96-0582-FOF-WS, Order Acknowledging Rescission Of Commission Jurisdiction and Establishing Procedure For Cancellation Of Certificates In Collier County, issued on May 3, 1996.

5. On February 27, 1996, the Board of County Commissioners of Collier County adopted Collier County Ordinance No. 96-6, which provides for the establishment of the Collier County Water and Wastewater Authority ("Authority"), as well as the general regulatory provisions to be observed. Section 1-12 of the ordinance provides that all non-exempt water and /or wastewater utilities operating in the unincorporated areas of Collier County must pay regulatory assessment fees to Collier County in an amount equal to 4.5 percent of their gross receipts. A certified copy of Collier County Ordinance No. 96-6 is attached at Attachment "A".

6. Pursuant to Collier County Ordinance No. 96-6, the County Manager's Agency has established and manned the Office of Utility Regulation for the purpose of providing staff support for the Authority and attending to the day-to-day regulatory functions established in Ordinance No. 96-6. See Organizational Chart at Attachment "B", showing the structure of the Office of Utility Regulation. The Office of Utility Regulation, which is now fully operational, consists of a coordinator, two fiscal analysts,

and a secretary. In addition to the salaries and overheads attributed to the Office of Utility Regulation's personnel, Collier County provides office space to house the regulatory personnel, as well as computers, software, furniture and other office necessities.

7. The Office of Utility Regulation is now fully operational and is handling regulatory actions and customer service matters for each of the regulated utilities found in Collier County, including SSU. SSU is the single largest water and wastewater utility in Collier County and has some 8,000 customers in the County.

8. Based on SSU's current rates, projected regulatory fees due from this utility to Collier County approximates $550,000 annually or about $46,000 per month. To date, SSU has not paid any regulatory fees to Collier county, which fees are overdue and owing to Collier County. During the approximately five months that Collier County has resumed regulatory authority within its County boundaries, SSU has collected from its customers some $230,000 of regulatory assessment fees, exclusive of interest, which it has retained for its own purposes and refused to remit to Collier County.

9. SSU's collection of the regulatory assessment fees and its failure to remit the same to Collier County has been the subject of discussion of the Authority, which voted unanimously to forward SSU a Notice of Violation on July 22, 1996, regarding its violation of Collier County Ordinance 96-6.

FURTHER AFFIANT SAYETH NOT.

D. E. "Bleu" Wallace

SUBSCRIBED AND SWORN TO before me, the undersigned Notary Public, this 6th day of August, 1996, by D. E. "Bleu" Wallace, who is personally known to me.

Marian R. Barnett
Notary Public
MARIAN R. BARNETT

My Commission expires:

NOTARY PUBLIC STATE OF FLORIDA
MARIAN R. BARNETT
COMMISSION # CC 473669
EXPIRES AUG 8, 1999
BONDED THRU
ATLANTIC BONDING CO., INC.

ATTACHMENT "A"

ORDINANCE NO. 96- 6

AN ORDINANCE OF THE COUNTY OF COLLIER, FLORIDA, PROVIDING FOR REGULATION OF WATER, BULK WATER, AND WASTEWATER UTILITIES WITHIN THE UNINCORPORATED AREAS OF COLLIER COUNTY, FLORIDA; TITLE; PROCEEDINGS AFFECTING SUBSTANTIAL INTERESTS; DEFINITIONS; COLLIER COUNTY WATER AND WASTEWATER AUTHORITY, POWERS AND DUTIES; ISSUANCE OF FRANCHISE CERTIFICATES AND CERTIFICATES OF EXEMPTION; REGULATION OF SMALL UTILITIES; RATES; INTERIM RATES AND PROCEDURES; OFFICIAL DATE OF FILING; MISCELLANEOUS PROVISIONS; CHARGES FOR SERVICE AVAILABILITY; SERVICE; UTILITY SERVICE; SERVICE FOR RESALE; REGULATORY FEES; APPLICATION FEES; ANNUAL REPORTING REQUIREMENTS; NOTICE OF PUBLIC HEARINGS; CONDUCT OF PUBLIC HEARINGS; BOARD APPROVAL OF ORDERS OF THE AUTHORITY; POWERS OF THE BOARD; APPLICATION FOR TRANSFER OF FRANCHISE CERTIFICATE, FACILITIES OR CONTROL; EXAMINATION AND TESTING OF METERS; APPLICATION FOR ADDITION TO SERVICE AREA; APPLICATION FOR DELETION OF SERVICE TERRITORY; ABANDONMENT; ENFORCEMENT AND PENALTY PROVISIONS, REVOCATION OF FRANCHISE; EXEMPTION OF COUNTY UTILITY SYSTEMS; COMPLIANCE WITH OTHER APPLICABLE REGULATIONS; APPELLATE REVIEW; PROVISION FOR THE POSSIBILITY OF TRANSFER OF REGULATION TO ANOTHER GOVERNMENTAL AGENCY; CONFLICT AND SEVERABILITY; INCLUSION INTO THE CODE OF LAWS AND ORDINANCES; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Collier County, Florida, has made the following determinations:

1. Section 367.171, Florida Statutes, authorizes the Board of County Commissioners to rescind Public Service Commission jurisdiction over private water and sewer Utilities in the unincorporated areas in Collier County and assume power and jurisdiction to regulate those Utilities.

2. The Board of County Commissioners, pursuant to Section 367.171, Florida Statutes, will adopt a Resolution rescinding Florida Public Service Commission jurisdiction over private water and sewer utilities in unincorporated Collier County.

3. The interests of the citizens of Collier County will be better served by Collier County regulating certain private water and sewer Utilities.

4. The regulation of water and sewer Utilities by Collier County is hereby declared to be in the public interest, and this Ordinance is in the exercise of the police power of the State for the protection of the public health, safety, and welfare, and the provisions of this Ordinance shall be liberally construed for the accomplishment of such purposes.

5. Pursuant to Section 125.01(t), Florida Statutes, Collier County is authorized to adopt ordinances and resolutions as needed to the exercise its powers and authority.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA THAT:

SECTION ONE: THAT THE FOLLOWING ORDINANCE IS ENACTED:

SECTION 1-1. TITLE; PROCEEDINGS AFFECTING SUBSTANTIAL INTERESTS.

This Ordinance is entitled the "Collier County Water and Wastewater Utilities Regulatory Ordinance." All proceedings relating to Utilities which are regulated by this Ordinance in which substantial interests of a party thereto will or may be determined, shall be conducted in compliance with the provisions of this Ordinance, Rules of the Board, and Rules of the Collier

County Water and Sewer Authority, all of which shall be construed to promote just, speedy, and inexpensive determination of each issue.

SECTION 1-2. DEFINITIONS.

For the purposes of this Ordinance the following terms, phrases, words, and their derivations shall have the meaning specified herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The word "may" is directory.

A. **Authority.** The Collier County Water and Wastewater Authority.

B. **Board.** The Board of County Commissioners of Collier County, Florida.

C. **Clerk of the Board.** The Clerk of the Circuit Court serving as Clerk and accountant to the Board.

D. **Bulk water utility.** Any person or business entity of any kind whatsoever, lessee, trustee or receiver, owning, operating, managing, or controlling a System or proposing construction of a System to provide untreated or treated water to a Utility, bulk user, or distributor of water for compensation.

E. **Combined notice.** A notice of any hearing before the Board which is combined with a notice of hearing before the Authority.

F. **Contribution-in-aid-of-construction; CIAC.** Any amount or money, services, and/or property, or any combination thereof, directly or indirectly received by a Utility at no cost to the Utility or which have value in excess of the consideration given by the Utility for same, the excess of which represents a gift, donation, or contribution to the capital of the Utility and is used or planned to be used to offset the acquisition, improvement and/or construction costs of the Utility's property, facilities, or equipment used to provide services to the customers of the Utility. The term CIAC includes payments to the utility such as system capacity charges, main extension charges, plant expansion fees, customer connections charges, and other similar monetary payments to the utility.

G. **Corporate undertaking.** The unqualified guarantee of a Utility to pay a refund, with or without interest, may be required by the Board.

H. **County.** Collier County, a political subdivision of the State of Florida. "County" may include the Board and the Authority unless the context clearly indicates otherwise.

I. **Days.** Consecutive calendar days.

J. **FPSC means the Florida Public Service Commission.**

K. **Franchise certificate** (or "Franchise") refers to a privilege granted by the Board to authorize a Utility to provide utility service within the boundaries of a specified geographic area or areas pursuant to this Ordinance.

L. **Governmental Agency.** This is a broad and inclusive definition that includes the Government of the United States, the State of Florida, and all districts, units, commissions, authorities, councils, committees, departments, divisions, bureaus, boards, sections, or other unit or subdivision or either or both of them, including the Florida Public Service Commission.

M. **Gross receipts.** All revenues received by the Franchisee including miscellaneous revenues, excluding the following: interest earned on invested funds, proceeds from resales at wholesale to other Franchisees of the County that will pay the County fees on the retail sales of such down-stream Utility service; capacity fees; and connection fees.

N. **Invested cost.** The actual legitimate original cost of property in the public service honestly and prudently incurred by the person first dedicating it to the public service, including any cost adjustments approved by the Authority, reduced by all contributions-in-aid-of construction and all other contributed assets that have not been adjusted for used and useful.

O. **Official Date of Filing.** The date specified by the Authority or its Designee pursuant to this Ordinance which certifies that the Utility has filed with the County complete minimum filing requirements established by this Ordinance and/or Rule of the Board of the Authority for the respective application or proceeding.

P. **Orders:**

(1) Orders of the Board. The Board may issue such Orders as it deems proper.

(2) Orders of the Authority:

(a) **FINAL Order** means any order of the Authority that is a final decision on the issue. The Final Order may be on matters of procedure and/or decisions on the merits of the matter.

(b) **Preliminary Order.** Each Preliminary Order of the Authority is a recommendation to the Board requesting that the Board render its decision on matters over which the Board has the final authority. Those decisions include: issuance or denial of Franchise Certificates pursuant to Section 1-4 herein; to execute Franchise Agreements with new utilities; to approve or deny Transfers of Franchise Certificates pursuant to Section 1-19 herein; to revoke a Franchise Certificate pursuant to Section 1-25 herein, or to authorize the Authority to institute litigation pursuant to Subsection 1-3 (13) herein. Such Preliminary Orders of the Authority are subject to such decisions thereon as the Board may determine proper, including remand by the Board back to the Authority and/or to a Hearing Examiner.

(3) Orders of Hearing Examiners. Hearing Examiners may issues such orders as appropriate in the proceedings. Procedural orders of the Hearing Examiner are not appealable to the Authority. The Hearing Examiner will usually issue recommended Orders to the Authority for decision thereon by the Authority. Such decisions of the Authority shall be final unless the Final decision Authority thereon has been specifically retained by the Board pursuant to this Ordinance.

Q. **Party.** Any person or group of persons having an identifiable interest in the respective proceeding, including any individual customer of the affected applicant or Utility.

R. **Person.** Any individual, corporation, authorized representative of any Governmental Agency, any estate, trust, partnership, association, fiduciary, and/or all other groups or combinations thereof, or any other entity.

S. **Presiding Officer.** Presiding Officer means the individual chairperson presiding over the respective matter, case or proceeding, meeting or hearing, to wit: the Chairman of the Board of County Commissioners, the Chairman of the Authority; or

the Hearing Officer regarding matters then being considered by the Hearing Examiner. Presiding Officer includes substitutes for each of the above at such times that the primary Presiding Offices cannot preside or otherwise handle the issue in a timely fashion.

T. **Rule of the Board.** A Rule approved by the Board pursuant to this Ordinance or by resolution adopted pursuant to this Ordinance. Rules of the Board may be not be amended, or repealed without one (1) public hearing thereon by the Board. "Rule" always includes the plural "Rules," unless the context indicates to the contrary.

U. **Service.** The readiness and ability on the part of a Utility to furnish and maintain water and/or sewer service to the point of delivery for each lot and/or tract, or pursuant to applicable rules and/or regulations of any applicable governmental agency having jurisdiction.

V. **Submetering.** This means the not-for-profit resale of water and/or sewer service by a master metered customer of a Franchisee to individual customers served through that master meter and which customers occupy residential or commercial units on property owned or otherwise lawfully controlled by the master metered customer.

W. **System.** Utility facilities and property used and useful in providing utility service, and upon a finding by the Board may include a combination of functionally related facilities and property that are physically connected by lines or other utility facilities.

X. **Territory.** The geographical service area described as such in a Utility's Franchise Certificate. Territory may be referred to herein and in Rules as "service area," "service areas," or "certificated area."

Y. **Test Year.** This means the twelve (12) month period commencing no more than eighteen (18) months prior to the Official Date of Filing of an application. The data presented in any statement concerning a Test Year shall be limited to actual income and expenses, without adjustment or alteration, as determined on an accrual basis during the subject time period.

Z. **Utility.** Any Person or business entity, lessee, trustee and/or receiver, owning, operating, managing, or controlling a System, or proposing construction of a System, who or which is providing or proposes to provide potable water and/or non-potable water, or bulk water, and/or sewer service, or any combination thereof, within any unincorporated area of the County to the public for compensation, but excluding only the following:

1. Property used solely or principally in the business of bottling, selling, distributing or furnishing bottled water or portable treatment facilities; or

2. Systems owned, operated, managed, or controlled by a Governmental Agency; or

3. Manufacturers providing such utility service solely in connection with their own manufacturing operations; or

4. Each public lodging establishment providing such utility service solely in connection with lodging service to its guests; or

5. Each landlord or Homeowners' Association providing utility service to their own tenants or unit owners without specific compensation for any such utility service; or

6. Each water system and/or sewer system which has a rated capacity (at maximum day system peak) of less than 2,000 gallons per day per utility service; or

7. Any Utility which derives less than fifty percent (50%) of its revenues from unincorporated areas of the County with the balance derived from the incorporated area. Any Utility which derives fifty percent (50%) or more of its revenues from the unincorporated areas of the County shall be subject to the provisions of this Ordinance as they relate to only the rates, fees, and charges charged by the Utility in its unincorporated area(s); or

8. Any utility system that is then serving less than one hundred (100) customers with water and/or sewer service. For the purpose of this subparagraph, a "customer" is not each individual served. Each residence, apartment unit, condominium unit, office or other unit of a building or structure, each mobile home, each recreational vehicle, etc., is one (1) customer. A duplex is two (2) customers; a triplex is three (3) customers, etc.

9. Systems solely for tenants or occupants of: governmental buildings, religious, educational or cultural institutions or facilities, or for recreational, scientific or institutional facilities.

10. Systems not owned by a Franchisee that are downline from the Franchisee's master meter and are operated and submetered by a master metered customer of the Franchisee for resale to individual residential or commercial consumers occupying property owned or otherwise lawfully controlled by that master metered customer.

AA. **Wastewater.** Means "sewage," or "sewerage," means a combination of the liquid and water-carried pollutants from a residence, commercial building, industrial plant, or institution, together with any groundwater, surface runoff, or leachate that may be present.

BB. **Wastewater system.** Means or "sewer," "sewer system," or "sewerage system" means any and all plant, system, facility or property, and additions, extensions and improvements thereto at any future time constructed to acquire as part thereof, useful or necessary or then having capacity for future use in connection with the collection, treatment, purification and disposal of sewage of any nature, originating from any source, and without limiting the generality of the foregoing, includes treatment plants, pumping stations, lift stations, valves, force mains, intercepting sewers, laterals, pressure lines, mains, and all necessary appurtenances and equipment; also includes all wastewater mains and laterals for the reception and collection of sewage from premises connected therewith; also includes all real and personal property and any interest therein, rights, easements, and franchises of any nature relating to any such system and necessary or convenient for the operation thereof.

CC. **Water system.** Means any and all plant, system, facility or property, and additions, extensions and improvements thereto at then future times, constructed or acquired as part thereof, useful or necessary or having the then present capacity for future use in connection with the development of sources, treatment or purification and distribution of water, and, without limiting the generality of the foregoing, includes dams, reservoirs, storage tanks, lines, valves, pumping stations, laterals and pipes for the purpose of carrying water to the premises connected with such system; also includes all real and personal property and any interest or rights therein, easements, and Franchises of any nature whatsoever relating to any such system and necessary or convenient for the operation thereof.

SECTION 1-3. COLLIER COUNTY WATER AND WASTEWATER AUTHORITY; POWERS AND DUTIES.

A. The Collier County Water and Wastewater Authority (the "Authority") is hereby established. Authority shall have the Final Decision on all issues authorized by this Ordinance unless it is clear that such final decision resides with the Board. The Authority, upon request or upon its own motion, has the following powers and duties pursuant to Ordinance:

1. To issue a Preliminary Order to issue (grant), issue with modifications and/or additional conditions as modified, or deny a Franchise Certificate;

2. To issue a Preliminary Order to revoke a Franchise Certificate.

3. To issue a Preliminary Order to amend the County's Annual Franchise Fee.

4. To issue a Preliminary Order to authorize the transfer of a Franchise Certificate.

5. To issue a Preliminary Order to institute litigation.

6. To issue a Final Order to fix rates that are just, reasonable, compensatory, and not unfairly discriminatory;

7. To issue a Final Order approving, modifying, or denying any tariff, or other rule or regulation proposed to be established by or on behalf of an applicant or Utility;

8. To by Final Order establish and from time-to-time amend a uniform system and classification of accounts for all regulated Utilities which, among other things, shall establish adequate, fair and reasonable depreciation rates and charges.

9. By Final Order to require regular or emergency reports from a Utility, including, but not limited to, financial reports, as the Authority deems necessary. If the Authority finds a financial report to be incomplete, incorrect, or inconsistent with the uniform system and classification of accounts, the Authority may require a new report or supplemental report, either of which the Authority may for good cause require to be certified by an independent certified public account licensed under Florida Statute;

10. To issue a Final Order to compel repairs, improvements, additions, and/or extensions to any Utility's facility, and/or to require the construction of a new facility if deemed reasonably necessary to provide adequate and proper service to any person entitled to such service, or if reasonably necessary to provide any prescribed quality of service; except that no Utility shall be required either to extend its utility service outside the service territory described in its Franchise Certificate, or to make additions to its plant or equipment to serve outside such service territory unless the Authority first finds that the Utility is financially able to make such additional investment without impairing its capacity to serve its then existing customers and other future customers who have vested rights to the respective utility service;

11. To issue a Final Order to compel interconnections of service or facilities between Utilities, and to approve any plant capacity charges, or wholesale service charges, or rates related to either, provided the Authority first finds that the Utility is financially able to make such additional investment without impairing its ability or capacity to serve its existing

customers and future customers who have a vested right to such Utility service;

12. In matters that are not covered by provisions that require Preliminary Orders, to make recommendations to the Board by Executive Summary regarding any matter pertaining to the regulation of Utilities deemed by the Authority to be necessary or convenient to carry out this Ordinance or Rule of the Board;

13. With respect to the conduct of its hearings pursuant to this Ordinance:

a. To adopt rules for the conduct of its hearings; and

b. To take testimony under oath;

14. To issue a Final Order to require the filing of reports and/or other information and data by a Utility and/or its affiliated companies, including its parent company regarding transactions or allocations of common costs among the Utility and such affiliated companies; the Authority may also require such reports or other data necessary to ensure that the Utility's rate payers do not subsidize non-utility activities;

15. To request that the Board or County Administrator provide Hearing Examiners and/or consulting services and/or other personnel, or departments of the County government to perform work, including compiling factual data and/or information reasonably required by the Authority or the Board for the proper performance of duties or functions under this Ordinance;

16. To enter on any property used by any utility at any reasonable time, and to set up and use thereon all necessary equipment to make investigations, inspections, examinations and/or tests for the exercising of any power under this Ordinance after reasonable attempts to give notice of same to the Utility; the Utility has the right to be represented at the making of such investigations, inspections, examinations and/or tests;

17. To hold any person who, or utility which, fails to obey any legal Order, mandate, decree or instruction issued by the Authority or hearing examiner during any proceeding by the Authority, in contempt of the Authority; each day of violation of any legal order, mandate, decree or instruction issued by the Authority may be deemed to constitute a separate act of contempt.

18. Subject to prior approval of the Board on a case-by-case basis upon Executive Summary request from the Authority, the Authority may take actions, including seeking injunctive relief, to effectuate any provision of this Ordinance;

19. To otherwise do all things necessary or convenient to the full and complete exercise of its jurisdiction and/or duties under this Ordinance except issue Final Orders in matters where the final decisions thereof have, by this Ordinance, been reserved to the Board.

B. Executive Director of the Authority. The Board shall employ an Executive Director of the Authority. The Executive Director may be a full-time or part-time employee of the County and shall be responsible for all administrative matters relating to the Authority. The Executive Director has final decision on many matters as specified in this Ordinance and/or Rules of the Board. The Authority may delegate additional powers to the Executive Director by adoption of Rules of the Authority provided such delegation does not violate this Ordinance and/or Rule of the Board.

C. The Executive Director or his/her designee may enter on any property used by any Utility at any reasonable time, and to set up and use thereon all necessary equipment to make investigations, inspections, examinations and/or tests for the exercising of any power under this Ordinance after reasonable attempts to give notice to the Utility; the Utility has the right to be represented at the making of such investigations, inspections, examinations and/or tests.

D. Forms. The Authority, without further approval by the Board, may prescribe and amend forms for use by Utilities in compliance with any provision of this Ordinance or Rule of the Board.

E. Members of the Authority. The Authority shall consist of five (5) members appointed by the Board. Three (3) members shall be technical members, and two (2) members shall be lay members. The Board, collectively, shall appoint all members. More than one (1) member may be appointed from the same area of expertise. No Board member has any individual power of appointment.

1. Each technical member shall be appointed based on individual expertise in one (1) or more of the following areas:

(i) Engineering: with experience in water and sewer systems;

(ii) Finance, accounting, rate-making, and/or utility regulation; or

(iii) Business administration.

2. The lay members shall be appointed on the basis of individual civic pride, integrity, and experience in any area of relevant utility service and management, rate making, utility regulation, or other endeavors considered by the Board to be beneficial to the proper functioning of the Authority. Lay members may be appointed from the same areas of expertise as technical members.

3. No member of the Authority shall, directly or indirectly, be employed by, be connected with, or have any financial interest in, or serve as an agent or representative of, any Utility then regulated by this Ordinance. Members of the Authority shall be subject to financial disclosure as required by Florida Statutes, currently Section 112.3145. A member of the Authority may not serve more than eight (8) consecutive years except if an individual is appointed initially to less than a four (4) year term that individual may serve two (2) full four (4) year terms in addition to the initial term, for a maximum continuous term of up to eleven (11) years. Members shall hold office until their successors have been duly qualified and appointed. No member shall accept any gratuity or other compensation of any kind from a Utility, any Utility employee, agent, or other representative. The Board may appoint an alternate member of the Authority who will take his/her voting seat only during times of absence of a regular member of the Authority.

4. Members of the Authority shall be reimbursed for their necessary expenses incurred in the performance of their official duties, as shall be determined and approved by the County Administrator.

5. The initial term of office shall be one (1) year for one (1) member, two (2) years for one (1) member, three (3) years for two (2) members, and four (4) years for the remaining member, with appointments or reappointments thereafter, whenever possible, to be for a term of four (4) years for each member.

The Commission shall determine which members shall be appointed for which year terms. Before entering upon the duties of office, each member shall file written acceptance of that appointment and take and subscribe to a written oath of office, which shall be filed in the Office of the Clerk to the Board.

6. A member of the Authority may be removed from office with or without cause by a vote of three (3) or more members of the Board. Whenever a member of the Authority shall fail to attend three (3) consecutive meetings without having been excused by the Chairman of the Authority, the Authority Chairman shall promptly certify in writing such absences to the Board. Upon such certification the defaulting member may be removed by the Board, if removed, the Board shall fill that vacancy by further appointment to that seat.

7. The members of the Authority shall select a Chairman, a Vice-Chairman, and such other officer(s) as deemed desirable by the Authority. Each officer should generally be appointed to a term of at least one (1) year. Each officer may be reappointed to his/her same office, but no member shall serve in the same office for more than three (3) consecutive years and no member may be appointed to an office that extends beyond his/her then remaining appointment to the Authority by the Board.

F. Minutes of each Authority meeting shall be kept and prepared under the general supervision and direction of the Clerk or designee of the Clerk to the Board. Such minutes shall be kept on file by the Authority.

G. The Authority shall meet as often as necessary, but generally not less often than once each month, to discharge its duties pursuant to this Ordinance. Three (3) members present constitute a quorum. The affirmative vote of three (3) members is required to take any action except to cancel or continue a meeting that has no quorum.

H. Subject to the County's budget, the County Administrator will provide clerical and public record recording assistance to the Authority.

SECTION 1-4. ISSUANCE OF FRANCHISE CERTIFICATES; CERTIFICATES OF EXEMPTION.

Only the Board may issue a Franchise Certificate to any Utility. The Authority has Final Order Authority over granting exemptions from regulation.

A. <u>Certificates From Florida Public Service Commission</u>. Each Utility holding a Certificate from the Florida Public Service Commission (FPSC) on the effective date of the Board's Resolution rescinding the jurisdiction of the FPSC over the Utility shall receive a Franchise Certificate for all service areas for which that Utility then held such a Certificate(s) from the FPSC, provided such Utility applies for each Franchise Certificate by filing an application for same with the Authority within one hundred twenty (120) days of the effective date of this Ordinance. The application for such a Franchise from the County shall include:

1. A map of its existing System with planned extensions, if any, and a legal description of all area(s) for which the then effective FPSC Certificate was issued;

2. A certified copy of all orders issued by the FPSC granting the FPSC Certificate to that Utility;

3. FPSC tariffs listing all FPSC approved rates and charges then in effect, all of which will remain in effect until modified as approved by the Authority;

4. A copy of all FPSC approved operating regulations and procedures of the Utility then in effect, all of which shall remain in effect until modified as approved by the Authority;

5. The then current FPSC approved rate base of the Utility, which shall continue to be the rate base of the Utility until modification thereof is approved by the Authority; and

6. Such other minimum filing requirements as may be required by Rule of the Board.

B. Within sixty (60) days of a Utility's submission of an application pursuant to subsection (a) above, the Authority shall render a decision whether such application is complete and thereupon set the Official Date of filing.

C. If the Authority finds that the application is deficient for failure to satisfy all filing requirements, the Authority shall return the application to the Utility for revisions. The Utility shall have thirty (30) days to revise and resubmit such application to the Authority, which shall have twenty (20) days to review the revised application. These time periods may be summarily extended by the Executive Director of the Authority for good cause.

D. At such time as the Authority determines the Utility's application satisfies all requirements of subsection (A) above, the Authority shall issue a Preliminary Order within thirty (30) days of the Official Date of Filing to recommend that the Board issue one (1) or more Franchise Certificates to the Utility.

E. Within thirty (30) days of the issuance of the Authority's Preliminary Order, the Board, without a public hearing, may issue its Order on the application, which may issue Franchise Certificate(s) to the Utility.

F. After one hundred and eighty days (180) from the effective date of this Ordinance, unless extended by Final Order of the Authority, it shall be unlawful for any Utility under the regulation jurisdiction of this Ordinance to provide any Utility Service within the unincorporated area of the County without either a Franchise Certificate having been granted to that Utility by the Board, or based upon an active application to acquire a Franchise Certificate for the respective service then pending before the County.

G. <u>New Utility.</u> For the purposes of this Ordinance, "New Utility" means any Utility applying for a Franchise from the County except pursuant to subsection A., above, "Grandfathering."

1. One hundred and twenty (120) days after the effective date of this Ordinance, no person shall build, install, maintain, operate, or continue to operate any Utility, including Bulk Water Utility, in any unincorporated area of the County unless the Board has granted that Utility a Franchise Certificate for that service, or unless the Utility, upon application for same, has been formally determined by the Authority as being exempt from regulation under this Ordinance.

2. Each applicant for issuance of a Franchise Certificate for a New Utility shall:

a. Provide information required by Rule of the Board and/or the Authority which may include a detailed inquiry into the ability of the applicant to provide service, the planned service territory, all facilities involved, the need for service in the planned service territory involved, and the existence or

nonexistence of that utility service from other sources within nearby geographical proximity to the service territory applied for;

b. File with the Authority schedules showing all proposed rates, fees, classifications and charges for service of every kind to be furnished by it; also all rules, regulations, and written contracts relating thereto;

c. Submit an affidavit that the applicant has caused notice of its intention to file an application for the New Franchise, which notice must be delivered by mail or other actual delivery to the Authority, and to such other persons and in such other manner as may be prescribed by Rule of the Board. Such notice shall be given at least twenty (20) days prior to the filing of such application;

d. If required by the Executive Director of the Authority, or by the Authority, file a certified copy of its certificate of incorporation, if any; an audited Financial Statement; an inventory of assets; and other information such that the Authority can determine whether or not the applicant is qualified to be issued a Franchise Certificate by the Board. The Board may require the applicant to post a bond, satisfactory to the Board in form and sureties, to guarantee compliance with any conditions imposed by the Board for issuance of the Franchise(s);

e. The application shall be signed by the person who will be the holder of the Franchise.

3. Review the Contents of each application for Franchise Certificates:

a. The Authority may issue a Preliminary Order approving a Franchise Certificate in whole or in part, with or without modifications, or deny any Franchise Certificate. No Utility shall be granted greater authority than that requested in the application and any amendments thereto. The Authority shall not issue a Preliminary Order to grant a Franchise Certificate for a proposed System or for the extension of an existing System which will be in competition with, or a duplication of, any other System or portion of a System, unless it first determines that such other System or portion thereof is not adequate to meet the reasonable needs of the service area and all other service commitments, if any, outside of the service area, or that the System is unable to, or that its principals refuse to or have neglected to, provide adequate utility services.

b. If the Authority does not receive written objection to such an application within twenty (20) days following the Official Date of Filing of the application, the Authority may issue a Preliminary Order on the application without a public hearing thereon.

c. If, within twenty (20) days following the Official Date of Filing of such an application, the Authority receives from a Utility, or from any consumer that would be substantially affected by the requested certification, a written objection requesting a public hearing, the Authority may conduct a public hearing, generally within twenty (20) days from actual receipt of the written objection, unless the hearing is extended by the Authority or its Executive Director.

d. A public hearing held pursuant to subsection 3. c., above, shall result in a Preliminary Order issued by the Authority. Within sixty (60) days of the issuance of such Preliminary Order, the Board should review the matter and may hear legal arguments concerning the Authority's Preliminary Order. Based upon such review and any such legal arguments presented, the Board may confirm, confirm as modified by the

Board, deny the Authority's Preliminary Order, or remand the matter back to the Authority or to a Hearing Examiner, or otherwise deal with the matter.

e. The Board may deny the application or require amendment to any Certificate on the ground that the such service will violate the established local comprehensive plan developed by the County pursuant to Florida Statutes, currently Section 163.3161, and following sections.

f. In reviewing the application, the Authority shall consider the following:

(i) The applicant's apparent ability to have or acquire sufficient resources to build, install and operate the proposed Utility;

(ii) The apparent ability of the applicant to provide the proposed service(s) to the territory with the proposed facilities involved, the need for service in the territory involved, and the existence or nonexistence of such utility service from other sources within geographical proximity to the territory for which the Utility has applied; and

(iii) Whether the application conflicts with the County's local comprehensive plan, including all relevant capital improvement programs adopted by the Board.

g. Each Franchise Certificate applied for, except those described in subsection A above, shall specify and acknowledge that:

(i) Such terms and conditions as may be deemed necessary by the Board to protect the public health, safety or welfare;

(ii) Whether the Franchise is for a water system, sewer system, or bulk water Utility, or applicable combination thereof;

(iii) The territory to be served by the Utility. The Franchise Certificate for a Bulk Water Utility may include all or part of an area covered by the Franchise of a another Utility. Subject to economic feasibility, the Utility must serve its entire certificated area(s);

(iv) That the Franchise Certificate is not any impediment to acquisition of the Utility or any part thereof by the County and/or any other Governmental Agency, by purchase, condemnation, or otherwise;

(v) That the County has full power and authority to grant a license or Franchise to any other person or entity to construct, maintain, repair, operate, and remove lines for the transmission of water, wastewater, gas, power, television, telephone, and/or any other public utilities whatsoever, under, on, over, across, through, and/or along every public road, public highway, other public right-of-way, or public utility easement for the respective uses acquired by the County, by any other Government Agency, by purchase, gift, devise, dedication, prescription, or by any other means;

(vi) That the Utility shall prevent the creation of and shall not allow or suffer to continue any obstructions or any other conditions which are or may become physically dangerous to any member of the general public;

(vii) That the Utility shall repair any and all damage and/or injury to public and private streets, roads, highways, and all other tangible property caused by reason

of the exercise of any privileges granted in the Franchise and, at no direct or indirect cost to the County or other Governmental Agency, shall promptly repair all such damage or injury to all public streets, roads, highways, and other tangible property, restoring each to the conditions at least equal to the conditions that existed immediately prior to the infliction of such physical damage or injury by or on behalf of the Utility;

(viii) That the Utility shall indemnify and hold harmless the County, the Board and its members, the Authority and its Executive Director, and all employees and members all of the above, from any claims, suits, and damages that nay result, directly or indirectly, from any exercise of (or failure to exercise) any rights, privilege(s) and/or licenses granted or authorized by the Franchise Certificate;

(ix) That in the event of widening, repairing, relocating, or reconstructing, of any public street, public road or public right-of-way, the Utility shall, at no cost to the County or any other Governmental Agency, relocate as needed all utility lines and other tangible property of that Utility;

(x) That the issuance of the Franchise Certificate shall not entitle the Franchisee to any consideration and shall not otherwise prevent, bar, or hinder the County and/or any other Governmental Agency from closing, abandoning, relocating, vacating, discontinuing, improving, or reconstructing any public street, road, or other right-of-way or easement, except those that are private;

(xi) That the Utility shall comply with all then applicable rules, regulations, and standards pertaining to such Utility from all Governmental Agencies having jurisdiction;

(xii) That the Utility shall always maintain and keep all improvements in good repair and, and subject to economic feasibility of the Utility, shall provide all Franchised Utility services within a reasonable time to all persons requesting such service to be provided within the certificated territory;

(xiii) That if the Authority determines that it is appropriate to install fire hydrants for the purpose of combating fires, the County has the right and privilege of doing so, and may order the Utility to make such connections and charge to its customers, pro rata, for labor and materials used in the installation of said fire hydrants and other appurtenances necessary for furnishing water from the respective distribution system to said fire hydrants; in such cases the charge to the Utility's customers shall be the Utility's actual cost for making the connections, together with a fair return on the Utility's investment therein;

(xiv) That the Franchise Certificate shall not be deemed to constitute a County requirement that any landowner use the Utility's water, nor shall this Ordinance be construed to constitute a Collier County imposed prohibition against any landowner using well water for consumption, irrigation, recreation and/or yard maintenance;

(xv) That Franchise Certificate issued by the County shall have no monetary or other value in the context of the County and/or any other Governmental Agency seeking to acquire the Utility or any part thereof;

(xvi) That the Franchise Certificate shall not be deemed to prohibit or restrict construction, operation and/or maintenance of any utility outside of the franchised service territory by the County or by any Governmental Agency;

(xvii) he term of the Franchise, which shall not exceed thirty ( ) years; also any provisions for renewal thereof;

(xviii) Provisions for purchase of the Utility by the County on such terms and conditions as the Board shall determine to be proper to best serve the public health, safety and/or welfare;

(xix) Provisions for revocation of the Franchise Certificate in the event of any violation of its terms, or of violation of this Ordinance, and/or any other logically related County ordinance, or Rule of the Board;

(xx) Provisions for the reasonable time within which the utility service granted in the Franchise shall be made available to the customers of the utility, including a schedule of estimated dates by which each utility service will be provided to customers; and that if no such service is provided within the time prescribed, that the Franchise shall be automatically void unless the Authority extends that time for good cause shown provided that an application for such an extension of time is made before expiration of the "no actual utility service" time prescribed in the Franchise. The grant of a time extension will require additional conditions that the Authority deems appropriate to assure the provision of adequate service within an additional reasonable time;

(xxi) Such modifications of any provisions authorized under the preceding paragraphs as may be necessary;

(xxii) That the system shall be approved by all appropriate Governmental Agencies as to design, construction, operation, capacity, maintenance, expansion, and otherwise;

(xxiii) That the Franchise may be amended at any time upon mutual consent of the parties thereto; and

(xxiv) Additional provisions as are required from time-to-time by Rule of the Board.

(xxv) Bulk Water Utility. A Franchise for a Bulk Water Utility may provide that the service area may include all or part of a service area of a County Franchised water Utility provided all provision of water in bulk within that overlapping service area shall be only to that other Utility;

h. Claims of Exemption from Regulation. Each person who or entity that claims an exemption from regulation (nonjurisdictional finding) by the County through application of any one or more of subparagraphs of subsection 1-2 (z), (definition of "Utility"), must file with the Authority an affidavit sworn to upon personal knowledge and signed by the affiant, who must be an authorized representative of the applicant. The affidavit must contain the name of the Utility, its complete street and mailing address, and sufficient information describing the Utility system upon which a determination as to the applicant's asserted exempt status can be ascertained by the Authority, plus citation to the specific subparagraph of subsection 1-2 (z), above, upon which the asserted exemption is based. Such application for declaration of exemption may be granted by Final Order of the Authority without any public hearing thereon, but if a complaint is filed by any person or entity with standing, the Authority may hold a public hearing to consider and decide the merits of the application by Final Order. These minimum filing requirements for an exemption do not apply to any Governmental Agency; any Governmental Agency may obtain a Declaration of its claimed exemption by letter request to the Authority.

SECTION 1-5. REGULATION OF SMALL UTILITIES.

A. Any Utility that, in the respective last fiscal year, has actual annual receipts of less than $75,000 from gross revenues from water sales, or less than $75,000 from gross revenues from sales of sewer service, or $150,000 in gross revenues from sales of both utility services, is referred to in this Ordinance as a "small utility." Small Utilities are exempted from some requirements of this Ordinance as specified by Rule of the Board.

B. Except to the extent otherwise specified in the Board's Rules, each Small Utility shall be regulated in accordance with all provisions applicable to other Utilities as provided in this Ordinance and/or Rules of the Board.

C. Except to the extent otherwise specified by the Board's Rules, supplemental Rules of the Board will apply to each Small Utility.

SECTION 1-6. RATES.

A. As used in this Ordinance, unless in the context a different intent is clear, "Rates" always includes all "rates," "fees" and/or "charges" without distinction, and which includes all rates, fees and/or charges that are charged or are planned by the Utility to be charged by the Utility to any of its customers or prospective customers, including service availability charges and connection charges. Each Utility shall charge, collect, demand, or receive, directly or indirectly, only those rates, fees, and charges that have been approved by an Order of the Authority for the respective class of service. Within each application for a rate increase the Utility must submit an affirmation under oath by an authorized officer of the Utility that the figures and calculations upon which the change in rates is based is accurate and that the change will not cause the applicant to exceed its last authorized rate of return. For a test year and the pro forma test year, The Utility must affirm under oath that the Utility is not and will not earn in excess of its last authorized rate of return by utilizing: (a) a schedule of rate base commencing with the last authorized rate base and utilizing Authority approved depreciation and amortization lives; (b) a schedule of revenues using the last authorized revenues as the starting point; (c) a schedule of expenses using the last authorized expenses as a starting point; and (d), a calculated earned rate base of return based on provisions (a), (b), and (c), herein. Upon a Final Rate Order for a rate proceeding affecting rate base, the utility shall, within the Utility's then current fiscal year, adjust its books as necessary to reflect the outcome of that proceeding. The Utility shall notify the Executive Director of the Authority that required adjustments have been completed to its books in accord with the Authority's final rate order.

B. <u>Limited Proceedings</u>.

1. Proceedings pursuant to Section 1-4(a) through (F), above, (PSC approved rate tariffs for existing Utilities), and in subsection (F), below, (New Class of Service), and in subsection (I) below, (Rate Index), and in subsection (J), below, (Pass-throughs), and most other proceedings hereunder are relatively summary proceedings that have relatively limited minimum filing requirements. Limited proceedings are for the Authority to consider and act upon any matter within the jurisdiction of the Authority under this Ordinance, including any matter the resolution of which requires the utility to adjust its rates, except full rate cases and staff assisted rate cases.

2. Ineligibility for a limited proceeding does not prevent a qualifying utility from seeking a change in rates pursuant to a full rate case or a staff assisted rate case.

3. Notice of Limited Proceedings to Customers. Following approval by the Executive Director of the Authority, or the Authority, utility may be required to provide notice to its customers of its limited proceeding application. Notice of the Final Hearing will be required if the request is to increase any rate or add a new class of service. Notice may be waived by the Authority if the Utility's request is only to acquire permission to implement a requirement of applicable state or federal law or regulation.

4. Prerequisites for eligibility and minimum filing requirements. Refer to the Rules of the Board.

5. Limited Proceeding Rate Increase: For a Utility with annual gross receipts from service within the County in excess of $750,000, a requested rate increase through a limited proceeding shall not include a pro forma revenue requirement in excess of one hundred and ten percent (110%) of the test year revenue requirement. For a Utility with annual gross revenues from within the County of less than $750,000, the requested rate increase by means of a limited proceeding shall not exceed $75,000.

6. If, within fifteen (15) months after the approval of the limited proceeding, the Authority finds that the Utility exceeded the range of its last authorized rate of return after an adjustment in rates, as authorized by this subsection, the Authority may order the Utility to refund, with interest, the difference to the rate payers and to adjust its rates accordingly. This provision shall not be construed to require a bond or corporate undertaking not otherwise required by the Authority.

C. A written application for any regulated rate, fee or charge or change, or any charge to any of the same shall be submitted to the Authority along with the full applicable application fee and applicable minimum filing requirements as then required by Rules of the Board.

D. Each Utility's then current rates, fees, charges, and customer service policies must be contained in tariff sheets approved by the Authority and filed with the Authority.

E. A Utility may only collect those regulated rates, fees, and charges that have been authorized by the Authority pursuant to this Ordinance by Order of the Authority for the particular class of service involved. No change in any rate schedule may be made without prior Authority approval.

F. Request for New Class of Service. If the Utility desires to implement a new class of service not previously approved by the Authority, the Utility may provide to its customers that new class of service. The rates, fees, and/or charges for same must be just, reasonable, reasonably compensatory, and not unduly discriminatory based upon the costs to the Utility to provide each new class of service. A schedule of such new rates, fees, and/or charges as fixed by the Utility shall be filed with the Authority at least fourteen (14) days before any such new class of service is furnished by the Utility. The Authority will summarily approve such rates, fees, and charges as applied for unless the Authority receives an objection thereto from any interested person, in which event the Authority may hold a public hearing thereon. The minimum filing requirements for a new class of service shall be the same as for rate indexing.

G. Original Cost Rate Base.

1. Except as to the rate bases that were established by the FPSC and were in effect at the time of granting the initial Franchise by the Board to each then existing Utility, the Authority may determine the rate base for each Utility, which rate base shall be used for rate-making purposes. The rate base consists of the actual legitimate original cost of property used and useful in the public service honestly and prudently incurred by the person first dedicating it to the public service, less accrued depreciation, and less CIAC and other contributed assets, net of amortization, plus allowance for required cash working capital, but shall not include any value for goodwill or going-concern value. Each Utility's rate base shall be retired by accumulated deferral and unamortized income taxes and investment tax credits.

2. The Authority shall consider the investment of the Utility in land acquired or facilities constructed or to be constructed in the public interest within a reasonable time into the future, and unless extended by the Authority, not to exceed twenty-four (24) months from the end of the historical test period used to set those rates, and provided the Utility demonstrates its commitment and ability to provide, complete, and bring those facilities on line within the prescribed time period.

3. In establishing initial rates for a Utility, the Authority may project the financial and operational data submitted by the Utility to a point in time when the utility is expected to be providing utility service at a reasonable capacity.

4. The Authority, in fixing rates, may determine the prudent cost of providing service during the period of time the rate(s) will be in effect following the entry of a Final Order of the Authority relating to the rate request from the Utility, and may use such costs to determine the revenue requirements that will allow the utility to earn a fair over-all rate of return on its rate base.

H. Contributions-in-Aid-of-Construction (CIAC).

1. The Utility shall not include any CIAC in its rate base during any rate proceeding and no accumulated depreciation on any CIAC shall be used to reduce rate base. However, depreciation expenses on CIAC may be accounted for by the Utility as an operating expense of providing utility service. The Utility can charge fair and reasonable sums for such depreciation expenses, but if it does so, the Utility shall actually deposit all such sums into a depreciation reserve account, whereby it shall become cash CIAC. Cash CIAC shall be expended only as specified below in subparagraph (2).

2. CIAC Capital not to be Included in Rate Base. Except to the extent reflected in the Utility's rates, fees, or charges resulting from expensed deductions for reasonable depreciation on CIAC, no Utility may collect any sum from any customer based upon any CIAC. If such sums were collected while the Utility was under the jurisdiction of the FPSC and the total on hand exceeds $5,000, all such sums shall be deposited by the Utility into a fully funded, interest bearing CIAC reserve account established with a local financial institution. Such funds in that reserve account, including all interest accruing thereon, may be used by the Utility without specific Authority approval only for the following purposes: for replacing CIAC retired from service at the end of its useful life; also to finance improvements to CIAC assets necessitated by advances in technology or government regulation; also to finance relocation of CIAC necessitated by factors beyond the control of the Utility; also to pay the proportionate share of income tax

actually owed by the Utility attributable to the revenue represented by those funds deposited in said CIAC reserve account. All property replaced, constructed, improved or relocated with funds withdrawn from the said CIAC reserve account shall thereafter be classified as CIAC to the full extent of such expenditures. "Replaced" in this context means the construction or installation of utility plant in place of retired property, together with the removal of the property retired, in accordance with the standards of the National Association of Regulatory Utility Commissioners (N.A.R.U.C.).

3. The Authority may authorize the Utility to expend CIAC cash funds for any other public service and/or CIAC contractual requirements of the Utility, including taxes on the contributed funds, construction of new capital assets, or for reimbursements or credits pro rata to the customers of the Utility.

4. Annual Statement of Withdrawals. A detailed statement of purpose of withdrawals by the Utility from said CIAC reserve account during each fiscal year of the Utility shall be submitted to the County as a part of the Utility's annual financial required by this Ordinance, along with a letter from the Utility agreeing to reimburse that account for any amount withdrawn that the Authority determines was not consistent with this subsection (H). If the Authority does not make such a determination within one hundred and twenty (120) days of the filing of the letter, the Utility is relieved from any further liability toward the County with respect to such withdrawals.

5. It shall be a violation of this Ordinance and of the Utility's Franchise Certificate to expend monies from the CIAC reserve account for any purpose not expressly authorized herein or otherwise authorized in advance by the Authority. Any unauthorized expenditure of money from the CIAC reserve account is a separate violation of this Ordinance and is grounds for revocation of the Utility's Franchise.

6. CIAC Tax Impact Escrow Account. Refer to the Rules of the Board for utilities authority, to collect monies equal to the "impact tax" resulting from the January 1, 1987 repeal of Section 118(b) of the Internal Revenue Code of the United States.

I. Rate Indexing.

1. On or before May 15 of each calendar year, the Authority shall adopt a price index for water and wastewater Utilities, which price index shall be equivalent to the price index established annually by the Florida Public Service Commission (FPSC). The index shall be the price index used by all Franchised Utilities until the Authority authorizes a change.

2. A Utility may not implement an index increase between the official filing date of a rate proceeding and one (1) year thereafter unless the rate case was withdrawn by the Utility. Pass-through expenses and expenses disallowed or adjusted in the Utility's then most recent rate case proceeding shall be excluded. A Utility may not use indexing to increase any operating costs for which an adjustment has been or could be made as a pass-through, or to increase its rates by application of a price index other than the price index authorized by the Authority at the time of that filing.

3. Procedures. Refer to the Rules of the Board for the procedures to implement rate changes by rate indexing.

4. If the Utility files its Annual Report on other than a calendar year basis, to apply for a change in rates by application of the index, the Utility shall file additional supplemental information to segregate expenses, revenues and

customer billing data on a calendar year basis. The source for this pro rata distribution shall be the Utility's Annual Report.

5. The maximum allowable increase resulting from the application of the rate index shall be no greater than the rate index. The provisions of this subparagraph do not prevent a Utility from seeking a change in rates pursuant to a full rate case or a staff assisted rate case.

6. After Authority approval of an indexed rate increase, the Utility shall notify each of its customers of the increase in each customer's next rate billing that is issued more than fifteen (15) days after that Authority approval.

7. No Utility shall implement any rate change pursuant to indexing unless it has filed with the County its current Annual Report and, if applicable, Audited Financial Statement, as required by this Ordinance, and the Utility is then current in the payment of its franchise administration fee.

8. If, within fifteen (15) months after the filing of an Annual Report as required by this Ordinance, the Authority finds that the Utility exceeded the range of its last authorized rate of return after an indexed increase in rates, implemented in the preceding year, the Authority may order the Utility to refund the overcharge, with interest, to the rate payers and to adjust its rates accordingly. This provision shall not require a bond or corporate undertaking not otherwise required by the Authority.

J. Pass-Through of Rate Increases or Decreases.

1. The approved rates of any Utility which receives all or any portion of its utility service from a Governmental Agency or from a water or sewer Utility regulated by the County under this Ordinance, and which redistributes that service to its utility customers, shall be automatically increased or decreased without hearing, upon verified notice to the Authority at least thirty (30) days prior to its implementation of the increase or decrease, that the rates charged by the Governmental Agency or other supplying Utility have changed. The approved rates of any Utility that are subject to an increase or decrease in the rates that it is charged for electric power or the amount of ad valorem taxes assessed against its used and useful property, or regulatory assessments, or the imposition of any new change by a Governmental Agency other than a fine or penalty, may be increased or decreased by the Utility, without formal action by the Authority, upon verified notice from the Utility to the Authority at least thirty (30) days prior to its implementation of the increase or decrease, that the rates charged by the supplier of the electric power or the taxes or charges imposed by the Governmental Agency have changed. The new rates shall reflect the amount of the change of the ad valorem taxes and/or rates imposed upon the Utility by the Governmental Agency, other utility, or supplier of power. The approved rates of any Utility may be automatically increased, without hearing or formal action by the Authority, upon verified notice to the Authority at least thirty (30) days prior to implementation of the changes, that costs have been incurred for water quality or wastewater quality testing required by the Department of Environmental Protection, the South Florida Water Management District, or other Governmental Agency. The new rates shall reflect, on an amortized basis, the cost of, or the amount of change in the cost of, required water quality or wastewater quality testing performed by laboratories approved by the Department of Environmental Protection or the South Florida Water Management District. However, no new shall reflect any costs then already included in the Utility's rates.

2. A Utility may not use pass-throughs to increase its rates as a result of water quality or wastewater quality testing

or an increase in the cost of purchased water services, wastewater services, or electric power, or in assessed ad valorem taxes, or regulatory assessments which increase was initiated more than twelve (12) months before that filing by the Utility. The provisions of this subsection do not prevent a Utility from seeking a change in rates pursuant to other provisions of this Section, (Rates).

3. Before implementing a change in rates under this subsection, the Utility shall file an affirmation under oath as to the accuracy of the figures and calculations upon which the change in rates is based, stating that the change will not cause the Utility to exceed its last authorized rate of return, or if no authorized rate of return exists, the actual averaged rate of return experienced by that Utility for the twelve (12) month period commencing not more that fifteen (15) months prior to the filing.

4. If the adjustment in rates is based upon an increase or decrease in the charges for purchased water, wastewater treatment, or electric power, the verified notice shall include information required by Rule of the Board.

5. The Utility shall notify each customer of each such change in rates and explain the reason(s) for such change. Such notice may be included in the customer's next utility bill that is delivered more than fifteen (15) days after implementation of such change.

6. If necessary for the Authority to determine issues of the appropriate rate of return due to a change in rates under this subsection, the Authority may require the Utility to file additional information.

7. The Authority may require the Utility to refund excess rates, with interest, if it is determined by the Authority that the authorized rate of return has been exceeded, and to adjust its rates accordingly.

8. A Utility may not adjust its rates pursuant to this subsection more than two (2) times in any twelve (12) month period, without specific authorization from the Authority.

9. The Official Date of Filing for the verified notice shall be at least thirty (30) days before any of the new rates can be implemented.

10. No Utility shall implement any rate change pursuant to this subsection unless it has filed with the Authority its current Annual Financial Report and, if applicable, Audited Financial Statement as required by this Ordinance, and the Utility is then current in the payment of its franchise administration fee.

11. Minimum Filing Requirements. Before implementing any change in rates under this subsection, the Utility shall file such minimum filing requirements as then required by Rule of the Board, along with an affirmation under oath as to the accuracy of the figures and calculations upon which the change in rates is based, stating that the change (or changes) will not cause the Utility to exceed the maximum of its last authorized rate of return. Whoever makes a false statement in the affirmation required hereunder, which statement he does not believe to be true in regard to any material matter, may be subject to prosecution for a misdemeanor, punishable as then provided by law.

12. If, within fifteen (15) months after the filing of an Annual Report as required by this Ordinance, the Authority finds that the Utility exceeded the range of its last authorized

rate of return after an adjustment in rates, as authorized by this subsection, implemented in the preceding year, the Authority may order the Utility to refund the difference, with interest, to the rate payers and to adjust its rates accordingly. This provision shall not be construed to require a bond or corporate undertaking not otherwise required by the Authority.

13. No adjustment in rates shall be implemented by the Utility until approved by the Authority. The Authority shall approve or reject requested pass-throughs within ninety (90) days from the Official Date of Filing. If the Authority fails to approve or deny the requested pass-through within that time period, all pass-throughs applied for in that application shall be deemed to be approved by the Authority.

14. A Utility may not adjust its rates under this subsection more than two (2) times in any twelve (12) month period. Simultaneously filed applications shall considered as one (1) rate adjustment.

K. Leverage Formula - Rate of Return on Equity. The Authority may regularly, not less often than once each year, establish a leverage formula or formulas that reasonably reflect the range of returns on common equity for an average water or sewer utility and which, for purposes of this section, shall be used to calculate the last authorized rate of return on equity for any Utility which otherwise would have no then established rate of return on equity. In any proceeding in which an authorized rate of return on equity is to be set, a Utility, in lieu of presenting evidence on its rate of return on common equity, may request that the Authority adopt the range of rates of return on common equity that has been established under this subsection (K).

L. Full Rate Cases. No Small Utilities need file any full rate cases.

1. Factors to be Considered. In every rate proceeding, the Authority shall consider the value and quality of the service and the cost of providing the service, which shall include, but not be limited to, debt interest, the Utility's requirements for cash working capital, maintenance, depreciation, taxes and operating expenses incurred in the operation of all property used and useful in providing Utility service, plus a fair return on the investment of the Utility in property used and useful in the public service. The Authority may consider the rate history and experience of the Utility, revenues received and expenses incurred through the operation of non-regulated services by the Utility when those operations involve the use of Utility assets, and any co-mingling of revenues received or a sharing of expenses incurred by the Utility, the consumption and load characteristics of the various classes of customers, and public acceptance of the rate structures.

2. The Authority shall determine the reasonableness of rate case expenses and shall disallow all rate case expenses determined by it to be unreasonable. No rate case expense determined to be unreasonable shall be paid by any customer. In determining the reasonable level of rate case expense, the Authority shall consider the extent to which the Utility has utilized or failed to utilize rate indexing and pass-throughs along with any other criteria as may be established by Rules of the Board. Refer to the Board's Rules for minimum Filing Requirements.

3. The Authority may withhold consent to the operation of any rate request or any portion thereof by issuing its Order to that effect within ninety (90) days after the Official Date of Filing of the rate request. The Order shall state all reasons for the withholding of consent. The Authority shall provide a

copy of the Order to the Utility and all interested persons who then have in writing requested such written notice. Such consent shall not be withheld for a period longer than eight (8) months following the official date of filing. Except for staff assisted rate cases, limited proceedings, price indexing, and pass-throughs, the new rates or all or any portion thereof not consented to may be placed into effect by the Utility under a bond, escrow, or corporate undertaking subject to refund at the expiration of such period upon notice to the Authority, and upon filing the appropriate tariffs. The Authority upon request of the applicant shall determine whether the corporate undertaking may be filed in lieu of the bond or escrow. The Utility shall keep accurate, detailed accounts of all amounts received because of such rates becoming effective under bond, escrow, or corporate undertaking subject to refund, specifying by whom and in whose behalf such amounts were paid. In its Final Order relating to such rate request, the Authority shall direct the Utility to refund, with interest at a fair rate to be determined by the Authority in such manner as it may direct, such portion of the increased rates which are found not to be justified and which are collected during the period specified. The Authority shall provide by Order for the disposition of any monies not refunded, but in no event shall such funds accrue to the benefit of the Utility. Unless extended in the particular case for good cause, the Authority shall take final action on the docket and issue its Final Order within twelve (12) months of the Official Date of Filing.

M. Not-for-profit Corporation Rates. The rates, fees and charges for every Public Utility owned and operated by a not-for-profit corporation or association shall be determined and set by the Authority to provide funds which with other funds available for such purposes, are sufficient at all times to pay the costs of maintaining, repairing and operating the system, including reserves for such purposes, and for replacement of necessary assets, and to pay the principal or and interest on any bonds as the same may become due, and to fund reserves, and to provide for making such payments.

N. Compliance with Standards of Operation. The Authority may condition the granting of new rates, charges, and fees of any franchisee upon compliance by that franchisee with the standards of operation required pursuant to the provision of this Ordinance and all other applicable state and federal laws.

O. Staff Assisted Rate Cases.

1. Staff assisted rate cases are intended to provide the small utility with a means to obtain rate relief through staff-assistance and thereby try to reduce rate case expenses of the Utility and its customers. These cases must be initiated by letter request of the small Utility.

2. The Utility, by requesting a staff assisted rate case, thereby agrees to accept the final rates and charges as approved by the Authority unless such final rates and charges actually produce less revenue than the previous mix of rates and charges. The Utility may withdraw an application for a staff assisted rate case at any time.

3. Small Utility. To be considered for a staff assisted rate case, the Utility must meet all of the following requirements unless specifically modified by Rule of the Board:

a. For the Utility's then most recent annual report, annual gross revenues may not exceed $75,000 for water or sewer service, or exceed $150,000 for both water and sewer services.

b. Payment of all franchise administration fees must be current.

c. All annual reports due to the County must be filed.

d. Unless waived by the Authority for good cause, all minimum filing requirements must be fulfilled. Refer to the Rules of the Board for those requirements.

e. Unless waived by the Authority for good cause, the Utility must pay at the time of the application a non-refundable filing fee equal to one percent (1%) of net income earned by the Utility during the preceding twelve (12) month test period, but not less than fifty dollars ($50.00).

f. The Executive Director of the Authority will schedule the staff assisted rate case and notify the Utility of the schedule.

g. Staff assisted rate case applicants shall not implement any rate change based upon failure of the Authority to make any final decision on the Utility's application within any specified time period, such as eight (8) months.

h. Initially, determinations of eligibility for staff assistance will be conditional pending examination of the condition of the applicant Utility's books and records. After an initial determination of eligibility, the Authority shall examine the books and records of the Utility before making a final determination of eligibility for staff assistance.

P. Rate Investigations. On its own motion or on a written complaint signed by a person applying for or receiving utility services from a Utility, or by request of a Utility itself, the Authority may investigate to determine if the rates charged or collected by a Utility, or if the Utility's practices affecting the rates, are unjust, unreasonable, discriminatory, or non-compensatory, or are in violation of this Ordinance, or Rule of the Board. If it appears that any change may be appropriate, the Authority hold a public hearing to determine just and reasonable rates, fees, or practices to be charges thereafter. Public notice of the public hearing shall by published one (1) time in a newspaper of general circulation in the County at least ten (10) days before the hearing. Notice of the hearing shall be given to the Utility and to the complainant, if any, at least thirty (30) days before the date of the hearing.

SECTION 1-6. INTERIM RATES, PROCEDURE.

A. The Authority, during any proceeding for a change of rates, upon its own motion, or petition from any party, may issue an Order to authorize the collection of interim rates until the effective date of the Final Order of the Authority. Such interim rates may be based upon a test period different from the test period used in the request for permanent rate relief. To establish a prima facie entitlement for interim relief, the Authority, the petitioning party or the Utility shall demonstrate that the Utility is earning outside the range of reasonableness on rate of return.

B. In authorizing an interim increase in rates, the Authority shall authorize, within ninety (90) days of the filing for such relief, the collection of rates sufficient to earn a rate of return at the minimum of the range of the last authorized rate of return. The difference between the interim rates and the previously authorized rates shall be collected under bond, escrow, letter of credit, or corporate undertaking, and be subject to refund with interest at an interest rate ordered by the Authority.

C. In a proceeding for an interim decrease in rates, the Authority shall authorize, within ninety (90) days of the filing for such relief, the continued collection of the previously authorized rates. However, revenues collected under those rates sufficient to reduce the achieved rate of return shall be placed under bond, escrow, letter of credit, or corporate undertaking subject to refund with interest at a rate ordered by the Authority

D. The Authority, upon written request and justification from the Utility applicant, shall determine whether escrow, letter of credit, or corporate undertaking may be filed in lieu of the bond.

E. In granting interim rate relief, the Authority, upon petition or upon its own motion, may preclude the recovery of any extraordinary or imprudently incurred expenditures or, for good cause shown, increase the amount of the bond, escrow, letter of credit, or corporate undertaking.

F. Any refund ordered by the Authority shall be calculated to reduce the Utility's rate of return during the pendency of the proceeding to the same level within the range of the newly authorized rate of return which is found fair and reasonable on a prospective basis, but the refund shall not be in excess of the amount of the revenues collected subject to refund and in accordance with subsection (B), above. In addition, the Authority may require interest on the refund at an interest rate established by the Authority.

G. In setting interim rates or setting revenues subject to refund, the Authority shall determine the revenue deficiency or excess by calculating the difference between the achieved rate of return of a Utility and its required rate of return applied to an average investment rate base or an end-of-period investment rate base.

H. For purposes of this Section:

1. "Achieved rate of return" means the rate of return earned by the Utility for the most recent twelve-month period. The achieved rate of return shall be calculated by applying appropriate adjustments consistent with those which were used in the most recent rate case of the Utility and annualizing any rate changes occurring during such period.

2. "Required rate of return" shall be calculated as the weighted average cost of capital for the most recent twelve-month period, using the last authorized rate of return on equity of the utility, the current embedded cost of fixed-rate capital, the actual cost of short-term debt, the actual cost of variable-cost debt, and the actual cost of other sources of capital which were used in the last rate case of the Utility or last proceeding where the Utility's rate base was established.

3. In a proceeding for an interim increase, the term "last authorized rate of return on equity", above, means the minimum of the range of the last authorized rate of return on equity established in the most recent rate case of the Utility. In a proceeding for an interim decrease, the term "last authorized rate of return on equity", above, means the maximum of the range of the last authorized rate of return on equity established in the most recent rate case of the Utility.

I. Nothing in this Section shall be construed to prohibit the Authority from authorizing interim rates for a Utility that does not then have an authorized rate of return previously established by the Authority.

J. Prior to the Authority issuing an Order to authorize the collection of interim rates, the Authority may hold a public hearing to issue its Order thereon.

SECTION 1-7. OFFICIAL DATE OF FILING.

Within thirty (30) days after receipt of an application, rate request, or other written document for which an Official Date of Filing is to be established, the Executive Director of the Authority or the Authority shall either determine an Official Date of Filing or issue a statement of deficiencies to the applicant, specifically listing why that application failed to meet the applicable minimum filing requirements. Such statement of deficiencies shall be binding upon the Authority to the extent that, once the deficiencies in the statement are satisfied, the official date of filing shall be promptly established as provided herein. Thereafter, within twenty (20) days after the applicant indicates to the Authority that it believes that it has met the minimum filing requirements, the Authority or its designee shall either determine the Official Date of Filing or issue another statement of deficiencies, listing specifically why the minimum requirements have not been met, in which case this procedure shall be repeated until the applicant meets the minimum filing requirements and the Official Date of Filing is finally established. When the Authority initiates a hearing, the official date of filing shall be the date upon which the order initiating the hearing is issued.

SECTION 1-8. MISCELLANEOUS PROVISIONS.

A. All of the substantive criteria, requirements and provisions which the Authority and the Board are required to follow in making any decision as provided for under this Ordinance and/or Rules of the Board, whether or not expressly stated in each such criteria, requirement, provision or Rule, as being applicable to the Authority and/or the Board, shall be binding upon the Authority and the Board in making and issuing decisions and orders on all matters. If the issue is not covered by any such criteria, requirement, provision or Rule, refer to the Rules of the FPSC as then published in the Florida Administrative Code.

B. All references in this Ordinance to Florida Statutes and Rules in the Florida Administrative Code shall automatically include all amendments to all of same without inserting any such changed reference into this Ordinance or in the Rules of the Board.

C. Customer Deposits and Interest Thereon. If a Utility requires a deposit from its customers, it shall, at least once each year, credit to each respective customer account, pro rata all interest accrued on the principal. Such accrued and unpaid interest shall be credited or paid to the customer when the customer discontinues that account.

D. No public hearing is required to decide a case or issue, unless a public hearing is specifically required by this Ordinance.

E. The minutes and transcript of the hearing and any relevant material submitted at or before the hearing shall be considered as part of the record of the application and any proceeding directly related thereto.

F. Extensions of required time periods. Unless prohibited by law, the Authority, for good cause, may grant extensions to time periods specified in this Ordinance or in Rules of the Board.

G. Matters of procedure not specifically provided for. The County may refer to all Procedural Rules of the FPSC (that relate to water and wastewater utilities) for guidance on how to determine an issue of procedure that is not specified in this Ordinance, by Rule of the Board, or by Rule of the Authority. The FPSC Procedural Rules now consist of Chapter 25-22, Florida Administrative Code (F.A.C.).

H. Substantive Matters not specifically provided for. The County may refer to the FPSC Rules for Water and Wastewater (currently Chapter 25-30, F.A.C.) for guidance as needed. Except to the extent specified otherwise in this Ordinance, Rule of the Board, or Rule of the Authority, the County shall endeavor to treat an issue the same as the FPSC would then treat that issue. Orders of the FPSC are not binding on the County, but may be considered by the County and will be followed unless it is decided that the FPSC's policy of the respective issue is not in the public interest for the County. No rule of the FPSC shall per se grant to any person or entity any procedural or substantive right or privilege not granted in this Ordinance, Rule of the Board, or Rule of the Authority, or require any duty or obligation not required or authorized to be required by this Ordinance, Rule of the Board, or Rule of the Authority.

I. The Board, through its Rules, may provide for Applications for Funds Prudently Invested (AFPI) Charges, for Declaratory Statements, and for any other procedures not otherwise provided for in this Ordinance. The Board may incorporate Rules of the FPSC by specific reference thereto.

SECTION 1-9. CHARGES FOR SERVICE AVAILABILITY.

A. No Utility shall create or give an undue or unreasonable preference or advantage to any person or locality, or subject any person or locality to any undue or unreasonable prejudice or disadvantage in any respect.

B. If the furnishing of service by a Utility requires the extension of or addition to its existing facilities, the Utility may require the applicant for such service to pay reasonable sums for service availability or reasonable deposits guaranteeing compensatory revenues from the service territory to be served, or reasonable contributions-in-aid-of-construction to help defray the costs of facilities which will be used and useful in furnishing that service, or reasonable construction or other advances evidenced by refundable or non-refundable agreement(s), or any combination thereof, as a condition precedent to furnishing that utility service. The Authority, upon request or upon its own motion, may investigate service agreements or proposals for charges and conditions for service availability. Each Franchisee must, upon request of the Authority, provide a copy of any such agreement requested at no cost to the County.

C. The Authority may set or approve just and reasonable charges and conditions for service availability. The Board, by Rule, may set standards for and levels of service availability charges and service availability conditions. Such charges and conditions shall be just and reasonable.

SECTION 1-10. UTILITY SERVICE.

A. Each Utility, within a reasonable time, shall provide service to the territory described in its Franchise Certificate. If the Authority finds that a Utility has failed to provide timely service to any persons reasonably entitled thereto, or finds that extension of that service to any such person can be accomplished only at an unreasonable cost and that transfer of the subject territory to another Utility is reasonable, and feasible, it may issue a Final Order to amend the Franchise Certificate to delete the territory not being served or not being

properly served by the Utility. If utility service has not been provided to any part of the territory which a Utility is authorized to serve, whether or not there has been a demand for such service, within five (5) years after the date of the County's first authorization for such service to such part of the territory, the Authority may issue a Final Order to amend or revoke such authorization for service, including deletion of that territory from the certificated area of the Utility.

B. Each Utility shall provide to each person reasonably entitled thereto such safe, efficient, and sufficient utility service as is prescribed by the Florida Safe Drinking Water Act currently (F.S. Subsection 403.850, et seq.) and the Florida Air and Water Pollution Control Act currently (F.S. Subsection 403.011, et seq.) and/or rules adopted pursuant thereto, or, if applicable, Chapters 17-550, 17-555, 17-560 or DHRS Chapter 10D-4, Florida Administrative Code, or the successor in function of each; also such service shall not be less safe, less efficient, or less sufficient than is consistent with the approved engineering design of the particular system and the reasonable and proper operation of the Utility in the public interest. If the Authority finds that a Utility has failed to provide its customers with water that meets the standards promulgated by the Department of Environmental Protection or the South Florida Water Management District, the Authority may issue a Preliminary Order to reduce the Utility's return on equity until such time as the standards are met. Such a procedure shall not affect any other possible remedy under this Ordinance or by law.

C. No Franchisee for a water system and/or a sewerage system in the same service area shall provide installations, pipes, lines and laterals for both systems so that one system shall be extended without the other system being extended at the same time, unless justification for such extension is approved by the Authority.

D. Collier County Water and Sewer Utility Impact Fee Requirement. No franchisee that is then receiving water supplied by the Collier County Water and Sewer Utility System shall sell such water or provide water or sewer hookups to any customer unless the customer provides evidence to the Franchisee that all applicable building permits required by Collier County have been issued and all required Collier County water and/or sewer impact fees have been paid to Collier County for all structure and sites for which water or sewer service is requested. Where applicable permits have not been issued and/or required fees have not been paid to the County, no Franchisee receiving water from the Collier County Water and Sewer Utility System shall enter into an agreement to sell water or provide water and/or sewer hookups to a customer at a future date, except as a party to a development agreement with the customer and Collier County which complies with the provisions of Section 163.3220 through 163.3243, Florida Statutes, or any and all successor paragraphs in function. Any other form of agreement or understanding shall be void and unenforceable to the extent that it purports to commit to the sale by such Franchisee of water, water hookups, sewer hookups, or EDU's of water or sewer capacity in the future.

SECTION 1-11. SERVICE FOR RESALE.

The Authority may issue a Preliminary Order to require a Utility to provide service for resale or to modify or discontinue service for resale. However, before requiring the provision of such service, the Authority shall first find that the Utility is financially able to make such additional investment as is required without impairing its capacity to serve its existing customers and its committed to future customers. This determination shall be made according to the Board's Rules. Any Utility which provides service for resale shall provide such service upon terms and conditions established by the Authority,

and no Utility shall discontinue such any such service without approval from the Authority. In the event a Governmental Agency voluntarily enters into an agreement for resale, such agreement shall provide that such service will not be discontinued without ninety (90) days advance notice being given to the purchaser prior to discontinuing such service. Nothing contained herein shall be construed to prohibit any Governmental Agency from requiring adequate security be given to such Governmental Agency to ensure payments required in the respective agreement.

SECTION 1-12. REGULATORY FEES.

A. Only the Board may establish and amend regulatory fees.

B. First Installment of Regulatory Fee. Each Utility holding a Certificate from the Florida Public Service Commission (FPSC) as of the effective date of this Ordinance, shall pay a transitional regulatory fee to the Authority in an amount equal to the amount of regulatory assessment fee which would have been paid by the Utility to the FPSC for that calendar quarter as if that Utility were still under the FPSC's Chapter 367, Florida Statutes, jurisdiction. That initial fee shall be paid to the County not later than the date that such fee would have been paid quarterly to the FPSC as if that Utility were then still regulated by the FPSC.

C. In addition to the said transitional regulatory fee as denoted above, each Utility shall pay a regulatory fee to the Authority in quarterly installments. Notwithstanding the transition, there will be no time period for which this fee is not applicable. The quarterly installment must be paid within thirty (30) days after the end of the next consecutive fiscal quarter of the Utility. Each quarterly installment must be paid within thirty (30) days of the end of each fiscal quarter of the Utility. With each payment, the Utility shall file with the Chairman of the Authority, a Statement of Gross Receipts for the applicable quarter, sworn to by an authorized financial officer of the Utility.

D. After payment of the initial quarter's regulatory fees, the regulatory fee shall be four and one-half percent (4.5 %) of the Utility's gross revenues, derived from the Utility's gross receipts billed within the County for the then last twelve (12) months. Such percentage shall continue until changed by Rule of the Board. Commencing at the beginning of the Utility's second calendar quarter, each Utility that held a Certificates from the FPSC shall decrease its rates pro rata to eliminate the difference between the regulatory fee the Utility was required to pay to the FPSC and the regulatory fee the Utility must pay to the County.

E. The amount of the regulatory fee shall be determined by the Board from time-to-time after public hearing thereon, but shall never become effective earlier than sixty (60) days after adoption of each such implementing Resolution. The fee shall be charged pro rata to the Utility's customers and each Utility may add to its customer invoices a separate line item for the then applicable regulatory fee to be paid to the County.

F. The regulatory fees are to be used to pay for the ongoing costs of supervising and regulating Utilities in the County and enforcing and administering this Ordinance, including the County's costs for any court appointed receivers, and for operation, maintenance and/or repair to abandoned Franchised Utilities, which may include extraordinary repairs to protect the health, safety and welfare of the general public. Extraordinary repairs are those that are neither typical nor customary and which occur infrequently, and payment of which shall require Authority approval.

G. To account for the time lag between billing and receipt of revenues from its customers, the gross revenues received by the Utility during the first three (3) months of the then last four (4) months shall be the sum used to calculate the regulatory fee to be paid to the County in that respective quarter. However, whenever a sale at wholesale is made of any water or wastewater service, this regulatory fee is not to be paid or payable on such revenues received by the selling Utility provided the Utility purchasing such water or wastewater service resells the same at retail directly to customers, whereupon such fee will be paid based upon those gross receipts by the end-use Utility. Also, revenues derived from the retail sale of water or wastewater service to Governmental Agencies need not be included in determining the amount of such fee. Each Utility that derives fifty percent (50%) or more of its revenues from the unincorporated area of the County, and which is subject to the provisions of this Ordinance as they relate to the Rates charged in the unincorporated areas, shall pay the regulatory fee as provided herein. The fee shall be the gross revenues received from the Utility's customers residing in the unincorporated area of the County.

H. Each Franchisee that fails to promptly submit to the County all required fees and accurate Statement of Gross Receipts within the prescribed period shall pay to the County a late regulatory fee charge of one percent (1%) of the delinquent fee per month, or fraction of a month.

I. All fees, including regulatory fees, collected by the County from Utilities pursuant to this Ordinance shall be placed in a separate trust account (called the "Utility Fee Trust Account") and such funds shall at all times remain separate and distinct from other County Funds unless and until the subject regulation of Utilities shall be by an entity other then the County, and in such event regulatory fees remaining after paying all expenses of termination of the Authority shall be refunded, with any interest accrued thereon, pro rata to each then regulated Utility. All such funds at the end of each fiscal year of the County shall automatically become the beginning balance for the succeeding fiscal year.

SECTION 1-13. APPLICATION FEES.

Application Fees. Only the Board may establish or amend Application fees. Application fees shall be established by, and may be amended from time-to-time, by resolution of the Board after public hearing. Any application filed by a Utility shall be accompanied by the applicable application fee. Such fees may be based upon the existing or proposed capacity of the Utility system, including proposed additions thereto or planned reductions therefrom in the Utility's then next fiscal year.

SECTION 1-14. ANNUAL FINANCIAL REPORTING REQUIREMENT.

A. Each Utility shall annually, within one hundred and twenty (120) days of the close of its fiscal year, file with the Authority a Financial Report of its operation in Collier County during the fiscal year. Such report shall be sworn to by the financial officer of the Utility. Any end-of-fiscal-year adjustments in the total regulatory fee paid to the County during the fiscal year then being reported shall be paid concurrently with submission of the annual report, or where an annual report correctly shows that overpayments of regulatory fees had been paid by the Utility during the fiscal year being reported, a Final Order allowing credit for the amount of those overpayments shall be issued by the Authority for the next fiscal year provided the Utility is not then delinquent in the payment of any other monies owed to the County.

B. If a Utility provides utility service in Collier County through a subsidiary or separate operating division of a parent corporation which does business in any location other than Collier County, the annual financial report and an Audited Financial Statement required by this Section shall be provided by the Utility in such form as to clearly reveal the financial details of the Collier County operations separated from all other operational units of the parent corporation.

C. If the Utility has an outstanding loan that is secured by utility assets, the Utility must describe in its annual financial report the status of the loan and the status of the utility improvement being paid for by such borrowed funds.

D. Each Franchisee that fails to promptly submit to the County all required fees and its accurate annual financial report within the prescribed time shall pay to the County a late charge of one percent (1%) of the delinquent fee per month, or fraction thereof.

SECTION 1-15. NOTICE OF PUBLIC HEARINGS.

A. Notice of Public Hearing before the Authority.

1. A notice of each public hearings before Authority shall contain the name of the applicant, an accurate description of the purposes of the hearing, and the date and time of the hearing before the Authority.

2. If the public hearing of the Authority is for the purpose of the making its Final Decision on a rate increase, the affected Utility shall mail a notice to each of its customers by regular mail or placed in its regular bills, but such posted notices must be received by the utility's customers at least ten (10) days before the date of that scheduled hearing.

3. If the notice is for a public hearing on a matter initiated by the Authority, such notice shall be served by certified mail, return receipt requested, on the affected Utility at least twenty (20) days before the first day of the public hearing and shall be published one (1) time in a newspaper of general circulation in Collier County at least ten (10) days before the first day of the public hearing.

4. Notice for hearings on applications for Limited Proceedings need be delivered only to persons who have in writing delivered to the Executive Director of the Authority requested such notice. Notice regarding Limited Proceedings is required only after the Authority has authorized that the Limited Proceeding is appropriate and has established the minimum filing requirements for the respective Limited Proceeding.

B. Notice of Public Hearing before the Board. A notice of public hearing before the Board shall be given as follows:

1. The notice shall contain the name of the applicant, an accurate description of the purposes of the hearing, and the date of the public hearing before the Board.

2. A notice of any public hearing before the Board for the consideration of a Preliminary Order of the Authority shall be served by certified mail, return receipt requested, on the affected Utility at least ten (10) days before the date of such hearing and shall be published one (1) time in a newspaper of general circulation in Collier County at least ten (10) days before the date of that hearing.

SECTION 1-16. CONDUCT OF PUBLIC HEARINGS.

A. Matters heard by a hearing examiner as well as matters heard by the Authority as a body without a hearing examiner are included within the phrase "hearings before the Authority" or similar phrases. Cases heard by the Authority on consideration of any Order of a hearing examiner are also classified as "hearings before the Authority" or similar phrase.

B. The Chairman of the Authority may call a hearing of the Authority; a hearing also may be called by written notice, signed by at least two (2) regular members of the Authority. Minutes shall be kept of all hearings. All hearings of the Authority shall be open to attendance by the general public except as such times, if any, when the specific subject to be discussed is exempt from public attendance by application of Florida Statute. The Chairman of the Authority will usually be the presiding officer during hearings before the Authority as a body. In the Chairman's absence, the Vice-Chairman shall be the Presiding Officer.

C. Each matter before the Authority shall be presented by the party who initiated the matter or that person's designated representative. All parties to the matter shall be provided an opportunity to appear and present evidence, cross examine witnesses, and present argument on each matter.

D. Parties. Parties to a hearing include the applicant, County staff, and non-County employees, if any, retained by the County to represent the County at the hearing; and intervenors. Each party shall be entitled to receive copies of all pleadings, motions, notices, orders, and all other matters filed in the proceeding unless exempt from such disclosure by Florida Statute, by administrative rule of the Florida Administrative Code, or any other controlling law, rule or regulation. If such matters are then exempt from public disclosure as if before the FPSC, such matters shall have a like exemption regarding the County. The County staff may participate as a party in each proceeding. The County staff's primary duty is to see that all relevant facts and issues are brought to the attention of the hearing examiner, the Authority, and/or the Board.

E. Filing, Service of Documents, and Computation of Time. Refer to Rules of the Board.

F. Initial pleadings. The initial pleading shall be either an application or other filing by a Utility, or by person with standing in the matter, by Resolution of the Board, or by Resolution of the Authority.

G. Pleadings. Pleadings shall substantially conform to the Florida Rules of Civil Procedure as to content, form, size, signatures, and certifications, and shall be served upon all parties. The original and seven (7) copies of all pleadings shall be submitted to the Executive Director of the Authority, except application for any rate change, which shall require an original and ten (10) copies. In specific cases the Executive Director of the Authority may require the applicant to submit additional copies.

H. Prehearing Statements. The Presiding Officer may issue an order to require the filing of prehearing statements. Refer to the Rules of the Board.

I. Informal Conferences. The Presiding Officer may require the parties to hold such conferences, exchange such information, and submit such papers as may aid in the organization of the proceeding and efficient disposition of the matter or part thereof. The Presiding Officer may participate in such informal conferences as appropriate.

J. Prehearing Notice. Upon seven (7) days written notice to the parties, one or more rehearings may be conducted for the purpose of hearing arguments on pending motions, clarifying or simplifying issues, discussing possibility of settlement of issues or the entire matter, examining documents and exhibits, exchanging names and addresses, and otherwise attempting to resolve the matter.

K. Prehearing Orders. The Presiding Officer may issue prehearing orders. Refer to the Rules of the Board.

L. Discovery. Parties may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure (FRCP). The Presiding Officer may issue appropriate orders to effectuate the purposes of discovery and to prevent delay and unnecessary expenses, and may impose appropriate sanctions under rule 1.380, FRCP, other than contempt or award any expenses or damages. Sanctions may include dismissal of the entire proceeding.

M. Testimony and Evidence. All testimony at a hearing shall be under oath and shall be recorded. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. All witnesses who testify shall be subject to cross-examination.

N. Hearing Before the Authority on Matter Referred by Hearing Examiner. At any hearing before the Authority for the consideration of any order of a hearing examiner, the Authority shall consider the record of the proceedings before the hearing examiner, and the legal arguments of the affected utility, any party, and of staff. No order of the Hearing Examiner shall be binding on the Authority, but the Authority shall rely on the findings of fact found by the hearing examiner unless the Authority determines from a review of the record that each unaccepted finding of fact was not based upon competent substantial evidence or that the proceedings on which the findings of fact were based did not comply with the essential requirements of law. The Authority may not reject the hearing examiners conclusions of law. If the Authority upon review of the record determines that a finding of fact by the hearing examiner cannot be relied upon by the Authority and the Authority determines it may be useful to hear testimony on that issue, the Authority may hear such testimony as may be deemed by the Authority necessary or helpful to determine the issue.

O. Public Hearing Before the Authority With No Hearing Examiner. At the conclusion of hearing conducted by the Authority without a hearing examiner, or as soon thereafter as practicable, the Authority shall issue its findings of fact based on the evidence of record, and its conclusions of law, and shall issue an Order to afford the proper disposition of the matter consistent with this Ordinance.

P. Voting Quorum. Decisions of the Authority shall be by motion approved by a majority of those members present and voting, except that at least three (3) members of the Authority must vote in order for the final agency action of the Authority to be official, except to continue a meeting or hearing due to lack of quorum. If the matter is to be determined by review of any order of a hearing examiner, the Authority may affirm all findings and all recommendations of the hearing examiner, or may modify same, subject to the restrictions of subsection N., above.

Q. Public Hearing. Definition: Most hearing are not "public hearings." A "public hearing" is an evidentiary hearing where evidence is to be presented and/or witnesses, if any, are to be cross examined, and/or where interested persons have a

legal right to be heard. If no hearing is required, action may be taken on the matter by consent agenda.

R. Consolidation. Consolidation of proceedings is appropriate if there are separate matters before the respective hearing which involve similar issues of fact or law, or identical parties. Any party to a proceeding may request that it be consolidated with other proceedings. The Hearing Examiner, the Authority, or the Board, may on their own motion, order separate proceedings to be consolidated.

S. Procedure, generally. Generally, the Florida Rules of Civil Procedure shall govern the proceedings before the hearing examiner, the Authority, or the Board, except that the provisions of this Ordinance and/or the Rules of the Board supersede the FRCP where any conflict arises between any of them. If there should be a conflict between this Ordinance and a Rule of the Board, the Ordinance shall prevail if allowed by law.

T. Intervention. Except for pass-throughs, indexing, staff assisted rate cases, and transfers to governmental agencies, persons, other than the original parties who can demonstrate a substantial interest in the proceeding and who desire to become party may petition the Presiding Officer for leave to intervene. Each petition must be received by the Executive Director of the Authority at least five (5) work days prior to commencement of the next scheduled hearing date and must include allegations sufficient to demonstrate that the intervenor is entitled to participate in the matter as a matter of law. Interventions may be allowed at any time into the specific proceeding, but all intervenors shall take the matter as they then find it. Intervention shall never be allowed if the intervention would unduly prejudice any party if the intervenor could have entered into the proceeding at an earlier date. The Executive Director of the Authority shall forward the petition to the respective Presiding Officer.

U. Public Counsel. There shall be no representation similar to a "public counsel" unless same is provided by and paid for by a party to the proceeding other than the County.

V. Hearing Examiners.

1. Attorney-at-law. Each hearing examiner shall be an attorney-at-law licensed to practice law in Florida and who has experience in the subject matter of the proceeding.

2. The Authority may advertise for and select a poll of hearing examiner candidates from which the County Administrator shall select up to six (6) individuals to be on call to serve as hearing examiners for the Board or the Authority. Appointments may be made for a specific matter, or for a specific period of time up to three (3) years. Each hearing examiner may be reappointed or not at the discretion of the County Administrator. There shall be no limit to the number of reappointments that may be given to any individual hearing examiner. The Board retains authority to remove any hearing examiner appointed by the County Administrator with or without cause, but no hearing examiner may be removed by anyone while the hearing examiner is involved in a matter except by order of a judge. Appointments to fill vacancies in fixed term appointments may be for the remainder of the unexpired term or for a longer term up to a total of three (3) years.

3. No hearing examiner may be an employee of Collier County. No hearing examiner shall have any conflict of interest in any matter. Hearing examiners shall be compensated at a rate not to exceed the rate then established by Authority and approved by the County Administrator. Hearing examiners shall be reimbursed for such travel, mileage and per diem expenses as may

be authorized by the County and by law. Detailed invoices from each hearing examiner for costs and fees must be submitted not less often than bimonthly to the Executive Director of the Authority for review and approval.

4. Approved costs and fees for each hearing examiner shall be paid out of the Utility Fee Trust Account provided sufficient funds are available therein.

5. The assignment of a hearing examiner to a matter should be a early as possible, and should never be later than by 5:00 P.M. on the publication date of notice of the first day of the respective hearing.

6. If a hearing examiner becomes unavailable after assignment to a matter, he/she shall as soon as possible notify that unavailability to the Executive Director of the Authority or the Chairman of the Authority.

7. Additional matters regarding hearing examiners or other Presiding Officers may be specified in the Rules of the Board.

W. Expert Witnesses, Subpoenas, Recordation, Due Process Protection, Evidence, Post-Hearing Procedures, Motions for Reconsideration, Stay Pending Judicial Review, and Receivers. Refer to the Rules of the Board.

X. Continuances. The Presiding Officer may grant a continuance of a hearing for good cause shown or upon stipulation of all parties. Requests for a continuance shall be made in writing or upon oral motion at hearing. Except in cases of emergency, requests for continuance must be made at least five (5) days prior to the date noticed for the start of the hearing.

Y. Dismissals. Refer to the Rules of the Board.

SECTION 1-17. BOARD APPROVAL OF PRELIMINARY ORDERS OF THE AUTHORITY.

A. In order for a Preliminary Order of the Authority to be effective, it must be approved by an order or resolution issued by the Board, with or without modifications, at any regular or special meeting of the Board.

B. Any party, including an individual customer of a Utility, who is dissatisfied with any Preliminary Order of the Authority may object to possible approval of such order by the Board by filing with the Clerk of the Board a written notice of objection within ten (10) days of issuance of the Preliminary Order of the Authority. Upon the filing of such notice, the Board may set a public hearing to consider that Preliminary Order, may review any record from the proceedings before the Authority, and/or hear legal arguments related to that Preliminary Order. Based upon such information, the Board shall decide whether to approve, amend and approve, reverse the Preliminary Order, remand the matter back to the Authority or to a hearing examiner, or take other action as the Board deems appropriate.

C. In the event a notice of objection is not filed within ten (10) days of issuance of a Preliminary Order of the Authority, the Board may confirm such order without a hearing, whereupon the Preliminary Order shall take effect as specified by the Board. Unless otherwise specified, the order shall become fully effective upon approval by the Board.

D. In the event a notice of objection is not filed by any party within ten (10) days of issuance of the Preliminary Order,

any member of the Board may nevertheless object to full approval or approval of any provision thereof.

E. Final Order of the Authority. A Final Order of the Authority shall take effect upon as directed by the Authority without any confirmation by the Board.

F. Public Hearing before the Board. Each public hearing before the Board shall be conducted as follows:

1. A hearing may be called by a majority vote of the Board. Minutes shall be kept of all hearings and all hearings and proceedings shall be open to the public.

2. Each case before the Board shall be presented by the party who initiated the hearing. All parties shall be provided an opportunity to appear and present argument on such case. Except in exceptional cases and for good cause, the Board will not hear testimony from witnesses, but will hear argument from attorneys or other authorized representatives of the parties.

3. At any public hearing before the Board for the consideration of a Preliminary Order, the Board may consider the record of the proceedings before the Authority and the legal arguments of the affected utility, any party, and of staff. No Preliminary Order of the Authority shall be binding on the Board. The Board may rely on the findings of fact found by the Authority unless the Board determines that the specific finding of fact was not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law. If the Board determines that any unaccepted finding of fact cannot be relied upon by the Board, or the Board determines it may be useful to have additional brief testimony in the matter, then the Board may hear such brief testimony or refer the matter to a hearing examiner or back to the Authority to establish such additional record evidence.

4. All testimony shall be under oath and shall be recorded. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. All witnesses who testify shall be subject to cross-examination.

G. An order of the Board shall be issued in each matter as soon as practicable, but, except for extensions by the Board for good cause, not later than the applicable time limitations provided under this Ordinance or by the Rules of the Board.

SECTION 1-18. POWERS OF THE BOARD.

In addition to its power and authority as otherwise specified elsewhere in this Ordinance, the Board has the following powers:

1. Board Intervention. If the Board finds that the rates, fees, charges, measurements, practices, or contracts of a Utility are unjust, unreasonable, insufficient, discriminatory, or otherwise in violation of this Ordinance, or of the Utility's Franchise, rules and regulations; or if an exemption from regulation under this Ordinance was granted based on any false information supplied to the County by the applicant for that exemption, the Board may order such measures as it deems necessary. Such measures include requirement by the person to apply to the County for a Franchise Certificate, or to set fair and reasonable rates, fees, charges, rate classes, and/or customer classifications; to change the Utility's rules and regulations; to require repairs, improvements, extensions and/or additions to the plant and/or equipment of the Utility as are deemed necessary to promote the health, safety or welfare of the

public served and committed to be served by that Utility; also to secure adequate service or facilities for those reasonably entitled thereto. The Board, for good cause, may intervene into any proceeding of the Authority at any time. The Board may in an emergency summarily take any matter away from the Authority and assume jurisdiction over the matter.

2. To issue a Final Order approving, modifying, denying, revoking or authorizing transfer of a Franchise Certificate;

3. To employ and fix the compensation for Hearing Examiners, and/or such technical, legal and clerical employees as it deems necessary;

4. In respect to the conduct of its hearings pursuant to this Ordinance:

a. To adopt rules by Resolution for the conduct of its hearings under this Ordinance; and

b. To take testimony under oath;

5. By Resolution, to adopt and amend rules appropriate for the administration and enforcement of this Ordinance;

6. To, by other ordinance of the County, prescribe and enforce rules and regulations for the protection of the health, safety and welfare of the citizens of Collier County, Florida, including but not limited to water quality, quantity and pressure, fire protection, disaster preparedness, and wastewater collection, treatment and disposal;

7. To construct, operate and maintain publicly owned water and sewer utilities, and enter into agreements with other governmental agencies, other utilities, and other legal entities and individuals, for all legal purposes connected with such construction, operation, or maintenance, including and not limited to agreements with Utility Franchisees for the reservation of specific quantities of water supply, water and/or sewerage treatment capacity, and sale and purchase of water and/or wastewater effluent or service. Such an agreement between the Board and a Utility Franchisee shall constitute an amendment to that Franchisee's franchise and may provide for rate adjustments pursuant to the terms of the agreement without the necessity of a rate hearing. No public hearing shall be required for amendment of a franchise by entering into or operation of such an agreement.

8. To exercise all powers and do all things necessary or convenient to the full and complete exercise of its jurisdiction and the enforcement of its orders and requirements, including approve court actions pursuant to Section 1-3 (13) herein.

9. Pursuant to Section 1-12 of this Ordinance, to establish and, if needed from time-to-time, amend the regulatory fee that must be paid by all utilities that are subject to the provision of this Ordinance.

10. Appoint members to the Authority; remove members from the Authority.

11. Pursuant to Section 1-13 of this Ordinance, amend the applicable Application Fees payable to the County.

SECTION 1-19. APPLICATION FOR TRANSFER OF FRANCHISE CERTIFICATE, FACILITIES OR CONTROL.

A. The Board has Final Order authority under this Section. When a Utility proposes to sell, assign, or otherwise transfer its Franchise Certificate, its system facilities or any portion

thereof, or majority organizational control, the franchisee must apply to the Authority for prior determination and approval from the Authority that the proposed sale, assignment, or other transfer is in the public interest and that the buyer, assignee, or any other transferee can and will fulfill the commitments, duties, and obligations, and of the existing Utility. The minimum filing requirements shall be as specified by Rules of the Board.

B. The transferor shall remain liable for any outstanding regulatory assessment fees, fines, or refunds of the Utility due to the County.

C. The application fee may be waived is the proposed transferee is a Governmental Agency.

D. Authority Determinations. Following a determination by Preliminary Order of the Authority that the application is complete, the Board may grant, deny, or amend the Preliminary Order or application for any for transfer upon such conditions as it deems proper, and after requiring such further relevant information as it deems necessary. The Authority and the Board may consider whether:

1. The Application is made in good faith;

2. The transferee has sufficient resources to serve the area for which the transfer is sought;

3. The transferor Utility is in regulatory compliance;

4. The known and projected economic impact on the Utility's customer base and the Utility's future rates, fees and charges;

5. The application conflicts with the County's Master Land Use Plan, including capital improvements elements.

E. Transfer to Homeowners' Association. Transfers to homeowners' association or any similar group shall be subject to the above stated provisions, plus the following additional provisions:

1. The transferee shall be a corporation not-for-profit organized under the laws of the State of Florida. All users of the utility service(s) of the Utility must be members of the corporation and be entitled to one (1) vote regarding the affairs of the corporation, including the rates, fees and charges to be charged by the Utility.

2. The members of the corporation must have voted to purchase or otherwise acquire the Franchise not more than one hundred and twenty (120) days prior to the filing of the application for transfer. The majority vote required shall be not less than the percentage required by the corporate charter and/or by-laws of the corporation, and in no case less than fifty percent (50%) of all members, plus one (1) member.

F. Transfer to Governmental Agency. An application shall be processed in the same manner as provided in Section 1-4 except that the sale or any other transfer of a Franchise Certificate or facility, in whole or in part, to any governmental agency shall, absent compelling reasons against, be approved as a matter of right; however, the governmental agency shall, prior to taking any official action, obtain from the Utility or the Authority (with respect to the facilities to be transferred) the most recent available income and expense statement, balance sheet, and statement of rate base for regulatory purposes, plus contributions-in-aid-of-construction and other contributed assets. Effective at the the time of the closing on any such

sale or other transfer, any request for rate relief pending before the Authority Authority shall automatically be deemed to have been withdrawn. Interim rates, if previously approved by the Authority, must be discontinued and any money collected pursuant to interim rate relief must be refunded to the customers of the Utility with interest.

G. The Authority may establish the then existing rate base for a Utility in its Preliminary Order to approve a sale, assignment, or any other transfer thereof, except no rate base need be established for any transfer to any governmental agency.

H. Any person, company or organization that obtains ownership or control over any system or any part thereof by any means, including through foreclosure of a mortgage or other encumbrance, must continue all utility service without interruption and shall remove or dismantle any portion of the system previously dedicated to public use which might impair the ability to provide existing service and service committed to.

I. Discretionary Public Hearing. At its discretion, the Authority and/or the Board may hold a public hearing to consider a completed application for any such transfer.

SECTION 1-20. EXAMINATION AND TESTING OF METERS.

A. The Board may by Rule provide for the examination and testing of all meters used for measuring any utility service of a Utility, and reasonable fees for same.

B. Any person may have a meter tested by the Utility upon payment of the applicable fee fixed by Rule of the Board.

C. Utility customers, at their discretion, may pay the fee at the time of the request or have the Utility include the fee in the next regularly scheduled statement. However, the fee shall be repaid to the customer or user if the meter is found to have been incorrect to the disadvantage of the customer or user in excess of the degree or amount of tolerance customarily allowed for such meters, or otherwise as may be provided in the Rules of the Board. No fee may be charged for any meter testing done by the Authority.

SECTION 1-21. APPLICATION FOR ADDITION TO SERVICE AREA.

A. The Authority has Final Authority approval under this Section. Proposed additions of utility service into any additional service area shall not be commenced until the Utility first obtains an amended Franchise Certificate from the Authority that authorizes such additions.

B. An application to amend a Franchise Certificate to add to the Utility's territory shall be made at any time within sixty (60) days following the completion of all notice requirements for same in Rules of the Board. The application shall be filed with the applicable application fee per Rule of the Board and shall contain a map and legal description of all additional territory proposed to be served, along with such other minimum filing requirements by Rules of the Board. The Authority should issue a Final Order Order regarding the application.

C. Except in very exceptional instances and always based on necessity, the Authority will not authorize extension of franchise territory to any parcel of land that is not contiguous to the Utility's then service territory, or in such a manner as to create "pockets" of unserved area. Any application for extension of any service territory that is not in accord with this policy shall specify in detail the necessity for variance to this policy and how the public interest will be served notwithstanding lack of adherence to this policy.

D. Authority Determinations. The Authority may render its decision upon such conditions as the Authority deems proper, and may require further relevant information as it deems necessary. This Authority shall consider whether:

1. The Application is made in good faith;

2. The applicant has sufficient resources to serve the area for which the extension is sought;

3. The System has sufficient capacity to serve the proposed added area;

4. The conceptual plan that shows the layout of the proposed system filed by the applicant demonstrates that, as applicable, the source of water, method of treatment of water, method of treatment of wastewater, and method of disposing of sewage effluent are adequate to protect the public health, safety, and welfare;

5. Whether the application conflicts with the County's local comprehensive plan, including capital improvement elements.

E. Discretionary Public Hearing. The Authority may hold public hearings to consider an application for a boundary change.

F. The Utility, at no cost to the County, shall file with the Authority a copy of the construction plans for the system, which plans must have been approved as required by applicable Governmental Agencies prior to any Utility construction being initiated. At no cost to the County, one (1) set of as-built drawings shall be filed with the Authority.

G. A Bulk Water Utility shall pay a minimum application fee of $500.00 to add to its service territory except for geographic areas to service individual retail customers.

SECTION 1-22. APPLICATION FOR DELETION OF SERVICE TERRITORY.

A. The Authority has Final Order authority under this Section.

B. The County, the affected Utility, and any substantially affected person shall be the only persons with standing regarding deletion of part of a Utility's service territory.

C. Each applicant who requests deletion of a Utility's service territory shall:

1. Provide the minimum filing requirements required by Rule of the Board, which include a detailed inquiry into the ability or lack of ability of the applicant to provide the utility service in the area sought to be deleted, the need or lack of need for the utility service in that area, and the existence or nonexistence of the utility service from other sources within close geographical proximity to that area;

2. Submit a sworn affidavit based on personal knowledge of an officer of the Utility that the applicant has caused notice of its intention to file an application to delete that service territory to be be delivered by mail or other means of actual delivery to the Authority and to such other persons as may be prescribed by Rule of the Board. Such notice shall be delivered at least twenty (20) days prior to the initial filing of that application.

D. If the Authority does not receive written objection to the application within twenty (20) days following the Official Date of Filing of the application, the Authority may issue a Final Order of its decision on the application without a public hearing.

E. If within twenty (20) days following the Official Date of Filing, the Authority receives a written objection requesting a public hearing from any other Governmental Agency, from another Utility, or from a Person who would be substantially affected by deletion of any part of the requested territory, the Authority may conduct a public hearing thereon. The Authority should decide the matter be Final Order.

SECTION 1-23. ABANDONMENT.

A. The Authority has Final Order authority under this Section.

B. Water or wastewater service to customers of a Utility shall not be interrupted by the abandonment or placement into receivership of that Utility. To that end:

1. No person owning, operating, managing or controlling a Utility shall abandon the Utility without giving at least sixty (60) days' advance written notice of such intent the Authority.

2. After receiving such notice, the Authority, absent compelling circumstances, may require petition the Circuit Court to appoint a receiver, which may be the Executive Director of the Authority or any person deemed appropriate by the Court. The receiver shall operate the Utility from the date of abandonment until such time as the receiver disposes of the property of the Utility in a manner designed to continue the efficient and effective operation of all such utility service. All costs of the receivership, including expenses of the receiver operating and disposing of the Utility, plus attorneys fees incurred by the receiver and any by the Board, shall be assessed as a lien against and paid by the owner of the Utility.

3. The notice to the Authority under subsection (1), above, is sufficient cause for revocation, suspension, or amendment of the Franchise Certificate of the Utility as of the date of abandonment. The person operating such Utility shall automatically be considered to hold temporary authorization to operate from the Authority.

SECTION 1-24. ENFORCEMENT AND PENALTY PROVISIONS.

A. Section 1-6 of this, the Collier County Code of Ordinances, applies throughout this Ordinance. Violations of this Ordinance may be prosecuted pursuant to 125.69, Florida Statutes, or its successor in function.

B. Any violation of this Ordinance is declared to be a misdemeanor within the meaning of Section 775.08, Florida Statutes, and shall be punishable as therein provided, except the County may specify in the respective case that imprisonment is not a possible penalty except for contempt of court. Any person building, installing, or operating a Water Utility, Sewer Utility, Bulk Water Utility, or any combination thereof, without a valid exemption by the County issued upon application therefore by the Utility, or without a Franchise therefor issued by the Board shall be guilty of a misdemeanor, which may be published as then provided by law. Each day of such operation may be deemed to be a separate misdemeanor. If any Utility, by any officer, agent or employee, or any other person, knowingly refuses to

comply with, or willfully violates any provision of this Ordinance or any Rule or Order of the Board or Authority, such Utility, officer, agent or employee, or other person shall, if convicted, be guilty of a misdemeanor as specified.

C. The Authority may initiate a complaint to the Code Enforcement Board for violation of this Ordinance in accordance with Chapter 162, Florida Statutes.

D. Administrative Penalty. For any violation of a Franchise or of this Ordinance or of any written Rule of the Board or of the Authority under this Ordinance, the Authority may assess an administrative penalty not exceeding five hundred dollars ($500.00), which may be collected in civil court of law of competent jurisdiction. Each day a violation continues may be considered as a separate violation.

E. Failure to File on Time. Whenever any filing requirement of any Utility, including all required accompanying documentation (report and/or statements), are not filed within the applicable prescribed time period, the Utility shall be notified of the delinquency by certified mail or other means of actual delivery. If the required fee and other documentation are not filed within thirty (30) days after the notice of delinquency has been received by the Utility, (or within such lesser time as specified in the notice), the Authority may conduct an independent audit of the books and records of the Franchisee to determine the amount of the fee that is due, or may calculate the fee by projecting the fee from the Utility's previous then recent experience. If the County calculates any such fees because the Utility has not done so in a prompt and complete manner, the Utility shall be liable for all applicable late charges plus all of the County's costs, including attorney's fees, costs of collection and costs of legal action(s) to enforce collection.

F. Costs. Any Utility officer, agent, or employee, or other person convicted under the provisions of this Ordinance shall pay, to the fullest extent allowed by law, all costs and expenses involved in that case.

G. The County may take such other lawful action in any court of competent jurisdiction as the County deems necessary to prevent or remedy any refusal to comply with, or any violation of, this Ordinance and/or any Rule or order of the Board or the Authority. Such action may include and shall not be limited to, an equitable action for injunctive relief, or any action at law for damages or other relief or remedy.

SECTION 1-25. REVOCATION OF FRANCHISE.

A. Only the Board may revoke a Franchise Certificate.

B. No Franchise Certificate shall be revoked until the Authority has held a public hearing on such matter and presented a Preliminary Order to the Board.

C. Notice of intent to consider a revocation shall be given to the Utility at least sixty (60) days before the date of the public hearing. Such notice shall be issued by the Authority and shall specify all reasons on which revocation is sought, stating the facts on which such reasons for revocation are based.

D. If the Authority determines after its public hearing that the basic for revocation has been established, the Authority will issue a Preliminary Order to the Authority to revoke the Franchise Certificate or may require any other remedy provided for in this Ordinance or otherwise provided by general law.

SECTION 1-26. EXEMPTION OF COUNTY UTILITY SYSTEMS.

This Ordinance does not apply to any utility facilities owned by the County. This Ordinance shall not prohibit or restrict in any manner the construction, operation or maintenance of a water or sewer (wastewater) system, bulk water system, or any combination thereof by the County, except in any geographic area for which an exclusive Franchise Certificate for that Utility service has been granted to a Utility under this Ordinance and the Franchise Certificate is active and valid.

SECTION 1-27. COMPLIANCE WITH OTHER APPLICABLE REGULATIONS.

All Utilities shall comply with all rules, regulations and quality and operating standards pertaining to such utilities as promulgated by any and all Governmental Agencies having jurisdiction thereof.

SECTION 1-28. APPELLATE REVIEW.

Any person directly aggrieved by an order, resolution or other action of the Board, or by Final Order of the Authority, may have it reviewed by the Circuit Court on petition for a writ of certiorari, pursuant to rule 9.100, Florida rules of appellate procedure or its successor in function rule, as then applicable. Matters before a Hearing Examiner or the Authority may not be appealed to the Board. Parties may, in lieu thereof, and as provided for in this Ordinance, file timely objections to Preliminary Orders of the Authority that are at that time scheduled for presentation to the Board for action by the Board.

SECTION 1-29. PROVIDING FOR THE POSSIBILITY OF TRANSFER OF REGULATION TO ANOTHER GOVERNMENTAL AGENCY.

In addition to any power granted on the effective date of this Ordinance by Chapter 367, or any other Florida Statutes, if the Board should acquire authority to decide that one (1) or more Utilities regulated hereunder should in the Board's judgment become regulated by another Governmental Agency, and which transfer can be accomplished by the County, then the Board, at its discretion, by taking such action can approve such transfer of regulation to the other Governmental Agency.

SECTION TWO: CONFLICT AND SEVERABILITY.

In the event that this Ordinance conflicts with any other ordinance of Collier County of other applicable law, the more restrictive shall apply. If any phrase or portion of this Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion.

SECTION THREE: INCLUSION INTO THE CODE OF LAWS AND ORDINANCES.

The provisions of this Ordinance shall become and be made a part of the code of laws and ordinances of Collier County, Florida. Sections of this Ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or any other appropriate word.

SECTION FOUR: EFFECTIVE DATE.

This Ordinance shall become effective immediately upon filing this Ordinance with the Florida Department of State.

PASSED AND DULY ADOPTED by the Board of County Commissioners of Collier County, Florida, this 13th day of February, 1996.

ATTEST:
DWIGHT E. BROCK, CLERK

By: Ellie Hoffman, D.C.

BOARD OF COUNTY COMMISSIONERS
COLLIER COUNTY, FLORIDA

by: _____
JOHN C. NORRIS, CHAIRMAN

Approved as to form and
legal sufficiency:

Thomas C. Palmer
Assistant County Attorney

ordinances\ufcreprd-2
mrb/10699

This ordinance filed with the Secretary of State's Office the 16th day of March, 1996 and acknowledgement of that filing received this 14th day of March, 1996.
By Ellie Hoffman
Deputy Clerk

State of FLORIDA
County of COLLIER

I HEREBY CERTIFY THAT this is a true and correct copy of a document on file in Board Minutes and Records of Collier County WITNESS my hand and official seal this 16th day of August, 1996.

DWIGHT E. BROCK, CLERK OF COURTS

By: Ellie Hoffman D.C. _____

ATTACHMENT "B"

OFFICE OF THE COUNTY MANAGER
EXECUTIVE ASSISTANT