

REQUEST TO ESTABLISH DOCKET  
(PLEASE TYPE)

Date March 27, 1998

Docket No. 980442-SU

1. Division Name/Staff Name Division of Legal Services (Vaccaro)
2. OPR Division of Legal Services (Vaccaro)
3. OCR Division of Water and Wastewater (Hines)
4. Suggested Docket Title Petition of Pine Island Cove Homeowner's Association for waiver of Rules 25-30.110(3), (6) and (7), Florida Administrative Code.

5. Suggested Docket Mailing List (attach separate sheet if necessary)

- A. Provide NAMES ONLY for regulated companies or ACRONYMS ONLY regulated industries, as shown in Rule 25-22.104, F.A.C.
- B. Provide COMPLETE name and address for all others. (Match representatives to clients.)

1. Parties and their representatives (if any)

<u>Pine Island Cove Homeowner'</u>	<u>Anne Dalton, Esq. (utility's atty.)</u>
<u>Association, Inc.</u>	<u>2044 Bayside Parkway</u>
<u>7290 Ladyfish Drive</u>	<u>Ft. Myers, FL 33901</u>
<u>St. James City, FL 33956-2723</u>	

2. Interested Persons and their representatives (if any)

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

6. Check one:

- Documentation is attached.  
 Documentation will be provided with the recommendation.

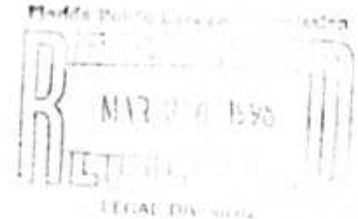
The Law Office of  
**ANNE DALTON, ESQUIRE**

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Fort Myers, Florida 33901  
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Tim Vaccaro, Esquire  
Senior Attorney  
Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850



March 19, 1998

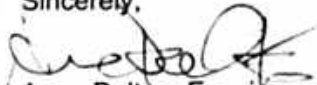
RE: Pine Island Cove Homeowners' Association/Petition for Waiver of Penalty

Dear Mr. Vaccaro:

Enclosed is a revised Petition for Waiver of Penalty, for your review and consideration. We would respectfully request that you discard the previous submission and replace it with this one.

Thank you for your consideration and cooperation with all of the Pine Island representatives.

Sincerely,

  
Anne Dalton, Esquire

ENCLOSURES

CC: Pine Island Cove Homeowners' Association (w/copy of enclosures)

AD/os

**BEFORE THE  
STATE OF FLORIDA  
PUBLIC SERVICE COMMISSION**

**In Re: Pine Island Cove  
Homeowners Association, Inc.  
(Pine Island),**

**Petitioner**

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**COMPLAINT NO. (NOT FILED)**

**PETITION FOR WAIVER**

The undersigned Counsel for Petitioner, after reviewing the Letter of February 10, 1998, from Tim Vaccaro, Senior Attorney, Public Service Commission, submits this Petition for a Waiver in accordance with the provisions of Florida Statute 120.542(5), Administrative Procedures Act, as amended, and the corresponding Commission Rules as set forth in the Florida Administrative Code, and states as follows:

**APPLICABLE RULE FROM WHICH WAIVER IS REQUESTED**

The Rules from which this waiver is requested are Section 25-30.110(3) ("Records and Reports, Annual Reports; Filing Extensions"), of the Florida Administrative Code, as amended, and the penalty sections of that same Rule, Section 25-30.110 (6) ("Annual Reports: Penalty for Noncompliance") and/or Section 25-30.110(7) ("Delinquent Reports").

**TYPE OF ACTION REQUESTED**

Petitioner respectfully requests that a waiver be granted relieving Petitioner from the requirement to pay any and all penalties for failure to file the 1992-1994 Annual Reports, on the grounds that the requirement to pay this penalty would cause a substantial hardship to Petitioner under Section 120.542(2) of the Administrative Procedure Act. This penalty is set forth in detail in the letter of February 10, 1998 from Tim Vaccaro, Esquire, Senior Attorney for the Public Service Commission.

### SPECIFIC FACTS TO JUSTIFY WAIVER FOR PETITIONER

1. Petitioner, Pine Island Cove Homeowners' Association (hereafter "Pine Island") is a small, not-for-profit corporation comprised of homeowners within Pine Island Cove, located in St. James City, Lee County, Florida.

2. The Pine Island Cove Homeowners' Association purchased the Pine Island Cove common elements from the Developer in December, 1990. The utility which is the subject of this Petition was part of that purchase.

3. The license to the utility was not transferred until 1995, for reasons unknown to Pine Island.

4. The Board of Directors of Pine Island reasonably relied on their attorney and accountant to advise them of all required utility filings. The Board of Directors of Pine Island exercised due diligence in completing those filings in accordance with the professional advice received at that time. Those professionals no longer represent Pine Island. Pine Island has in good faith attempted to comply with the applicable rules of the PSC regarding timely filing of required documents, and the failure to so comply is through no fault of Pine Island.

5. Upon being advised by the Public Service Commission in 1995 regarding the delinquent status of filings with the Public Service Commission, Pine Island retained an accounting firm which prepared and submitted all delinquent annual reports to the Public Service Commission as soon as possible and paid all required fees.

6. Since 1995, Pine Island has filed all annual reports in timely fashion and paid any applicable fees, with no requests for extensions of time or delinquencies. Pine Island shall continue to file all annual reports and pay applicable fees in timely fashion in the future.

7. F.S. 120.542 (2) sets forth the definition of substantial hardship as "demonstrated economic, technological, legal or other type of hardship to the person

requesting the variance or waiver." Imposition of this penalty would cause a substantial hardship to Pine Island for the following reasons:

A. Pine Island has suffered a total loss of \$249,319 for operation of the utility for the calendar years 1990-1996, i.e., since it first owned it. Copies of the Income Statement for each year are attached, and the annual breakdown of these losses are as follows:

- (i) Calendar Year 1996: loss of \$32,994;
- (ii) Calendar Year 1995: loss of \$33,443;
- (iii) Calendar Year 1994: loss of \$35,636;
- (iv) Calendar Year 1993: loss of \$52,545;
- (v) Calendar Year 1992: loss of \$49,330;
- (vi) Calendar Year 1991: loss of \$44,407;
- (vii) Calendar Year 1990: loss of \$1,014.

B. The utility department of Lee County, Florida, has advised Pine Island that the County sewage system would be extended to Pine Island by the end of this year and that Pine Island should anticipate connecting to this system at some point in the future. Pine Island has received estimates of up to \$100,000 for the cost of connection, with Pine Island being responsible for payment of one hundred percent of this cost. These estimates include the cost of dismantling and removing the sewage plant now in operation on-site, installation of pump and various types of equipment. It is critical for Pine Island to begin setting aside funds for this future expenditure, and payment of a penalty to the PSC would significantly impact on Pine Island's ability to do so.

C. Pine Island has conducted tests of the sewer lines within the confines of its property. There has been significant surface water intrusion in those lines, due to the climactic conditions on the Island over the past several years and also due to the

age and original construction of the system. The County has advised Pine Island that it is unlikely that the County would pay the cost of repairs and/or upgrades to lines within the confines of Pine Island when Pine Island connects to the County sewer system. Whether or not Pine Island connects to the County system immediately, Pine Island is facing significant costs in repairs and upgrades to its sewer lines in the foreseeable future. It is critical for Pine Island to begin setting aside funds for these expenditures as well, and payment of a penalty to the PSC would significantly impact on Pine Island's ability to do so.

8. To require Pine Island, as a non-profit corporation who has shown a loss on every annual report filed with the PSC, and which is facing significant mandatory expenditures in the near future for upgrades and/or repairs to its system and/or connection to the County facility, to pay a penalty for delinquent filings would constitute a substantial hardship to the homeowners' association. We believe this complies with the definition of substantial hardship set forth in F.S. 120.542 (2), as amended.

#### **GRANT OF A WAIVER SERVES THE PURPOSES OF UNDERLYING STATUTE**

The general powers of the Public Service Commission are set forth in Section 367.121, F.S. and, specifically, Sections 367.121(c) and 367.121(i). Inter alia, the Commission may require filing of reports and other data by a utility regarding transactions or allocations of common costs. There are two reasons why the PSC requires annual reports. First, this ensures that the ratepayers are not subsidizing non-utility activities and that there is no overage of earnings. Secondly, this ensures that the utility is paying the proper assessment fees.

Both of these purposes of the underlying statute have been met, since the annual reports have been filed and the fees paid.

The second underlying statute herein is F.S. 367.161, F.S., which is the penalty statute. This statute states that any knowing refusal to comply with, or willful violation of,

any provision of this section of Florida Statutes or any lawful rule or order of the Public Service Commission will trigger the penalties set forth therein. The purpose of the penalty is to guarantee compliance with PSC rules and regulations.

Pine Island did not knowingly or willfully refuse to file the annual reports. To the contrary, it exercised all due diligence and good faith in fulfilling what it believed to be its legal obligations. Despite its best efforts, it was declared delinquent by the PSC. Having discovered the delinquency, Pine Island immediately took all appropriate steps to correct the delinquency by filing the prior reports and otherwise complying with all the PSC requests. It has subsequently maintained its compliance with the PSC rules and regulations without asking for an extension or being delinquent in any fashion.

The purpose of the penalty statute has also been met, as compliance has been achieved and Pine Island has subsequently stayed in compliance.

#### **CONCLUSION**

Pine Island respectfully requests the Public Service Commission to consider its request for a waiver of any penalties for delinquent filings of annual reports, in view of the above-recited facts and circumstances.

Respectfully submitted,

BY:   
M. ANNE DALTON, ESQUIRE  
Florida Bar No. 0852960  
Attorney for Petitioner  
2044 Bayside Parkway  
Fort Myers, FL 33901  
(941) 337-7900



UTILITY NAME: PINE ISLAND COVERHOMEOWNERS ASSOC, INC

**YEAR OF REPORT  
DECEMBER 31, 96**

**INCOME STATEMENT**

Account Name	Ref. Page	Water	Wastewater	Other	Total Company
<b>Gross Revenue:</b>					
Residential		\$ _____	\$ 39,866	\$ _____	\$ 57,866
Commercial		_____	_____	_____	_____
Industrial		_____	_____	_____	_____
Multiple Family		_____	_____	_____	_____
Guaranteed Revenues		_____	_____	_____	_____
Other (Specify)		_____	_____	_____	_____
<b>Total Gross Revenue</b>		\$ _____	\$ 39,866	\$ _____	\$ 39,866
<b>Operation Expense (Must tie to pages W-3 and S-3)</b>	W-3 S-3	\$ _____	\$ 35,843	\$ _____	\$ 35,843
Depreciation Expense	F-5	_____	4,852	_____	4,852
CIAC Amortization Expense	F-8	_____	14,807	_____	14,807
Taxes Other Than Income	F-7	_____	3,227	_____	3,227
Income Taxes	F-7	_____	_____	_____	_____
<b>Total Operating Expense</b>		\$ _____	\$ 58,729	\$ _____	\$ 58,729
<b>Net Operating Income (Loss)</b>		\$ _____	\$ (18,863)	\$ _____	\$ (18,863)
<b>Other Income:</b>					
Nonutility Income		\$ _____	\$ _____	\$ _____	\$ _____
_____		_____	_____	_____	_____
_____		_____	_____	_____	_____
<b>Other Deductions:</b>					
Miscellaneous Nonutility Expenses		\$ _____	\$ _____	\$ _____	\$ _____
Interest Expense		_____	14,131	_____	14,131
_____		_____	_____	_____	_____
_____		_____	_____	_____	_____
<b>Net Income (Loss)</b>		\$ _____	\$ (32,994)	\$ _____	\$ (32,994)



UTILITY NAME: PINE ISLAND COVE HOMEOWNERS ASSOCIATION, INC.YEAR OF REPORT  
DECEMBER 31, 1995

## INCOME STATEMENT

Account Name	Ref. Page	Water	Sewer	Other	Total Company
Gross Revenue:					
Residential -----		\$ -----	\$ 29,281	\$ -----	\$ 29,281
Commercial -----		-----	-----	-----	-----
Industrial -----		-----	-----	-----	-----
Multiple Family -----		-----	-----	-----	-----
Guaranteed Revenues -----		-----	-----	-----	-----
Other (Specify) -----		-----	-----	-----	-----
Total Gross Revenue		\$ -----	\$ 29,281	\$ -----	\$ 29,281
Operation Expense (Must tie to Pages W-3 and S-3)	W-3 S-3	\$ -----	\$ 23,279	\$ -----	\$ 23,279
Depreciation Expense	F-5	-----	4,839	-----	4,839
Amortization Expense		-----	15,817	-----	15,817
Taxes Other Than Income	F-7	-----	3,493	-----	3,493
Income Taxes	F-7	-----	-----	-----	-----
Total Operating Expense		\$ -----	\$ 47,428	\$ -----	\$ 47,428
Net Operating Income (Loss)		\$ -----	\$ (18,147)	\$ -----	\$ (18,147)
Other Income:					
Nonutility Income		\$ -----	\$ -----	\$ -----	\$ -----
-----		-----	-----	-----	-----
-----		-----	-----	-----	-----
Other Deductions:					
Miscellaneous Nonutility Expenses		\$ -----	\$ -----	\$ -----	\$ -----
Interest Expense		-----	15,296	-----	15,296
-----		-----	-----	-----	-----
-----		-----	-----	-----	-----
Net Income (Loss)		\$ -----	\$ (33,443)	\$ -----	\$ (33,443)

UTILITY NAME: PINE ISLAND COVE HOMEOWNERS ASSOCIATION, INC.

YEAR OF REPORT  
DECEMBER 31, 19 94

INCOME STATEMENT

Account Name	Ref. Page	Water	Sewer	Other	Total Company
Gross Revenue:					
Residential		\$	\$ 26,902	\$	\$ 26,902
Commercial					
Industrial					
Multiple Family					
Guaranteed Revenues					
Other (Specify)					
Total Gross Revenue		\$	\$ 26,902	\$	\$ 26,902
Operation Expense (Must tie to Pages W-3 and S-3)	W-3 S-3	\$	\$ 25,056	\$	\$ 25,056
Depreciation Expense	F-5		4,839		4,839
Amortization Expense			15,816		15,816
Taxes Other Than Income	F-7		1,882		1,882
Income Taxes	F-7				
Total Operating Expense		\$	\$ 47,593	\$	\$ 47,593
Net Operating Income (Loss)		\$	\$ (20,691)	\$	\$ (20,691)
Other Income:					
Nonutility Income		\$	\$	\$	\$
Other Deductions:					
Miscellaneous Nonutility Expenses		\$	\$	\$	\$
Interest Expense			14,672		14,672
Net Income (Loss)		\$	\$ (35,636)	\$	\$ (35,636)



UTILITY NAME: PINE ISLAND COVE HOMEOWNERS ASSOCIATION, INC.

YEAR OF REPORT  
DECEMBER 31, 1997

INCOME STATEMENT

Account Name	Ref. Page	Water	Sewer	Other	Total Company
Gross Revenue:					
Residential		\$	\$ 26,913	\$	\$ 26,913
Commercial					
Industrial					
Multiple Family					
Guaranteed Revenues					
Other (Specify)					
Total Gross Revenue		\$	\$ 26,913	\$	\$ 26,913
Operation Expense (Must tie to Pages W-3 and S-3)	W-3 S-3	\$	\$ 16,426	\$	\$ 16,426
Depreciation Expense	F-5		4,839		4,839
Amortization Expense			15,816		15,816
Taxes Other Than Income	F-7		770		770
Income Taxes	F-7				
Total Operating Expense		\$	\$ 37,851	\$	\$ 37,851
Net Operating Income (Loss)		\$	\$ (10,938)	\$	\$ (10,938)
Other Income:					
Nonutility Income		\$	\$	\$	\$
Other Deductions:					
Miscellaneous Nonutility Expenses		\$	\$	\$	\$
Interest Expense			38,392		38,392
Net Income (Loss)		\$	\$ (49,330)	\$	\$ (49,330)

UTILITY NAME: PINE ISLAND COVE HOMEOWNERS ASSOCIATION, INC.

YEAR OF REPORT  
DECEMBER 31, 1991

INCOME STATEMENT

Account Name	Ref. Page	Water	Sewer	Other	Total Company
Gross Revenue:					
Residential		\$	\$ 26,913	\$	\$ 26,913
Commercial					
Industrial					
Multiple Family					
Guaranteed Revenues					
Other (Specify)					
Total Gross Revenue		\$	\$ 26,913	\$	\$ 26,913
Operation Expense (Must tie to Pages W-3 and S-3)	W-3 S-3	\$	\$ 12,554	\$	\$ 12,554
Depreciation Expense	F-5		4,839		4,839
Amortization Expense			15,816		15,816
Taxes Other Than Income	F-7		2,691		2,691
Income Taxes	F-7				
Total Operating Expense		\$	\$ 35,900	\$	\$ 35,900
Net Operating Income (Loss)		\$	\$ (8,987)	\$	\$ (8,987)
Other Income:		\$	\$	\$	\$
Nonutility Income					
Other Deductions:		\$	\$	\$	\$
Miscellaneous Nonutility Expenses			35,420		35,420
Interest Expense					
Net Income (Loss)		\$	\$ (44,407)	\$	\$ (44,407)



UTILITY NAME: PINE ISLAND DUE UTILITY

YEAR OF REPORT  
DECEMBER 31, 1990

INCOME STATEMENT

Account Name	Ref. Page	Water	Sewer	Other	Total Company
Gross Revenue:					
Residential -----		\$ <u>N/A</u>	\$ <u>25,158</u>	\$ <u>N/A</u>	\$ <u>25,158</u>
Commercial -----					
Industrial -----					
Multiple Family -----					
Guaranteed Revenues -----					
Other (Specify) -----					
<b>Total Gross Revenue</b> -----		\$ -----	\$ <u>25,158</u>	\$ -----	\$ <u>25,158</u>
Operation Expense (Must tie to Pages W-3 and S-3)	W-3 S-3	\$ -----	\$ <u>20,454</u>	\$ -----	\$ <u>20,454</u>
Depreciation Expense -----	F-5		<u>4,837</u>		<u>4,837</u>
Amortization Expense -----					
Taxes Other Than Income -----	F-7		<u>881</u>		<u>881</u>
Income Taxes -----	F-7				
<b>Total Operating Expense</b> -----		\$ -----	\$ <u>26,172</u>	\$ -----	\$ <u>26,172</u>
<b>Net Operating Income (Loss)</b> -----		\$ -----	\$ <u>1,014</u>	\$ -----	\$ <u>1,014</u>
Other Income:					
Nonutility Income -----		\$ -----	\$ -----	\$ -----	\$ -----
-----					
Other Deductions:					
Miscellaneous Nonutility Expenses -----		\$ -----	\$ -----	\$ -----	\$ -----
Interest Expense -----					
-----					
<b>Net Income (Loss)</b> -----		\$ -----	\$ <u>1,014</u>	\$ -----	\$ <u>1,014</u>

MAR 19 '98 11:00AM MARK NORTON STROEMER

P. 2/9



Member  
American Institute of Certified Public Accountants  
Tax Division  
Private Companies Practice Section  
Management Consulting Services Division  
Florida Institute of Certified Public Accountants  
National Litigation Support Services Association

March 19, 1998

Public Service Commission  
Attn: Tim Vaccaro  
Capital Circle Office Center  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Re: Pine Island Cove Homeowners Association, Inc.

Dear Mr. Vaccaro:

In response to the Public Service Commissions' request for additional information concerning the appeal by Pine Island Cove Homeowners Association, Inc. to waive all penalties, please also take into consideration the losses suffered by the Association in the past. The losses, referenced by the enclosed copies of the Income Statements from the PSC Annual Reports, total \$249,319 in the past six years and were incurred as follows:

1990 - (1,014)  
1991 - (44,407)  
1992 - (49,330)  
1993 - (52,545)  
1994 - (35,636)  
1995 - (33,443)  
1996 - (32,994)

We feel that these losses have placed the Association in a position that there will be significant hardship if the penalties are not waived.

Sincerely,

Randall L. Wright, C.P.A.  
For the firm

Cc: Pine Island Cove Homeowners Association, Inc.  
Enclosure