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November 30, 1998

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

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NOV 30 PM 4:43
RECORDS AND REPORTING

Re: Docket No. 980561-WS

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced dockets on behalf of Florida Water Services Corporation are the original and fifteen copies of the Reply Comments/Testimony of Brian P. Armstrong.

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

ACK _____

AFA _____

APP None

CAF _____

CMU _____

CTR _____

EAG _____ KAH/rl

LEG _____ Enclosures

LIN Stc All Parties of Record

OPC _____ Tim J

RCH 1

SEC 1

WAS 2

OTH _____

Thank you for your assistance with this filing

Sincerely,

Kenneth A. Hoffman
Kenneth A. Hoffman

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Jim
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FPSC-RECORDS/REPORTING

Blanca S. Bayo, Director
Page 2
November 30, 1998

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U. S. Mail to the following this 30th day of November, 1998:

Christiana Moore, Esq.
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Stephen C. Burgess, Esq.
Office of Public Counsel
111 West Madison Street
Room 812
Tallahassee, Florida 32399-1400

By: 
KENNETH A. HOFFMAN, ESQ.

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REPLY COMMENTS/TESTIMONY OF BRIAN P. ARMSTRONG
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
ON BEHALF OF
FLORIDA WATER SERVICES CORPORATION
DOCKET NO. 980561-WS

1 Q. WHAT IS YOUR NAME?

2 A. My name is Brian P. Armstrong, and I am General
3 Counsel and Vice President - Legal of Florida Water
4 Services Corporation.

5 Q. DID YOU FILE DIRECT COMMENTS/TESTIMONY IN THIS RULE
6 DOCKET ON BEHALF OF FLORIDA WATER SERVICES
7 CORPORATION?

8 A. Yes.

9 Q. HAVE YOU REVIEWED THE PREFILED COMMENTS OF MR.
10 SHAFER OF THE COMMISSION STAFF AND MR. BURGESS OF
11 THE OFFICE OF PUBLIC COUNSEL?

12 A. Yes, I have.

13 Q. DO YOU HAVE ANY REPLY COMMENTS TO MR. BURGESS'S
14 COMMENTS?

15 A. Yes. On page 2 of his comments, Mr. Burgess posits
16 the argument that Section 367.081(4)(b) authorizes
17 the Commission to, by rule, offset prior year's
18 foregone expense decreases against a filed increase
19 because the statute refers to "new rates authorized
20 to reflect the amount of the change" I
21 think it rather clear from the statute that the
22 "change" referred to is the change in the expense
23 in the last 12 months. The Legislative history
24 seems to confirm this. For the Commission's

1 edification, attached to my reply comments are two
2 Florida Senate Staff reports on changes to Chapter
3 367 made in 1985. With regard to pass-through
4 items, both of these reports refer to "pass-through
5 costs dating back [only] 12 months for the date of
6 filing." Thus, it is the amount of the change to a
7 pass-through expense in the last 12 months which is
8 supposed to be the subject of the pass-through rate
9 change, not any changes prior thereto. I note that
10 Mr. Shafer's Attachment C illustrates that the
11 amount of the 12-month change to his hypothetical
12 pass-through expense is \$.50, but that the proposed
13 rule would deny full recovery of that amount.

14 Aside from the argument mentioned above, Mr.
15 Burgess admits that the Commission is not expressly
16 given statutory power to do what it proposes to do
17 by this rule; Mr. Burgess states that the statute
18 "does not prohibit offsetting an increase by a
19 previously nonimplemented decrease." If the
20 Commission is not affirmatively given a power by
21 the statute, then the Commission has no authority
22 to exercise that power, as a rule cannot create
23 such. Further, Mr. Burgess glosses over the
24 inequity argument I made in my direct

1 testimony/comments: it is patently unfair for the
2 Commission to offset for prior year's foregone
3 decreases but not accumulate prior year's foregone
4 increases.

5 Q. DO YOU HAVE ANY REPLY COMMENTS TO MR. SHAFER'S
6 COMMENTS?

7 A. Yes. In addition to the points I have made in
8 reply to Mr. Burgess' comments, I would like to
9 reply briefly to some of Mr. Shafer's points. On
10 pages 5 and 6 Mr. Shafer states that the proposed
11 rule would not impose a pass-through rate decrease.
12 Yet, that is exactly the effect which the staff
13 intends for the proposed rule to have: put the
14 utility in the position staff believes the utility
15 would be in had it filed for a pass-through
16 decrease in a prior year. On page 7, Mr. Shafer
17 opines that the Commission has the authority to
18 require prior years cost information pursuant to
19 Section 367.121(1)(c), Florida Statutes. The
20 Commission has the power pursuant to the cited
21 provision to require a utility to file "reports,"
22 but I do not believe it is appropriate or correct
23 that such a power may be invoked to so drastically
24 alter the only filing requirements established in

1 the statute for pass-through filings -- a simple
2 "verified notice" and earnings "affirmation." I
3 take it that by invoking Section 367.121(1)(c) Mr.
4 Shafer concedes that Section 367.081(4)(b) does not
5 empower the Commission to require 3 years of
6 historic information.

7 On pages 8 and 9, Mr. Shafer discusses the
8 prospect of what he calls "double recovery" of an
9 expense item. As stated in my direct comments, I
10 maintain that this perception is wrong. The pass-
11 through statute was not designed for the Commission
12 to perennially micromanage rates for one or more
13 expense items. All expenses do not remain equal
14 from year to year, as Mr. Shafer presumes. The
15 pass-through statute was designed to provide a
16 simple mechanism for affecting rate changes to
17 reflect 12-month changes in certain expense items
18 through the utility's filing a verified notice and
19 affirmation.

20 On page 9, Mr. Shafer asserts as does Mr.
21 Burgess that there should be no accumulation of
22 prior year's foregone pass-through increases
23 because the utility controls when it files for a
24 pass-through. I find it ironic that staff would

1 like to effectively wrest away that utility control
2 when it comes to a foregone prior year's pass-
3 through decrease.

4 **Q. DO YOU HAVE ANY FURTHER COMMENTS AT THIS TIME?**

5 **A. No.**

DOCKET NO. 980561-WS
ATTACHMENT TO REPLY COMMENTS/TESTIMONY
OF
BRIAN P. ARMSTRONG

REVISED: June 11, 1985
DATE: March 28, 1985

BILL NO. SB 175

Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

COPY

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>
1. <u>Branning</u> <i>AB</i>	<u>Cain</u> <i>HC</i>
2. _____	_____
3. _____	_____

<u>REFERENCE</u>	<u>ACTION</u>
1. <u>COM</u>	<u>Fav. w/Amend.</u>
2. <u>ECCA</u>	_____
3. _____	_____

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SUBJECT:

Water and Sewer Systems

BILL NO. AND SPONSOR:

SB 175 by
Senator McPherson
(As passed by the Legislature)

I. SUMMARY:

A. Present Situation:

Chapter 367, Florida Statutes, provides for the regulation of certain water and sewer systems by the Public Service Commission (PSC). Prior to the issuance of a permit by the Department of Environmental Regulation for the construction of a new water and sewer facility, the utility must obtain a certificate from the PSC authorizing it to provide service. The certificate defines the utility's service territory and can be subsequently amended to extend the utility's service territory. Section 367.061, F.S., establishes the procedures by which a water and sewer utility can extend its service. A utility desiring to extend its service territory must meet certain notice requirements. The utility may make an application to the PSC to amend its certificate providing for such extension at any time within one year following notice.

Section 367.081(4), F.S., 1984 Supp., establishes a procedure by which a water and sewer utility may implement a rate adjustment based on a price index for major categories of operating costs incurred by water and sewer utilities, without further action by the PSC. Water and sewer utilities can automatically adjust their rates based on an annual indexing of certain costs and a pass-through of the following:

(1) The cost of purchasing services from a governmental agency or other water and sewer utility regulated by the PSC;

(2) The cost of purchasing electric power; or

(3) The amount of ad valorem tax assessed against its property.

A water and sewer utility is limited to two such adjustments in a 12-month period. The use of the indexing and pass-through provisions for rate adjustments are limited to the most recent index calculation and pass-through costs dating back only 12 months from the date of filing. When applications under both the indexing and pass-through provisions are filed, the filing is considered as one rate adjustment. If, within 24 months of the rate adjustment, the PSC finds that the utility exceeded its authorized rate of return, it may order the utility to refund the difference to the ratepayers.

B. Effect of Proposed Changes:

Chapter 367, F.S., currently requires a certificate from the PSC for new water and sewer facilities under its jurisdiction. Other provisions of the chapter seem to imply that all water and sewer utilities under its PSC's jurisdiction must have certificates. This bill specifically requires that all such water and sewer utilities must have a current certificate.

Section 403.853, F.S., 1984 Supp., permits the Department of Environmental Regulation to require the testing of public water supplies for certain contaminants. Testing for such contaminants is required for community water supply systems at least every 3 years. The department has promulgated rules to require such testing to be done by certain certified laboratories. This bill allows water and sewer utilities to use the automatic pass-through provisions of s. 367.081, F.S., 1984 Supp., to recover from the ratepayers the costs of such water testing. If the PSC finds that the utility has exceeded its authorized rate of return after implementing a rate adjustment pursuant to the pass-through provisions, then it may order the utility to refund the difference to the ratepayers and adjust its rates accordingly. Such a determination must be made by the PSC within 24 months after the rates have been adjusted by the utility using the pass-through provisions.

II. ECONOMIC IMPACT AND FISCAL NOTE:**A. Public:**

Currently, there are only 5 laboratories in the state which have been certified to do the water testing which the Department of Environmental Regulation requires. The costs associated with such tests range from \$760 to \$1,100 statewide. These figures are generally only for the initial test and where the findings are negative and no further tests are required at that time. Additional tests, and therefore costs, are necessary when initial test results are positive. The costs of the tests would be amortized and passed onto the ratepayers through an automatic rate adjustment. If, however, costs for any water quality tests have already been included into a utility's rate, then the pass-through provisions cannot be used.

It is not known at this time how many water and sewer utilities that are subject to the PSC's jurisdiction do not currently possess a certificate from the PSC. The bill would require such utilities to have a current certificate.

B. Government:

No significant impact.

III. COMMENTS:

Technical errors - none noted.

IV. AMENDMENTS:

#1 by Commerce: Clarifies the time period in which the PSC may make a determination as to a water and sewer utility's overearnings as a result of automatic rate adjustments. No additional impact.

REVISED: June 12, 1985

BILL NO. SB 175

DATE: April 18, 1985

Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

C I Y

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Branning</u>	<u>Cain</u>	1. <u>COM</u>	<u>Fav. w/Amend.</u>
2. <u>Balzer</u>	<u>Burnside</u>	2. <u>ECCA</u>	<u>Favorable</u>
3. _____	_____	3. _____	_____

FLORIDA DEPARTMENT OF STATE
Tallahassee, FL 32399-0250

SUBJECT: Water and Sever Systems

BILL NO. AND SPONSOR: SB 175 by Senator McPherson

1. SUMMARY:

A. Present Situation:

Chapter 367, Florida Statutes, provides for the regulation of certain water and sewer systems by the Public Service Commission (PSC). Prior to the issuance of a permit by the Department of Environmental Regulation (DER) for the construction of a new water and sewer facility, the utility must obtain a certificate from the PSC authorizing it to provide service.

Section 367.081(4)(a), Florida Statutes, 1984 Supplement, establishes a procedure by which water and sewer utilities may implement a rate adjustment based on a price index for major categories of operating costs incurred by water and sewer utilities without action by the PSC. Section 367.081(4)(b), Florida Statutes, establishes a procedure by which utilities can automatically adjust their rates based on a pass-through of certain costs.

A water and sewer utility is limited to two adjustments in a 12-month period and the use of the indexing and pass-through provisions for such adjustments are limited to the most recent index calculation and pass-through costs dating back 12 months from the date of filing. When applications under the indexing and pass-through provisions are filed, the filing is considered as one rate adjustment. If, within 24 months of the rate adjustment, the PSC finds that the utility exceeded its authorized rate of return, it may order the utility to refund the unauthorized return to ratepayers.

Part VI of section 403.853, Florida Statutes, 1984 Supplement, requires DER to adopt and enforce regulations relating to the testing of public water supplies for certain contaminants. The department has required by rule that such testing be done by certain certified laboratories meeting certain criteria every three years.

B. Effect of Proposed Changes:

The bill requires that each utility subject to the commission's jurisdiction possess a current certificate.

The bill allows water and sewer utilities to use the automatic pass-through provisions of section 367.081(4), Florida Statutes, 1984 Supplement, to recover from ratepayers the costs of such water testing. If the PSC finds that the utility has exceeded its authorized rate of return after implementing a rate adjustment pursuant to the pass-through provisions, the commission may order the utility to refund the unauthorized return to ratepayers and to adjust its rates accordingly. Such a

REVISED: June 12, 1985

DATE: April 18, 1985

BILL NO. SB 175

Page 2

determination must be made by the PSC within 24 months after the rates have been adjusted by the utility using the pass-through provisions.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

There are 5 laboratories in Florida which meet DER's criteria to do water testing required by DER. The cost of initial tests is between \$760 to \$1,100. If the results are negative, no more tests, or costs, are necessary. If the results are positive, additional tests, and costs, are necessary. It is assumed that the costs of the tests would be passed onto the ratepayers through an automatic rate adjustment.

To the extent certain water and sewer utilities subject to the PSC's jurisdiction are not in possession of a current certificate, those utilities will incur the cost of an application fee and annual regulatory assessment fees. It is assumed these costs will be passed on to the ratepayers in the form of higher rates.

B. Government:

According to PSC staff, the requirement that certain utilities under its jurisdiction which do not possess current certificates obtain one will result in increased revenue to the PSC in the form of application fees and annual regulatory assessment fees.

III. COMMENTS:

The provisions of the chapter do not provide for the expiration or renewal of a certificate, but do provide for the revocation or suspension of a certificate. It would appear more appropriate to require water and sewer utilities under the jurisdiction of the PSC to possess a "valid" certificate rather than a "current" certificate.

SB 175 was ordered enrolled on May 27, 1985.

IV. AMENDMENTS:

#1 by Commerce: Clarifies the time period in which the PSC may make a determination as to a water and sewer utility's overearnings as a result of automatic rate adjustments.