

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: October 7, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF APPEALS (MOORE) *CM*
 DIVISION OF WATER & WASTEWATER (CROUCH, WILLIS, WILLIAMS) *WLL*
 DIVISION OF AUDITING & FINANCIAL ANALYSIS (HEWITT) *BY*

RE: DOCKET NO. 960258-WS - PETITION TO ADOPT RULES ON MARGIN RESERVE AND IMPUTATION OF CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION ON MARGIN RESERVE CALCULATION, BY FLORIDA WATERWORKS ASSOCIATION

AGENDA: 10/19/99 - REGULAR AGENDA - RULE ADOPTION - PARTIES MAY PARTICIPATE AT THE COMMISSION'S DISCRETION

RULE STATUS: ADOPTION SHOULD NOT BE DEFERRED

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: I:\PSC\APP\WP\960258-5.RCM

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CASE BACKGROUND

On March 1, 1996, the Florida Waterworks Association (FWA) petitioned the Commission to adopt a rule on margin reserve for water and wastewater utilities. The Commission proposed Rule 25-30.431, Florida Administrative Code, codifying its current policy. A rulemaking hearing was held and on June 10, 1997, the Commission voted to adopt the rule with changes. FWA and Florida Water Services Corporation (FWSC) filed petitions at the Division of Administrative Hearings challenging the proposed rule. The Office of Public Counsel (OPC) intervened to support the proposed rule.

After a seven-day hearing in December, 1997, a Division of Administrative Hearings (DOAH) Administrative Law Judge (ALJ) found that proposed Rule 25-30.431 was an invalid exercise of delegated legislative authority on numerous grounds. The Commission appealed

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the ALJ's final order to the First District Court of Appeal and the court reversed the ALJ on every ground. That decision became final on May 25, 1999. The ALJ subsequently granted the Commission's motions to dismiss FWA and FWSC's petitions for attorney's fees, concluding all DOAH proceedings involving this rule.

Ordinarily, at this point the Commission could file the rule for adoption with the Secretary of State with no further action required. During this past legislative session, however, the Legislature amended the law that is implemented by Rule 25-30.431. This legislation became law on June 11, 1999. Chapter 99-319, § 1, Laws of Florida. Staff subsequently made several changes to the rule to reflect the statutory changes. A draft of the revised rule was sent to the parties that participated in the rulemaking. Comments were received from the Florida Waterworks Association (FWA), Florida Water Services Corporation (FWSC), Frank Seidman of M & R Consulting, Inc., and the Office of Public Counsel. (Attachment 3.)

The rules as approved for adoption by the Commission are shown in Attachment 1, with the changes recommended by the staff shaded. Recommended additions to the rules are shown as shaded and underlined. Recommended deletions are shown as shaded and stricken through. Also attached is a copy of Chapter 99-319, Laws of Florida, showing the changes to section 367.081(2)(a), Florida Statutes. (Attachment 2, pages 1-2).

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission adopt changes to Rule 25-30.431?

RECOMMENDATION: Yes, the Commission should adopt Rule 25-30.431 with the changes recommended by staff as shown in Attachment 1.

STAFF ANALYSIS: Section 367.081, Florida Statutes, the law implemented by Rule 25-30.431, has been amended to provide for a five-year margin reserve period for utility property unless there is clear and convincing evidence that a greater period is justified, and to prohibit the imputation of contributions-in-aid-of-construction (CIAC):

(2)(a)2. For purposes of such proceedings, the commission shall consider utility property, including land acquired or facilities constructed or to be constructed within a reasonable time in the future, not to exceed 24 months after the end of the historic base year used to set final rates unless a longer period is approved by the commission, to be used and useful in the public service, if:

a. Such property is needed to serve current customers;

b. Such property is needed to serve customers 5 years after the end of the test year used in the commission's final order on a rate request as provided in subsection (6) at a growth rate for equivalent residential connections not to exceed 5 percent per year; or

c. Such property is needed to serve customers more than 5 full years after the end of the test year used in the commission's final order on a rate request as provided in subsection (6) only to the extent that the utility presents clear and convincing evidence to justify such consideration.

Ch. 99-319, §1, at 1-2, Laws of Fla. These provisions necessitate several changes to the rule to delete the inconsistent or unnecessary language.

25-30.431(1)--Margin Reserve Definition

The rule as approved by the Commission in 1997 defines "margin reserve" as "the amount of plant capacity needed to preserve and protect the ability of utility facilities to serve existing and future customers in an economically feasible manner that will preclude a deterioration in quality of service and prevent adverse

environmental and health effects." The term "margin reserve" is not used in the statute. Because "margin reserve" is the term the Commission and the industry use to refer to utility property needed to serve in the future, however, staff recommends changing the language to simply refer to the statute as follows: The utility property needed to serve customers after the end of the test year used in the final order on a rate request as provided in section 367.081(2)(a)2.b. and 2.c., Florida Statutes (1999), shall be known as the "margin reserve."

Mr. Seidman, whose comments were endorsed by FWA, recommends that the definition in the existing proposed rule be retained and that the substance of section (3) be combined with it. Mr. Seidman states that the full definition includes elements discussed and acknowledged by the technical staff and by the Commission itself in previous rate orders and in rulemaking proceedings. He believes that the language should be preserved as a reminder of the purpose of a margin reserve.

OPC disagreed with the changes recommended by Mr. Seidman and FWA. OPC believes that it is unnecessary to define "margin reserve" for the purpose of the rule, and that Mr. Seidman's definition is inaccurate because it does not reflect what the statute requires. The statute requires at least a five-year margin regardless of whether the actual increment of plant capacity that is economically feasible to add is 1.5 years or 4 years. Pursuant to statute, the margin reserve added to rate base is now independent from any finding as to the next economically feasible plant addition.

Staff agrees with OPC that the suggested definition is inconsistent with the new statute. There is no definition of "margin reserve" in the statute, nor does the statute state the Legislature's findings or its purpose in including the facilities needed five years in the future in used and useful rate base. In addition, staff is not aware of any case in which the Commission has found that five years is an economically feasible amount of plant capacity to include in the margin reserve. Thus, staff does not recommend retaining the existing language.

25-30.431(2)--Margin Reserve Period Definition

As approved by the Commission, "margin reserve period" is defined as "the time period needed to install the next economically feasible increment of plant capacity." Since the Legislature has now provided that such property that is needed for at least five years in the future is used and useful, regardless of whether it is the time needed to install the next economically feasible increment, staff believes the definition should be deleted.

FWA urges the Commission to retain this section, stating that it accurately reflects Commission policy and reasoning for including a margin reserve in rate base. While that is true as far as it applies to an 18-month margin reserve period for certain plant components, or longer if the Commission finds it is justified, it is not necessarily true with respect to a margin reserve period of five years for all plant components. OPC states that the Legislature has pre-empted the Commission's discretion on this issue, and that it no longer matters what the Commission finds on economic feasibility. Thus, the definition should be deleted.

25-30.431(3)--Margin Reserve as Component of Used and Useful

This section of the rule provides that margin reserve is an acknowledged component of the used and useful rate base that when requested and justified shall be included in rate cases. Mr. Seidman and FWA commented that this section should be retained and combined with a definition in section (1). Staff disagrees and recommends that this section of the rule be deleted. Since the statute now provides that what is known as "margin reserve" shall be considered used and useful, the rule provision is totally unnecessary.

25-30.431(4)--Determination of Margin Reserve Period

This part of the rule provides for a margin reserve period of eighteen months unless otherwise justified, and also provides for the factors the Commission shall consider in determining whether a longer period is justified. The majority of this language was initially proposed by FWA and supported by FWSC, but with a presumptively valid margin reserve period of five years. FWA and FWSC challenged this provision when the base period was reduced to eighteen months, however, the court found that the criteria were valid.

The new section 367.081(2)(a)2.b. and 2.c., Florida Statutes, provides that property that is needed to serve customers 5 years after the end of the test year shall be considered used and useful. A longer period than five years will be considered used and useful "only to the extent that the utility presents clear and convincing evidence to justify such consideration." Ch. 99-319, § 1, at 2, Laws of Fla. (§367.081(2)(a)2.c.) Staff recommends changing this section of the rule to reflect the statutory five-year allowance, but to keep the provision about the factors to be considered in determining whether a greater period is justified.

In addition, the law appears to apply to all "utility property," whereas this section of the rule governed the margin reserve period for water source and treatment facilities and wastewater treatment and effluent disposal facilities. Staff recommends deleting the reference to these facilities.

25-30.431(5)--Margin Reserve Calculation

This section, which provides the formula for calculating the margin reserve, should be retained with several minor changes to make it consistent with the statute. These changes reflect the statutory cap on the growth rate used to determine the property in the margin reserve at "5 percent per year"; that the margin reserve period is set forth in the statute; that it is not limited to the plant components that were listed; and that the units of measurement may be other than equivalent residential connections (ERCs) for some plant components.

25-30.431(6)--Filing of a Capacity Analysis Report

This section requires a utility to submit its most recent capacity analysis report filed with the Department of Environmental Protection. The language was first proposed by FWA and is unaffected by the statutory changes. Staff recommends keeping the provision without changes.

25-30.431(7)--Imputation of CIAC

The new law specifically prohibits the imputation of "prospective future" CIAC against the utility's investment in used and useful property. Since subsection (7) of the rule provides for imputation when a margin reserve is authorized, it should be deleted.

DOCKET NO. 960258-WS
DATE: October 7, 1999

ISSUE 2: Should the rule as approved by the Commission be filed for adoption with the Secretary of State and the docket be closed?

RECOMMENDATION: Yes. The rule should be filed for adoption after the changes are published in the Florida Administrative Weekly.

STAFF ANALYSIS: After a Notice of Change is published in the Florida Administrative Weekly, the rule may be filed with the Secretary of State for adoption and the docket may be closed.

Attachments

Rule 25-30.431, Margin Reserve
Chapter 99-319, Laws of Florida
Comments of FWA and Others

1
2 25-30.431 Margin Reserve

3 (1) The utility property needed to serve customers after the
4 end of the test year used in the final order on a rate request as
5 provided in section 367.081(2)(a)2.b. and 2.c., Florida Statutes
6 (1999), shall be known as the "Margin reserve" is defined as the
7 amount of plant capacity needed to preserve and protect the ability
8 of utility facilities to serve existing and future customers in an
9 economically feasible manner that will preclude a deterioration in
10 quality of service and prevent adverse environmental and health
11 effects.

12 (2) "Margin reserve period" is defined as the time period
13 needed to install the next economically feasible increment of plant
14 capacity.

15 (3) Margin reserve is an acknowledged component of the used
16 and useful rate base determination that when requested and
17 justified shall be included in rate cases filed pursuant to section
18 367.081, Florida Statutes.

19 (24) Unless otherwise justified, the margin reserve period for
20 water source and treatment facilities and wastewater treatment and
21 effluent disposal facilities will be 18 months. In determining
22 whether a ~~another~~ margin reserve period greater than the five year
23 period provided by section 367.081(2)(a)2., Florida Statutes
24 (1999), is justified, the Commission shall consider the rate of
25 growth in the number of equivalent residential connections (ERCs);

CODING: Words underlined are additions; words in
~~struck through~~ type are deletions from existing law.

1
2 the time needed to meet the guidelines of the Department of
3 Environmental Protection (DEP) for planning, designing, and
4 construction of plant expansion; and the technical and economic
5 options available for sizing increments of plant expansion.

6 (3 5) (a) Margin reserve for utility property water source and
7 treatment facilities and wastewater treatment and effluent disposal
8 facilities shall be calculated as follows:

9
$$\underline{EG} \times \underline{MP} \times \underline{UD} = \underline{MR}$$

10 where:

11 EG = Equivalent Annual Growth in ERCs determined
12 pursuant to (b) or (c) below, not to exceed 5
13 percent per year

14 MP = Margin Reserve Period determined pursuant to
15 subsection (4) section 367.081(2)(a)2.b. and c.,
16 Florida Statutes (1999)

17 UD = Unit of measurement utilized Demand per ERC
18 (customer demand applied in the used and useful
19 calculations for water and wastewater facilities)

20 MR = Margin reserve expressed in the units of
21 measurement utilized gallons per day (GPD)

22 (b) The equivalent annual growth in ERCs (EG) is measured
23 in terms of the projected annual growth and shall be calculated
24 in Schedules F-9 and F-10 of Form PSC/WAW 19 for Class A

25

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1
2 utilities and Form PSC/WAW 20 for Class B utilities, incorporated
3 by reference in Rule 25-30.437.

4 (c) The utility shall also submit a linear regression
5 analysis using average ERCs for the last 5 years. The utility
6 may submit other information that will affect growth in ERCs.

7 ~~(4 6)~~ As part of its application filed pursuant to Rule
8 25-30.437, the utility shall submit its most recent wastewater
9 capacity analysis report, if any, filed with DEP.

10 ~~(7) Contributions in aid of construction (CIAC) shall be~~
11 ~~imputed when a margin reserve is authorized. The amount of~~
12 ~~imputed CIAC shall be determined based on 50 percent of the~~
13 ~~number of ERCs included in the margin reserve period and the~~
14 ~~projected CIAC that will be collected from those ERCs. However,~~
15 ~~the imputed CIAC shall not exceed the rate base component~~
16 ~~associated with margin reserve.~~

17 Specific Authority: 367.121, F.S.

18 Law Implemented: 367.081(2), F.S.

19 History--New _____.

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struck through type are deletions from existing law.

CHAPTER 99-319

Committee Substitute for Senate Bill No. 1352

An act relating to the Public Service Commission; amending s. 367.081, F.S.; prohibiting the commission from imputing prospective future contributions-in-aid-of-construction against certain utility investments in certain rate proceedings; providing construction; requiring the commission to approve rates for certain services under certain circumstances; providing construction; deleting a requirement that the commission consider a utility's investments in certain lands or facilities in setting final rates; amending s. 367.021, F.S.; redefining the term "governmental authority"; amending s. 367.022, F.S.; eliminating the annual report requirement for exempt resellers; providing for an additional exemption; amending s. 367.071, F.S.; authorizing specified transactions before Public Service Commission approval; amending s. 367.0816, F.S.; removing provisions requiring rate-case expense reductions at the conclusion of the recovery period; amending 367.0814, F.S.; authorizing the commission to authorize the collection of interim rates under certain circumstances; providing criteria; authorizing the commission to require collection of certain rate differentials; providing for finalization of interim rates under certain circumstances; providing for refund of certain rate differentials under certain circumstances; amending s. 367.082, F.S.; clarifying a procedure relating to a withdrawal of a request for rate relief during the pendency of a rate case; amending s. 367.091, F.S.; requiring utilities to notify local governing bodies of the filing of an application for rate change; requiring the Florida Public Service Commission to grant petitions to intervene which are filed by local governing bodies; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (2) of section 367.081, Florida Statutes, is amended to read:

367.081 Rates; procedure for fixing and changing.—

(2)(a)1. The commission shall, either upon request or upon its own motion, fix rates which are just, reasonable, compensatory, and not unfairly discriminatory. In every such proceeding, the commission 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 requirements of the utility for working capital; maintenance, depreciation, tax, and operating expenses incurred in the operation of all property used and useful in the public service; and a fair return on the investment of the utility in property used and useful in the public service. However, the commission shall not allow the inclusion of contributions-in-aid-of-construction in the rate base of any utility during a rate proceeding, nor shall the commission impute prospective future contributions-in-aid-of-construction against the utility's investment in property used and useful in the public service; and accumulated depreciation on such contributions-in-aid-of-construction shall not be

used to reduce the rate base, nor shall depreciation on such contributed assets be considered a cost of providing utility service.

2. For purposes of such proceedings, the commission shall consider utility property, including land acquired or facilities constructed or to be constructed within a reasonable time in the future, not to exceed 24 months after the end of the historic base year used to set final rates unless a longer period is approved by the commission, to be used and useful in the public service, if:

a. Such property is needed to serve current customers;

b. Such property is needed to serve customers 5 years after the end of the test year used in the commission's final order on a rate request as provided in subsection (6) at a growth rate for equivalent residential connections not to exceed 5 percent per year; or

c. Such property is needed to serve customers more than 5 full years after the end of the test year used in the commission's final order on a rate request as provided in subsection (6) only to the extent that the utility presents clear and convincing evidence to justify such consideration.

Notwithstanding the provisions of this paragraph, the commission shall approve rates for service which allow a utility to recover from customers the full amount of environmental compliance costs. Such rates may not include charges for allowances for funds prudently invested or similar charges. For purposes of this requirement, the term "environmental compliance costs" includes all reasonable expenses and fair return on any prudent investment incurred by a utility in complying with the requirements or conditions contained in any permitting, enforcement, or similar decisions of the United States Environmental Protection Agency, the Department of Environmental Protection, a water management district, or any other governmental entity with similar regulatory jurisdiction. The commission shall also consider the investment of the utility in land acquired or facilities constructed or to be constructed in the public interest within a reasonable time in the future, not to exceed, unless extended by the commission, 24 months from the end of the historical test period used to set final rates.

Section 2. Section 1 of this act does not apply to rate cases that are pending on March 11, 1999.

Section 3. Subsection (7) of section 367.021, Florida Statutes, is amended to read:

367.021 Definitions.—As used in this chapter, the following words or terms shall have the meanings indicated:

(7) "Governmental authority" means a political subdivision, as defined by s. 1.01(8), or a regional water supply authority created pursuant to s. 373.1962, or a nonprofit corporation formed for the purpose of acting on behalf of a political subdivision with respect to a water or wastewater facility.

Section 4. Section 367.022, Florida Statutes, is amended to read:

367.022 Exemptions.—The following are not subject to regulation by the commission as a utility nor are they subject to the provisions of this chapter, except as expressly provided:

- (1) The sale, distribution, or furnishing of bottled water.;
- (2) Systems owned, operated, managed, or controlled by governmental authorities, including water or wastewater facilities operated by private firms under water or wastewater facility privatization contracts as defined in s. 153.91, and nonprofit corporations formed for the purpose of acting on behalf of a political subdivision with respect to a water or wastewater facility.;
- (3) Manufacturers providing service solely in connection with their operations.;
- (4) Public lodging establishments providing service solely in connection with service to their guests.;
- (5) Landlords providing service to their tenants without specific compensation for the service.;
- (6) Systems with the capacity or proposed capacity to serve 100 or fewer persons.;
- (7) Nonprofit corporations, associations, or cooperatives providing service solely to members who own and control such nonprofit corporations, associations, or cooperatives.;
- (8) Any person who resells water or wastewater service at a rate or charge which does not exceed the actual purchase price of the water or wastewater thereof, if such person files at least annually with the commission a list of charges and rates for all water service sold, the source and actual purchase price thereof, and any other information required by the commission to justify the exemption; but such person is subject to the provisions of s. 367.122.
- (9) Wastewater treatment plants operated exclusively for disposing of industrial wastewater.
- (10) The sale of bulk supplies of desalinated water to a governmental authority.
- (11) Any person providing only nonpotable water for irrigation purposes in a geographic area where potable water service is available from a governmentally or privately owned utility or a private well.
- (12) The sale for resale of bulk supplies of water or the sale or resale of wastewater services to a governmental authority or to a utility regulated pursuant to this chapter either by the commission or the county.

Section 5. Subsection (1) of section 367.071, Florida Statutes, is amended to read:

367.071 Sale, assignment, or transfer of certificate of authorization, facilities, or control.—

(1) No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest and that the buyer, assignee, or transferee will fulfill the commitments, obligations, and representations of the utility. However, a sale, assignment, or transfer of its certificate of authorization, facilities or any portion thereof, or majority organizational control may occur prior to commission approval if the contract for sale, assignment, or transfer is made contingent upon commission approval.

Section 6. Section 367.0816, Florida Statutes, is amended to read:

367.0816 Recovery of rate case expenses.—The amount of rate case expense determined by the commission pursuant to the provisions of this chapter to be recovered through a public utilities rate shall be apportioned for recovery over a period of 4 years. ~~At the conclusion of the recovery period, the rate of the public utility shall be reduced immediately by the amount of rate case expense previously included in rates.~~

Section 7. Section 367.0814, Florida Statutes, is amended to read:

367.0814 Rates and charges; requests for staff assistance in changing.—

(1) The commission may establish rules by which a water or wastewater utility whose gross annual revenues are \$150,000 or less may request and obtain staff assistance for the purpose of changing its rates and charges. A utility may request staff assistance by filing an application with the commission.

(2) The official date of filing is established as 30 days after official acceptance by the commission of the application. If a utility does not remit a fee, as provided by s. 367.145, within 30 days after acceptance, the commission may deny the application. The commission has 15 months after the official date of filing within which to issue a final order.

(3) The provisions of s. 367.081(1), (2)(a), and (3) shall apply in determining the utility's rates and charges.

(4) The commission may, upon its own motion, or upon petition from the regulated utility, authorize the collection of interim rates until the effective date of the final order. 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 interim relief, there must be a demonstration that the operation and maintenance expenses exceed the revenues of the regulated utility, and interim rates shall not exceed the level necessary to cover operation and maintenance expenses as defined by the Uniform System of Accounts for Class C Water and Wastewater Utilities (1996) of the National Association of Regulatory Utility Commissioners.

(5) The commission may require that the difference between the interim rates and the previously authorized rates be collected under bond, escrow,

letter of credit, or corporate undertaking subject to refund with interest at a rate ordered by the commission.

~~(6)(4)~~ The utility, in requesting staff assistance, shall agree to accept the final rates and charges approved by the commission unless the final rates and charges produce less revenue than the existing rates and charges.

~~(7)(5)~~ In the event of a protest or appeal by a party other than the utility, the commission may provide for temporary rates subject to refund with interest.

~~(8)(6)~~ If a utility becomes exempt from commission regulation or jurisdiction during the pendency of a staff-assisted rate case, the request for rate relief is deemed to have been withdrawn. Interim rates, if previously approved, shall become final. Temporary rates, if previously approved, must be discontinued, and any money collected pursuant to the temporary rates, or the difference between temporary and interim rates, if previously approved, must be refunded to the customers of the utility with interest.

~~(9)(7)~~ The commission may by rule establish standards and procedures whereby rates and charges of small utilities may be set using criteria other than those set forth in s. 367.081(1), (2)(a), and (3).

Section 8. Subsection (7) of section 367.082, Florida Statutes, is amended to read:

367.082 Interim rates; procedure.—

(7) If a utility becomes exempt from commission regulation ~~or jurisdiction~~ during the pendency of a rate case, the request for rate relief pending before the commission is deemed to have been withdrawn. Interim rates, if previously approved, must be discontinued, and any money collected pursuant to interim rate relief must be refunded to the customers of the utility with interest.

Section 9. This act does not apply to rate cases pending on March 11, 1999.

Section 10. Present subsections (2), (3), (4), and (5) of section 367.091, Florida Statutes, are redesignated as subsections (3), (4), (5), and (6), respectively, and a new subsection (2) is added to that section, to read:

367.091 Rates, tariffs; new class of service.—

(2) Upon filing an application for new rates, the utility shall mail a copy of the application to the chief executive officer of the governing body of each county within the service areas included in the rate request. The governing body may petition the commission for leave to intervene in the rate change proceeding and the commission shall grant intervenor status to any governing body that files a petition.

Section 11. This act shall take effect upon becoming a law.

Approved by the Governor June 11, 1999.

Filed in Office Secretary of State June 11, 1999.



P.O. Box 13427
Tallahassee, FL 32317-3427
Phone or Fax (850) 877-0673
www.pixels.net/m&r e-mail: frankden@ieee.org AUG -5 PM 2:30

Management & Regulatory Consultants, Inc.

August 3, 1999

Ms. Christiana Moore
Division of Appeals
Florida Public Service Commission
2450 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Draft Revision of Proposed Margin Reserve Rule

Dear Ms. Moore:

I have read the comments of the Florida Waterworks Association (FWA) regarding the draft revisions of proposed rule 25-30.431, F.A.C. I agree with those comments as far as they go, but I believe they do not go far enough. These are my personal comments.

In addition to the sections FWA recommends should be retained, I recommend that the definition portion of section (1) also be retained and be combined with section (3). The combined sections would be redesignated as a new section (1), to read as follows:

(1) "Margin Reserve" is the amount of plant capacity needed to preserve and protect the ability of utility facilities to serve existing and future customers in an economically feasible manner that will preclude a deterioration in quality of service and prevent adverse environmental and health effects. Margin reserve is an acknowledged component of the used and useful rate base determination that shall be included in rate cases filed pursuant to section 367.081, Florida Statutes.


I recommend that the definition of "Margin Reserve" precede that of "Margin Reserve Period" because without the first definition, the second is meaningless.

I recommend including this full definition of "Margin Reserve" because it includes elements discussed and acknowledged by the technical staff of the Commission and by the Commission itself in previous rate orders and in rulemaking proceedings. The elements of

the definition were never in controversy during the rule appeal process. One of the most important of these elements is preserving the ability of facilities to serve existing and future customers without a deterioration in quality of service. It is important that the language be preserved in the rule as a reminder to those that follow that although the margin reserve period may be expressed as a number of years, it is more than a number; it has an important purpose.

Thank you for your consideration.

Very truly yours,



Frank Seidman

cc: Kathryn G. W. Cowdery,
for the FWA

RUDEN
MCCLOSKEY
SMITH
SCHUSTER &
RUSSELL, P.A.
ATTORNEYS AT LAW

215 SOUTH MONROE STREET
SUITE 815
TALLAHASSEE, FLORIDA 32301

09 013-9 PM 01
TELEPHONE: (850) 681-9027
FAX: (850) 224-2032

E-MAIL: BKG@RUDEN.COM

August 9, 1999

Ms. Christiana Moore
Division of Appeals
Florida Public Service Commission
Gunter Building, Room 301
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Hand Delivery

Re: Draft revisions to proposed margin reserve rule

Dear Ms. Moore:

This letter is on behalf of the Florida Waterworks Association. We have reviewed the letter dated August 3, 1999, from Mr. Frank Seidman to you relative to the proposed Margin Reserve Rule.

The Florida Waterworks Association agrees with Mr. Seidman's letter and adopts his recommendation as its own.

Very truly,



B. Kenneth Gatlin

BKG/ldv

RUDEN
MCCLOSKEY
SMITH
SCHUSTER &
RUSSELL, P.A.
ATTORNEYS AT LAW

215 SOUTH MONROE STREET
SUITE 815
TALLAHASSEE, FLORIDA 32301

TELEPHONE: (850) 681-9027
FAX: (850) 224-2032

E-MAIL: KCC@RUDEN.COM

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July 30, 1999

Ms. Christiana Moore
Division of Appeals
Florida Public Service Commission
Gunter Building, Room 301
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Hand Delivery

Re: Draft revisions to proposed margin reserve rule

Dear Ms. Moore:

This letter contains the Florida Waterworks Association's comments on the draft revisions to proposed rule § 25-30.431, F.A.C., which you provided to this firm by transmittal of July 23, 1999.

In general, the FWA believes that the draft revisions do reflect the recent amendments to § 367.081(2), Florida Statutes.

However, the FWA does not believe that the PSC should delete proposed rule §§ 25-30.431(2) and (3), F.A.C., in their entirety. These proposed rule sections read as follows:

(2) "Margin reserve period" is defined as the time period needed to install the next economically feasible increment of plant capacity.

(3) Margin reserve is an acknowledged component of the used and useful rate base determination that when requested and justified shall be included in rate cases filed pursuant to section 367.081, Florida Statutes.

To the extent that these two sections define margin reserve, they accurately reflect Commission policy and reasoning for including margin reserve in rate base. Inclusion of the definitional statements contained in §§ 25-30.431(2) and (3), F.A.C., would be beneficial in giving a greater understanding of the concept of margin reserve to the regulated community, customers, and future PSC commissioners and staff members. In rate cases where a margin reserve period greater than five years is being requested, all

parties will have more clear guidance as to the appropriateness of the request, and the parameters of the term "margin reserve" will be better defined.

Based upon the above reasoning, the FWA recommends that proposed rule § 25-30.431(2), F.A.C., be retained without modification.

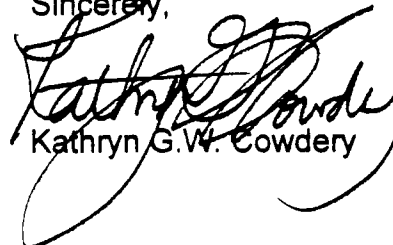
Rather than delete the entire proposed rule § 25-30.431(3), F.A.C., in order to conform the rule to § 367.081(2)(a)2, Fla. Stat., FWA proposes that the rule be revised as follows:

(3) Margin reserve is an acknowledge component of the used and useful rate base determination that when requested and justified shall be included in rate cases filed pursuant to section 367.081, Florida Statutes.

The deletion of only the phrase "when requested and justified" would conform the proposed rule to § 367.081(2)(a)2, F.A.C., which does not contain that language, while retaining the beneficial portion of the proposed rule. The definitional portion of proposed rule § 25-30.431(3), F.A.C., would be retained for the reasons given above.

Thank you for consideration of these comments. Please contact this office should you have any questions.

Sincerely,



Kathryn G.W. Cowdery

KGWC/ldv

cc: FWA Membership



JACK SHREVE
PUBLIC COUNSEL

STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature
111 West Madison St.
Room 812
Tallahassee, Florida 32399-1400
850-488-9330

August 25, 1999

Christiana T. Moore, Esquire
Florida Public Service Commission
Division of Appeals
Gunter Building, Room 301
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RE: Revisions to proposed margin reserve rule

Dear Ms. Moore:

This letter contains the Citizens' comments to Staff's draft revisions to Proposed Rule 25-30.431, F.A.C., as well as the Citizens' response to certain comments submitted by industry representatives.

The Citizens are satisfied with Staff's draft revisions and believe that it is reasonable for the Commission to adopt the revisions as currently drafted.

The Citizens disagree with the changes suggested by Mr. Frank Seidman, Management and Regulatory Consultants, Inc., and adopted by Florida Waterworks Association through a letter from Mr. Kenneth Gatlin.

The Citizens believe that it is unnecessary to define "margin reserve" for the purpose of the rule, and believe that the definition suggested by Mr. Seidman is inaccurate.

Mr. Seidman recommends that margin reserve be defined as follows:

"Margin Reserve" is the amount of plant capacity needed to preserve and protect the ability of utility facilities to serve existing and future customers in an economically feasible manner that will preclude a deterioration in quality of service and prevent adverse environmental and health effects. Margin reserve is an acknowledged component of the used and useful rate base determination that shall be included in rate cases filed pursuant to section 367.081, Florida Statutes.

Christiana T. Moore
August 25, 1999
Page 2

The problem with Mr. Seidman's definition is that it does not reflect what the statute requires. The statute appears to require that the Commission add at least a five-year margin, regardless of the actual economically feasible increments that could be added. Suppose, for example, all parties in a particular case stipulated that the "plant capacity needed to preserve and protect the ability of utility facilities to serve existing and future customers in an economically feasible manner" corresponded to a three-year future period. Is Mr. Seidman suggesting that in such a situation that the Commission could add only a three-year margin reserve to rate base?

This hypothetical demonstrates the fact that the statutory directive for the ratemaking treatment of margin reserve is altogether independent of the actual facts of economic feasibility in any particular case. If the next economically feasible plant addition is 4 ½ years, the margin reserve will be 5 years; if the next economically feasible plant addition is 1 ½ years, the margin reserve is 5 years. Pursuant to statute, the margin reserve added to rate base is now independent from any finding as to the next economically feasible plant addition.

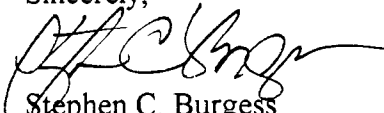
Consequently, to tie the margin reserve definitionally to any finding on the next economical increment of the plant is total fiction.

In his letter, Mr. Seidman points out that the elements of his definition were never in controversy during the rule appeal process. When the rule appeal process took place, however, the Commission anticipated using its findings on economic feasibility to establish the amount of margin reserve to add to rate base. Now the Legislature has pre-empted the Commission's discretion over that issue. It no longer matters what the Commission finds on economic feasibility, it appears that the Commission must still add at least a five-year margin.

Under such circumstances, it is totally improper to define margin reserve in the terms suggested by Mr. Seidman.

Thank you for your consideration of the Citizens' comments. If you would like to discuss this further, please let me know.

Sincerely,



Stephen C. Burgess
Deputy Public Counsel

SCB/dsb

cc: Kathryn G.W. Cowdery, Esquire
B. Kenneth Gatlin, Esquire
Mr. Frank Seidman



P.O. Box 609520
Orlando, Florida 32860-9520
(407) 880-0058
Fax (407) 598-4241

VIA FAX TO:

To: *Chris Moore*
From: *M. Feil*
Date: *8/5/99*

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Comments on MR rule. Change needed to work for different plant components; i.e. plant lines, etc.

Number of pages including this sheet: _____

You may reach me at: (407) 598-_____
Fax (407) 598-4241

1 Environmental Protection (DEP) for planning, designing, and
2 construction of plant expansion; and the technical and economic
3 options available for sizing increments of plant expansion.

4 (3 5) (a) Margin reserve for utility property water source and
5 treatment facilities and wastewater treatment and effluent disposal
6 facilities shall be calculated as follows:

$$7 \quad \underline{EG \times MP \times D = MR}$$

8 where:

9 EG = Equivalent Annual Growth in ERCs determined
10 pursuant to (b) or (c) below, not to exceed 5
11 percent per year

12 MP = Margin Reserve Period determined pursuant to
13 subsection (4) section 367.081(2) (a) 2.b. and c.,
14 Florida Statutes (1999).

15 D = Demand per ERC (customer demand applied in the
16 used and useful calculations for water and
17 wastewater facilities).

18 MR = Margin reserve expressed in gallons per day (GPD)

19 (b) The equivalent annual growth in ERCs (EG) is measured
20 in terms of the projected annual growth and shall be calculated
21 in Schedules F-9 and F-10 of Form PSC/WAW 19 for Class A
22 utilities and Form PSC/WAW 20 for Class B utilities, incorporated
23 by reference in Rule 25-30.437.

24 (c) The utility shall also submit a linear regression
25 analysis using average ERCs for the last 5 years. The utility

CODING: Words underlined are additions; words in
~~struck-through~~ type are deletions from existing law.