

FLORIDA PUBLIC SERVICE COMMISSION

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M E M O R A N D U M

DECEMBER 5, 1991

TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM : DIVISION OF WATER AND WASTEWATER (HILL, LOWE, SHAFER,  
WILLIAMS, WILLIS, BETHEA, CHASE, CROUCH, DANIEL,  
McCASKILL, MERCHANT, MESSER, MONIZ)  
DIVISION OF LEGAL SERVICES (DAVIS, FEIL)

RE : DOCKET NO.: 910920-WS - PROPOSED ADOPTION OF RULE 25-  
30.038, F.A.C., EXPEDITED APPLICATION FOR ACQUISITION OF  
EXISTING SMALL WATER AND WASTEWATER UTILITIES

DOCKET NO.: 911082-WS - PROPOSED REVISIONS TO RULES 25-  
22, AND 25-30, F.A.C. PERTAINING TO WATER AND WASTEWATER  
UTILITIES

AGENDA : DECEMBER 17, 1991 - CONTROVERSIAL - PARTIES MAY  
PARTICIPATE

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FPSC-RECORDS/REPORTING

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### CASE BACKGROUND

In 1985, the Division of Water and Wastewater had 42 open and active rate cases. Eighteen of these cases were red, having exceeded the statutory time limit for processing, and 6 were two years old or older. Also, the agency cost of regulating the industry exceeded revenues collected by more than 2 million dollars. Thus began a process to simplify regulation for water and wastewater.

In 1986, the Executive Director established a Water and Sewer Task Force to study problems (such as taking too long and costing too much to process water and sewer cases) and develop possible solutions. This task force was comprised of representatives from the Division of Records and Reporting, Division of Auditing and Financial Analysis, Division of Water and Sewer, Division of Legal Services, Office of Public Counsel, Office of the Executive Director and Economic Standards and Control.

The task force identified 14 areas for study and over a period of several months developed alternative solutions and recommendations. In early 1987, the Division of Water and Wastewater began implementing many of the recommended solutions. Examples of these are; hold pre-prehearings, establish standard time frames for processing cases, establish criteria for using the proposed agency action (PAA) process, reserve hearing dates (shadow CASRs) early on, condition staff assisted rate cases (SARCs) on the company not protesting, etc.

In 1988, the staff was directed by the Commission to open a generic investigation into simplification of regulation and alternative methods of regulation for the water and sewer industry. Nineteen issues were identified and hearings were held in January of 1989. Based upon the findings of these hearings, the Commission began implementing what it could via policy, took to the legislature those items requiring statutory change and directed staff to begin rule-making in several areas. Examples of these are; simple averages, formula approach for working capital, a PAA option for rate cases, alternatives to rate base regulation and statewide rates.

Concurrently, the Commission directed staff to investigate rate case expense and the use of the index/pass-through provisions by the industry. This investigation was completed several months

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later with the conclusion that our requirements and the manner in which we regulate were the major contributing factors to rate case expense. Second, while many utilities did use the index provisions many utilities had never used it or used it only once in a while. As a result, the staff was directed to revise our MFRs to reduce the filing requirements, identify ways we could simplify rate making and to encourage the industry to utilize the index/pass-through provisions.

At the same time, the Commission was preparing its sunset package for the 1989 Legislative session. The thrust of our package was to streamline regulation and reduce cost. Many of the ideas brought forward in the various proceedings previously mentioned were contained in this package including a PAA option for rate cases, increasing the regulatory assessment fees (RAF), other than rate base regulation for Class C utilities, etc. The legislature, after assuring itself that the Commission would do everything it could to streamline, passed our package with very few changes. Most notable was the increase in RAFs to 4.5% (nearly 5 cents on every dollar) with the caveat that this industry cannot be subsidized by the other industries and, that we should make more use of DOAH for our proceedings.

Our status today is that the division has implemented every cost savings measure at our disposal, yet barely cover the cost of regulation. In addition to the measures previously mentioned, we have implemented a tariff system that shifted the filing of hundreds of index/pass-throughs from Records and Reporting to the division. Standard issues and boilerplate have been implemented in all areas. We are moving toward new certificates being done on a hypothetical/typical system basis. Finally, nearly every certification case that requires a hearing is sent to DOAH. Yet, our revenues exceed expenses by less than \$400,000 or 0.08%.

These rules are the division's attempt at major cost savings. Every rule has been examined to see if there is a less expensive way to accomplish what needs to be done. The staff has separated our recommended rules into six broad categories for ease in discussion and modification. These are:

- 1.) Acquisition Policy
- 2.) Certification
- 3.) File & Suspend Rate Cases

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- 4.) Staff Assisted Rate Cases
- 5.) Rates, Charges and Tariffs
- 6.) Miscellaneous and Cleanup

While our rule package contains many changes and new ideas, three areas deserve special mention.

First, the "total company" concept has been adopted for processing cases. That is, any company with multiple systems is required to file all systems when requesting rate relief. If the company is not under-earning as a total company, they need not file. This concept is also used in over-earnings, working capital, CWIP, etc. We believe major cost savings will occur as a result of this change alone. The most recent Southern States rate case was handled in a similar manner to what we are recommending and was a resounding success as far as cost is concerned. Regardless of the outcome of the docket, rate case expense was a record low of \$24,000 per system which, when compared to rate case expense for PPW (similar but much smaller case \$154,000 so far), is a major savings. Our agency alone saved over \$50,000 in processing the case.

Second, utilizing the new statutory authority for something other than rate base regulation for Class C utilities, we have developed a rate setting alternative that is something between an index and a full blown SARC. By using this methodology we hope to reduce the number and frequency of SARCs.

Third, we have included a "quick take" option in transfers involving a Class A or B utility purchasing a Class C utility. We have long recognized regulatory lag as being a disincentive to purchasing a small, troubled system. In addition to facing fines, penalties and possibly major capital improvements, a purchasing utility has had to wait 12 to 15 months before compensatory rates are granted. Our belief is that this new alternative will greatly facilitate these purchases and save considerable time and money.

Finally, it should be noted that these rules have not been brought along in the normal rulemaking process. Some of them have been to workshops and some have not. Some have had an economic impact statement (EISs) done and some have not. What we require and seek from the Commission is direction. As we said, it has taken five years to get to this point and over this time period the Commission itself has changed. Our plan is to get final direction

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from the Commission and set the rules directly for hearing. Then, after the EISS and hearings, bring them back for final adoption next year. The docket and the rules will be turned over to the Division of Appeals after your vote.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission initiate rulemaking to adopt the proposed rules in Attachment 1A?

RECOMMENDATION: Yes. (DAVIS, FEIL, HILL, LOWE, SHAFER, WILLIAMS, WILLIS, BETHEA, CHASE, CROUCH, DANIEL, McCASKILL, MERCHANT, MESSER, MONIZ)

STAFF ANALYSIS:

The Commission has required the Division of Water and Wastewater to bring before them rules which codify existing policies and practices. We believe the attached rules fulfill this objective.

For ease of review, we have divided the rules into six categories. They are:

- 1.) Acquisition Policy
- 2.) Certification
- 3.) File & Suspend Rate Cases
- 4.) Staff Assisted Rate Cases
- 5.) Rates, Charges and Tariffs
- 6.) Miscellaneous and Cleanup

A separate discussion is included for each new or amended rule. It should be noted that there are two rules which contain alternatives.

CATEGORY 1 - ACQUISITION POLICY

Staff is recommending rule changes relating to issues involved in the transfer of ownership of an existing utility, such as establishing the rate base at the time of transfer, determining the amount of acquisition adjustment, if any, and implementing compensatory rates for the purchasing utility. In these rule changes (and proposed new rules), we have attempted to explain and

codify Commission policy on the calculation of acquisition adjustments resulting from transfers and provide a new mechanism encouraging the acquisition of small systems by larger utilities. It is important to note that the rules discussed in this section directly relate to each other and should be reviewed together. The rules addressed in this section are:

**Section 25-30.037 - Application for Authority to Transfer -** This is an existing rule which contains the filing requirements for an application for transfer of ownership of an existing utility.

**Section 25-30.0371 - Rate Base Established at Time of Transfer -** This is a proposed new rule which codifies Commission policy relating to acquisition adjustments, defines rate base at the time of transfer, and identifies factors that may be considered in calculating the level of a negative or positive acquisition adjustment.

**Section 25-30.038 - Expedited Application for Acquisition of Existing Small System -** This is a proposed new rule which would be an alternative to Section 25-30.037, FAC, providing an expedited mechanism for Commission approval of the purchase of small utility systems by large utilities and the implementation of compensatory rates.

While many of staff's proposed rule changes concerning this topic apply equally whether the purchase involves a large or small utility system, our main focus has been the purchase of small systems by large utilities. Over the years, the Commission has stated its desire to encourage the purchase of small systems by large utilities. In forming its policy, the Commission has recognized the difficulty in operating a small water and wastewater utility as a financially sound business. Most of the problems associated with small utilities can be traced to their size. Small utilities typically are unable to attract the capital necessary to provide adequate service, particularly in the face of increasingly more stringent and costly environmental requirements. If they are able to attract capital, the cost is high due to the associated risk of the investment. The operating costs of small utilities are high on a per customer basis, because such utilities lack economies of scale, which are available to other utilities that are able to spread costs over a larger customer base. In addition, small utilities usually suffer from an inadequate or inexperienced technical and professional staff because the customer base is not large enough to support the salaries. With all of these factors working against them, it is a wonder that any small water and

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wastewater utility is able to provide its customers with safe, efficient and sufficient service and operate as a financially sound business.

The Legislature has expressed its concern with the proliferation of small water and wastewater utilities in the sunset legislation in 1989. Section 367.045(5), Florida Statutes, provides, in part, that the commission may deny an application for a certificate if the public can be adequately served by extending or modifying a current system. That section of the statute goes on to say that the Commission may not grant a certificate or an amendment of certificate which will be in competition with, or duplication of, any other system unless it first determines that such other system is unable to provide adequate service. Historically, the Commission has addressed the problem of small systems in several ways. One is to discourage the establishment of small systems (particularly those that will be owned by persons not intending to remain long in the business) by stricter initial certificate requirements and closer scrutiny of such applications. Another way to address the problem is to eliminate small systems by encouraging larger utilities to acquire the existing small systems, particularly if these systems are poorly run operations in need of major improvements.

For this reason, the Commission currently allows the purchasing utility to earn a return on the acquired system's net book value, regardless of the purchase price. This policy provides an incentive to the purchasing utility while providing certain benefits to the customers of the acquired system, such as an improved quality of service, more professional and experienced utility personnel, elimination of a general disinterest in the utility operations (in the case of developer-owned systems), and more stable rates in the long run due to a reduced cost of debt, economies of scale and more efficient operations.

While this Commission has in the past stated its desire to encourage the purchase of small systems by large utilities, its current rules and procedures often work against this policy. The systems being purchased are often in need of some repair and the rates for service are unrealistically low or nonexistent. Under our current rules, a purchasing utility has to first file an application for approval of the acquisition. This usually takes six to eight months to process because a staff audit is needed to determine rate base at the time of acquisition. In addition, if the purchasing utility wants to increase the rates (or establish rates if none have been charged by the prior owner), a rate case or

limited proceeding must be filed which will take another eight months to process. (There have been some cases wherein the transfer case and limited proceeding has been processed simultaneously, thus saving about eight months of regulatory lag before rates can be changed.) Therefore, the purchasing utility must incur the administrative and legal expense of the acquisition case and subsequent rate case, as well as absorb anywhere from eight to sixteen months of losses before reasonably compensatory rates can be implemented.

Staff has drafted a proposed rule (Section 25-30.038, FAC) designed to reduce some of this regulatory lag and the resulting expense to the purchasing utility. This rule is proposed as an alternative to Section 25-30.037, FAC, and is applicable to any Class A or B utility requesting approval to acquire an existing small system and implement compensatory rates. For purposes of this rule, a small system is defined as one having the capacity to serve 500 or fewer ERCs. Under this proposed new rule, the purchasing utility would be applying for approval of a transfer and a limited proceeding to implement or increase rates. The rates which could be implemented would be restricted to either: (1) those approved by the Commission for the buyer in the county in which the system is located, as long as such rates have been set by the Commission in a rate proceeding; or (2) the approximate statewide average rates, which will be approved by the Commission at least annually in a procedure similar to that used to establish the annual price index for use by water and wastewater utilities.

This proposed rule provides that, within ninety days, the Commission will grant or deny the acquisition of a small system by a larger utility and allow the purchasing utility to implement reasonable rates, on a temporary basis, subject to refund for a period of one year. In addition, the buyer must keep separate records for the acquired system and file certain schedules identified from the annual report form at the end of one year of operation. At that time, the Commission will set permanent rates and may establish rate base of the acquired system, based upon the information supplied by the buyer.

While the provisions of the rule outlined in Section 25-30.038, FAC, should facilitate the purchase of small systems by larger utilities and reduce the expense and regulatory lag now incurred, it does not address the issue of acquisition adjustment which could result from the purchase. An acquisition adjustment is the difference between the cost of acquiring a utility system and its rate base. Currently, the amount of the acquisition adjustment

is determined by comparing the net book value with the purchase price. A negative acquisition adjustment results when the purchase price is less than the net book value; a positive acquisition adjustment results when the purchase price is greater than the net book value.

Staff believes that purchase price and net book value should not be the only two factors considered in determining the amount of an acquisition adjustment. To begin with, contract purchase price is not indicative of the total cost of acquiring a system. The administrative and legal costs incurred in securing approval of the acquisition, as well as other out-of-pocket expenses such as outstanding fines are real and legitimate costs of acquisition. In addition, if the acquired system's rates are insufficient or nonexistent, the cost of securing a rate change as well as carrying the system's losses until reasonable rates are implemented are actual costs associated with the acquisition. All of these costs are surely considered by the purchaser in negotiating a contract purchase price, and staff believes they should be considered by the Commission in its calculation of acquisition adjustment.

In addition, staff believes that the condition of the plant at the time of transfer should be taken into account in establishing the rate base (net book value) of the utility assets. If a utility system is in immediate need of major repair or replacement, the value of the system should be reduced to reflect that fact.

Therefore, in staff's opinion, a more accurate reflection of the amount of the acquisition adjustment would be a comparison of total acquisition costs and the rate base, which has been adjusted, if necessary, for the condition of the plant. Finally, once an acquisition adjustment is calculated (positive or negative), whether or not it should be recognized for ratemaking purposes should depend on the specific circumstances of the system being acquired. Factors such as the seller's history of DER compliance, the level of service provided by the seller, the ability of the seller to make any necessary improvements and the impact of these improvements on its financial strength should be considered. For instance, the purchase of a small utility which has historically been in violation of DER rules and in need of major improvements by a larger utility with a good track record for service and with the financial strength to fund the improvements is definitely in the best interest of the customers. If a negative acquisition adjustment results from such a sale, in staff's opinion, the adjustment should not be recognized for ratemaking purposes because of the obvious benefits to the customers as noted above.

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Staff has tried to capture the concepts discussed above in a proposed new rule (Section 25-30.0371, FAC), which is titled Rate Base Established at Time of Transfer. This proposed rule defines rate base for transfer purposes as the net book value of the utility assets. The rule also provides that the Commission shall consider the condition of the utility assets purchased in deciding if a purchased asset should be removed from the rate base calculation. Thus, it puts the industry on notice that the Commission may remove from rate base inadequate or broken-down utility plant.

The proposed rule codifies Commission policy relating to the recognition of acquisition adjustments for ratemaking purposes, providing that in the absence of extraordinary circumstances, a purchase of a utility system at a premium or discount shall not affect the rate base calculation. The rule also lists the factors that the Commission may consider when calculating the amount of acquisition adjustment, such as the total cost of acquisition, condition of plant, DER compliance, adequacy of rates, etc. Lastly, the proposed rule provides that the Commission may consider setting rate base at zero in instances where there are no records available to document the seller's investment or level of CIAC.

In conjunction with this new rule, staff is proposing other rule changes addressing the acquisition adjustment issues previously discussed. Currently, Section 25-30.037, FAC, requires justification for a positive acquisition adjustment if one is requested. Staff is proposing a revision which requires the applicant to provide justification as to why a negative acquisition adjustment should not be recognized, if the cost of acquisition is less than rate base, calculated pursuant to Section 25-30.0371, FAC. Section 25-30.038, FAC, which is the proposed rule discussed above as an alternative to Section 25-30.037, FAC, also contains this requirement. In addition, Section 25-30.0371, FAC, clearly provides that when a negative acquisition adjustment occurs, it is the applicant's burden to show why it should not be imposed. Staff is also proposing revisions to Section 25-30.037, FAC, to require statements from the buyer as to the physical condition of the utility system, its status with DER, and that it has obtained the federal income tax records of the seller, or an explanation of why they were not available. Again, these same requirements are contained in Section 25-30.038, FAC, the alternative rule. In requiring these items, we believe we are putting the industry on notice as to their importance as well as getting more information up front in order to calculate rate base and the amount of acquisition adjustment according to the concepts discussed above.

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In summary, in developing proposed new rules, Sections 25-30.0371 and 25-30.038, FAC, and proposed revisions to Section 25-30.037, FAC, staff has attempted to explain in the rules the Commission policy on the calculation and recognition of acquisition adjustments resulting from the transfer of utility systems, as well as to provide a mechanism to facilitate the acquisition of small utility systems by larger utilities and the implementation of compensatory rates.

#### CATEGORY 2 - CERTIFICATION

The highlights of the proposed certification rules include streamlining the noticing requirements to eliminate certified mail notices and reducing newspaper noticing from three notices to one; providing for more effective noticing by including other affected state agencies and potential customers; and adding applicability statements to eliminate confusion as to which type of filing is appropriate in amendments, transfers, and name changes. Two new rules are proposed which will codify existing Commission practice in applications for acknowledgement of a name change and in abandonments. Each of the existing certification rules has been reviewed and proposals made to add certain requirements which are now being requested as follow-up information.

**Section 25-30.010 - Rules for General Application** - The proposed change to this rule changes the reference from sewer to wastewater.

**Section 25-30.011 - Application and Scope** - The proposed change to this rule changes the reference from sewer to wastewater.

**Section 25-30.025 - Official Filing Date** - The proposed change to this rule changes the reference from sewer to wastewater.

**Section 25-30.030 - Notice of Application** - This rule applies to noticing original certificates, amendments, and transfers. Changes are proposed which will eliminate the 4-mile radius limitation in noticing surrounding utilities. The Commission is currently required to maintain a database of certificated utilities in a section, township, and range format to comply with the current rule requirement. The proposed change will provide a cost saving to the Commission if the database is no longer required. A proposal is made to allow noticing by regular mail instead of certified mail and to reduce the newspaper noticing from three notices to one. These changes will provide a significant cost

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saving to the industry. The DER and Water Management District offices were added to the noticing requirements. Also, a requirement was added to notice residents in the requested territory on wells or septic tanks.

**Section 25-30.032 - Applications** - The changes proposed to this rule will reduce the number of copies of applications from 15 to 12 and clarify the applicability of the rule by referencing two new rules which are subject to these requirements. The reduction in number of copies required will result in a cost saving to the industry.

**Section 25-30.033 - Application for Original Certificate of Authorization and Initial Rates and Charges** - Three new criteria are proposed in original certificate applications requiring the use of the base facility charge rate structure for metered service, requiring that a return on common equity be established using the current equity leverage formula, and requiring that an AFUDC rate be authorized and setting the criteria for determining that rate. The rate structure requirement is consistent with the Commission's goal of encouraging conservation. The return on equity and AFUDC requirements codify current Commission practice and puts the applicant on notice of these requirements up front.

**Section 25-30.034 - Application for Certificate of Authorization for Existing Utility Currently Charging for Service** - Two new criteria are proposed requiring information on existing customers as background information and, in cases where the applicant is requesting territory not served at the time of application, requiring statements showing the need for service and whether the provision of service is consistent with the local comprehensive plan.

**Section 25-30.035 - Application for Grandfather Certificate** - The proposed change will require information on exiting customers as background information.

**Section 25-30.036 - Application for Amendment to Certificate of Authorization** - The two proposed changes to this rule include an applicability statement to clarify the distinction between an amendment and a transfer and removal of the 4-mile limitation in noticing surrounding utilities to be consistent with the proposed change in the rule on noticing requirements.

**Section 25-30.039 - Application for Name Change** - This is a new rule which is intended to clarify the distinction between a

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name change and a transfer and to codify the filing requirements. A name change application may only be used in the case where there is no change in the ownership or control of the utility or its assets. The filing requirements include information regarding the reason for the name change, verification that there is no change in ownership, requiring that the land must remain in the certificated name of the utility, and requiring a notice to the customers of the name change. The Commission acknowledges a name change rather than approving it.

**Section 25-30.060 - Application for Exemption from Regulation or Nonjurisdictional Finding** - The proposed addition to the rule will require a statement that the reseller applicant is aware of the requirements of the rules and statutes relating to examination and testing of meters.

**Section 25-30.090 - Abandonments** - This is a new rule which codifies language which should be included in the notice required by statute when a utility intends to abandon, such as the reason for the abandonment, the date of the abandonment, and the status with DER. The rule also contains proposals requiring the appointed receiver to request from the Commission the utility's current tariff and annual report, requiring the receiver to file a revised tariff sheet reflecting the name of the receiver, codifying that the receiver is subject to Chapter 367, F.S. and Chapter 25-30, F.A.C., and providing for an exemption, upon request, for a governmental authority acting as a receiver. This rule and the related statute are intended to help prevent service interruption to utility customers. The proposal also encourages governmental authorities to become receivers by clearly stating that, upon request, they will be found exempt from PSC regulation.

**Section 25-30.111 - Exemption for Resale of Utility Service, Annual Reports** - The proposed changes to this rule clarify that an exemption is not automatic, it must be approved and that the requirements apply to wastewater systems as well as water systems.

### CATEGORY 3 - FILE AND SUSPEND RATE CASES

These rules contain policy and filing requirements for file and suspend rate cases. The majority of the rules are merely a codification of existing Commission policy. However, some of the recommended rules are reversals of current Commission policy and some are recommending policy where none exists. While each Section is briefly discussed below, some of the recommended rules are controversial enough to warrant further discussion.

Section 25-30.430, for example, deals with test year approval. We have included two possible rules for this issue. The first, our recommended rule, leaves the current rule in place with two changes; direct testimony is not required with the MFRs and, the Division Director is given authority to grant extensions to file MFRs (Commission practice). The alternative rule only requires the company to notify the Commission of the test year(s) it intends to use and the anticipated date of filing. We believe the current rule is working fine and no major change is necessary.

This category also contains rules for inclusion of a margin reserve, standards for quality of service, used and useful calculations, processing of rate cases for companies with multiple systems and requires the use of the base facility charge rate structure. We recognize that many of these rules are not in final form and will require fine tuning. However, we believe Commission policy and practice is well known in these areas and should be codified. Our rule on used and useful, for example, only contains our formula at this point. After hearings and input from the industry and OPC, we believe we will be able to adopt rules that are fair just and reasonable.

Three other areas should be noted by the Commission. First, our recommended rules on the margin reserve contain a reversal of current Commission policy with respect to imputation of CIAC. That is, our rules no longer provide for the imputation of CIAC when including a margin. A margin is included when warranted by growth to recognize the fact that the utility must stand ready to serve the next customer that requests service. The Commission has imputed CIAC in the past to capture the CIAC paid by that next customer when he/she connects. However, once that customer connects, the utility must stand ready to serve the next customer, and so on until the utility reaches build-out. Therefore, our recommended rule does not include imputation of CIAC unless the margin brings the company to build-out or the utility has prepaid CIAC.

Second, our rules require companies with multiple systems to file all systems when requesting rate relief. This has been discussed in the case background but it is significant enough that we wanted to be sure this item was not overlooked. Our belief is that the savings to the Commission and to customers is so significant that this procedural change should be made.

Finally, we have recommended something so different with respect to working capital that we must highlight this area. There

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are at least three alternative methods for calculating working capital that we will mention here, but alternative rules are not included.

We have recommended that all companies with multiple systems and annual revenues in excess of \$750,000 use the balance sheet approach to working capital. We have included a waiver provision so that any company that believes this would be a burden could ask for a waiver. Our thinking is that companies of this size and type should have the information readily available to calculate working capital in this manner without additional burden.

The first alternative to this is the one previously adopted by the Commission in Order No. 21202. This would apply the formula approach to all water and wastewater companies, A's, B's and C's. A second alternative would be the use of the balance sheet for Class A utilities and the use of the formula for all Class B and C utilities. Finally, the third alternative would be the use of the balance sheet for all Class A and B utilities and the formula for all Class C utilities.

We believe the approach we have recommended will obtain the greatest amount of precision for regulatory purposes while not adding to the burden of regulation.

**Section 25-30.117 - Accounting for Pension Costs** - This rule proposal requires utilities which have established defined benefit pension plans to account for those costs pursuant to SFAS 87.

**Section 25-30.220 - Utility Standards** - This section codifies and incorporates by reference five sets of engineering standards which are used in the design and construction of water and wastewater facilities. Adoption of this rule will enable all parties in a proceeding to refer to the same engineering standards without requiring parties to actually provide copies of these standards in every case. While advisory in nature, these standards, published by the American Water Works Association (AWWA), Health Research Incorporated (Ten States Standards), Insurance Services Office (ISO), and Water Pollution Control Federation (WPCF) (now known as Water Environment Federation (WEF)), are accepted throughout the industry as normal engineering design standards. Adoption of this rule would save considerable time, money, and paper.

**Section 25-30.430 - Test Year Approval** - The first change to this section removes the reference to prefiled testimony from the

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Chairman's test year approval letter in Section 3. Prefiled testimony is now proposed to be addressed as a minimum filing requirement (MFR) in Section 25-30.436(2).

The second change is proposed to allow requests for extensions of time to file MFRs to be made to the Director of the Division of Water and Wastewater. The rule previously did not address whether the Division Director or the Chairman was responsible for granting extensions. The proposed rule eliminates the confusion of responsibility and alleviates the Chairman from a tedious house-keeping duty.

**Section 25-30.432 - Used and Useful** - This section defines and establishes rules covering specific factors to be calculated when deriving Used and Useful percentages. Margin Reserve, Fire Flow, Unaccounted-for-Water, and Excessive Infiltration/ Inflow are defined and explained. Certain factors may be disregarded by the utility if they have no growth to be considered, or the utility does not provide adequate fire flow and therefore elects not to request fire flow capacity be calculated. Unaccounted-for-Water and Excessive Infiltration/ Inflow are quantities derived from the utility's flow records and may or may not be a factor. Used and Useful is one of the most controversial topics in water and wastewater rate cases. The percentages derived, and finally accepted by the Commission have a significant impact upon the final revenue requirement and rates granted the utility. The goal of this rule is to codify Commission policy governing the specific issues and formulas to be used when calculating Used and Useful percentages. This rule allows for waiver and for the filing of fully documented and supported alternatives.

**Section 25-30.433 - Rate Case Proceedings** - The purpose of this section is to codify into rule common issues in rate increase proceedings which have been non-rule policy of the Commission. Subsections 1 and 2 (formula approach for working capital allowance and beginning and end of year average for rate base and cost of capital) were required by the Commission in Order No. 21202, the Limited Investigation into Rate Setting Procedures and Alternatives for Water and Sewer Utilities, Docket No. 880883-WS. Subsections 3-6 have been non-rule policy in rate proceedings for many years. Subsection 7 codifies non-rule policy for rate proceedings on the issue of ownership of land, but this policy is currently stated by rule for all water and wastewater certificate applications.

**Section 25-30.434 - Application for Allowance For Funds Prudently Invested (AFPI) Charges** - The purpose of this proposed

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rule is to codify the Commission's non-rule policy on AFPI applications, filing requirements and the calculation of the appropriate rates to be allowed. The rule also defines what an Allowance For Funds Prudently Invested charge is and what the purpose of the charge is.

**Section 25-30.435 - Application for a Rate Increase by an Applicant Which Owns Multiple Systems** - This is a proposed new rule that requires a company with multiple water systems or multiple wastewater systems to file all systems when requesting rate relief. Rate of return determined on a total company basis, overearnings determined on a total company basis, working capital using the balance sheet approach for companies with revenues in excess of \$750,000, allows for waiver.

**Section 25-30.436 - General Information and Instructions Required of Class A and B Water and Wastewater Utilities in an Application for Rate Increase** - There are several housecleaning changes in this rule which are self-explanatory. In subsection 2, a change is proposed to require prefiled testimony to be filed 30 days after the minimum filing requirements have been met in cases where the utility has not requested to use the PAA procedure.

In subsection 3, (f-g), non-rule policy is duplicated from Proposed Rule 25-30.433, Rate Case Proceedings.

Subsection 7 requires the utility to file actual rate case expense incurred, instead of the rate case expense allowed, at the conclusion of a rate case. This information is required by the Deputy Director, Technical, and has been informally requested by staff at the end of a rate case. However, utilities have not been submitting this information upon requests. By placing this requirement in the rule, utilities are notified up-front that this information will be required at the conclusion of the case.

**Section 25-30.437 - Financial, Rate and Engineering Information Required of Class A and B Water and Wastewater Utilities in an Application for Rate Increase** - There are several housecleaning changes in this rule which are self-explanatory.

Subsection 6 proposes that utilities requesting uniform rates be required to submit the MFRs on a system-by-system basis as well as an uniform basis. This is not clear in the current MFRs. This subsection also lists the schedules which have to be submitted for uniform rate consideration.

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**Section 25-30.439 - Additional Rate Information Required in Application for Rate Increase** - A new section which requires the filing of tariff sheets in rate case proceedings.

**Section 25-30.441 - Engineering Information Required** - This section is essentially housecleaning: 441(5) is unclear and should have been deleted during the last rulemaking session. This section addresses the specific information required to be filed when a utility seeks to recover the cost of investment for plant construction required by a governmental authority. Our revision to this rule deletes the unclear and unneeded sentence (5).

**Section 25-30.443 - Minimum Filing Requirements for Class C Water and Wastewater Utilities** - There are several housecleaning changes in this rule which are self-explanatory. The other changes are necessary to be consistent with the information required of Class A and B utilities (Section 25-30.437).

#### **CATEGORY 4 - STAFF ASSISTED RATE CASES**

This section addresses proposed rules and rule changes relating to Staff Assisted Rate Cases and non-rate base ratemaking in relation to Staff Assisted Rates Cases. The relevant statutory authority is Chapter 367.0814, Florida Statutes.

**Section 25.30.455 - Staff Assistance in Rate Cases** - Changes being proposed to this rule are clarification items that codify existing policies. There are three significant items addressed. The first is to clarify language regarding the revenue threshold for qualification for staff assistance.

The existing language regarding threshold revenues is ambiguous as to whether a large utility such as Southern States Utilities, Inc., may apply for staff assistance on a system basis. In practice the Commission has interpreted Chapter 367.0814, Florida Statutes, to mean total revenues on a company wide basis cannot exceed \$300,000 (combined water and wastewater). Changes to paragraph (1) clarify the rule to coincide with current practice.

The second area of proposed change is designed to more specifically identify the obligations of the utility and the Commission Staff in the event a staff assisted PAA order is protested. These changes are a direct result of recent Staff Assisted Cases that were protested and went to hearing.

The third proposed change is language that clearly indicates

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that apportionment of rate case expense will apply according to Chapter 367.0815, Florida Statutes, in the event the utility requests revenues in excess of those granted in the PAA.

**Section 25.30-456 - Staff Assistance in Alternative Rate Setting** - This proposed section is to provide an option whereby non-rate base ratemaking may be applied to Class C utilities qualifying for staff assistance under 367.0814, Florida Statutes and Section 25-30.455, FAC. The rules track the existing staff assistance rules regarding qualifications, eligibility and the determination thereof, and procedures in the event of protest of the initial PAA decision in the case.

The goals that we attempted to address include making the process faster and less costly and therefore more attractive to the utility than a comprehensive Staff Assisted Rate Case; to protect the consumer as much as is practical from severe rate shock; to discourage expensive and time consuming protests and hearings; and to improve the utility's financial viability by providing rates that will at least recover operating expenses.

To that end, these rules contain the following unique features:

(1) the concept that operating revenues will be compared to expenses for the purposes of establishing rates rather than the current rate base method;

(2) the Commission will vote on a PAA recommendation within 90 days of the official filing date;

(3) a maximum increase limited to 50% of test year operating revenues;

(4) in the event of protest the maximum will be removed and the utility given the option of having rates set on rate base thus increasing the likelihood of greater increases.

The objective is to provide the utility with another tool to keep rates closer to compensatory levels while mitigating rate shock, reducing rate case expense and time invested. Hopefully, a byproduct will be less costly regulation, particularly since an audit will not be required and the time frame is shorter.

**CATEGORY 5 - RATES, CHARGES AND TARIFFS**

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Eleven rules are included in this category. All the changes made to these eleven rules have the effect of either clarifying existing language, codifying existing Commission policy or generating cost savings. A list of the rules and a brief discussion of their purpose is listed below:

**Section 25-30.135 - Tariffs** - The goal of the changes proposed to this rule is to tighten up language such that redundancies are removed and to give the Commission the flexibility to reduce the information in the tariffs to a minimum. It is proposed that the utility have on file for inspection a copy of the following items: current systems map(s); current territory map; current Sections 25-9 - Tariffs, 25-22 - Commission Procedures, and 25-30 - Water and Wastewater Rules and Regulation; and Chapter 367, Florida Statutes.

**Section 25-30.320 - Service Disconnection** - This section has two minor additions recommended. First, the requirement that a customer shall be given written notice before a utility may refuse or discontinue service and second, prevents a utility from discontinuing service if the unauthorized or fraudulent use of service has ceased or been discontinued prior to arrival of the utility to discontinue service. This section is designed to prevent improper, premature, and in some instances vindictive disconnection of service by the utility.

**Section 25-30.335 - Customer Billing** - Clarifies existing language and codifies policy on requiring the use of the base facility charge rate structure.

**Section 25-30.360 - Refunds** - Modifies the existing rule to conform with actual Commission practice that Motions for Reconsideration temporarily stay the refund.

**Section 25-30.460 - Application for Miscellaneous Service Charges** - Codifies existing miscellaneous service charge policy.

**Section 25-30.465 - Private Fire Protection Rates** - Codifies existing private fire protection charge policy.

**Section 25-30.470 - Calculation of Rate Reduction in Four Years After Rate Case as Mandated by Section 367.0816, Florida Statutes** - Codifies existing statutory 4 year rate reduction methodology and tariff filing date.

**Section 25-30.475 - Effective Dates Language for Approved Tariffs** - Codifies existing effective date policy.

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**Section 25-30.515 - Definitions** - Clarifies definitions and codifies existing policy on service availability.

**Section 25-30.554 - Applicability of Guaranteed Revenue Charges** - Codifies existing policy on application of guarantee revenue charges and service availability charges.

**Section 25.30.565 - Application for Approval of New or Revised Service Availability Policy or Charges** - Eliminates unnecessary language and codifies Commission policy with regard to the filing of tariffs.

**CATEGORY 6 - MISCELLANEOUS and CLEANUP**

This section discusses several changes that do not directly relate to any of the above groupings. Included are rules addressing various noticing requirements, mandatory meter installation, filing fees, out of state records and elimination of the existing rule regarding imputation of CIAC.

**Sections 25-22.0406 and 25-22.0407 - (Proposed) Noticing Requirements** - Staff is proposing to modify Section 25-22.0406, Florida Administrative Code, so as to make it applicable only to rate requests by electric, gas, and telephone utilities. Noticing for rate cases by water and wastewater utilities is proposed to be contained in a separate rule, proposed Section 25-22.0407.

Staff is proposing a separate rule for water and wastewater utilities primarily for practical reasons. Most of the Commission's rate cases are filed by water and wastewater utilities. Water and Wastewater Division staff deal with rate case noticing questions on a daily basis, and frequently the questions which arise can be directly attributed to differences between water and wastewater cases and cases in the other industries. For instance, normally, there are no "service hearings" (See Section 25-0406(6), Florida Administrative Code) in water and wastewater rate cases. Because of the seeming ambiguity of the term "service hearing" in the context of a water and wastewater rate case, it is not unusual for a dispute to arise as to whether separate publication notice is required for a final hearing in a water or wastewater case after the protest of a proposed agency action order because customer testimony is taken.

Another problem inherent to water and wastewater cases is noticing for a change in the service availability charge. It is not unusual for the Commission to adjust a utility's service

availability charges in a rate case without the utility's requesting such a change. Difficulties can arise when the Commission does this, and the parties normally notified in advance of a utility-initiated request have not been so notified because they were not required to be under the current rules.

In addition to answering many of the questions which arise because of the unique nature of water and wastewater cases, staff's proposed rule simplifies and clarifies several noticing requirements. Under the current rule, the utility must "begin" its initial customer noticing within thirty days after the case time schedule is mailed to the utility. Proposed subsection (5) makes it clear that the utility has to provide the initial customer notice by no later than sixty days after the utility is notified its MFRs have been accepted. Under proposed subsection 5(g), a utility must provide notice to potential customers even though the utility has not asked for a change in service availability in conjunction with its rate application. Proposed subsection (8) clarifies that noticing for a hearing after the protest of a proposed agency action order would be no different than what it would have been if the case went directly to hearing.

**Section 25-22.0408 - (Proposed) Notice for Applications for New or Revised Service Availability Charges or Policy and Applications for AFPI** - The purpose of this proposed rule is to streamline noticing requirements for service availability policy and charge applications; clarify that it applies to filings for both new and revised service availability policy and charges; is extended to cover applications for AFPI filings as well. Hopefully this will reduce costs to the utility without sacrificing noticing coverage.

**Section 25-30.020 - Fees Required to be Paid by Water and Wastewater Utilities** - Staff is proposing to entirely revamp the structure of the filing fees required for applications for water and wastewater filings. In 1989, there was a statutory change to Section 367.145, Florida Statutes, allowing the Commission to establish fees by rule and to increase the maximum filing fee to \$4,500 for any filing. Currently, the fees contained in Section 25-30.020, FAC, are based on the capacity of the system, are identical for any type of filing, and provide for a maximum fee of \$2,250. The fees contained in staff's rule revision are based on the capacity of the system as well as the complexity of the type of filing and reflect a maximum fee of \$4,500 per water or wastewater service. The maximum fee would apply to a file and suspend rate case application for water or wastewater service for a utility with

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the capacity to serve greater than 4,000 ERCs. The proposed rule revision also clearly provides that a separate fee shall be paid for water and wastewater service. This provision is not contained in the current rule, although it is our practice to collect separate fees for water and wastewater service.

The chart below illustrates the proposed amount of the fees by type of filing and by size of the company. For illustrative purposes only we have included a column indicating the approximate revenue of the companies by size, which is based on a \$30 monthly water or wastewater bill.

SCHEDULE OF PROPOSED FILING FEES

<u>ERCs</u>	<u>APPROXIMATE REVENUE *</u>	<u>SARC</u>	<u>FILING FEES</u>		
			<u>FILE &amp; SUSPEND</u>	<u>ORIGINAL AND TRANSFER</u>	<u>LIMP, SERV. AVAIL, AMENDMENT</u>
<100	< \$36,000	\$ 150			
101-200	36,000-72,000	500			
>200	>72,000	1,000			
<500	< \$180,000		\$1,000	\$ 750	\$ 500
501-2000	180-720,000		2,000	1,500	1,000
2001-4000	720-1.4 Mill.		3,500	2,250	1,750
>4,000	> 1.4 Mill.		4,500	3,000	2,250

\* Approximate revenue based on \$30 bill (water or wastewater)

**NOTE: Separate fees for water and wastewater filings are required.**

In addition to the above, staff is proposing filing fees for all AFPI applications in the amount of \$1,200; for all grandfather certificate applications in the amount of \$400; and for all applications for name change in the amount of \$250.

**Section 25-30.110 - Records and Report; Annual Reports -** This rule change codifies into rule the Commission's policy of requiring utilities which maintain its books and records outside the state to

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reimburse the Commission for travel costs incurred for Commission representative. This is consistent with the telecommunications Rule 25-4.020(2). This proposal goes further than the telecommunications rule in stating that these costs will not be recovered through rate case expense.

**Section 25-30.255 - Measurement of Service for Water Utilities**  
- Staff is proposing an amendment to the rule which requires that each utility shall measure water sold upon the basis of metered volume, unless the Commission approves a flat rate. Staff's proposed revision would require individual water meters for new construction after some date certain (currently January 1, 1993, in the proposed rule revision). The purpose of this revision is to encourage water conservation by disallowing master water meters which are often used in apartment buildings, mobile home parks and condominiums. It is staff's belief that customers will be more likely to conserve water in cases where their usage is billed directly and where they can see the direct benefit of conservation efforts in their water bill. Staff's proposed revision tracks similar rules for the electric industry (Section 25-6.049, FAC) and the gas industry (Section 25-7.071, FAC).

**Section 25-30.570 - Imputation of Contributions In Aid of Construction** - The current rule allows the Commission to impute CIAC up to the amount of the distribution and collection systems if no records exist. We are recommending this rule be deleted because under the new proposed Section 25-30.0371 the Commission may consider the entire system contributed if no records exist.

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**ISSUE 2:** Should the Commission go directly to hearing on all of the proposed rule changes contained in Attachment 1A?

**RECOMMENDATION:** Yes, the Commission should go directly to hearing on all of the proposed rules contained in Attachment 1A. (SHAFER)

**STAFF ANALYSIS:** Due to the scope and complexity of the proposed changes the Staff believes that it is appropriate to set the proposed changes for hearing as soon as the Commission calendar allows. Because many of the proposed changes will directly result in new or changed Commission policy and because most of the proposed changes have not been to workshop the industry has not had any chance for input. The Staff expects a significant amount of controversy in some areas that most likely will result in a hearing in any event. In addition, Economic Impact Studies (EISs) have not been performed on any of the proposed changes. Therefore, to allow the industry and Public Counsel an opportunity for input and to allow the Division of Research and Regulatory Review an opportunity to perform the necessary EISs we believe that the proposed rule changes contained in Attachment 1A should be set immediately for hearing at the earliest possible convenience.

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**ISSUE 3:** Should Dockets Nos. 910920-WS and 911082-WS be consolidated for processing these proposed rules with Docket 910920-WS closed and 911082-WS remaining open?

**RECOMMENDATION:** Yes, the two dockets should be consolidated with Docket No. 910920-WS closed and Docket 911082-WS remaining open to process the proposed rules through the hearing process to adoption.  
(WILLIAMS)

**STAFF ANALYSIS:** The staff would like to have all of the proposed rules pertaining to the Water and Wastewater Industry consolidated into one docket. The proposed rules in the first docket are interrelated to rules in the later docket and should be considered together as a package.