

SCANNED

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FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0850

M E M O R A N D U M

SEPTEMBER 24, 1993

TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM : DIVISION OF APPEALS (MOORE) *cm*
DIVISION OF WATER AND WASTEWATER (HILL, WILLIS, MERCHANT, *own*
own MESSER, CHASE, SHAFER) *gc*
DIVISION OF AUDITING AND FINANCIAL ANALYSIS (CAUSSEAU) *own*
DIVISION OF LEGAL SERVICES (SUMMERLIN)
DIVISION OF RESEARCH AND REGULATORY REVIEW (MAHONEY, HOPPE) *own*

RE : DOCKET NO. 911082-WS - PROPOSED REVISIONS TO RULES 25-22.0406, 25-30.020, 25-30.025, 25-30.030, 25-30.032, 25-30.033, 25-30.034, 25-30.035, 25-30.036, 25-30.037, 25-30.060, 25-30.110, 25-30.111, 25-30.135, 25-30.255, 25-30.320, 25-30.335, 25-30.360, 25-30.430, 25-30.436, 25-30.437, 25-30.443, 25-30.455, 25-30.515, 25-30.565; NEW RULES 25-22.0407, 25-22.0408, 25-25-30.0371, 25-30.038, 25-30.039, 25-30.090, 25-30.117, 25-30.432 to 25-30.435, 25-30.4385, 25-30.4415, 25-30.456, 25-30.460, 25-30.465, 25-30.470, AND 25-30.475; AND REPEAL OF RULE 25-30.441, F.A.C., PERTAINING TO WATER AND WASTEWATER REGULATION

AGENDA: SPECIAL COMMISSION CONFERENCE, OCTOBER 7 AND 8, 1993
CONTROVERSIAL - PARTIES MAY PARTICIPATE ONLY TO RESPOND TO QUESTIONS FROM THE COMMISSION

RULE STATUS: ADOPTION MAY BE DEFERRED

FILE NAME: I:\PSC\APP\WP\911082#3.RCM

CASE BACKGROUND

The Commission initially proposed these rules at a special agenda conference held on March 5, 1993. A notice of rulemaking was issued on March 24, 1993 and the rules were published in the April 2, 1993 Florida Administrative Weekly. Hearings were held on May 24, 25 and 26, and on August 12, 1993.

DOCUMENT NUMBER-DATE

10301 SEP 24 93

FPSC-RECORDS/REPORTING

During the course of the hearings, certain rules were identified by the participants as not controversial. Other rules were discussed at greater length by the parties, staff, and by Commissioners. The Commission made an initial decision on some of the proposed rules and directed staff to bring the rules to final agenda with specific changes or as originally proposed. The Commission also asked staff to divide the "recommendation" into "controversial" and "noncontroversial" parts.

Staff has divided the rules covered by this recommendation into five categories or issues with the actual rule text and specific comments contained in the following chart. Issue 1 contains those rules that parties agreed were not controversial. Issue 2 contains those rules that the Commission, after hearing the parties' comments, initially decided and provided staff with specific directions. Issue 3 contains those rules that are controversial and not initially decided, or rules that may not be controversial but for which the Commission gave staff no direction. Issues 4 and 5 contain the rules that are recommended for withdrawal or deferral.

At the close of the hearing on August 12, 1993, the Commission instructed staff to present the rules and staff's comments on the rules or its rationale for recommending additional changes to the rules in chart form. Changes to the rules--as they were originally proposed--are shaded. Staff was directed to furnish the chart to parties and, upon receiving the comments of the parties, to insert them verbatim in a third column and file the document with the Director of Records and Reporting.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission adopt Rules 25-30.032, 25-30.060, 25-30.090, 25-30.111, 25-30.135, 25-30.320, 25-30.335, 25-30.360, 25-30.4385, 25-30.460, and 25-30.470?

RECOMMENDATION: Yes, the Commission should adopt these rules as proposed with the changes, if any, that are shown in the attached text of those rules.

STAFF ANALYSIS: The participants in the hearings agreed that these rules are not controversial.

DOCKET NO. 911082-WS
SEPTEMBER 24, 1993

ISSUE 2: Should the Commission adopt Rules 25-30.020, 25-30.025, 25-30.030, 25-30.033, 25-30.034, 25-30.035, 25-30.036, 25-30.430, 25-30.455, 25-30.456, 25-30.475, and 25-30.565?

RECOMMENDATION: Yes, the Commission should adopt these rules as proposed with the changes, if any, that are shown in the attached text of those rules.

STAFF ANALYSIS: After hearing from staff and parties, the Commission made its initial decision and directed staff to present these rules at final agenda in the form contained in the attached chart.

ISSUE 3: Should the Commission adopt Rules 25-30.037, 25-30.0371, 25-30.039, 25-30.117, 25-30.433, 25-30.434, 25-30.436, 25-30.437, 25-30.4415, 25-30.443, 25-30.465, 25-30.515, and repeal Rule 25-30.441?

RECOMMENDATION: Yes, the Commission should adopt these rules with the changes, if any, that are shown in the attached text of those rules, and should repeal Rule 25-30.441.

STAFF ANALYSIS: After hearing from staff and parties, the Commission deferred its decision on these rules until the final agenda.

ISSUE 4: Should the Commission withdraw proposed new Rules 25-30.038 and Rule 25-30.435?

RECOMMENDATION: Yes.

STAFF ANALYSIS: The Commission should withdraw these rules for the reasons stated in staff's comments to the rules in the attached chart.

DOCKET NO. 911082-WS
SEPTEMBER 24, 1993

ISSUE 5: Should the Commission withdraw proposed new Rule 25-30.432, regarding used and useful and the provision regarding imputing CIAC that was contained in Rule 25-30.433(6)?

RECOMMENDATION: Yes, the Commission should withdraw proposed Rule 25-30.432 and section (6) of Rule 25-30.433.

STAFF ANALYSIS: The Commission decided at the August 12, 1993 hearing to defer consideration of these two rules. Staff now recommends that these rules be withdrawn. Although the Commission voted to propose them and notice has been published, the hearing has not been held. An additional workshop is planned and it is likely that staff will be recommending substantial changes to the rule before a hearing is held. An evaluation of the revised rule's economic impact is advisable. Whether Rule 25-30.432 is withdrawn and re-proposed or deferred, the process will take several months. If the Commission defers adoption rather than withdraws the rules, the record will remain open after final action on the 38 other rules, resulting in a very cumbersome and lengthy record for a rule that remains in the development stage. Procedurally, it will be simpler and consume little additional time to withdraw these two rules and open a new docket when a revised rule and economic impact statement is ready for the Commission to consider.

ISSUE 6: Should the docket be closed once the rules are filed with the Secretary of State and a Notice of Withdrawal, if applicable, is published?

RECOMMENDATION: Yes.

STAFF ANALYSIS: The docket may be closed after the rules are filed for adoption and a notice is published that certain of the rules are being withdrawn.

CTM/
Attachment

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ISSUE 6: Should the docket be closed once the rules are filed with the Secretary of State and a Notice of Withdrawal, if applicable, is published?

RECOMMENDATION: Yes.

STAFF ANALYSIS: The docket may be closed after the rules are filed for adoption and a notice is published that certain of the rules are being withdrawn.

CTM/
Attachment

25-30.020 Fees Required to be Paid by Water and Wastewater
Sewer Utilities.

(1) When a utility files any application for a certificate of authorization certification, extension, transfer pursuant to sections 367.045, 367.071 and 367.171, Florida Statutes, or files any request for a rate change pursuant to sections 367.081, 367.0814 and 367.0822, Florida Statutes, rate change, (except an index or pass-through), or files for authorization to collect or change service availability charges pursuant to section 367.101, Florida Statutes, the utility shall remit a fee to the Commission, Director of Records and Reporting. A separate fee shall apply for water service and wastewater service. A separate fee shall also apply for each section listed above. For purposes of this rule, capacity is determined by combining the capacities of all systems included in the application. For purposes of this rule, an equivalent residential connection (ERC) is 350 gallons per day (gpd) for water service and 280 gallons per day (gpd) for wastewater service.

(2) The amount of the fee to be filed pursuant to subsection (1) of this rule, shall be based upon the existing or proposed capacity of the system or extension as follows:

(a) For an original certificate application filed pursuant to Section 367.045, Florida statutes, the amount of the fee shall be as follows:

1. For utilities with the existing or proposed capacity to

25-30.020

At the May, 1993 hearing, the Commission directed staff to present the rule as proposed for adoption with the changes recommended by staff in Exhibits CHH-1 and CHH-2 (Composite Exhibit 1, Tab 16). In addition, staff recommends the addition to section (1) at line 10 stating to whom the fee shall be paid.

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

STAFF'S COMMENTS

PARTIES' COMMENTS

1 serve up to 500 ERCs, \$750:

2 2. For utilities with the existing or proposed capacity to
3 serve from 501 to 2,000 ERCs, \$1,500:

4 3. For utilities with the existing or proposed capacity to
5 serve from 2,001 to 4,000 ERCs, \$2,250:

6 4. For utilities with the existing or proposed capacity to
7 serve more than 4,000 ERCs, \$1,000.

8 ~~(a) For systems or extensions serving from 1 to 999 persons,~~
9 ~~\$150+~~

10 ~~(b) For systems or extensions serving from 1,000 to 4,999~~
11 ~~persons, \$900+~~

12 ~~(c) For systems or extensions serving from 5,000 to 9,999~~
13 ~~persons, \$1,500+~~

14 ~~(d) For systems or extensions serving 10,000 or more persons,~~
15 ~~\$2,250+~~

16 (b). For an application for extension or deletion of territory
17 filed pursuant to Section 367.045, Florida Statutes, the amount of
18 the fee shall be as follows:

19 1. For applications in which the area to be extended or
20 deleted has the proposed capacity to serve up to 100 ERCs, \$100:

21 2. For applications in which the area to be extended or
22 deleted has the proposed capacity to serve from 101 to 200 ERCs,
23 \$200:

24 3. For applications in which the area to be extended or
25 deleted has the proposed capacity to serve from 201 to 500 ERCs,

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1 \$500:

2 4. For applications in which the area to be extended or
3 deleted has the proposed capacity to serve from 501 to 2,000 ERCs.

4 \$1,000:

5 5. For applications in which the area to be extended or
6 deleted has the proposed capacity to serve from 2,001 to 4,000
7 ERCs. \$1,750:

8 6. For applications in which the area to be extended or
9 deleted has the proposed capacity to serve more than 4,000 ERCs.
10 \$2,250.

11 (c) For an application for transfer or change in majority
12 organizational control filed pursuant to Section 367.071, Florida
13 Statutes, the amount of the fee shall be as follows:

14 1. For applications in which the utility to be transferred
15 has the capacity to serve up to 500 ERCs. \$750:

16 2. For applications in which the utility to be transferred
17 has the capacity to serve from 501 to 2,000 ERCs. \$1500:

18 3. For applications in which the utility to be transferred
19 has the capacity to serve from 2,001 to 4,000 ERCs. \$2,250:

20 4. For applications in which the utility to be transferred
21 has the capacity to serve more than 4,000 ERCs. \$3,000.

22 (d) For an application for a grandfather certificate filed
23 pursuant to Section 367.171, Florida Statutes, the amount of the
24 fee shall be as follows:

25 1. For applications in which the utility has the capacity to

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1 serve up to 100 ERCs, \$100;
2 2. For applications in which the utility has the capacity to
3 serve from 101 to 200 ERCs, \$200;
4 3. For applications in which the utility has the capacity to
5 serve from 201 to 500 ERCs, \$500;
6 4. For applications in which the utility has the capacity to
7 serve from 501 to 2,000 ERCs, \$1,000;
8 5. For applications in which the utility has the capacity to
9 serve from 2,001 to 4,000 ERCs, \$1,750;
10 6. For applications in which the utility has the capacity to
11 serve more than 4,000 ERCs, \$2,250.
12 (e) For file and suspend rate cases filed pursuant to Section
13 367.081, Florida Statutes, the amount of the fee shall be as
14 follows:
15 1. For utilities with the existing capacity to serve up to
16 500 ERCs, \$1,000;
17 2. For utilities with the existing capacity to serve from
18 501 to 2,000 ERCs, \$2,000;
19 3. For utilities with the existing capacity to serve from
20 2,001 to 4,000 ERCs, \$3,500;
21 4. For utilities with the existing capacity to serve more
22 than 4,000 ERCs, \$4,500.
23 (f) For staff-assisted rate cases filed pursuant to Section
24 367.0814, Florida Statutes, the amount of the fee shall be as
25 follows:

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- 1 1. For utilities with the existing capacity to serve up to
2 100 ERCs, \$200:
- 3 2. For utilities with the existing capacity to serve from
4 101 to 200 ERCs, \$500:
- 5 3. For utilities with the existing capacity to serve more
6 than 200 ERCs, \$1,000.
- 7 (g) For an application for a limited proceeding pursuant to
8 Section 367.0822, Florida Statutes, the amount of the fee shall be
9 as follows:
- 10 1. For utilities with the existing capacity to serve up to
11 100 ERCs, \$100:
- 12 2. For utilities with the existing capacity to serve from
13 101 to 200 ERCs, \$200:
- 14 3. For utilities with the existing capacity to serve from
15 201 to 500 ERCs, \$500:
- 16 4. For utilities with the existing capacity to serve from
17 501 to 2,000 ERCs, \$1,000:
- 18 5. For utilities with the existing capacity to serve from
19 2,001 to 4,000 ERCs, \$1,750:
- 20 6. For utilities with the existing capacity to serve more
21 than 4,000 ERCs, \$2,250.
- 22 (h) For an application for approval of charges or conditions
23 for service availability filed pursuant to section 367.101, Florida
24 Statutes, the amount of the fee shall be as follows:
- 25 1. For utilities with ~~the~~ existing and proposed capacity to

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STAFF'S COMMENTS

PARTIES' COMMENTS

1 serve up to 100 ERCs, \$100;
 2 2. For utilities with ~~the~~ existing and proposed capacity to
 3 serve from 101 to 200 ERCs, \$200;
 4 3. For utilities with ~~the~~ existing and proposed capacity to
 5 serve from 201 to 500 ERCs, \$500;
 6 4. For utilities with ~~the~~ existing and proposed capacity to
 7 serve from 501 to 2,000 ERCs, \$1,000;
 8 5. For utilities with ~~the~~ existing and proposed capacity to
 9 serve from 2,001 to 4,000 ERCs, \$1,750;
 10 6. For utilities with ~~the~~ existing and proposed capacity to
 11 serve more than 4,000 ERCs, \$2,250.
 12 ~~DELETE (i) For utilities filing pursuant to Rule 25-30.435, F.A.C.,~~
 13 ~~"Application for a Rate Increase by an Applicant that Owns Multiple~~
 14 ~~Systems" or 25-30.565, "Application for Approval of New or Revised~~
 15 ~~Service Availability Policy or Charges," the fees in paragraphs~~
 16 ~~(f)(1), (g), and (h) above, shall be determined by combining the~~
 17 ~~capacity of all systems included in the application.~~
 18 Specific Authority: 150.127(2) and 167.121(1), F.S. 167-141, F.S.
 19 as amended by Chapter 80-99, Laws of Florida.
 20 Law Implemented: 167.045(1)(d) and (2)(e), 167.071(3), 167.081(5),
 21 167.0822(2), 167.101(2), 167.145 and 167.171(2)(b), F.S. 167-141,
 22 F.S., as amended by Chapter 80-99, Laws of Florida.
 23 History: New 10/29/80, formerly 25-10.11, Transferred from
 24 25-10.011 and Amended 11/9/86, Amended _____.
 25

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STAFF'S COMMENTS

PARTIES' COMMENTS

25-30.025 Official Date of Filing.

(1) The "official date of filing" is the date on which ~~the~~

~~Director of the Division of Water and Wastewater determines the~~

utility has filed completed sets of the minimum filing requirements

(MFRs). ~~Including testimony that may be required by Rule 25-~~

~~30.436(2) for any application that has been accepted by the~~

~~Director of the Division of Water and Wastewater as being complete~~

and ~~payment of~~ the appropriate filing fee to the Director of

Records and Reporting.

(2) The Director of the Division of Water and Wastewater

Sewer shall determine the official date of filing for any utility's

application and, ~~advise the Commission who will~~ advise the

applicant. The Commission shall resolve any and dispute regarding

the official date of filing.

Specific Authority: 367.121(1), F.S.

Law Implemented: 367.083, F.S.

History: New 3/26/81, formerly 25-10.12, Transferred from 25-

10.012 and Amended 11/9/86, Amended ____.

25-30.025

At the May, 1993 hearing, the Commission directed staff to present the rule as originally proposed for adoption with the addition of language clarifying that the "official date of filing" is not established until testimony that may be required by Rule 25-30.436(2) is filed.

OPC

25-30.025 The Office of the Public Counsel (OPC or the Citizens) supports the changes to this rule as proposed by the Staff of the Florida Public Service Commission (the Staff), particularly, that the "official date of filing" will not be established until the utility has filed its testimony and MFRs. This change was proposed by OPC and objected to by Southern States Utilities, Inc. (Southern States). The filing of direct testimony at the time the MFRs are filed, or not establishing the official date of filing until testimony is filed, will reduce the need for discovery, enable the parties to more efficiently use their time, and result in less rate case expense. Furthermore, as pointed out by Staff, requiring the filing of testimony with the MFRs for the water and wastewater industry is consistent with the requirements of the electric and telephone industries. [Tr. 281, May 25, 1993.]

Southern States would prefer that the Commission allow it an additional 30 days after the approval of the MFRs before it is required to file testimony. Florida has an eight month file and suspend law, and to delete another 30 days from the time available for the Citizens, the Staff, and other intervenors, to put their cases together, is simply unfair. Southern States' arguments to allow an additional 30 days to file testimony after the official date of filing are without merit and should be rejected.

The Commission should confirm its previous vote to insert the language in the rule as recommended by the Staff. [Tr. 290-91, May 25, 1993.]

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STAFF'S COMMENTS

PARTIES' COMMENTS

25-30.030 Notice of Application.

25-30.030

At the May hearing, the Commission directed staff to present the rule as originally proposed for adoption with the additional changes recommended by staff in Exhibit PD-1 (part of Composite Exhibit 1 at Tab 21), and directed staff to recommend language to clarify what is meant by "appropriate" territory description format. This clarification is contained in section (2) of the proposed rule.

(1) When a utility applies for a certificate of authorization, an extension or deletion of its service area, or a sale, assignment or transfer of its certificate of authorization, facilities or any portion thereof or majority organizational control, it shall provide notice of its application in the manner and to the entities described in this section.

(2) Before providing notice in accordance with this section, a utility shall obtain from the Commission a list of the names and addresses of the municipalities, the county or counties, the regional planning council, the Office of Public Counsel, the Commission's Director of Records and Reporting, the appropriate regional office of the Department of Environmental Protection, the appropriate water management district, and privately-owned water utilities, and wastewater utilities that hold a certificate granted by the Public Service Commission and that are located within the county in which the utility or the territory proposed to be served is located within a four-mile radius. In addition, if any portion of the proposed territory is within one mile of a county boundary, the utility shall obtain from the Commission a list of the names and addresses of the privately-owned utilities located in the bordering counties and holding a certificate granted by the Commission. The utility's request for the list shall include a complete legal description, in township, range and land sections, of the territory to be requested in the application that includes:

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1 (a) a reference to township(s), range(s), and section(s) and
2 county, and

3 (b) a complete and accurate description of the territory
4 served or proposed to be served in one of the following formats:
5 The description may reference in ardstates, state roads, and major
6 bodies of water. The description shall not rely on references to
7 government lots, local streets, recorded plats or lots, tracts, or
8 other recorded instruments.

9 1. Sections: If the territory includes complete sections,
10 the description shall only include the township, range, and section
11 reference. If the territory includes partial sections, the
12 description shall either identify the subsections included or
13 excluded.

14 2. Notes and bounds: A point of beginning which is
15 referenced from either a section corner or a subsection corner,
16 such as a quarter corner, the perimeter shall be described by
17 traversing the proposed territory and closing at the point of
18 beginning. The description shall include all bearings and
19 distances necessary to provide a continuous description.

20 (3) The notice shall be appropriately styled:

21 (a) Notice of Application for an Initial Certificate of
22 Authorization for Water, Wastewater, or Water and Wastewater
23 Certificate;

24 (b) Notice of Application for an Extension of Service Area;

25 (c) Notice of Application for Deletion of Service Area;

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1 (d) Notice of Application for a Transfer of Water,
2 Wastewater, or Water and Wastewater Certificate(s); or

3 (e) Notice of Application for a Transfer of Majority
4 Organizational Control.

5 (4) The pNotice shall include the following:

6 (a) the date the notice is given;

7 (b)(a) the name and address of the applicant;

8 (c)(b) a description, using township, range and section
9 references, of the territory proposed to be either served, added,
10 deleted, or transferred; and

11 (d)(c) a statement that any objections to the aApplication
12 must be filed with the Director, Division of Records and Reporting,
13 101 East Gaines Street, Tallahassee, Florida 32399-0870, no later
14 than 30 days after the last date that the pNotice was mailed or
15 published, whichever is later.

16 (5) Within 7 seven days of filing its application, the
17 utility shall provide a copy of the pNotice, by regular certified
18 mail or personal service, to:

19 (a) the governing body of the county in which the utility
20 system or the territory proposed to be served is located;

21 (b) the governing body of any municipality contained on the
22 list obtained pursuant to (2) above within a four-mile radius of
23 the utility system or the territory proposed to be served;

24 (c) the regional planning council agency designated by the
25 Clean Water Act, 33 U.S.C. 1288(2);

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struck-through type are deletions from existing law.

1 (d) all any water or wastewater utilities contained on the
2 list(s) obtained pursuant to (2) above utility within a four-mile
3 radius of the territory proposed to be served, added, deleted, or
4 transferred;

5 (e) the office of Public Counsel; and

6 (f) the Commission's Director of Records and Reporting;

7 (g) the appropriate regional office of the Department of
8 Environmental Regulation; and

9 (h) the appropriate Water Management District.

10 (6) No sooner than 21 ~~twenty-one~~ days before the application
11 is filed and no later than 7 ~~seven~~ days after the application is
12 filed, the utility shall also provide a copy of the Notice, by
13 regular mail or personal service, to each customer, ~~if any~~ of the
14 system to be certificated, transferred, acquired, or deleted.

15 (7) The Notice shall be published once ~~each week, for three~~
16 ~~consecutive weeks~~, in a newspaper of general circulation in the
17 territory proposed to be served, added, deleted, or transferred.
18 The ~~first~~ publication shall be within 7 days of filing the
19 application no sooner than 21 days before the date the application
20 is filed, and no later than seven days after the date the
21 application is filed.

22 (8) A copy of the notice(s) and list of the entities
23 receiving notice pursuant to this rule shall accompany the
24 affidavit required by sections 367.045(1) (e) and (2) (f), Florida
25 Statutes. The affidavit shall be filed no later than 15 days after

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STAFF'S COMMENTS

PARTIES' COMMENTS

1 filing the application.

2 (91+0) This rule does not apply to applications for / /
3 grandfather certificates filed under section 367.171, Florida
4 Statutes, or to applications for transfers to governmental
5 authorities filed under Section 367.071, Florida Statutes, or to
6 name changes.

7 Specific Authority: 367.121(1), F.S.

8 Law Implemented: 367.031, 367.045, 367.071, F.S.

9 History: New 4/5/81, formerly 25-10.061, Transferred from
10 25-10.0061 and Amended 11/9/86, Amended 1/27/91, Amended ____.

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STAFF'S COMMENTS

PARTIES' COMMENTS

1 25-30.032 Applications.

25-30.032

At the May 25 hearing, all parties agreed that the rule as proposed is not controversial and should be adopted. The Commission directed staff to present it for adoption as proposed. Because staff is recommending withdrawal of proposed new Rule 25-30.038, the reference to it in section (1) should be stricken.

2 (1) Each utility subject to regulation by the Commission
3 shall apply for an initial certificate of authorization, amendment
4 to an existing certificate of authorization, or transfer, or name
5 change by filing a completed application and 12 fifteen copies, in
6 accordance with either 25-30.033, 25-30.034, 25-30.035, 25-30.036,
7 or 25-30.037(1) or (2) ~~25-30.038~~, or 25-30.039, F.A.C. However,
8 a utility shall apply for a transfer to a governmental authority by
9 filing a completed application and two copies, in accordance with
10 Rule 25-30.037 (3) and (4), F.A.C. The application shall be filed
11 with the Director, Division of Records and Reporting, 101 East
12 Gaines Street, Tallahassee, Florida 32399-0870. Sample
13 application forms may be obtained from the Division of Water and
14 Wastewater, Bureau of Certification, 101 East Gaines Street,
15 Tallahassee, Florida 32399-08500073.

16 (2) A utility may file combined applications if it is
17 applying for certificates of authorization or any amendments
18 thereto for both water and wastewater systems; however, the utility
19 shall remit a separate application fee for each service system.
20 The Commission will treat a combined application as if a separate
21 application had been filed for each service system.

22 (3) The official filing date of an application for an
23 original certificate, any amendment to an existing certificate, or
24 any transfer shall be the date a completed application is filed
25 with the Division of Records and Reporting, except that the

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STAFF'S COMMENTS

PARTIES' COMMENTS

1 | noticing requirements set forth in Rule 25-30.030, F.A.C. do not
2 | need to be completed at that time. If, however, the utility has /
3 | not completed the noticing within the time limits prescribed by /
4 | Rule 25-30.030, F.A.C., 22 days of filing the application, the
5 | official filing date shall be the date the noticing is complete.
6 | ~~The affidavit that the applicant has provided notice of its actual~~
7 | ~~application required by Section 367.045, Florida Statutes, shall be~~
8 | ~~filed within 35 days after filing the application.~~
9 | Specific Authority: 367.121, F.S.
10 | Law Implemented: 367.031, 367.045, 367.071, F.S.
11 | History: New 1/27/91, Amended ____.

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STAFF'S COMMENTS

PARTIES' COMMENTS

25-30.033

The Commission directed staff to present the rule as originally proposed with staff's recommended change contained in Exhibit PD-2 (part of Composite Exhibit 1 at Tab 21), and changes suggested by Public Counsel as modified by Frank Seidman on behalf of Florida Waterworks Association (part of Composite Exhibit 1 at Tab 9). In addition, staff has added one phrase in subsection (1)(1) to reference the territory description format suggested to be included in Rule 25-30.030(2).

25-30.033 (1)(j) 99 year lease too restrictive as sole example. Include: Commission will consider a written easement or other cost effective alternatives.

OPC

25-30.033 OPC supports in part and opposes in part the Staff's proposed rule. In particular, OPC supports the Staff's proposed changes to section (1)(r), which clarifies the previously proposed rule concerning the provision of financial statements (balance sheet and income statement) and, if available, sources and uses of funds statements. No party disputed OPC's proposed clarification. [Composite Exhibit 1, Tab 8, p. 4.]

OPC opposes the Staff's failure to make the changes recommended by OPC to section (1)(c). The Commission instructed the Staff to address OPC's concerns in section (1)(s). Staff's suggested changes to section (1)(s) do not adequately address OPC's concerns.

Therefore, OPC suggests the following compromise. OPC believes that the Commission should know the name of any parent company having ownership of the utility seeking an original certificate. OPC recommends that to section (1)(c), the Commission add the language set forth in Appendix A, of OPC's post hearing comments, which includes parent companies on the list of information items required from the utility. OPC's recommendation is to add after the word "person(s)", the words "or companies" owning an interest in the applicant's business. This will ensure that if a company, as well as a person, owns an interest in the utility, the Commission will know it when the utility applies for an original certificate.

To section (1)(s), OPC proposes that the language more accurately reflect the intent of the Commission. Thus, after the words "a list of all entities", add the words, "including affiliates" upon which the applicant is relying to provide funding. . . . Appendix A to these post hearing comments sets forth OPC's proposed rule.

25-30.033 Application for Original Certificate of Authorization and Initial Rates and Charges.

(1) Each application for an original certificate of authorization and initial rates and charges shall provide the following information:

(a) the applicant's name and address;
(b) the nature of the applicant's business organization, i.e., corporation, partnership, limited partnership, sole proprietorship, association, etc.;

(c) the name(s) and address(es) of all corporate officers, directors, partners, or any other person(s) owning an interest in the applicant's business organization;

(d) whether the applicant has made an election under Internal Revenue Code § 1362 to be an S corporation;

(e) a statement showing the financial and technical ability of the applicant to provide service, and the need for service in the proposed area. The statement shall identify any other utilities within ~~the area proposed to be served a 4-mile radius~~ that could potentially provide service, and the steps the applicant took to ascertain whether such other service is available;

(f) A statement that to the best of the applicant's knowledge, the provision of service will be consistent with the water and wastewater sections of the local comprehensive plan, as approved by the Department of Community Affairs at the time the application is filed, or, if not consistent, a statement

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STAFF'S COMMENTS

PARTIES' COMMENTS

APPENDIX A

OPC - Appendix A

25-30.033 (1) Each application for an original certificate of authorization and initial rates and charges shall provide the following information:

(c) the name(s) and address(es) of all corporate officers, directors, partners, or any other person(s), or companies, owning an interest in the applicant's business organization;

(s) a list of all entities, including affiliates, upon which the applicant is relying to proving funding.....

demonstrating why granting the certificate of authorization would be in the public interest.

(g) the date applicant plans to begin serving customers;

(h) the number of equivalent residential connections (ERCs)

proposed to be served, by meter size and customer class. If development will be in phases, separate this information by phase;

(i) a description of the types of customers anticipated, i.e., single family homes, mobile homes, duplexes, golf course clubhouse, commercial, etc.;

(j) evidence, in the form of a warranty deed, that the utility owns the land upon which the utility treatment facilities are or will be located, or a copy of an agreement which provides for the continued use of the land, such as a 99-year lease. The applicant may submit a contract for the purchase and sale of land with an unexecuted copy of the warranty deed, provided the applicant files an executed and recorded copy of the deed, or executed copy of the lease, within 30 ~~thirty~~ days after the order granting the certificate;

(k) one original and two copies of a sample tariff, containing all rates, classifications, charges, rules, and regulations, which shall be consistent with Chapter 25-9, Florida Administrative Code. Model tariffs are available from the Division of Water and Wastewater, 101 East Gaines Street, Tallahassee, Florida 32399-0850~~0070~~;

(l) a description of the territory to be served, using

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1 township, range and section references ~~as specified in Rule 25-~~

2 ~~30.039(2);~~

3 (m) one copy of a detailed system map showing the proposed
4 lines, treatment facilities and the territory proposed to be
5 served. The map shall be of sufficient scale and detail to enable
6 correlation with the description of the territory proposed to be
7 served;

8 (n) one copy of the official county tax assessment map, or
9 other map showing township, range, and section with a scale such as
10 1"=200' or 1"=400', with the proposed territory plotted thereon by
11 use of metes and bounds or quarter sections, and with a defined
12 reference point of beginning.

13 (o) a statement regarding the separate capacities of the
14 proposed lines and treatment facilities in terms of ERCs and
15 gallons per day. If development will be in phases, separate this
16 information by phase;

17 (p) a written description of the type of water treatment,
18 wastewater treatment, and method of effluent disposal;

19 (q) if (p) above does not include effluent disposal by means
20 of ~~reuse spray irrigation~~, a statement that describes with
21 particularity the reasons for not using ~~reuse spray irrigation~~;

22 (r) a detailed ~~financial~~ statement (balance sheet ~~and income~~
23 ~~statement~~), certified if available, of the financial condition of
24 the applicant, that shows all assets and liabilities of every kind
25 and character. ~~The income statement shall be for the preceding~~

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calendar or fiscal year. If an applicant has not operated for a full year, then the income statement shall be for the lesser period. The financial statement shall be prepared in accordance with Rule 25-30.115, Florida Administrative Code, if available. A statement of the source and application of funds shall also be provided;

(a) a statement of profit and loss (operating statement), certified if available, of the applicant for the preceding calendar or fiscal year. If an applicant has not operated for a full year, then for the lesser period;

(a)(5) a list of all entities upon which the applicant is relying to provide which have provided, or will provide funding to the utility, and an explanation of the manner and amount of such funding, which shall include their financial statements and or copies of any financial agreements with the utility. This requirement shall not apply to any person or entity holding less than 10 percent ownership interest in the utility, unless that person or entity is also providing other funding (other than funding to secure an ownership interest) to the utility;

(a)(6) a cost study including customer growth projections supporting the proposed rates, charges and service availability charges. A sample cost study, and assistance in preparing initial rates and charges, are available from the Division of Water and Wastewater;

(a)(7) a schedule showing the projected cost of the

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1 proposed system(s) by uniform system of accounts (USOA) NARWE
2 account numbers pursuant to Rule 25-30.115, F.A.C. and the related
3 capacity of each system in ERCs and gallons per day. If the
4 utility will be built in phases, this shall apply to the first
5 phase;

6 ~~(v)(w)~~ : a schedule showing the projected operating expenses
7 of the proposed system by USOA NARWE account numbers, when 80
8 percent of the designed capacity of the system is being utilized.
9 If the utility will be built in phases, this shall apply to the
10 first phase; and

11 ~~(v)(w)~~ a schedule showing the projected capital structure
12 including the methods of financing the construction and operation
13 of the utility until the utility reaches 80 percent of the design
14 capacity of the system.

15 (2) The base facility and usage rate structure (as defined in
16 Rule 25-30.437(7), F.A.C.) shall be utilized for metered service,
17 unless an alternative rate structure is supported by the applicant
18 record of the proceeding and authorized by the Commission.

19 (3) A return on common equity shall be established using the
20 current equity leverage formula established by order of this
21 Commission pursuant to section 367.081(4), F.S., unless there is
22 competent substantial evidence supporting the use of a different
23 return on common equity.

24 (4) Utilities obtaining initial certificates pursuant to this
25 rule are authorized to accrue allowance for funds used during

1 construction (AFUDC) for projects found eligible pursuant to Rule
2 25-30.116(1), F.A.C.

3 (a) The applicable AFUDC rate shall be determined as the
4 utility's projected weighted cost of capital as demonstrated in its
5 application for original certificate and initial rates and charges.

6 (b) A discounted monthly AFUDC rate calculated in accordance
7 with Rule 25-30.116(1), F.A.C., shall be used to insure that the
8 annual AFUDC charged does not exceed authorized levels.

9 (c) The date the utility shall begin to charge the AFUDC rate
10 shall be the date the certificate of authorization is issued to the
11 utility so that such rate can apply to the initial construction of
12 the utility facilities.

13 Specific Authority: 367.121, F.S.

14 Law Implemented: 367.031, 367.045(1), F.S.

15 History: New 1/27/91, Amended ____.

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STAFF'S COMMENTS

PARTIES' COMMENTS

25-30.034

The Commission directed staff at the May hearing to present the rule as originally proposed for adoption. Staff has added one phrase in section (1)(h) to reference the territory description format suggested to be included in Rule 25-30.030(2).

FWWA & FCWC

25-30.034 (1)(e) 99 year lease too restrictive as sole example. Include: Commission will consider a written easement or other cost effective alternatives.

25-30.034 Application for Certificate of Authorization for Existing Utility Currently Charging for Service.

(1) Each existing utility currently charging for service, which is applying for an initial certificate of authorization, other than under section 367.171, Florida Statutes, shall provide the following information:

(a) the utility's complete name and address;

(b) the nature of the utility's business organization, i.e., corporation, partnership, limited partnership, sole proprietorship, association, etc.;

(c) the name(s) and address(es) of all corporate officers, directors, partners, or any other person(s) owning an interest in the utility;

(d) a statement regarding the financial and technical ability of the applicant to continue to provide service;

(e) evidence that the utility owns the land upon which the utility treatment facilities are located, or a copy of an agreement which provides for the continued use of the land, such as a 99-year lease;

(f) one original and two copies of a model sample tariff, containing all rates, classifications, charges, rules, and regulations, which shall be consistent with Chapter 25-9, Florida Administrative Code. Model Sample tariffs are available from the Division of Water and Wastewater, 101 East Gaines Street, Tallahassee, Florida 32399-08500070;

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1 (g) a statement specifying on what date and under what
2 authority the current rates and charges were established;

3 (h) a description of the territory to be served, using
4 township, range and section references ~~as specified in Rule 25-~~
5 ~~30-030(2)~~;

6 (i) one copy of a detailed system map showing the lines,
7 treatment facilities and the territory to be served. Any territory
8 not served at the time of the application shall be specifically
9 identified on the system map. The map shall be of sufficient scale
10 and detail to enable correlation with the description of the
11 territory to be served;

12 (j) one copy of the official county tax assessment map, or
13 other map showing township, range, and section with a scale such as
14 1"=200' or 1"=400', with the proposed territory plotted thereon by
15 use of metes and bounds or quarter sections, and with a defined
16 reference point of beginning.

17 (k) the numbers and dates of any permits issued for the
18 systems by the Department of Environmental Regulation;

19 (l) the date the utility was established; and

20 (m) a statement explaining how and why applicant began
21 providing service prior to obtaining a certificate of
22 authorization; and

23 (n) a schedule showing the number of customers currently
24 served, by class and meter size, as well as the number of customers
25 projected to be served when the requested service territory is

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1 fully occupied.

2 (2) If the applicant is requesting any territory not served
3 at the time of application, provide the following:

4 (a) a statement showing the need for service in the proposed
5 area; and

6 (b) a statement that to the best of the applicant's
7 knowledge, the provision of service in this territory will be
8 consistent with the water and wastewater sections of the local
9 comprehensive plan as approved by the Department of Community
10 Affairs at the time the application is filed, or, if not
11 consistent, a statement demonstrating why granting the territory
12 would be in the public interest.

13 Specific Authority: 367.121, F.S.

14 Law Implemented: 367.045, F.S.

15 History: New 1/27/91, Amended ____.

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STAFF'S COMMENTS

PARTIES' COMMENTS

25-30.035 Application for Grandfather Certificate.

Each applicant for a certificate of authorization under the provisions of section 367.171, Florida Statutes, shall provide the following information.

(1) the utility's complete name and address;

(2) the nature of the utility's business organization, i.e., corporation, partnership, limited partnership, sole proprietorship, association, etc.;

(3) the name(s) and address(es) of all corporate officers, directors, partners, or any other person(s) owning an interest in the utility;

(4) the date the utility was established;

(5) a description of the types of customers served, i.e., single family homes, mobile homes, duplexes, golf course clubhouse, commercial, etc.;

(6) evidence that the utility owns the land upon which the utility treatment facilities are located, or a copy of an agreement which provides for the continued use of the land, such as a 99-year lease;

(7) one original and two copies of a sample tariff, containing all rates, classifications, charges, rules, and regulations, which shall be consistent with Chapter 25-9, Florida Administrative Code. Sample tariffs are available from the Division of Water and Wastewater, 101 East Gaines Street, Tallahassee, Florida 32399-08500070.

25-30.035

The Commission directed staff to present the rule for adoption as originally proposed with the addition of a requirement, based on Public Counsel's comments, to identify affiliates upon which the applicant relies for funding. Staff has not included this requirement because the rule prescribes the filing requirements for grandfather certificates. Grandfather certificates are granted as a matter of right pursuant to section 367.171(2)(b), F.S., and applicants do not need to demonstrate adequate funding.

Staff has added one phrase in (9) to reference the territory description format suggested to be included in Rule 25-30.030(2).

FWWA & FCWC

25-30.035 (2) Agree with staff comment re no need to further identify affiliates in grandfather application.

(6) 99 year lease too restrictive as sole example. Include: Commission will consider a written easement or other cost effective alternatives.

OPC

25-30.035 The Citizens disagree with the Staff's proposal inasmuch as it excludes information requested by Public Counsel and directed by the Commission to be included.

The Staff asserts that it has not complied with the Commission's directive because section 367.171, Florida Statutes grants grandfather certificates as a matter of right and proof of adequate funding is not specifically required.

OPC notes, however, that various requirements of 25-30.035 are not specified in section 367.171, Florida Statutes. The statute does, however, provide that the granting of a grandfather certificate is contingent upon a utility complying with all the statute's requirements, one of which provides that the utility shall provide "... such other financial information as may be required by the Commission." Section 367.171 (2)(a)3.

The identification of affiliates upon which the applicant relies for funding is just such "other financial information."

The Commission should follow through on its directive to the Staff and include OPC's proposed addition.

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STAFF'S COMMENTS

PARTIES' COMMENTS

1 (8) a statement specifying on what date and under what
2 authority the current rates and charges were established;

3 (9) a description, using township, range, and section
4 references ~~as specified in Rule 25-30.030(2)~~, of the territory the
5 utility was serving, or was authorized to serve by the county which
6 had jurisdiction over the utility on the day Chapter 367, Florida
7 Statutes, became applicable to the utility;

8 (10) one copy of a detailed system map showing the lines,
9 treatment facilities and the territory to be served. Any territory
10 not served at the time of the application shall be specifically
11 identified, and the map shall be of sufficient scale and detail to
12 enable correlation with the description of the territory to be
13 served;

14 (11) one copy of the official county tax assessment map, or
15 other map showing township, range, and section, with a scale such
16 as 1"=200' or 1"=400', with the proposed territory plotted thereon
17 by use of metes and bounds or quarter sections, and with a defined
18 reference point of beginning; end

19 (12) the numbers and dates of any permits issued for the
20 systems by the Department of Environmental Regulation; and

21 (13) a schedule showing the number of customers currently
22 served, by class and meter size, as well as the number of customers
23 projected to be served when the requested service territory is
24 fully occupied.

25 Specific Authority: 367.121, F.S.

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STAFF'S COMMENTS

PARTIES' COMMENTS

1 Law Implemented: 367.171, F.S.
2 History: Amended 7/21/65, 1/7/69, 2/3/70, 3/6/71, 9/12/74,
3 3/26/81, formerly 25-10.02, Transferred from 25-10.002 and Amended
4 11/9/86, Amended 1/27/91, Amended ____.

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STAFF'S COMMENTS

PARTIES' COMMENTS

FWWA & FCWC

25-30.036 (3)(d) 99 year lease too restrictive as sole example. Include: Commission will consider a written easement or other cost effective alternatives.

(3)(f) at page 30, line 14 should read (4)(f).

25-30.036

The Commission directed staff at the May hearing to present the rule for adoption as originally proposed with staff's recommended changes contained in Exhibit PD-3 (part of Composite Exhibit 1, Tab 21).

25-30.036 Application for Amendment to Certificate of Authorization to Extend or Delete Service.

(1) This section applies to any certificated water or wastewater utility that proposes to extend its service territory into an area in which there is no existing water or wastewater system or proposes to delete a portion of its service territory.

(2) A request for service territory expansion and amendment of an existing certificate or issuance of a new certificate shall be considered approved under the following conditions if no protest is timely filed to the notice of application:

(a) the utility has provided a written statement of an officer of the utility that the proposed new territory includes a maximum of 25 equivalent residential connections within such territory at the time the territory is at buildout; and

(b) the utility has provided the written statement of an officer of the utility that, upon investigation, to the best of his or her knowledge:

1. there is no other utility in the area within a 4-mile radius of the proposed territory that is willing and capable of providing reasonably adequate service to the new territory; and

2. the person(s) or business(es) requesting water or wastewater service have demonstrated to the utility that service is necessary because (1) a private well has been contaminated or gone dry, (2) a septic tank has failed; or (3) service is otherwise not available.

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1 ~~(c) the utility has filed a completed application in~~
2 ~~accordance with section (2) of this rule within 45 days of the~~
3 ~~completion of the notice requirements.~~

4 ~~(2)(c)~~ Each utility proposing to extend its service area
5 ~~(except applications filed pursuant to section (2)(c) above, which~~
6 ~~shall file only (a), (d), (e), (i), ~~(m)~~ (o), (p), (q), and (r)~~
7 ~~listed below) shall provide the following:~~

8 (a) the utility's complete name and address;

9 (b) a statement showing the financial and technical ability
10 of the utility to provide service and the need for service in the
11 area requested. ~~The statement shall identify any other utilities~~
12 ~~within a 4-mile-radius that could potentially provide such service;~~

13 (c) a statement that to the best of the applicant's knowledge
14 the provision of service will be consistent with the water and
15 wastewater sections of the local comprehensive plan at the time the
16 application is filed, as approved by the Department of Community
17 Affairs, or, if not, a statement demonstrating why granting the
18 amendment would be in the public interest.

19 (d) evidence that the utility owns the land upon which the
20 utility treatment facilities that will serve the proposed territory
21 are located or a copy of an agreement, such as a 99-year lease,
22 which provides for the continued use of the land;

23 (e) a description of the territory proposed to be served,
24 using township, range and section references ~~as specified in Rule~~

25 ~~25-30:030(2);~~

STAFF'S COMMENTS

PARTIES' COMMENTS

1 (f) one copy of a detailed system map showing the proposed
2 lines, treatment facilities, and the territory proposed to be
3 served. The map shall be of sufficient scale and detail to enable
4 correlation with the description of the territory;

5 (g) if the utility is planning to build a new wastewater
6 treatment plant, or upgrade an existing plant to serve the proposed
7 territory, provide a written description of the proposed method(s)
8 of effluent disposal;

9 (h) if (g) above does not include effluent disposal by means
10 of ~~reuse spray-irrigation~~, a statement that describes with
11 particularity the reasons for not using ~~reuse spray-irrigation~~.

12 (i) one copy of the official county tax assessment map or
13 other map showing township, range, and section, with a scale such
14 as 1"=200' or 1"=400', with the proposed territory plotted thereon
15 by use of metes and bounds or quarter sections, and with a defined
16 reference point of beginning.

17 (j) a statement describing the capacity of the existing
18 lines, the capacity of the treatment facilities, and the design
19 capacity of the proposed extension;

20 (k) the numbers and dates of any permits issued for the
21 proposed systems by the Department of Environmental Regulation;

22 (l) a detailed statement regarding the proposed method of
23 financing the construction, and the projected impact on the
24 utility's capital structure;

25 (m) a description of the types of customers anticipated to be

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STAFF'S COMMENTS

PARTIES' COMMENTS

1 served by the extension, i.e., single family homes, mobile homes,
2 duplexes, golf course clubhouse, commercial, etc.;

3 (n) a statement regarding the projected impact of the
4 extension on the utility's monthly rates and service availability
5 charges;

6 (o) the original and two copies of sample tariff sheets
7 reflecting the additional service area; and

8 (p) the applicant's current certificate for possible
9 amendment.

10 (q) the number of the most recent order of the Commission
11 establishing or changing the applicant's rates and charges.

12 (r) an affidavit that the utility has tariffs and annual
13 reports on file with the Commission.

14 ~~(1)(2)~~ Each utility proposing to delete a portion of its
15 service area shall submit the following:

16 (a) the utility's complete name and address;

17 (b) a description of the territory proposed to be deleted,
18 using township, range and section references;

19 (c) one copy of a detailed system map showing the existing
20 lines, treatment facilities, and territory served. The map shall
21 be of sufficient scale and detail to enable correlation with the
22 legal description of the territory;

23 (d) the number of current active connections within the
24 territory to be deleted;

25 (e) one copy of the official county tax assessment map, or

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STAFF'S COMMENTS

PARTIES' COMMENTS

1 other map, showing township, range, and section with a scale such
2 as 1"=200' or 1"=400', with the territory proposed to be deleted
3 plotted thereon by use of metes and bounds or quarter sections, and
4 with a defined reference point of beginning.

5 (f) a statement specifying the reasons for the proposed
6 deletion of territory;

7 (g) a statement indicating why the proposed deletion of
8 territory is in the public interest;

9 (h) a statement as to the effect of the proposed deletion on
10 the ability of any customer or potential customer to receive water
11 and wastewater service, including alternative source(s) of service;

12 (i) the original and two copies of sample tariff sheets
13 reflecting the revised service area; and

14 (j) the applicant's current certificate for possible
15 amendment.

16 (k) the number of the most recent order of the Commission
17 establishing or changing the applicant's rates and charges.

18 (l) an affidavit that the utility has tariffs and annual
19 reports on file with the Commission.

20 Specific Authority: 367.121, F.S.

21 Law Implemented: 367.045, F.S.

22 History: New 1/27/91, Amended ____.

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STAFF'S COMMENTS

PARTIES' COMMENTS

25-30.037 Application for Authority to Transfer.

(1) This rule applies to any application for the transfer of an existing water or wastewater system, regardless of whether service is currently being provided. This rule does not apply where the transfer is of an exempt or non-jurisdictional system and will result in the system continuing to be exempt from or not subject to Commission jurisdiction. The application for transfer may result in the transfer of the seller's existing certificate, amendment of the buyer's certificate or granting an initial certificate to the buyer.

(2)(i) Each application for transfer of certificate of authorization, facilities or any portion thereof, to a non-governmental entity shall include the following information:

(a) the complete name and address of the seller transferor;
(b) the complete name and address of the buyer transferee;
(c) the nature of the buyer's transferee's business

organization, i.e., corporation, partnership, limited partnership, sole proprietorship, or association;

(d) the name(s) and address(es) of all of the buyer's transferee's corporate officers, directors, partners or any other person(s) who will own an interest in the utility;

(e) the date and state of incorporation or organization of the buyer-transferee;

(f) the names and locations of any other water or wastewater or water and wastewater utilities owned by the buyer transferee;

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25-30.037

The Commission directed staff at the hearing on May 26 to present the rule as proposed with changes recommended by Public Counsel to sections (2)(g), (2)(k) and (3)(g). As to staff's suggested change to section (2)(m), regarding a negative acquisition adjustment, staff believes the Commission gave sufficient direction that the buyer should not be required to justify in the transfer application why a negative acquisition adjustment should not be included in determining net book value. Staff can obtain this information through discovery if necessary, and the change is not included in this version of the rule which is presented for adoption.

FWWA & FCWC

25-30.037 (2)(q) 99 year lease too restrictive as sole example. Include: Commission will consider a written easement or other cost effective alternatives.

(3)(i) 99 year lease too restrictive as sole example. Include: Commission will consider a written easement or other cost effective alternatives.

SSU

25-30.037(2)(m) SSU agrees with retaining this subsection of the existing rule unchanged as proposed by Staff. Staff's deletion of its earlier proposal that a utility set forth the reasons why a negative acquisition should not be imposed is appropriate since such a requirement would impose a burden on the utility to establish something it does not seek, i.e., a negative acquisition adjustment. A burden of proof of this nature violates established principles of law which hold that a petitioner carries the burden only of establishing its right to the affirmative relief it seeks from the Commission.

OPC

25-30.037 OPC agrees in part and opposes in part the Staff's recommendations concerning this proposed rule.

Specifically, OPC agrees with Staff's recommendations concerning section (2)(g) and notes that no party really objected to the additional information requested of a utility applying for authority to transfer.

Concerning sections (2)(k) and (3)(g), OPC reiterates the comments made with respect to 25-30.033 (1)(s).

With respect to section (2)(m), the Staff notes in its recommendation that it "believes that the Commission gave sufficient direction that the buyer should not be required to justify in the transfer application why a negative acquisition adjustment should not be included in determining net book value."

STAFF'S COMMENTS

PARTIES' COMMENTS

OPC has searched the record and was unable to locate any such direction. This subject was addressed at the following transcript cites: 108-109, August 12, 1993; 446-453, May 25, 1993.

At the conclusion of the discussion of section (2)(m), the following direction was given by Chairman Deason:

CHAIRMAN DEASON: Are there any comments on the provision of .037(2)(m)? Any comments from any of the parties? Very well. Just include that in your final recommendation.

MS. CHASE: Okay. [Tr. 109, August 12, 1993.]

OPC notes that much discussion of this proposed rule took place during the May hearings. In general, Southern States and the Florida Water Works Association (FWWA) were opposed to the proposal.

OPC supports the rule originally proposed by Ms. Chase on JC-1 of Composite Exhibit 1, Tab 17. That proposed rule required: "a statement setting out the reasons for the inclusion of a positive acquisition adjustment, if one is requested; or if appropriate, a statement setting out the reasons why a negative acquisition adjustment should not be included."

OPC agrees with Ms. Chase that the reason for recommending this rule is to determine whether or not extraordinary circumstances exist, which would be determinative of a negative acquisition adjustment, if the Commission adopts proposed rule 25-30.0371 (2). Ms. Chase gave good reasons for requiring this information:

CHAIRMAN DEASON: Let me ask Staff a question. I know we've not dealt with 0371, so we really don't know what the outcome is going to be, but if the outcome of 0371 is to affirm or establish the policy that there is no acquisition adjustment absent extraordinary circumstances, if that is reaffirmed in these rules, is it necessary to have the proposed change to Section 2(m) concerning proof of no negative?

(g) a copy of the contract for sale and all auxiliary or supplemental agreements, which shall include, if applicable:

1. purchase price and terms of payment, and
2. a list of and the dollar amount of the assets purchased and liabilities assumed or not assumed, including those of non-regulated operations or entities; and
3. a description of all consideration between the parties, for example, promised salaries, retainer fees, stock, stock options, assumption of obligations.

(h) the contract for sale shall also provide for the disposition, where applicable, of the following:

1. customer deposits and interest thereon;
2. any guaranteed revenue contracts;
3. developer agreements;
4. customer advances;
5. debt of the utility;
6. leases;

(i) a statement describing the financing of the purchase;

(j) a statement indicating how the transfer is in the public interest, including a summary of the buyer's transferee's experience in water or wastewater utility operations, a showing of the buyer's transferee's financial ability to provide service, and a statement that the buyer transferee will fulfill the commitments, obligations and representations of the seller transferor with regard to utility matters;

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STAFF'S COMMENTS

PARTIES' COMMENTS

(k) a list of all entities ~~upon which the applicant is~~
~~relying to provide~~ ~~which have provided, or will provide~~ funding to
 the ~~buyer transferee~~, and an explanation of the manner and amount
 of such funding, which shall include their financial statements and
 copies of any financial agreements with the utility. This
 requirement shall not apply to any person or entity holding less
 than 10 percent ownership interest in the utility, ~~unless that~~
~~person or entity is also providing other funding other than~~
~~funding to secure an ownership interest in the utility;~~

(l) the proposed net book value of the system as of the date
 of the proposed transfer. The net book value shall be calculated
 in accordance with Rule 25-10.0371, F.A.C. If rate base has been
 established by this Commission, state indicate the order number and
 date issued and identify all adjustments made to update this rate
 base to the date of transfer;

(m) a statement setting out the reasons for the inclusion of
 an acquisition adjustment, if one is requested;

(n) if the books and records of the ~~seller transferor~~ are not
 available for inspection by the Commission ~~or are not adequate for~~
~~purposes of establishing the net book value of the system~~, a
 statement by the ~~buyer transferee~~ that a good faith, extensive
 effort has been made to obtain such books and records for
 inspection by the Commission ~~and detailing the steps taken to~~
~~obtain the books and records;~~

(o) ~~a statement from the buyer that it has obtained or will~~

MS. CHASE: I believe it is, Commissioner, and the reason for that is one of the things that we do as Staff is we try to evaluate the idea of whether or not there are extraordinary circumstances. And I think this helps us. And maybe there is a better way of getting at this, but what the purpose of this really is they're obviously paying less than rate base. There's reason for that. And we're trying to get at their motivation for the determination of the purchase price. In other words if they are paying less, why is that? And I think that would get to why there shouldn't be a negative acquisition adjustment. Is it because the system is run down, or is it because the seller just simply wants to get out of the business and is willing to do this, the disinterest, whatever. So maybe that isn't the best way of getting at that point, but that is what we were trying to do. We were trying to find out if, in fact, there are extraordinary circumstances. (Tr. 448-49, May 25, 1993.)

What followed this dialogue were comments which are probably indicative of the utilities' attitudes about providing forthright information to the Staff and other intervenors when such areas are probed. The Commission, for this reason alone, should include the above-stated language in a rule, rather than assuming that the information may be obtained through discovery which is much more costly and subject to obfuscation.

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1 obtain copies of all of the federal income tax returns of the
2 seller from the date the utility was first established, or rate
3 base was last established by the Commission or, if the tax returns
4 have not been obtained, a statement from the buyer detailing the
5 steps taken to obtain the returns;

6 (p) a statement from the buyer that after reasonable
7 investigation, the system being acquired appears to be in
8 satisfactory condition and in compliance with all applicable
9 standards set by the Department of Environmental Regulation (DER)
10 or, if the system is in need of repair or improvement, has any
11 outstanding Notice of Violation of any standard set by the DER or
12 any outstanding consent orders with the DER, the buyer shall
13 provide a list of the improvements and repairs needed and the
14 approximate cost to make them, a list of the action taken by the
15 utility with regard to the violation, a copy of the Notice of
16 violation(s), a copy of the consent order and a list of the
17 improvements and repairs consented to and the approximate cost to
18 make them;

19 (q)(e) evidence that the utility owns the land upon which the
20 utility treatment facilities are located, or a copy of an agreement
21 which provides for the continued use of the land, such as a 99-year
22 lease;

23 (r)(p) a statement regarding the disposition of any
24 outstanding regulatory assessment fees, fines, or refunds owed;

25 (s)(q) the original and two copies of sample tariff sheets

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STAFF'S COMMENTS

PARTIES' COMMENTS

1 reflecting the change in ownership; and
2 ~~(t)(2)~~ the utility's current certificate(s), or if not
3 available, provide an explanation of the steps the applicant took
4 to obtain the certificate(s).
5 ~~(3)(2)~~ In case of a change in majority organizational
6 control, the application shall include the following information:
7 (a) the complete name and address of the seller the
8 information required under paragraphs (a), (b), (d), (f), (i), (j),
9 (k), (o), and (q) of subsection (i);
10 (b) the complete name and address of the buyer a copy of the
11 purchase agreement;
12 (c) the name(s) and address(es) of all of the buyer's
13 corporate officers, directors, partners and any other person(s) who
14 will own an interest in the utility; a statement from the
15 transferee that it has obtained or will obtain all the books and
16 records of the utility; and
17 (d) the names and locations of any other water or wastewater
18 utilities owned by the buyer if the books and records of the
19 transferor are not available, a statement by the transferee that a
20 good faith, extensive effort has been made to obtain such books and
21 records;
22 (e) a statement describing the financing of the purchase;
23 (f) a statement describing how the transfer is in the public
24 interest, including a summary of the buyer's experience in water or
25 wastewater utility operations, a showing of the buyer's financial

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1 ability to provide service, and a statement that the buyer will
2 fulfill the commitments, obligations and representations of the
3 seller with regard to utility matters;

4 (g) a list of all entities that have provided, or will
5 provide, funding to the buyer, and an explanation of the manner and
6 amount of such funding, which shall include their financial
7 statements and copies of any financial agreements with the utility.
8 This requirement shall not apply to any person or entity holding
9 less than 10 percent ownership interest in the utility, ~~unless that~~
10 ~~person or entity is also providing other funding other than~~
11 ~~funding to secure an ownership interest in the utility;~~

12 (h) a statement from the buyer that after reasonable
13 investigation, the system being acquired appears to be in
14 satisfactory condition and in compliance with all applicable
15 standards set by the DER or, if the system is in need of repair or
16 improvement, has any outstanding Notice of Violation(s) of any
17 standard(s) set by the DER or any outstanding consent orders with
18 the DER, the buyer shall provide a list of the improvements and
19 repairs needed and the approximate cost to make them, a list of the
20 action taken by the utility with regard to the violations, a copy
21 of the Notice of Violation(s), a copy of the consent order and a
22 list of the improvements and repairs consented to and the
23 approximate cost;

24 (i) evidence that the utility owns the land upon which the
25 utility treatment facilities are located, or a copy of an agreement

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STAFF'S COMMENTS

PARTIES' COMMENTS

1 which provides for the continued use of the land, such as a 99-year
2 lease;

3 (i) the original and two copies of sample tariff sheets
4 reflecting the change in ownership; and

5 (k) the utility's current certificate(s), or if not
6 available, the applicant shall provide an explanation of the steps
7 the applicant took to obtain the certificate(s).

8 ~~(a) the information required under paragraphs (a), (b), (d),~~
9 ~~(f), (i), (j), (k), (e), and (q) of subsection (i);~~

10 ~~(4)(3)~~ Each application for transfer of certificate of
11 authorization, facilities, or any portion thereof, or majority
12 organizational control to a governmental authority shall contain
13 the following information:

14 (a) the name and address of the utility and its authorized
15 representative;

16 (b) the name of the governmental authority and the name and
17 address of its authorized representative;

18 (c) a copy of the contract or other document transferring the
19 utility system to the governmental authority;

20 (d) a list of any utility assets not transferred to the
21 governmental authority if such remaining assets constitute a system
22 providing or proposing to provide water or wastewater service to
23 the public for compensation;

24 ~~(e)(e)~~ a statement that the governmental authority obtained,
25 from the utility or Commission, the most recent available income

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1 and expense statement, balance sheet, statement of rate base for
2 regulatory purposes, and contributions-in-aid-of-construction; /

3 ~~(f)(4)~~ the date on which the governmental authority proposes
4 to take official action to acquire the utility;

5 ~~(g)(e)~~ a statement describing the disposition of customer
6 deposits and interest thereon; and

7 ~~(h)(f)~~ a statement regarding the disposition of any
8 outstanding regulatory assessment fees, fines or refunds owed.

9 ~~(5)(4)~~ If a utility is transferring a portion of its
10 facilities to a governmental agency, it must provide the following
11 additional information:

12 (a) a description of the remaining territory using township,
13 range, and section references;

14 (b) one copy of the official county tax assessment map, or
15 other map, showing township, range, and section with a scale such
16 as 1"=200' or 1"=400', with the remaining territory plotted thereon
17 by use of metes and bounds or quarter sections, and with a defined
18 reference point of beginning.

19 (c) the original and two copies of sample tariff sheets
20 reflecting the remaining territory.

21 ~~(6)(5)~~ Upon its receipt of items required in ~~(4)(3)~~(a), (b),
22 (c), and (d), (e) and (f), the Commission will issue an order
23 acknowledging that the facilities or any portion thereof have been
24 acquired by the governmental authority.

25 ~~(7)(6)~~ Upon receipt of the items required in ~~(4)(3)~~~~(g)(e)~~ and

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STAFF'S COMMENTS

PARTIES' COMMENTS

1 ~~(h)(f)~~ and, if applicable, ~~(5)(4)(a)~~, (b), and (c), upon payment of
2 ~~all regulatory assessment fees due and owing,~~ and upon the
3 completion of all pending proceedings before the Commission, the
4 ~~Commission will issue an order amending or cancelling the~~ utility's
5 certificate will be amended or cancelled. Amendment or
6 cancellation of the certificate shall not affect the utility's
7 obligation pursuant to Rule 25-10.120, F.A.C., Regulatory
8 Assessment Fees.
9 Specific Authority: 367.121, F.S.
10 Law Implemented: 367.071 F.S.
11 History: New 1/27/91, Amended ____.

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STAFF'S COMMENTS

PARTIES' COMMENTS

SSU

25-30.0371(1) SSU agrees with the rule as proposed. Exclusion of the last sentence as proposed by Staff is appropriate because:

1. It is inconsistent with current Commission policy and provides a disincentive to the purchase of utility systems;

2. It inappropriately penalizes the acquiring utility for possible imprudence of the seller;

3. Staff could not provide a definition or examples of a "deteriorated" asset, therefore, it is appropriate to consider the impact of a "deteriorated" asset in the context of an "extraordinary circumstance" under section (2) on a case-by-case basis;

4. A deteriorated asset may or may not have a net book value and in most cases, if there was no imprudence on the part of the seller, there is no impact on rate base by retirement of the "deteriorated" asset;

5. A provision requiring the Commission to consider the condition of assets equates to "buyer beware" and will drive up the costs of litigating transfer proceedings and thereby discourage purchasers of small distressed systems;

6. Over the last five years, no negative acquisition adjustments have been approved by the Commission;

7. Purchases of utility systems below net book value are not driven by the presence of deteriorating or non-functioning assets but arise primarily due to the seller's inability to: (a) earn an adequate return; (b) keep up with the costs of environmental requirements; (c) bear the risk of fines for non-compliance with environmental regulations; and (d) obtain or attract necessary capital to finance required investments.

SSU

25-30.0371(2) SSU agrees with the rule as proposed. This rule reflects the correct acquisition adjustment policy because:

Staff recommends that the Commission adopt this rule which codifies the longstanding Commission policy that the purchase of a utility system at a premium or discount shall not affect the rate base calculation in the absence of extraordinary circumstances. The rule as originally proposed with the shaded changes does that.

As discussed at the August 12 hearing, the changes staff recommends are to 1) delete the last sentence in section (1) requiring the Commission to consider the condition of the assets at the time of transfer; and 2) delete section (3) requiring the Commission to set rate base at the time of transfer if requested by the acquiring utility. Staff believes (3) should be deleted because it will unnecessarily bind the Commission. In addition, staff has added a phrase in the last section at the suggestion of Commissioner Clark to clarify that the value of plant in service in an original cost study should also reflect appropriate adjustments such as depreciation.

Because staff is recommending withdrawal of proposed new Rule 25-30.038, the reference to it in section (1) should be stricken.

25-30.0371 Rate Base Established at Time of Transfer.

This rule applies to any utility purchased by a utility regulated by this Commission, except where the purchased utility is located in a nonjurisdictional county and is not otherwise subject to the Commission's jurisdiction under section 367.171(7), P.S..

(1) For the purposes of this rule and Rule 25-30.037 and 25-30.038, rate base is defined as the net book value of the utility assets involved. Net book value is calculated as Utility Plant In Service less Accumulated Depreciation plus Construction Work in Progress less Contributions In Aid of Construction less Advances for Construction plus Accumulated Amortization of Contributions In Aid of Construction. The Commission shall also consider the condition of the utility assets purchased in deciding if a purchased asset should be removed from the rate base calculation.

(2) In the absence of extraordinary circumstances, the purchase of a utility system at a premium or at a discount shall not affect the rate base calculation.

(3) If requested by the acquiring utility, rate base including any acquisition adjustment will be determined in the order approving the transfer.

(4) Where the buyer demonstrates that it has engaged in a good faith effort to obtain original cost documentation, and has been unable to obtain such documents, the Commission may establish rate base based upon competent substantial evidence reconstructing and estimating the original cost of plant in service including

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STAFF'S COMMENTS

PARTIES' COMMENTS

1 ~~appropriate adjustments thereto~~ and the amount of contributions-
 2 ~~in-aid-of-construction.~~

3 Specific Authority: 367.121, F.S.

4 Law Implemented: 367.071(5), F.S.

5 History: New.
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1. It reflects long-standing and current Commission policy most recently confirmed in Order No. 25729, Order Concluding Investigation and Confirming Acquisition Adjustment Policy, issued February 17, 1992;

2. It encourages the acquisition of small or distressed systems by establishing a clear and certain policy that positive or negative acquisition adjustments will not be made unless specifically requested and extraordinary circumstances are established;

3. A clear and certain policy that acquisition adjustments will not be imposed absent extraordinary circumstances will provide certainty to utilities and lenders contemplating or involved in acquisitions, and will reduce litigation costs by limiting potential litigation to the alleged presence of extraordinary circumstances;

4. Such certainty is vital to encourage acquisitions which serve the best interests of ratepayers who are captive to owners who do not have the financial resources or operating expertise to provide high quality service at reasonable rates nor to maintain compliance with ever-increasing environmental requirements and the investments and expenses associated therewith;

5. Rates are set on prudent costs, and transfers at net book value do not impose any additional revenue requirements, i.e. there is no harm to the ratepayers;

6. It must be remembered that a utility incurs substantial costs prior to acquisition of a system;

7. The rule as proposed provides the Commission with the flexibility to deviate from net book value on a case-by-case basis when there are valid reasons in the public interest for doing so;

8. All transfers must be approved by the Commission, and a transfer would not be approved unless it was in the best interests of the ratepayers.

A rule that requires negative acquisition adjustments or proof that a negative acquisition adjustment should not be made will discourage the purchase of small or distressed systems because:

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STAFF'S COMMENTS

PARTIES' COMMENTS

1. It unnecessarily increases the cost to acquire the system due to the need to litigate every acquisition that is less than net book value, and based upon Exhibits 3 and 10, the cost to litigate could exceed the net book value;

2. It unnecessarily delays the time period in which transfer approvals can be obtained, thus threatening the acquisition -- time is of the essence in these business transactions, especially where the system being acquired may need an infusion of cash and improvements to correct or prevent engineering or environmental problems;

3. It penalizes a utility such as Southern States which is already earning substantially less on assets purchased (rate base after non-used and useful adjustments) when compared with SSU's investment (consideration paid plus liabilities assumed plus additions since acquisition) in purchased systems (See Exhibit 5);

4. The arguments raised by Office of Public Counsel ("Public Counsel" or "OPC") previously have been rejected in the recent investigation docket resulting in Order No. 25729;

Regarding Staff's revised Exhibit PD-8 (Hearing Exhibit 10), purchase prices and net book values as presented differ significantly from SSU's perspective of these items. As a result, the acquisition adjustment and revenue impact are not consistent with SSU's perspective either as they are fallout numbers based on purchase price and net book value. An example of the differences in perspective is in the case of Lehigh Utilities, Inc. Staff uses a purchase price of \$40 million which includes a substantial amount of non-utility assets. SSU, in contrast, would use the actual purchase price for utility assets alone. On the net book value number, Staff uses values based on the rate case with a projected test year ended September 30, 1992. This amounted to \$11.8 million. SSU would use the value at time of acquisition which is considerably less.

STAFF'S COMMENTS

PARTIES' COMMENTS

5. Public Counsel's two primary arguments in favor of modification of the Commission's existing policy are without merit. Public Counsel's argument that the ratepayers pay twice for investments to improve deteriorated assets is specious since such investments, if necessary and prudent, must be made whether by the selling utility or purchasing utility. Public Counsel's argument that a utility's "investment" in the purchase of a system equates to consideration paid or provided by the purchasing utility is contrary to Commission precedent that the term "investment" under Section 367.081(2), F.S., means the original cost of property when dedicated to public service (See, e.g., Order No. 21907, issued September 19, 1989);

6. A regulatory system that automatically imposed negative acquisition adjustments would represent a return to fair market value regulation, which was soundly rejected some 50 years ago;

7. It inappropriately shifts the burden of proof to the utility.

For a fuller discussion of the business analysis underlying the acquisition of small or distressed systems, See Exhibit 1, Cresse comments at pages 3 through page 5, line 17, Exhibit 1, and Guastella comments at page 1, line 21 through page 11, line 4.

OPC

25-30.0371 OPC opposes the rule as recommended by the Staff. OPC, in its original comments, provided an alternative to the then proposed rule which would split the difference between a negative acquisition adjustment between ratepayers and stockholders. OPC's recommendation was to share this "benefit" so that 20% of it went to stockholders and 80% of it went to ratepayers. OPC's position was based upon the perceived concern of the Commission that the utilities be provided with an "incentive" to purchase small troubled systems. As OPC has argued in the past, the Citizens believe that the opportunity to earn a return on the amount invested should be incentive enough. Nevertheless, OPC proposed an alternative that it felt would be generous to the utilities and in the spirit of the Commission's goals.

STAFF'S COMMENTS

FARTIES' COMMENTS

Notwithstanding OPC's 20/80 recommendation, OPC believes that establishing a rule on the acquisition adjustment policy of this Commission is premature for several reasons. First, the majority of Commissioners have served on the Commission less than two years and have had little if any opportunity to evaluate the implied acquisition policy of past Commissioners.

Second, the Commission should know the impact of proposed rules prior to adopting them. The Citizens do not believe that the Commission has been given accurate information with respect to the impact of the proposed acquisition rule. The Staff provided the Commission with an exhibit which allegedly quantified the impact of not making negative or positive acquisition adjustments during the last five years. The information presented on Exhibit 10, does not properly reflect the amount or impact of negative acquisition adjustments from either the Deltona or Lehigh systems of Southern States. These were the two largest acquisitions made by Southern States in the last five years. The Commission needs accurate information on this important issue so that it can make an informed decision. OPC does not believe that the Commission has been provided with this critical information. The acquisition of one company or system by another is a complex process and does not often lend itself to simple numerical comparisons. Understanding the complexities of each acquisition made by Southern States or other companies regulated by the Commission can not be adequately studied or evaluated in the brief hearing process undertaken for purposes of establishing this and numerous other rules.

Clearly no party to this proceeding would deny that this proposed rule was the most hotly contested of all of the proposed rules. It created much debate on all sides with no consensus by any of the parties or the Commissioners. For this reason as well as the one stated above, OPC recommends that the Commission not establish a rule with respect to acquisition adjustments. At a minimum OPC recommends that Commission strike section (2) for this proposed rule and decide this important issue on a case-by-case basis.

STAFF'S COMMENTS

PARTIES' COMMENTS

1 25-10.038 Expedited Application for Acquisition of Existing

2 Small System.

~~DELETED~~

25-30.038

At the August 12 hearing, staff
recommended withdrawal of this proposed new
rule. The participants in the hearing
concurred with staff's recommendation and the
Commission agreed that this rule should be
withdrawn.

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PARTIES' COMMENTS

25-10.039

Staff recommends adopting this rule as originally proposed. The change to the rule suggested by staff in Exhibit JC-2 (part of Composite Exhibit 1, at Tab 17), which would require the applicant for a name change to show that the land where the treatment facilities are located is in the new name, is not recommended. The issue of what is acceptable proof of ownership or right to continued use of land and the cost that would be incurred requires further research and should be addressed in a later rule proceeding.

25-10.039 Application for Name Change.

(1) This rule shall apply to a certificated utility that changes its name only, with no change in the ownership or control of the utility or its assets.

(2) Each application for approval of a change in name of a certificated utility shall include the following information:

(a) The complete name, address, and type of business entity of the certificated utility;

(b) The proposed change in name and the type of business entity under the new name;

(c) A statement setting out the reasons for the name change;

(d) The effective date of the name change;

(e) In the case of a corporation, limited partnership, or any other type of entity that is chartered by the State of Florida or any other state, a copy of the certificate or other document issued by the state showing its acceptance of the entity's new name. In addition, an officer of the entity shall provide a statement that the ownership and control of the utility and its assets will not change under the proposed name. In the case of a sole proprietorship, general partnership, or any other type of entity not chartered by the State of Florida or any other state, a statement, signed by a duly authorized representative, that the ownership and control of the utility and its assets will not change under the proposed name;

(f) A proposed notice to be sent to the customers of the

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STAFF'S COMMENTS

PARTIES' COMMENTS

1 utility informing them of the change in utility name:
2 (g) An original and two copies of a proposed tariff / /
3 reflecting the name change, including all standard forms; and.
4 (h) The applicant's current certificate.
5 (i) After the Commission staff approves the customer notice,
6 the utility shall send the approved customer notice to all existing
7 customers with the next regular billing, advising them of the name
8 change.
9 Specific Authority: 367.121, F.S.
10 Law Implemented: 367.121, F.S.
11 History: New.
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STAFF'S COMMENTS

PARTIES' COMMENTS

1 25-30.060 Application for Exemption from Regulation or
2 Nonjurisdictional Finding.

3 (1) Each application for an exemption shall be filed in
4 original and two copies, ~~except that applications filed under~~
5 ~~Section 367.022(7), Florida Statutes, shall be filed in original~~
6 ~~and 15 copies,~~ with the Director, Division of Records and
7 Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-
8 0870. Sample application forms may be obtained from the Division
9 of Water and Wastewater Sewer, Bureau of Certification, 101 East
10 Gaines Street, Tallahassee, Florida 32399-08500873.

11 (2) Each application for an exemption from regulation shall
12 contain the following information:

13 (a) The name of the system owner;

14 (b) The physical address of the system;

15 (c) The mailing address of the applicant, if different from
16 the system address;

17 (d) The name, address, and phone number of the primary
18 contact person for the exemption request;

19 (e) The nature of the applicant's business organization,
20 e.g., corporation, partnership, limited partnership, sole
21 proprietorship, association; and

22 (f) A statement that the applicant is aware that pursuant to
23 Section 837.06, Florida Statutes, whoever knowingly makes a false
24 statement in writing with the intent to mislead a public servant in
25 the performance of his official duty shall be guilty of a

5-30.060

At the May 26 hearing, all participants
agreed that the rule as proposed is not
controversial and should be adopted. The
Commission directed staff to present it for
adoption as proposed.

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1 misdemeanor of the second degree, punishable as provided in s.
2 775.082, s. 775.083, or s. 775.084.

3 (3) Each application must specifically state which type of
4 exemption is being applied for and contain one of the following:

5 (a) For an exemption pursuant to Section 367.022(1), Florida
6 Statutes, a statement from the owner of the system that the system
7 is used solely to provide bottled water and that water is not
8 provided to customers through a water main or service pipe;

9 (b) For an exemption pursuant to Section 367.022(2), Florida
10 Statutes, a statement from the governmental authority specifying
11 the statutory authority for the governmental authority; that the
12 system is owned, operated, managed, or controlled by the
13 governmental authority; stating whether it provides water service,
14 wastewater service or both; and specifying the service area. The
15 applicant shall describe with particularity the nature of the
16 ownership, operation, management, and control of the system;

17 (c) For an exemption pursuant to Section 367.022(3), Florida
18 Statutes, a statement from the manufacturer that service is
19 provided solely in connection with its operations; stating whether
20 it provides water service, wastewater service or both; and
21 specifying the service area;

22 (d) For an exemption pursuant to Section 367.022(4), Florida
23 Statutes, a statement from the public lodging establishment that
24 service is provided solely in connection with service to its
25 guests; stating whether it provides water service, wastewater

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1 service or both; and specifying the service area;

2 (e) For an exemption pursuant to Section 367.022(5), Florida /
3 Statutes, a statement from the landlord that it provides service /
4 solely to tenants; that charges for service are non-specifically
5 contained in rental charges; stating whether it provides water
6 service, wastewater service or both; and specifying the service
7 area. A copy of the landlord's most recent version of a standard
8 lease or rental agreement, ~~stating that there is no separate charge~~
9 ~~for water service, wastewater service, or both,~~ shall be submitted
10 with the application;

11 (f) For an exemption pursuant to Section 367.022(6), Florida
12 Statutes, a statement from the owner of the system that the system
13 has or will have the capacity to serve 100 or fewer persons;
14 stating whether it provides water service, wastewater service or
15 both; and specifying the service area. The applicant shall submit
16 documentation verifying the capacity of the system(s). For a
17 wastewater system, the capacity of both the treatment and disposal
18 facilities shall be documented;

19 (g) For an exemption pursuant to Section 367.022(7), Florida
20 Statutes, a statement from the corporation, association, or
21 cooperative that it is nonprofit; that it provides service solely
22 to members who own and control it; stating whether it provides
23 water service, wastewater service or both; specifying who will do
24 the billing for such service; and specifying the service area. The
25 applicant must submit its articles of incorporation as filed with

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1 the Secretary of State and its bylaws, which documents must clearly
2 show the requirements for membership, that the members' voting
3 rights are one vote per unit of ownership, and the circumstances
4 under which control of the corporation passes to the non-developer
5 members. Control of the corporation must pass: 1) at 51 percent
6 ownership by the non-developer members or, 2) at some greater
7 percentage delimited by a time period not to exceed 5 years from
8 the date of incorporation. The applicant must provide proof of its
9 ownership of the utility facilities and the land upon which the
10 facilities will be located or other proof of its right to continued
11 use of the land, such as a 99-year lease;

12 (h) For an exemption pursuant to Section 367.022(8), Florida
13 Statutes, a statement from the reseller that service is provided at
14 a rate or charge that does not exceed the actual purchase price;
15 stating that the reseller is aware of the requirements of Rule 25-
16 30.111, Florida Administrative Code; stating that the reseller is
17 aware of the requirements of Section 367.122, Florida Statutes, and
18 Rules 25-30.262, .263, .264, .265, .266 and .267, Florida
19 Administrative Code, relating to examination and testing of meters;
20 stating whether it provides water service, wastewater service or
21 both; and specifying the service area. The reseller must also
22 provide the name of the utility providing service to it and that
23 utility's current rates and charges. The reseller must submit a
24 schedule of all of its proposed rates and charges, an explanation
25 of the proposed method of billing customers, separately, for both

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STAFF'S COMMENTS

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1 water and wastewater, and a schedule showing that the amount billed
2 will not exceed the amount paid for water, wastewater, or both; /

3 (i) For an exemption pursuant to Section 367.022(9), Florida
4 Statutes, a statement from the owner of the wastewater system that
5 the system is primarily for the treatment of wastewater other than
6 domestic wastewater, such as runoff and leachate from areas that
7 receive pollutants associated with industrial or commercial
8 storage, handling or processing; identifying the principal source
9 or nature of such wastewater; and specifying the service area;

10 (j) For a nonjurisdictional finding pursuant to Section
11 367.021(12), Florida Statutes, a statement from the system owner
12 stating that it does not charge for providing utility service;
13 specifying how operational costs of providing service are treated
14 or recovered; stating whether it provides water service, wastewater
15 service, or both; and specifying the service area.

16 Specific Authority: 367.121(1), F.S.

17 Law Implemented: 367.021(12), 367.022, 367.031, F.S.

18 History: New 1/5/92, Amended ____.

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STAFF'S COMMENTS

PARTIES' COMMENTS

25-30.090 Abandonments.25-30.090

At the May 26 hearing, all participants agreed that the rule as proposed is not controversial and should be adopted. The Commission directed staff to present it for adoption as proposed.

(1) This rule applies to any person, lessee, trustee, or receiver owning, operating, managing, or controlling a utility which intends to abandon the utility. The provisions of this rule are intended to prevent service interruptions to the utility customers.

(2) The notice required by section 367.165, F.S., shall include the following:

(a) The utility's name and address;

(b) The person to contact regarding this notice, their address and telephone number;

(c) The location of the utility's books and records;

(d) The date of the notice;

(e) The date the utility will be abandoned;

(f) Whether the water system, wastewater system, or both are to be abandoned;

(g) A statement of the reason the utility is to be abandoned;

(h) A statement of the status of the utility with the Department of Environmental Regulation regarding outstanding citations or violations.

(3) Within 10 days of the appointment of a receiver by the circuit court, the receiver shall request from the Commission a copy of the utility's tariff and most recent annual report.

(4) Within 90 days of the appointment of the receiver, the receiver shall file a proposed tariff revision amending the title

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STAFF'S COMMENTS

PARTIES' COMMENTS

1 page to reflect the name, address and telephone number of the
2 receiver. This shall not affect the certificated name of the
3 utility.

4 (5) During the pendency of the receivership, the receiver
5 shall be responsible for fulfilling the utility's obligations
6 pursuant to Chapter 367, F.S., and Chapter 25-39, F.A.C. In no
7 event shall a receiver be held responsible for failure to provide
8 safe, efficient and sufficient service where such failure is
9 substantially caused by actions or omissions pre-dating appointment
10 of the receiver, unless the receiver is given reasonable
11 opportunity to rectify such failure.

12 (6) If the receiver appointed by the circuit court is a
13 governmental authority as defined by section 367.021(7), F.S., the
14 governmental authority, upon request, shall be found exempt
15 pursuant to section 367.022(2), F.S.

16 Specific Authority: 367.121, F.S.

17 Law Implemented: 367.165, F.S.

18 History: New.
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STAFF'S COMMENTS

PARTIES' COMMENTS

1 25-30.111 Exemption for Resale of Utility Service, Annual
2 Report.

3 Any person who has been granted an exemption from regulation
4 as a reseller of resale water or wastewater sewer service and
5 claims the exemption provided for in subsection 367.022(8), F.S.,
6 shall file a report by March 31 of each year following the year for
7 which the exemption is claimed. The report shall contain the
8 following:

9 (1) A schedule, listing by month, the rates charged for and
10 total revenue received from the water or wastewater service sold.

11 (2) A schedule, listing by month, the rates charged and total
12 expense incurred for the purchase of the water or wastewater sewer
13 service.

14 (3) A statement listing the source from which the water or
15 wastewater sewer service was purchased.

16 Specific Authority: 367.121(1), F.S.

17 Law Implemented: 367.022(8), F.S.

18 History: New 3/26/81, formerly 25-10.09, Transferred from 25-
19 10.009 11/9/86, Amended ____.

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25-30.111

At the May 26 hearing, all participants
agreed that the rule as proposed is not
controversial and should be adopted. The
Commission directed staff to present it for
adoption as proposed.

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STAFF'S COMMENTS

PARTIES' COMMENTS

FWWA & FCWC

25-30.117 Agree with Staff position. The purpose of the rule is to require consistent accounting treatment, not to establish ratemaking policy.

OPC

24-30.117 OPC does not agree with the Staff's recommendation which essentially rejects OPC's proposal concerning the funding of pension plans. As the Commission is well aware, the financial viability of a water or wastewater utility is generally significantly less stable than that of electric and telephone companies that operate in Florida. Thus, OPC believes the Commission should require that pensions established by water and wastewater utilities be funded. Otherwise a utility can collect these costs from ratepayers yet never pay them to their employees. Accordingly, the Commission should not reject OPC's recommendation. OPC's recommended language for this rule is set forth in Appendix A.

OPC - Appendix A

25-30.117 Any utility that has an established defined benefit pension plan as defined by the Financial Accounting Standard's Board in the Statement of Financial Accounting Standards No. 87, Employers' Accounting for Pensions (SFAS 87), shall account for these costs pursuant to SFAS 87 as it applies to business enterprises in general, and these costs shall be funded and properly escrowed.

25-30.117

Staff recommends the Commission adopt this rule as originally proposed without the changes that have been recommended by Public Counsel. Public Counsel's changes were discussed at the August 12 hearing but left undecided.

The proposed rule prescribes the accounting treatment of pension costs, whereas Public Counsel's recommended addition--to require pension costs to be funded and placed in escrow--prescribes the regulatory treatment. Staff does not believe the Commission has developed a policy on this and, until the issue is addressed on a case-by-case basis and a policy developed, no rule should be adopted.

25-30.117 Accounting for Pension Costs.

Any utility that has an established defined benefit pension plan as defined by the Financial Accounting Standard's Board in the Statement of Financial Accounting Standards No. 87, Employers' Accounting for Pensions (SFAS 87), shall account for these costs pursuant to SFAS 87 as it applies to business enterprises in general.

Specific Authority: 367.121, F.S.

Law Implemented: 367.121, F.S.

History: New.

STAFF'S COMMENTS

PARTIES' COMMENTS

1 25-30.135 Tariffs, Rules and Miscellaneous Requirements.

2 (1) Each utility shall adopt and file tariffs in accordance
3 with Chapter 25-9, Florida Administrative Code.

4 (2) No utility may modify or revise its rules or regulations
5 or its schedules of rates and charges until the utility files and
6 receives approval from the Commission for any such modification or
7 revision.

8 (3) Each utility shall maintain for customer inspection upon
9 request during regular business hours at its main in-state business
10 office, a current copy of Chapters 25-9, 25-22 and 25-30, Florida
11 Administrative Code, a current copy of Chapter 367, F.S., and a
12 copy of the utility's current tariffs, and current developer
13 agreements. The Commission shall provide current copies of the
14 above rules and statute to each utility rules, regulations and
15 schedules.

16 Specific Authority: 367.121, F.S.

17 Law Implemented: 367.081, F.S.

18 History: Amended 9/12/74, formerly 25-10.41, Transferred from
19 25-10.041 and Amended 11/9/86, Amended ____.

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25-30.135

 All participants agreed at the hearing
 that the rule as proposed is not
 controversial and should be adopted. The
 Commission directed staff to present it for
 adoption as proposed.

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STAFF'S COMMENTS

PARTIES' COMMENTS

25-30.320

All participants agreed at the hearing that the rule as proposed is not controversial and should be adopted. The Commission directed staff to present it for adoption as proposed.

25-30.320 Refusal or Discontinuance of Service.

(1) Until adequate facilities can be provided, a utility may refuse to serve an applicant if, in the best judgment of the utility, it does not have adequate facilities, or supply to render the service applied for, or if the service is of character that is likely to affect unfavorably service to other customers.

(2) As applicable, the utility may refuse or discontinue service under the following conditions provided that, unless otherwise stated, the customer shall be given written notice and allowed a reasonable time to comply with any rule or remedy any deficiency:

(a) For noncompliance with or violation of any state or municipal law or regulation governing such utility service.

(b) For failure or refusal of the customer to correct any deficiencies or defects in his piping or equipment which are reported to him by the utility.

(c) For the use of utility service for any other property or purpose than that described in the application.

(d) For failure or refusal to provide adequate space for the meter or service equipment of the utility.

(e) For failure or refusal to provide the utility with a deposit to insure payment of bills in accordance with the utility's regulation.

(f) For neglect or refusal to provide reasonable access to the utility for the purpose of reading meters or inspection and

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STAFF'S COMMENTS

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1 maintenance of equipment owned by the utility.
2 (g) For nonpayment of bills or noncompliance with utility's / /
3 rules and regulations in connection with the same or a different
4 type or a different class of utility service furnished to the same
5 customer at the same premises by the same or affiliated utility
6 only after there has been a diligent attempt to have the customer
7 comply, including at least 5 working days' written notice to the
8 customers. Such notice shall be separate and apart from any bill
9 for service. For purposes of this subsection, "working day" means
10 any day on which the utility's office is open and the U.S. Mail is
11 delivered. A utility shall not, however, refuse or discontinue
12 service for nonpayment of a dishonored check service charge imposed
13 by the utility.
14 (h) Without notice in the event of a condition known to the
15 utility to be hazardous.
16 (i) Without notice in the event of tampering with regulators,
17 valves, piping, meter or other facilities furnished and owned by
18 the utility.
19 (j) Without notice in the event of unauthorized or fraudulent
20 use of service. Whenever service is discontinued for fraudulent
21 use of such service, the utility, before restoring service, may
22 require the customer to make at his own expense all changes in
23 piping or equipment necessary to eliminate illegal use and to pay
24 an amount reasonably estimated as the deficiency in revenue
25 resulting from such fraudulent use. Service shall not be

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STAFF'S COMMENTS

PARTIES' COMMENTS

1 discontinued if, prior to the arrival of the utility to discontinue
2 service, the customer has:

- 3 1. paid for all fraudulent use of service;
- 4 2. demonstrated the fraudulent use has ceased;
- 5 3. paid all other applicable fees and charges; and
- 6 4. the service condition allowing fraudulent use of service
7 has been corrected.

8 (3) Service shall be restored when cause for discontinuance
9 has been satisfactorily adjusted.

10 (4) In case of refusal to establish service, or whenever
11 service is discontinued, the utility shall notify the applicant or
12 customer in writing of the reason for such refusal or
13 discontinuance. In all instances involving refusal or
14 discontinuance of service the utility shall advise in its notice
15 that persons dissatisfied with the utility's decision to refuse or
16 discontinue service may register their complaint with the utility's
17 Customer Relations Personnel and to the Florida Public Service
18 Commission at 1-800-342-3552, which is a toll free number.

19 (5) The following shall not constitute sufficient cause for
20 refusal or discontinuance of service to an applicant or customer:

21 (a) Delinquency in payment for service by a previous occupant
22 of the premises unless the current applicant or customer occupied
23 the premises at the time the delinquency occurred and the previous
24 customer continues to occupy the premises and such previous
25 customer will receive benefit from such service.

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1 (b) Failure to pay for appliances or equipment purchased from
2 the utility. /

3 (c) Failure to pay for a different class of service, except
4 where two or more classes of service are rendered to the same
5 customer at the same premises.

6 (d) Failure to pay the bill of another customer as guarantor
7 thereof.

8 (e) Failure to pay a dishonored check service charge imposed
9 by the utility.

10 (6) No utility shall discontinue service to any customer,
11 between 12:00 noon on a Friday and 8:00 a.m. the following Monday
12 or between 12:00 noon on the day preceding a public holiday and
13 8:00 a.m. the next working day; provided, however, that this
14 prohibition shall not apply when:

15 (a) Discontinuance is requested by or agreed to by the
16 customer; or

17 (b) A hazardous condition exists; or

18 (c) Meters or other utility-owned facilities have been
19 tampered with; or

20 (d) Service is being obtained fraudulently or is being used
21 for unlawful purposes.

22 Specific Authority: 367.121, F.S.

23 Law Implemented: 367.081, 367.121, F.S.

24 History: Amended 9/12/74, 4/3/80, formerly 25-10.74, Transferred
25 from 25-10.074 and Amended 11/9/86, 1/1/91, 1/11/93, ____.

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STAFF'S COMMENTS

PARTIES' COMMENTS

1 25-30.335 Customer Billing.

2 (1) Except as provided in this rule, a utility shall render
3 bills to customers at regular intervals, and each bill shall
4 indicate: the billing period covered; the applicable rate
5 schedule; beginning and ending meter reading; the amount of the
6 bill; ~~as applicable, gross and/or net billing, and/or discount or~~
7 ~~penalty, and final discount or penalty date~~; and the delinquent
8 date or the date after which the bill becomes past due; and any
9 authorized late payment charge.

10 (2) If the utility estimates the bill, the utility shall
11 indicate on the bill that the amount owed is an estimated amount.

12 (3) When service is rendered for less than 50 ~~fifty~~ percent
13 of the normal billing cycle, the utility shall prorate the base
14 facility charges as though the normal billing cycle were 30 ~~thirty~~
15 days, except that the utility may elect not to issue an initial
16 bill for service if the service is rendered during a time period
17 which is less than 50 ~~fifty~~ percent of the normal billing cycle.
18 Instead, the utility may elect to combine the amount owed for the
19 service rendered during the initial time period with the amount
20 owed for the next billing cycle, and issue a single bill for the
21 combined time period. For service taken under flat rate schedules,
22 50 ~~fifty~~ percent ~~(50%)~~ of the normal charges may be applied.

23 (4) A utility may not consider a customer delinquent in
24 paying his or her bill until the 21st ~~twenty-first~~ day after the
25 utility has mailed or presented the bill for payment.

25-30.335

All participants agreed at the hearing
that the rule as proposed is not
controversial and should be adopted. The
Commission directed staff to present it for
adoption as proposed.

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STAFF'S COMMENTS

PARTIES' COMMENTS

1 (5) Each utility shall establish each point of delivery as an
2 independent customer and shall calculate the amount of the bill
3 accordingly, except where physical conditions make it necessary to
4 use additional meters or points of delivery for one class of
5 service to a single customer on the same premises, or where such
6 multiple meters or delivery points are used for the convenience of
7 the utility.

8 (6) A utility may not incorporate municipal or county
9 franchise fees into the amount indicated as the cost for service on
10 the customer's bill. Rather, the utility shall show any such
11 franchise fee as a separate item.

12 (7) The utility shall maintain a record of each customer's
13 account for the most current 2 two years so as to permit
14 reproduction of the customer's bills during the time that the
15 utility provided service to that customer.

16 (8) In the event of unauthorized use of service by a
17 customer, a utility may bill the customer on a reasonable estimate
18 of the service taken. In addition, the utility may assess a fee to
19 defray the cost of restoring service to such a customer provided
20 that the fee is specified in the utility's tariff.

21 (9) If a utility utilizes the base facility and usage charge
22 rate structure and does not have a Commission authorized vacation
23 rate, the utility shall bill the customer the base facility charge
24 regardless of whether there is any usage.

25 Specific Authority: 367.121, F.S.

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PARTIES' COMMENTS

1 Law Implemented: 367.121, F.S.

2 History: Amended 9/14/75, 6/21/79, formerly 25-10.97, Transferred /
3 from 25-10.097 and 25-10.111, and Amended 11/9/86, Amended _____. /

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STAFF'S COMMENTS

PARTIES' COMMENTS

25-30.360 Refunds.

25-30.360

All participants agreed at the hearing that the rule as proposed is not controversial and should be adopted. The Commission directed staff to present it for adoption as proposed.

(1) Applicability. With the exception of deposit refunds, all refunds ordered by the Commission shall be made in accordance with the provisions of this Rule, unless otherwise ordered by the Commission.

(2) Timing of Refunds. Refunds must be made within 20 ninety ~~(90)~~ days of the Commission's order unless a different time frame is prescribed by the Commission. A timely motion for reconsideration temporarily stays the refund, pending the final order on the motion for reconsideration. ~~Unless a stay has been requested in writing and granted by the Commission, a motion for reconsideration of an order requiring a refund will not delay the timing of the refund.~~ In the event ~~of~~ that a stay is granted pending reconsideration, the timing of the refund shall commence from the date of the order disposing of any motion for reconsideration. This rule does not authorize any motion for reconsideration not otherwise authorized by Chapter 25-22, Florida Administrative Code.

(3) Basis of Refund. Where the refund is the result of a specific rate change, including interim rate increases, and the refund can be computed on a per customer basis, that will be the basis of the refund. However, where the refund is not related to specific rate changes, such as a refund for overearnings, the refund shall be made to customers of record as of a date specified by the Commission. In such case, refunds shall be made on the

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STAFF'S COMMENTS

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1 basis of usage. Per customer refund refers to a refund to every
2 customer receiving service during the refund period. Customer of
3 record refund refers to a refund to every customer receiving
4 service as of a date specified by the Commission.

5 (4) Interest.

6 (a) In the case of refunds which the Commission orders to be
7 made with interest, the average monthly interest rate until refund
8 is posted to the customers account shall be based on the 10 ~~thirty~~
9 ~~(30)~~ day commercial paper rate for high grade, unsecured notes sold
10 through dealers by major corporations in multiples of \$1,000 as
11 regularly published in the Wall Street Journal.

12 (b) This average monthly interest rate shall be calculated
13 for each month of the refund period:

14 1. By adding the published interest rate in effect for
15 the last business day of the month prior to each
16 month of the refund period and the published rate
17 in effect for the last business day of each month
18 of the refund period, divided by 24 ~~twenty-four~~
19 ~~(24)~~ to obtain the average monthly interest rate;

20 2. The average monthly interest rate for the month
21 prior to distribution shall be the same as the last
22 calculated average monthly interest rate.

23 (c) The average monthly interest rate shall be applied to the
24 sum of the previous month's ending balance (including monthly
25 interest accruals) and the current month's ending balance divided

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1 by ~~2 two-(2)~~ to accomplish a compounding effect.

2 (d) Interest Multiplier. When the refund is computed for
3 each customer, an interest multiplier may be applied against the
4 amount of each customer's refund in lieu of a monthly calculation
5 of the interest for each customer. The interest multiplier shall
6 be calculated by dividing the total amount refundable to all
7 customers, including interest, by the total amount of the refund,
8 excluding interest. For the purpose of calculating the interest
9 multiplier, the utility may, upon approval by the Commission,
10 estimate the monthly refundable amount.

11 (e) Commission staff shall provide applicable interest rate
12 figures and assistance in calculations under this Rule upon request
13 of the affected utility.

14 (5) Method of Refund Distribution. For those customers still
15 on the system, a credit shall be made on the bill. In the event
16 the refund is for a greater amount than the bill, the remainder of
17 the credit shall be carried forward until the refund is completed.
18 If the customer so requests, a check for any negative balance must
19 be sent to the customer within 10 ten-(10) days of the request.
20 For customers entitled to a refund but no longer on the system, the
21 company shall mail a refund check to the last known billing address
22 except that no refund for less than \$1.00 will be made to these
23 customers.

24 (6) Security for Money Collected Subject to Refund. In the
25 case of money being collected subject to refund, the money shall be

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1 secured by a bond unless the Commission specifically authorizes
2 some other type of security such as placing the money in escrow,
3 approving a corporate undertaking, or providing a letter of credit.
4 The company shall provide a report by the 20th of each month
5 indicating the monthly and total amount of money subject to refund
6 as of the end of the preceding month. The report shall also
7 indicate the status of whatever security is being used to guarantee
8 repayment of the money.

9 (7) Refund Reports. During the processing of the refund,
10 monthly reports on the status of the refund shall be made by the
11 20th of the following month. In addition, a preliminary report
12 shall be made within 10 ~~thirty (30)~~ days after the date the refund
13 is completed and again 90 days thereafter. A final report shall be
14 made after all administrative aspects of the refund are completed.
15 The above reports shall specify the following:

16 (a) The amount of money to be refunded and how that amount
17 was computed;

18 (b) The amount of money actually refunded;

19 (c) The amount of any unclaimed refunds; and

20 (d) The status of any unclaimed amounts.

21 (8) Any unclaimed refunds shall be treated as cash
22 contributions-in-aid-of-construction.

23 ~~(8) With the last report under subsection (7) of this Rule,~~
24 ~~the company shall suggest a method for disposing of any unclaimed~~
25 ~~amounts. The Commission shall then order a method of disposing of~~

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STAFF'S COMMENTS

PARTIES' COMMENTS

1 ~~the unclaimed funds.~~

2 Specific Authority: 350.127(2), F.S.

3 Law Implemented: 367.081(6), 367.082(2), F.S.

4 History: New 8/17/83, formerly 25-10.76, Transferred from

5 25-10.076 11/9/86, Amended ____.

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STAFF'S COMMENTS

PARTIES' COMMENTS

25-30.430 Test Year Approval.

25-30.430

FWWA & FCWC

25-30.430 Agree with Staff change.

The Commission directed staff to present this rule for adoption as originally proposed. Additionally, staff recommends one change to (3) below.

"May" should be changed to "shall" so there is no basis for an objection that extensions may be denied arbitrarily. If an applicant shows good cause for an extension and the extension won't cause the test year to be unrepresentative, there is no reason to deny the request.

(1) Prior to the filing of an application for a general rate increase a utility shall submit to the Commission a written request for approval of a test year, supported by a statement of reasons and justifications showing that the requested test year is representative of utility operations. The Commission Chairman will then approve or disapprove the request within 30 days from the receipt of the request. In disapproving the requested test year, the Chairman may suggest another test year. Within 30 days of the Chairman's approval or disapproval of a test year, upon request of any interested person the full Commission may review the Chairman's test year decision.

(2) Each applicant for test year approval shall submit the following information in its written request to the Chairman:

(a) A statement explaining why the requested test year is representative of the utility's current operations.

(b) A general statement of major plant expansions or changes in operational methods which:

1. Have occurred in the most recent 18 months or since the last test year, whichever is less;

2. Will occur during the requested test year.

(c) A general statement of all known estimated pro forma adjustments which will be made to the requested test year amounts.

(d) If a projected test year is requested, provide an explanation as to why the projected period is more representative

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STAFF'S COMMENTS

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1 of the utility's operations than a historical period.

2 (2) Any requests for extensions of time to file the
3 application shall be made to the Director, Division of Water and
4 Wastewater. Upon good cause shown and if the extension will not
5 cause the approved test year to be unrepresentative, the Director
6 shall grant an extension in writing.

7 ~~(3) In the test year approval letter the Commission Chairman~~
8 ~~may advise whether or not prepared testimony in support of the~~
9 ~~utility's application will be required to be filed as part of the~~
10 ~~minimum filing requirements.~~

11 ~~(a) Prepared testimony will be required, as part of the~~
12 ~~minimum filing requirements, for all cases anticipated to require~~
13 ~~a formal hearing, rather than a proposed agency action process.~~

14 ~~(b) Where prepared testimony is not required to be filed as~~
15 ~~part of the minimum filing requirements, it may be required by the~~
16 ~~Commission or the Commission Chairman during a rate case~~
17 ~~proceeding.~~

18 Specific Authority: 367.121, F.S.

19 Law Implemented: 367.081, 350.01(5), F.S.

20 History: New 6/10/75, Amended 6/13/79, 3/26/81, 9/27/83,

21 Transferred from 25-10.175 and Amended 11/9/86, 6/25/90, ____.

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STAFF'S COMMENTS

PARTIES' COMMENTS

1 25-10.432 Used and Useful in Rate Case Proceedings.

2 The text of this rule is not presented here because the

3 Commission decided on August 12 to delay its consideration.

25-30.432

At the August 12 hearing the Commission
voted to delay consideration of this rule.

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PARTIES' COMMENTS

25-30.433

FWWA & FCWC

25-30.433 Rate Case Proceedings.

The following changes are recommended by staff:

Introductory paragraph: The phrase "for good cause shown" is deleted as suggested by Commissioner Clark because it is redundant.

(1) Quality of Service - At the May hearing, the Commission decided against providing a penalty in this rule for failure to meet standards as suggested by Public Counsel. Staff recommends no changes to this section.

(2) A consensus was not reached at the May hearing and the Commission instructed staff to Staff provide its recommendation for the final agenda. Staff recommends the Commission adopt this section as originally proposed.

(3) The change to the first sentence was recommended by staff at the May hearing. This language clarifies the Commission practice of netting used and useful debit and credit deferred taxes. This coincides with the used and useful adjustments made to plant in determining rate base. No parties disagreed with this change, however the rule section was left undecided and the Commission instructed staff to provide its recommendation.

The new third sentence is added to clarify the rule and does not change its meaning or intent.

Staff recommends that the Commission adopt the proposed rule as changed because it codifies longstanding Commission policy.

(4) Staff recommends the adoption of this section as originally proposed--without the change proposed by OPC to the 13-month averaging method. Staff believes the increased cost to prepare MFRs using the 13-month averaging method far outweighs the benefit of an increase in accuracy.

(5) Staff recommended deleting the word "plant" in its comments (part of Composite Exhibit 1, Tab 18, at page 12) to clarify the rule. Without this change, a literal interpretation could erroneously lead to the assumption that the same dollar adjustment made to plant be made to depreciation.

25-30.433 (2) Add Cash before "working capital" because the only thing 1/8th of O&M represents is cash working capital.

(3) Agree with clarifying language re used and useful debit deferred taxes.

Strongly disagree with exclusion of other deferred debit-- from rate base. This is a flawed, confiscatory policy that contravenes 367.081(2), Florida Statutes. Deferred debits are mid term (neither short nor long) non-tangible assets. Because they are not included in rate base as either plant (long term) or working capital (short term), the utility is denied an opportunity to earn on an asset necessary to serve the public. The Commission should include deferred debits in rate base as a separate line item to be evaluated on a case by case basis (TR 503-525, 5/26/93). The Staff has argued that if deferred debits are included in rate base then deferred credits would also have to be included and once you start deciding which ones should be included you are essentially back to the balance sheet method (TR 497, 543 5/26/93). But this argument, at best, lacks substance, and, at worst, misstates policy. First, the deferred debits that we are asking to include are not current assets and are not part of working capital whether determined by the formula or balance sheet method. Therefore, they would not be a consideration regardless of how working capital is determined. [We should not confuse the balance sheet method of determining working capital with reconciliation of rate base to the capital structure.] Second, deferred credits, for the most part, are already considered by the Commission. The deferred credit accounts are (1) unamortized premium on debt, which the Commission includes in the cost of debt, (2) advances for construction, which the Commission nets against rate base, (3) accumulated deferred ITC's, which the Commission includes in the cost of capital and

In a rate case proceeding, the following provisions shall apply, unless ~~for good cause shown~~ the applicant or any intervenor demonstrates that these rules result in an unreasonable burden. In these instances, fully supported alternatives will be considered by the Commission. Any alternatives proposed by the utility must be filed with the minimum filing requirements.

(1) The Commission in every rate case shall make a determination of the quality of service provided by the utility. This shall be derived from an evaluation of three separate components of water and wastewater utility operations: quality of utility's product (water and wastewater); operational conditions of utility's plant and facilities; and the utility's attempt to address customer satisfaction. Sanitary surveys, outstanding citations, violations and consent orders on file with the Department of Environmental Regulation (DER) and county health departments (HRS) or lack thereof over the preceding 3-year period shall also be considered. DER and HRS officials' testimony concerning quality of service as well as the testimony of utility's customers shall be considered.

(2) Working capital shall be calculated as one-eighth of operation and maintenance expenses.

(3) ~~Used and useful~~ debit deferred taxes ~~created due to income taxes associated with used and useful contributions in aid of construction (OP&G)~~ shall be offset against ~~used and useful~~

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STAFF'S COMMENTS

PARTIES' COMMENTS

1 credit deferred taxes in the capital structure. Any resulting net
 2 debit deferred taxes shall be included as a separate line item in
 3 the rate base calculation. Any resulting net credit deferred taxes
 4 shall be included in the capital structure calculation. No other
 5 deferred debits shall be considered in rate base when the formula
 6 method of working capital is used.

7 (4) The averaging method used by the Commission for rate base
 8 and cost of capital is the simple beginning and end-of-year
 9 average.

10 (5) Non-used and useful plant adjustments shall be applied to
 11 the applicable depreciation expense. Property tax expense on non-
 12 used and useful plant shall not be allowed.

13 ~~(6) Charitable contributions shall not be recovered through~~
 14 ~~rates.~~

15 ~~(7) CIAC shall not be awarded on the margin reserve~~
 16 ~~calculation.~~

17 (7) Income tax expense shall not be allowed for Subchapter S
 18 corporations, partnerships or sole proprietorships.

19 (8) Non-recurring expenses shall be amortized over a 5-year
 20 period unless a shorter or longer period of time can be justified.

21 (9) The amortization period for forced abandonment or the
 22 prudent retirement, in accordance with the National Association of
 23 Regulatory Utility Commissioners Uniform System of Accounts, of
 24 plant assets prior to the end of their depreciable life shall be
 25 calculated by taking the ratio of the net loss (original cost less

The addition of the second sentence regarding non-used and useful property taxes was recommended by the Office of Public Counsel (OPC) (Composite Exhibit 1, Tab 8). Staff agrees with OPC that non-used and useful property tax adjustments are Commission practice when the taxing authority taxes total plant, not just used and useful plant. Staff disagrees with OPC's proposed rule as its wording assumes that an adjustment is required whenever a non-used and useful adjustment is made. As reworded, staff's recommended rule will codify current policy. This language will still permit the flexibility when no adjustment should be made.

(6) The Commission directed staff to remove the original proposed rule regarding imputation of CIAC on the margin reserve for consideration at a later date with the used and useful rule. In place of that section, staff has included the proposed rule on charitable contributions, as recommended by OPC and as directed by the Commission. This codifies current Commission practice.

(7) This section was left pending at the May hearing. Staff recommends the Commission adopt this section as originally proposed.

(8) Staff recommends the Commission adopt this section as originally proposed.

(9) Staff recommends the Commission adopt this section as originally proposed without the change recommended by OPC. OPC's suggested methodology has been argued in several cases in the recent past and rejected by the Commission. The rule as originally proposed codifies the Commission's longstanding practice.

(10) and (11) No comments were presented on these sections of the rule at the hearing and staff recommends the Commission adopt it as originally proposed.

(12) Staff recommends adding this section which was initially suggested by OPC but modified by the Florida Waterworks Association (FWWA). The wording recommended by FWWA was taken from a number of Commission orders issued over the past ten years.

(13) At the August hearing, the Commission left this rule pending and directed staff to present the proposal of OPC. Staff recommends that the Commission adopt the rule proposed by OPC, modifying it to refer specifically to the parent debt rule, because it codifies long standing Commission policy.

(4) other, which includes such items as gains on disposition of property and advance billings and which are or can be reviewed on a case by case basis. So, all deferred credits except "other" are now being directly addressed by the Commission in rate base or cost of capital, but under this proposed rule, none of the deferred debits may be addressed at all. This is clearly a discriminatory and confiscatory policy. At the very least, easily identifiable, utility related deferred expenses, such as unamortized rate case expense, deferred maintenance and deferred testing expenses should be separately identified and included in rate base (TR 507,508, 5/26/93). [see Composite Exhibit No. 1, Comments of the FWWA, 4/29/92, pp.25-26; Supplemental Comments of Frank Seidman for the FWWA, pp.26-27; Comments of the FWWA on Proposed Rules, 4/23/93, pp.1-10]

[This rule proposal is the subject of a pending rule challenge by FWWA and FCWC before the Division of Administrative Hearings (DOAH), Department of Management Services].

(4) Agree with Staff position.

(7) Income tax expense is a legitimate cost of doing business (see Composite Exhibit No. 1, Supplemental Comments of Frank Seidman for the FWWA, p.29). Recommend permissive language, e.g., Recovery of income tax expense through rates for Subchapter S corporations, partnerships or sole proprietorships will be considered on a case by case basis.

(9) Agree with Staff position.

(10) 99 year lease too restrictive as sole example. Include: Commission will consider a written easement or other cost effective alternatives.

(12) Agree with Staff position.

(14) Strongly disagree with this rule, and with Staff statement that it codifies longstanding Commission policy. Loss carryforwards are the result of past revenue levels being inadequate. Disallowing tax expense in the period for which rates are being set because of loss carryforwards understates revenue requirements by allowing

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STAFF'S COMMENTS

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1 accumulated depreciation and contributions-in-aid-of-construction
 2 (CIAC) plus accumulated amortization of CIAC plus any costs
 3 incurred to remove the asset less any salvage value) to the sum of
 4 the annual depreciation expense, net of amortization of CIAC, plus
 5 an amount equal to the rate of return that would have been allowed
 6 on the net invested plant that would have been included in rate
 7 base before the abandonment or retirement. This formula shall be
 8 used unless the specific circumstances surrounding the abandonment
 9 or retirement demonstrate a more appropriate amortization period.

10 (10) A utility is required to own the land upon which the
 11 utility treatment facilities are located, or possess the right to
 12 the continued use of the land, such as a 99-year lease.

13 (11) In establishing an authorized rate of return on common
 14 equity, a utility, in lieu of presenting evidence, may use the
 15 current leverage formula adopted by Commission order. The equity
 16 return established shall be based on the equity leverage order in
 17 effect at the time the Commission decides the case.

18 ~~Cost of non-utility investment should be removed directly from~~
 19 ~~equity when reconstructing the capital structure to rate base unless~~
 20 ~~the utility can show, through competent evidence, that to do~~
 21 ~~otherwise would result in a more equitable determination of the~~
 22 ~~cost of capital for regulatory purposes.~~

23 ~~Interest expense shall~~
 24 ~~be calculated by synchronizing the cost of debt included in the~~
 25 ~~capital structure with the rate base including attributing an~~

(14) At the August hearing, the Commission directed staff to present the rule proposed by OPC with staff's changes. Staff recommends that the Commission adopt the rule as modified by staff. With the changes, it codifies longstanding Commission policy.

Staff was initially directed to address intergenerational inequities in its recommendation. This Commission does not allow tax losses from non-regulated activities of the utility or its affiliates to subsidize above-the-line utility operations through use of tax losses attributable to non-regulated activities. This is the flip-side of that issue. Tax losses from above-the-line utility operations can be used to offset taxable income of affiliated companies or below-the-line taxable income of the utility. Regulatory recognition of the tax loss attributable to above-the-line operations prevents cross subsidization of non-utility activities by above-the-line operations. It follows generally accepted accounting principles and is good tax and regulatory practice. There is no intergenerational inequity. The actual tax expense of the utility that results from above-the-line utility operations is spread over the customers who receive service.

future customers to benefit from previous utility losses (TR 331-334, 8/12/93 & Composite Exhibit No. 1, Supplemental Comments of Frank Seidman for FWWA, p.31.) It has been a longstanding policy of this Commission to adjust expenses and revenues so that they are representative of the ongoing cost of service and cost recovery during the period when rates will be in effect. In that respect, the Commission has adjusted revenues, expenses, depreciation and taxes for ratemaking purposes so that they are normal, i.e., so that they are representative. When this is done, revenues recover only those costs associated with serving the customers paying those costs, no more and no less. A fair and reasonable return on property used and useful in serving the public has an income tax expense associated with it. If that tax expense is reduced to zero for ratemaking purposes because of losses carried forward from a prior period, then the revenue requirements for the period during which rates are in effect become understated; become not normal and not representative of the real cost associated with providing service in that period.

[This proposed rule was not included in the Notice of Rulemaking. It imposes an economic impact that was not considered in the Commission's Economic Impact Statement. The impact of this rule should be considered. Any survey of utilities regarding impact should be directed to a wide sampling of Class "C" utilities in addition to the larger utilities that are usually contacted.]

SSU

25-30.433(1) SSU agrees with the rule as proposed. It would be inappropriate to include a penalty in this section because the Commission always has the authority to deal with shortcomings in utility operations.

SSU

25-30.433(2) SSU agrees with the rule as proposed. The one-eighth operation and maintenance (O&M) expenses approach is highly preferable to the balance sheet approach because:

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~~Interest expense on Investment Tax Credits that earn a rate of return. Where applicable, interest expense shall also include the tax effect of parent debt in accordance with Rule 25-14.004, Florida Administrative Code.~~

~~(14) Income tax expense shall not be allowed for utilities that have sufficient loss carryforwards at the utility level to offset any tax liability in the foreseeable future.~~

Specific Authority: 367.121, F.S.

Law Implemented: 367.081, F.S.

History: New.

(14) At the August hearing, the Commission directed staff to present the rule proposed by OPC with staff's changes. Staff recommends that the Commission adopt the rule as modified by staff. With the changes, it codifies longstanding Commission policy.

Staff was initially directed to address intergenerational inequities in its recommendation. This Commission does not allow tax losses from non-regulated activities of the utility or its affiliates to subsidize above-the-line utility operations through use of tax losses attributable to non-regulated activities. This is the flip-side of that issue. Tax losses from above-the-line utility operations can be used to offset taxable income of affiliated companies or below-the-line taxable income of the utility. Regulatory recognition of the tax loss attributable to above-the-line operations prevents cross subsidization of non-utility activities by above-the-line operations. It follows generally accepted accounting principles and is good tax and regulatory practice. There is no intergenerational inequity. The actual tax expense of the utility that results from above-the-line utility operations is spread over the customers who receive service.

1. The one-eighth O&M approach is less costly to perform than the balance sheet approach and consistent with Commission policy;

2. Any greater accuracy derived from the balance sheet approach is offset by the greater cost of the balance sheet approach;

3. The notion that the one-eighth O&M method yields a higher working capital requirement is simply not true as evidenced by application of the two working capital methods to SSU's most recent three rate cases (See Exhibit 7);

4. The balance sheet method may produce unrealistic results such as a zero working capital requirement for utilities that are substantially under-earning.

SSU

25-30.433(3) With respect to the last sentence in the rule, SSU maintains that, at minimum, utilities should earn a return on unamortized rate case expense because (a) such costs are not included in the one-eighth O&M formula; (b) such costs are well defined and approved by Commission order; and (c) there is clearly a lag between expense and recovery of these costs.

SSU

25-30.433(4) SSU agrees with the rule as proposed. The simple averaging approach is more appropriate than the 13 month averaging method because:

1. The simple average method requires the utility to produce less documentation (2 versus 13 months data), thus making it simpler, less expensive, and less time-consuming to present and analyze;

2. Even with a projected test year, final rates are normally not implemented until after the test year is over. That being the case, the use of a simple average or a year-end rate base is very reasonable and fair to ratepayers;

3. A comparison of a simple average to a 13 month average simply does not result in a material difference or increase in accuracy.

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SSU

25-30.433(5) SSU agrees with the rule as proposed. This version of the rule is more appropriate because:

1. This is current Commission policy;
2. All property taxes paid by a utility are a required, prudent expense necessary to maintain operations in a particular county;
3. Non-used and useful adjustments to depreciation expense are applied based on application of non-used and useful percentages as determined by the Commission related to the assets which create the depreciation expense. The same pool of regulatory dollars allows for a simple mathematical adjustment. This is not true with property taxes. Each county applies its own methodology to value property and determine property taxes. Moreover, some counties do not tax non-used and useful property while others impose a tax on some percentage less than 100% of the fair market value of the property. The rule as proposed provides the Commission with the ability to address the specific application of property taxes on a case-by-case basis. There may simply be situations where adjustments are not appropriate, and the language proposed by OPC would create an inflexible automatic rule that will not always be properly applicable.

SSU

25-30.433(8) SSU disagrees with the rule as proposed -- the amortization period should be four years and not five years.

1. Four years corresponds with the rate case amortization period and would create a uniform policy;
2. For whichever period of time chosen, there should not be an automatic reduction in rates -- rates should be reduced only when the utility is earning outside of its range of return (since rates within the range have already been determined to be fair, just, and reasonable);

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3. In most cases, returns deteriorate over time and a reduction in rates exacerbates the deterioration and adds an administrative burden to the utility. It may also accelerate the need for a rate case. In those rare instances where a company is over-earning due to a change in amortization, the Commission has the authority to adjust the company's rates.

SSU

25-30.433(9) SSU agrees with the proposed rule. This rule is appropriate because it does not penalize the utility for investment that was prudent when made.

SSU

25-30.433(12) SSU disagrees with the proposed rule, but prefer the proposed rule language to the OPC language.

The issue this rule attempts to address is whether a utility's cost of capital, including debt, would be greater than it would be if the company was not involved in non-utility business within the same business entity. However, the rule is premised upon two false assumptions -- the rule assumes investors know exactly how much debt and equity are invested in non-utility businesses and that the cost of equity has increased because of the investment in the non-utility business. This issue should be pursued on a generic basis since it affects all industries, but if the Commission decides to adopt a rule, the present language is superior since it permits the utility the opportunity to establish the investment components in non-utility businesses and the associated costs which may result in a more equitable determination of cost of capital for regulatory purposes.

STAFF'S COMMENTS

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SSU

25-30.433(14) SSU disagrees with the proposed rule.

Tax loss carryforwards exist because in the year the tax loss was recorded the utility lost money -- simply put, the utility had insufficient revenue to pay its O&M costs plus interest. The effect of the proposed rule is to take the loss the owner paid for and use it in a subsequent year to benefit the ratepayers. That is unfair and would constitute retroactive ratemaking. Rates are set prospectively on the basis of a prospective rate of return -- and rates should not be reduced because of a prior year's losses. The proposed rule yields the anomalous and inequitable result of making prospective rates lower than they otherwise would be if prior rates producing the income tax losses had been higher.

The proposed rule would put the utility in a Catch-22 situation where if it loses money in one year, it is guaranteed to never be able to earn a full return in future years.

Tax losses relate to losses absorbed by the shareholders, not the ratepayers. Therefore, such losses should not be passed back to ratepayers in establishing rates. In fact, this would be retroactive ratemaking and if a tax loss is passed back to the ratepayers, then the loss sustained by the utility shareholders (due to insufficient rates) should be recovered from ratepayers. Also, the proposed rule would ignore tax sharing agreements which may exist. This rule should be eliminated.

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OPC

25-30.433 OPC supports in part and opposes in part many sections of this proposed rule. This proposed rule deals with many aspects of the ratemaking process and establishing rules for numerous issues that are litigated on a case-by-case basis.

Concerning section (1), OPC recommended that the Commission insert into the proposed language that if the utility does not meet the Commission's quality of service standards then a penalty be imposed on the utility. OPC believes that the Commission routinely does impose such penalties. Consequently, the addition of this language to the rule would codify current Commission policy. Furthermore, it would give the utilities a greater incentive to comply with the Commission's quality of service standards. Accordingly, OPC recommends that the Commission adopt the language as set forth in Appendix A to these post hearing comments.

Section (2) address the issue of working capital. The Staff argues that the lack of sophistication of water and wastewater utilities, combined with the significance of rate case expense in this industry, warrants the use of the 1/8th O&M approach to working capital. OPC believes that since the Commission last addressed this issue in 1989, the water and wastewater industry has greatly progressed by adding computers, which would greatly reduce the cost of determining working capital needs under the balance sheet approach. Furthermore, if the Commission's policy is made explicit with respect to the components included in the working capital requirement, there should not be a great deal of litigation costs associated with the balance sheet approach.

The utilities, primarily the Florida Water Works Association, argued that the balance sheet approach is more expensive than the 1/8th O&M approach because the former requires the allocation of each component of the balance sheet to account for jurisdictional differences and nonutility

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operations. [Tr. 500.] OPC points out that rather than allocate each component of the balance sheet, the entire working capital allowance, as determined for the entire company, can be easily allocated by using a net investment allocation factor. The Commission should reject FWWA's specious argument.

The FWWA asserts that the balance sheet approach is not accurate. The FWWA also notes that the lead/lag approach is the most accurate, but that it is too expensive to use. [Tr. 501.] OPC must point out that most persons knowledgeable about working capital know that a 365-day balance sheet approach would produce the same results as a lead lag/study. Thus, contrary to the FWWA's comments, a 13-month balance sheet approach produces accurate results--it is just simplified relative to a lead/lag study.

Southern States also argued that the 1/8th O&M approach was based upon a lead/lag analysis. [Tr. 532-33.] As pointed out by OPC the 1/8th approach was developed by the Federal Energy Regulatory Commission (FERC), specifically for the electric and gas industry. It had no relationship to the water and wastewater industry. [Tr. 534.]

The FWWA cited three reasons why the balance sheet approach is not accurate: 1) it is based upon a test year which may not be representative of normal operations; 2) it requires allocation; and 3) it puts management in a position of manipulating short-term assets. [Tr. 501-502.] None of these arguments is valid, as all three equally apply to the other industries regulated by the Commission, but the Commission has determined the balance sheet approach to be the most accurate.

OPC does not believe that the FWWA or Southern States has presented persuasive arguments against the use of the balance sheet approach to calculating working capital, which this Commission has repeatedly endorsed as being the most accurate determination of a utility's working capital needs. For these reasons, OPC believes that if the Commission adopts a rule on the appropriate method of calculating working capital, the method should be the balance sheet approach, not the 1/8th O&M approach.

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Section (3) concerns deferred debits and credits. The controversy over this issue focused on the Staff's recommendation that if the 1/8th O&M approach to working capital is used, no deferred debits shall be included in rate base, other than those associated with taxes, where applicable. OPC supports the Staff's recommendations and sets forth the following commentary by Staff which succinctly puts the issue into perspective.

MR. WILLIS: Commissioners, I would like to throw something in, too. I worked a lot on that prior docket in which the Commission went to the one-eighth formula on. And parties here are mixing a lot of things and trying to take components apart.

The industry wants to take in deferred debits and look at just those certain components instead of using the one-eighth.

And I think in this case Staff is going to have to support Ms. Dismukes in this because the real reason this Commission went to the one-eighth formula was to use it as a surrogate to the balance sheet approach.

And Ms. Merchant is completely correct when she says that the balance sheet approach contains everything including your current assets and liabilities, but also there are intermediate assets and liabilities, your deferred debits and credits. It has always been that way, and that is the way it is done in the other industries, too.

As far as my experience goes, the major issues that arose in the cases in the past came from the deferred debits and credits. It never really had that much of an issue on the current assets and liabilities. Those were always, in interest-earning or not interest-earning? How much should be thrown in? But the real emphasis and the cost went to the deferred debits and credits. And that is one of the

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major reasons that the Commission said, "We will just use the one-eighth formula as a surrogate." I don't think the Commission was looking at saying one-eighth per our definition here is current assets and current liabilities. I think when they passed that rule or, basically in that order, they were saying that the one-eighth formula is a surrogate to the entire balance sheet approach. [Tr. 540-41.]

For the reasons expressed by Mr. Willis, OPC recommends that the Commission adopt the rule as proposed by the Staff, absent adoption of OPC's recommendation concerning section (2).

Section (4) addresses the averaging method for establishing rate base and capital structure. The Staff has recommended use of the beginning and ending year average. OPC disagrees with this recommendation because: 1) it is not the most accurate method to use; 2) it deviates from the 13-month average method used by the electric and telephone industry; and 3) it is subject to more manipulation than the 13-month average approach. [Tr. 156-57.] Recognizing the concerns of the Staff regarding the small Class C companies, OPC agrees that the beginning and ending year average would probably be more appropriate. However, with respect to the Class A&B companies, OPC believes that the 13-month average should be used. The Staff agreed that the 13-month average method was more accurate. [Tr. 165, August 12, 1993.] And, Mr. Todd, with the FWWA agreed that the 13-month average method would be less likely to skew the results higher than the beginning and ending year average method. [Tr. 164, August 12, 1993.]

For the reasons set forth above and as stated during the hearings, OPC recommends that the Commission, if it establishes a rule, calculate rate base and capital structure using the 13-month average approach.

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Section (5) addresses non-used and useful adjustments applicable to depreciation expenses and property taxes. OPC supports the Staff's recommendations on both the depreciation expense and applicable property taxes. As noted by OPC at the hearing held on August 12, 1993, both of these adjustments are a long-standing policy of the Commission. Promulgating these rules will eliminate the cost of litigating the issue and put to rest the appropriate treatment of property taxes and depreciation associated with non-used and useful plant. [Tr. 172-74, August 12, 1993.]

The Commission should reject Southern States' argument. Southern States asserted that because property taxes are a current expense they should be collected from current ratepayers even though the related property is not used and useful. As discussed at the hearings, the interest expense associated with non-used and useful plant is also a current expense, yet it is collected from future customers through the AFPI charge. Southern States' argument is illogical and was rejected in the Southern States "giga case". Accordingly, the Commission should adopt the recommendation of the Staff and OPC.

Section (6) deals with charitable contributions and their removal from recovery through rates. OPC agrees with Staff's recommendation. No party opposed this rule, which the Commission should adopt as recommended by the Staff.

Section (7) concerns income tax expense for Subchapter S corporations, partnerships, and sole proprietorships. OPC supports the Staff's recommendation that income tax expense shall not be allowed for utilities which are Subchapter S corporations, partnerships, and sole proprietorships.

Section (8) addresses the amortization period for nonrecurring expenses. In general, OPC supports the Staff's recommendation but would like for the Commission to consider OPC's alternative. OPC recommended that such expenses be amortized over a four year-period (as opposed to five as recommended by the Staff), but at the end of four years, the

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utility's rates would be reduced to account for the fact that the expense had been fully recovered. This is the same methodology the Commission uses with rate case expense. Accordingly, while OPC does not oppose a five-year amortization, OPC still recommends four years, if rates are reduced at the end of four years consistent with the reduction to rates for rate case expense.

Section (9) relates to the amortization period for abandoned projects. OPC opposes the Staff's recommendation. OPC believes that the cost of abandoned projects should not be recovered from ratepayers. In the alternative, if the Commission believes that some sharing of the cost is appropriate, OPC recommends a fifteen-year amortization period. [Composite Exhibit 1, Tab 8.] The Staff in its recommendation stated that "OPC's suggested methodology has been argued in several cases in the recent past and rejected by the Commission." OPC respectfully disagrees with this characterization. OPC's recommended methodology has been proposed in just two recent cases--only one of which has been decided by this Commission; the other case is undecided.

As discussed at the hearings and presented in the Citizen's comments, a fifteen-year amortization period divides the cost of abandonment more equitably between the ratepayers and stockholders. A fifteen-year amortization period will put 50% of the burden on the stockholder and 50% on the ratepayer. OPC believes that this equal sharing is fair and consistent given that the utility is compensated, through its return on equity, for this kind of risk. [Composite Exhibit 1, Tab 8.] OPC continues to support its recommendation that the amortization period be set at fifteen years.

Section (10) concerns land ownership. OPC supports the Staff's recommendation as written. OPC believes that the interests of the customers need to be protected and that ownership or possession of the right to continued use of the property for a period, like ninety-nine years, accomplishes this goal.

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Section (11) deals with the cost of equity for water and wastewater utilities and the use of the leverage graph. OPC does not oppose the Staff's recommendation.

Section (12) concerns the capital structure treatment of nonutility property. OPC agrees in part and disagrees in part with the Staff's recommendation. OPC agrees with the general philosophy of the rule as recommended by the Staff, but disagrees with the language used by the Staff.

OPC agrees that it is the Commission's policy to remove from the equity component of the capital structure 100% of a utility's investment in nonutility operations. Southern States admitted that this is the Commission's policy. [Tr. 310, August 12, 1993.]

In the past the Commission has endorsed this treatment for the following reasons: 1) it recognizes that nonutility investments will almost always increase a utility's cost of capital since there are very few investments that a utility can make that are of equal or lower risk; 2) it prevents cost of capital cross-subsidies; and 3) it sends a clear signal to utilities that ratepayers will not subsidize nonutility related costs. [Orders 23573 and 24013.]

Southern States suggests that the real issue here is the cost of debt, not equity. [Composite Exhibit 1, Tab 12.] OPC disagrees. It is generally accepted in the financial community that the higher the business risk of an entity the greater the common equity ratio needed to offset this higher business risk. In addition, it is generally accepted that the nonregulated operations of a utility are riskier than the regulated operations. This leads to the logical conclusion that were it not for the nonregulated operations of the utility the equity ratio would be lower. Rather than attempt to trace funds, the Commission has traditionally removed 100% of the utility's investment in nonutility operations from the equity component of the rate base. [Tr. 208-309, August 12, 1993.]

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Southern States argued that the Commission's leverage graph is used to determine a utility's cost of equity for its utility business only. [Composite Exhibit 1, Tab 12.] While this is true, the cost of equity is different (although related) to the capital structure and equity ratio. By not removing the nonutility investment from the equity component of the capital structure the overall rate of return allowed by the Commission will typically be higher than if such an adjustment were made. [Tr. 308-09, August 12, 1993.]

Southern States asserted that the only other issue is whether or not the cost of debt is greater than it would be, if the company were not involved in nonutility activities. [Composite Exhibit 1, Tab 12.] This is true, but really is not pertinent to OPC's proposed rule. Accordingly, Southern States' comments in this regard are misplaced, invalid, and should be rejected by the Commission.

The Florida Water Works Association suggested that OPC's proposal, if adopted, be modified to include language that such an adjustment would be made unless the utility provides competent evidence to the contrary. This is essentially the same wording used by the Staff in its recommendation. [Composite Exhibit 1, Tab 9.] OPC would prefer that the rule include language that, absent extraordinary circumstances, the utility's investment in nonutility operations will be removed from the equity component of the capital structure. If the Commission adopts the rule as proposed by Staff, it is highly likely that the stated goal of these rule hearings will not be met--that is, to reduce rate case expense.

Southern States' consultant admitted during the hearings that in its next rate case, he would recommend to his client that it fight this issue. He indicated that he would recommend that Southern States not automatically remove 100% of the nonutility investment from the equity component of the capital structure.

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Clearly, the parties agree that the crux of the rule is established Commission policy. If the Commission truly wishes to endorse the concept of reducing rate case expense, then it should adopt the language proposed by OPC in Appendix A to these comments.

Section (13) deals with interest synchronization. OPC agrees with the rule as proposed by Staff and recommended by OPC. This rule codifies current Commission policy. [Composite Exhibit 1, Tab 8 and Tr. 326-27, August 12, 1993.]

Section (14) concerns tax loss carryforwards. OPC agrees in part and disagrees in part with the Staff's recommendation. OPC agrees with the rule as proposed by Staff because it codifies Commission policy. However, OPC believes that the Commission should expand upon this and include language which would not allow income tax expenses for utilities if the parent company has sufficient tax loss carryforwards to offset any tax liability in the future. [Composite Exhibit 1, Tab 8.] Attachment A to these comments sets forth OPC's recommended rule.

Section (15), which was not addressed by the Staff, concerns chamber of commerce dues. OPC recommended a rule which does not allow utilities to recover in rates chamber of commerce dues. This is a longstanding policy of the Commission that has been litigated on numerous occasions. OPC recommends that the language included in Appendix A to these comments be adopted by the Commission.

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OPC - Appendix A

25-30.433 (1) The Commission in every rate case shall make a determination of the quality of service provided by the utility. This shall be derived from an evaluation of three separate components of water and wastewater utility operations: quality of utility's product (water and wastewater); operational conditions of utility's plant and facilities; and the utility's attempt to address customer satisfaction. Sanitary surveys, outstanding citations, violations and consent orders on file with the Department of Environmental Regulation (DER) and county health departments (HRS) or lack thereof over the preceding 3-year period shall also be considered. DER and HRS officials' testimony concerning quality of service as well as the testimony of the utility's customers shall be considered. In the event that the utility does not meet one or more of the three standards set by the Commission, the Commission will impose an appropriate penalty.

(12) The investment in nonutility operations shall be removed from the equity component of the utility's capital structure, absent extraordinary circumstances.

(15) Chamber of Commerce dues shall not be recovered through rates.

25-30.434

Staff recommends the adoption of this rule as originally proposed with the changes in (3)(f) and (5).

(3)(f) This section as originally proposed is confusing and indirectly allows utilities to reflect plant net of accumulated depreciation only if the accumulated depreciation was previously recovered in through AFPI charges. Staff believes that it is inappropriate to reflect gross plant. Further, if AFPI charges had previously been collected, then the plant would not be subject to AFPI charges again. This would allow a continuation of the collection of carrying charges when the Commission had ordered that those amounts cease in the prior charges. Staff recommended the use of gross instead of net plant in the comments contained in Composite Exhibit 1, Tab 21, at pages 16-17.

(5) This section is merely reorganized to remove excess words. The meaning is not changed.

FWWA & FCWC

25-30.434 (3)(f) Strongly disagree with staff position that qualifying plant be reduced by accumulated depreciation regardless of whether it has ever been recovered through rates. The phrase that Staff recommends to be deleted should remain in the rule. Until a utility recovers its first AFPI charge it has never had the opportunity to recover depreciation on nonused plant. Why should it be required to reduce the assets on which it can earn by depreciation on prudently invested plant that it has never been allowed to recover? (TR 555-562, 5/26/93). Chairman Deason queried as to whether basing depreciation expense in AFPI on gross rather than net qualified plant could be used to recover depreciation expense that a utility was entitled to recover in prior periods but was not covered because rates were purposely set too low (TR 563, 5/26/93). That cannot and should not happen. It would be retroactive ratemaking. AFPI recovers costs associated with qualified plant, i.e., plant which the Commission has determined was not includable in rate base; plant that is attributable to future customers. It does not include plant in service for which depreciation expense was allowable but not recovered. Using gross qualified plant as the basis for AFPI depreciation expense allows full recovery of depreciation expense for plant being held for future customers from those future customers and for which no other opportunity to recover that expense ever existed (TR 564, 5/26/93 and Exhibit No. 9, Supplemental Comments of Debra Swain, 8/5/93).

NOTE: Exhibit No. 8 (Staff) and No. 9 (Swain), both regarding AFPI, were identified and believed to have been admitted. The transcript indicates neither was admitted. We request that both exhibits be admitted as evidence.

[This proposed rule is a reversal of the position expressed in the Notice of Rulemaking. It imposes an economic impact that was not considered in the Commission's Economic Impact Statement. The impact of this rule should be considered.]

- 1 25-30.434 Application for Allowance For Funds Prudently
 2 Invested (AFPI) Charges.
 3 (1) An Allowance For Funds Prudently Invested (AFPI) charge
 4 is a mechanism which allows a utility the opportunity to earn a
 5 fair rate of return on prudently constructed plant held for future
 6 use from the future customers to be served by that plant in the
 7 form of a charge paid by those customers.
 8 (2) Each application for AFPI charges shall comply with the
 9 notice requirements specified in Rule 25-22.0408, F.A.C.
 10 (3) Each application for AFPI charges shall provide the
 11 following information. If any of the following items do not apply
 12 to the applicant, the applicant shall state the reason it does not
 13 apply.
 14 (a) The applicant's name and address.
 15 (b) A statement describing how the noticing requirements have
 16 been complied with, including a copy of the actual notice(s).
 17 (c) The numbers of all Commission order(s) that:
 18 1. previously established customer rates for the applicant
 19 either in a rate case or a reverse make-whole proceeding; and
 20 2. established AFPI charges for the applicant.
 21 (d) The charge shall be calculated for one equivalent
 22 residential connection (ERC) on a monthly basis up to the time the
 23 utility reaches the designed capacity of the plant for which the
 24 charge applies. The charges shall cease when the plant has reached
 25 its designed capacity.

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 struck-through type are deletions from existing law.

SSU

25-30.434(2)(f) SSU disagrees with the proposed rule and supports the comments and Exhibit 9 of the Florida Water Works Association's expert Deborah D. Swain supporting the use of gross plant in determining the cost of qualifying non-used and useful assets under this rule. As Ms. Swain explained, "when calculating AFPI, the qualifying assets on which the utility may earn a return should only be reduced by the accumulation of depreciation recovered from customers, if any. A reduction for unrecovered depreciation would prevent a utility from earning a return on its prudent investment in non-used and useful plant." See Exhibit 9, at 3.

SSU also requests, in accordance with Mr. Cresse's recommendations (Tr. 567-571; 587), that the Commission amend section (6) to permit all unrecovered AFPI charges related to specific plant to be included in rate base following expiration of the accrual period determined pursuant to Section (5). This amendment is consistent with the principles that investment included in AFPI was prudent when made and that all ERCs projected in the calculation of AFPI for specific plant rarely, if ever, reach the level of 100% connection to the system.

OPC

25-30.434 OPC supports the rule as proposed by the Staff.

(e) A statement explaining the basis for the requested charges and conditions.

(f) The dollar amount of the non-used and useful plant and the accumulated depreciation ~~that has been recovered in previous AFPI charges~~, and the methodology used to determine these amounts.

The net of these two amounts shall be considered the cost of qualifying assets. Separate balances for plant and for accumulated depreciation shall be reported for the water treatment plant, wastewater treatment plant, water transmission and distribution system and wastewater collection system.

(g) The plant capacity related to each of the systems in (f) above and the methodology used to determine the amount.

(h) The number of future customers in number of ERCs related to the non-used and useful plant by system.

(i) The amount of depreciation expense and composite depreciation rate related to the non-used and useful plant by system.

(j) The overall rate of return requested for the AFPI charge and the workpapers supporting the calculation.

(k) The last authorized rate of return on equity and references to the docket number of the last rate case and the resulting order.

(l) The state and federal income tax rates requested for calculating the AFPI charge.

(m) All other costs such as non-used and useful property

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1 taxes and operation and maintenance expenses removed in the last
2 rate case.

3 (n) The test year to be used in the calculation, the month
4 that the utility expects the charge to go into effect and the
5 number of years the utility expects to collect the charge. Provide
6 a detailed explanation of why the number of years to collect the
7 charge represents a reasonable and prudent management decision in
8 the construction of plant.

9 (o) The workpapers and calculations used to develop the
10 proposed AFPI charge. The utility may obtain a diskette that
11 outlines the calculation and schedules to be used by calling or
12 writing the Bureau of Economic Regulation, Division of Water and
13 Wastewater, 904/488-8482. The required schedules that shall be
14 submitted are "AFPI Filing Schedules", Commission Form PSC/WAW 26
15 (/), incorporated by reference into this rule, and are as
16 follows:

17 Schedule 1 - List of Information Imputed Into Calculation
18 Schedule 2 - Calculation Of Carrying Costs Per ERC
19 Schedule 3 - Calculation Of Carrying Costs Per ERC Per Year
20 Schedule 4 - Calculation Of Carrying Costs Per ERC Per Month
21 The form may be obtained from the Commission's Division of Water
22 and Wastewater, 101 East Gaines Street, Tallahassee, Florida 32399-
23 0850.

24 (p) The revised or original tariff sheets necessary to
25 incorporate the AFPI charge into the tariff.

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1 (4) The beginning date for accruing the AFPI charge shall
2 agree with the month following the end of the test year that was
3 used to establish the amount of non-used and useful plant. If any
4 connections have been made between the beginning date and the
5 effective date of the charge, no AFPI will be collected from those
6 connections.

7 (5) ~~Unless proven otherwise~~ Unless there is competent
8 substantial evidence presented by the utility demonstrating that
9 the 5-year period is inappropriate, it is prudent for a utility to
10 have an investment in future use plant for a period of no longer
11 than 5 years beyond the test year.

12 (6) For utilities that have non-used and useful plant to be
13 held for periods longer than what is determined to be prudent, the
14 AFPI charge will cease accruing charges and will remain constant
15 after the accrual period, established by the Commission, has
16 expired. The utility can continue to collect the constant charge
17 until all ERCs projected in the calculation have been added.

18 Specific Authority: 367.121, F.S.

19 Law Implemented: 367.121, F.S.

20 History: New.

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STAFF'S COMMENTS

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1 25-30.435 Application for a Rate Increase by an Applicant
2 that Owns Multiple Systems.
3 The text of this rule is not presented here because the
4 Commission decided at the May hearing to remove it from
5 consideration.
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5-30.435

Staff recommends that the Commission
ote to withdraw the rule.

FWWA & FCWC

25-30.435 Agree with withdrawal of rule.

[This rule proposal is the subject of a
pending rule challenge by FCWC before the
Division of Administrative Hearings (DOAH),
Department of Management Services]

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~~struck-through~~ type are deletions from existing law.

STAFF'S COMMENTS

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FWWA & FCWC

25-30.436 General Information and Instructions Required of Class A and B Water and Wastewater Sewer Utilities in an Application for Rate Increase.

(1) Each applicant for a rate increase shall provide the following general information to the Commission:

(a) The name of the applicant as it appears on the applicant's certificate and the address of the applicant's principal place of business;

(b) The type of business organization under which the applicant's operations are conducted; if the applicant is a corporation, the date of incorporation; the names and addresses of all persons who own 5 percent or more of the applicant's stock or the names and addresses of the owners of the business.

(c) The number of the Commission order, if any, which previously considered the applicant's rates for the system(s) involved.

(d) The address within the service area where the application is available for customer's inspection during the time the rate application is pending.

(e) Where the utility requests rates which generate less than a fair rate of return, it must provide a statement of assurance that its quality of service will not suffer.

(f) An affidavit signed by an officer of the utility that states that the utility will comply with Rule 25-22.0407 25-22-0406, F.A.C.

25-30.436

(2) This section was reworded at the suggestion of Commissioner Clark at the May hearing.

(4)(d) This change is recommended to allow a deviation from the 16-copy filing requirement for the allocated costs required in section (4)(h).

(4)(g) The reference to Rule 25-30.432 is deleted because adoption of that rule has been deferred.

(4)(h) This change incorporates OPC's proposed changes from its comments in Composite Exhibit 1, Tab 8. Staff believes that this information will provide the Commission with sufficient information at the beginning of a proceeding in order to analyze related party transactions and charges. For those utilities that have such charges, this information would be provided through discovery regardless. Staff has recommended that only three copies of this information be provided with the MFRs instead of the 16 copies required otherwise. Staff does not agree with OPC's recommendation to require the workpapers and source documents to be filed as this could be very voluminous and expensive to copy. This information may easily be provided during discovery or audit if a problem appears to exist after the initial review is made. With respect to the organizational chart, staff believes that it is appropriate to receive the total organizational chart, not just those entities that have allocated costs or charges. A situation could occur where the charge only is allocated to a few entities, especially the regulated ones, and should be allocated to more entities. Without the complete chart, staff may not be aware that any further allocations might be appropriate.

25-30.436 (4)(h)2. The materiality threshold for itemization of allocated expenses as expressed in the Staff proposed rules is unclear. As written, it could be interpreted as those expenses allocated or charged that are "in excess of one-tenth of one percent" of the individual expense account, or of overall expenses, or of gross revenues. Ms. Merchant's testimony described it in terms of a percentage of revenues and not expenses. (TR 213, 8/12/93)

Even if the rule is clarified to provide a materiality threshold of one-tenth of one percent of gross operating revenues, it is much too low, for purposes of itemization in the MFRs. It would be unduly burdensome and cause significant increases in rate case expense for many companies.

More realistic materiality thresholds are already in place in the MFRs. Itemization of contractual services expenses less than 2% of test year revenues is not required. (Schedule B-9) Similarly, itemization of major maintenance projects expense of 2% (or less) of projected test year revenues is not required. (Schedule B-11)

The materiality threshold for allocated expenses should be comparable to these levels, for purposes of the MFRs.

[This proposed rule was not included in the Notice of Rulemaking. It imposes an economic impact that was not considered in the Commission's Economic Impact Statement. The impact of this rule should be considered. Any survey of utilities regarding impact should include utilities with significant levels of allocated expenses.]

(4)(h)4. Revise to read: An organizational chart showing the utility, its parent and the relationship of the utility with any affiliates from which it has costs allocated or charged. This revised language responds to the concern expressed by Mr. Todd of the FWWA regarding the problem of showing numerous affiliates that have nothing to do with the utility business (TR 211, 8/12/93).

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1 (g) A statement as to whether the applicant requests to have
2 the case processed using the proposed agency action procedure
3 outlined in section 367.081(8), F.S. ~~1989~~

4 (2) The applicant's petition for rate relief will not be
5 deemed filed until the appropriate filing fee has been paid and all
6 minimum filing requirements have been met, including ~~filing of the~~
7 ~~applicant's~~ prepared direct testimony where appropriate unless the
8 applicant has filed its petition pursuant to section 367.081(8).
9 F.S. At a minimum, the direct testimony shall explain why the rate
10 increase is necessary and address those areas anticipated at the
11 time of filing to be at issue.

12 (3) The applicant shall state any known deviation from the
13 policies, procedures and guidelines prescribed by the Commission in
14 relevant rules or in the company's last rate case.

15 (4) In the rate case application:

16 (a) Each schedule shall be cross-referenced to identify
17 related schedules as either supporting schedules and/or recap
18 schedules.

19 (b) Each page of the filing shall be consecutively numbered
20 on 8 1/2 x 11-inch paper.

21 (c) Except for handwritten official company records, all data
22 in the petition, exhibits and minimum filing requirements shall be
23 typed.

24 (d) Sixteen copies shall ~~be required to~~ be filed with the
25 Commission's ~~directly with the~~ Division of Records and Reporting,

The proposed rule requiring an organizational chart for affiliated companies is not feasible for a utility with a multinational parent. Case in point - Palm Coast Utility Corporation, a wholly owned subsidiary of ITT Corporation, which has several wholly owned subsidiaries with hundreds of affiliates. For Palm Coast Utility the cost of providing a complete organizational chart may not be possible and in any event would be extremely costly and time consuming.

[This proposed rule was not included in the Notice of Rulemaking. It imposes an economic impact that was not considered in the Commission's Economic Impact Statement. The impact of this rule should be considered. Any survey of utilities regarding impact should be directed to utilities with multi-national parents, e.g. Palm Coast Utility Corporation and Sunray Utilities, Inc.]

(4)(i) 99 year lease too restrictive as sole example. Include: Commission will consider a written easement or other cost effective alternatives.

SSU

25-30.436(4)(h) SSU agrees with the rule as proposed. As proposed now by Staff, the draft rule balances the production of relevant materials with the expense of providing multiple copies as well as work papers and other backup documentation that can be obtained through discovery. The MFRs are minimum filing requirements -- any further expansion of the rule is not cost effective and provides a level of information that is inappropriate and unnecessary for the purpose of the MFRs.

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STAFF'S COMMENTS

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OPC

25-30.436 OPC supports in part and opposes in part the Staff's recommendations concerning this rule. Specifically, OPC supports the Staff's proposed changes to section (4)(h), which were recommended by OPC. [Composite Exhibit 1, Tab 8 and Tr. 208-210, August 12, 1993.] As OPC noted at the hearings, affiliated transactions are typically a critical issue in a rate proceeding. To require the utility to provide this information in the MFRs, rather than through discovery, would improve the process, reduce rate case expense, and allow Staff, the Citizens, and other intervenors access to this information in a timely and efficient manner. [Ibid.]

Nevertheless, OPC believes that two important parts of its original proposal have not been included by the Staff in its recommendation and should be included. Specifically, sections (4)(h)4 and (4)(h)5, originally proposed by OPC. [Composite Exhibit 1, Tab 8.] The sections required the utility to provide:

4. The workpapers used to develop the allocation method, including but not limited to the numerator and denominator of each allocation factor.

5. The workpapers and source documents used to develop, where applicable, the basis for the direct charging method.

The utilities' main objections to providing this information as a part of the MFR's was that it could be voluminous. OPC agrees that it might be voluminous, but this problem can easily be overcome by including language in the rule requiring only three copies of the workpapers and source documents be provided with the MFRs. Given this easy resolution, OPC urges the Commission to make this information part of the MFRs.

1 except as specifically identified in (4)(h) below or in Rule
2 25-30.437, 25-30.439 or 25-30.440, F.A.C.

3 (e) Whenever the applicant proposes any corrections, updates
4 or other changes to the originally filed data, 20 twenty-(20)
5 copies shall be filed with the Division of Records and Reporting
6 with copies also served on all parties of record at the same time.

7 (f) If the capital structure contains zero or negative
8 equity, a return on equity shall be requested, which shall be the
9 maximum of the return of the current equity leverage formula
10 established by order of this Commission pursuant to section
11 167.081(4), F.S.

12 (g) The provisions of Rules ~~25-30.432 and~~ 25-30.433 shall be
13 followed in preparing the utility's application.

14 (h) Any system that has costs allocated or charged to it from
15 a parent, affiliate or related party, any source in addition to
16 those costs reported on Schedule B-12 of Commission Form PSC/WAS 17
17 (as described in Rule 25-30.437) shall file three copies of
18 additional schedules that show the following information:

19 1. The total costs being allocated or charged prior to any
20 allocation or charging as well as the source of the allocation name
21 of the entity from which the costs are being allocated or charged
22 and its relationship to the utility.

23 2. A detailed description and itemization of the costs in
24 excess of one-tenth of one percent being allocated or charged and
25 the amount of each itemized cost which is allocated or charged to

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1 the utility.

2 2. The allocation of direct charging method used and the
3 bases for using that method.

4 3. In organizational chart of the relationship between the
5 utility and its parent and its related companies and the
6 relationship of any related parties.

7 4. A copy of any contract or agreements between the utility
8 and its parent or affiliated companies for services rendered
9 between or among them.

10 (i) For any land recorded on the utility's books since rate
11 base was last established, the utility shall file copies of the
12 documents that demonstrate that the utility owns the land upon
13 which the utility treatment facilities are located, or that
14 provides for the continued use of the land, such as a 99-year
15 lease.

16 (5) Commission Designee. The Director of the Division of
17 Water and Wastewater Sewer shall be the designee of the Commission
18 for purposes of determining whether the applicant has met the
19 minimum filing requirements imposed by this rule.

20 (6) Waiver of MFR Requirements. The Commission may grant a
21 waiver with respect to specific data required by this rule upon a
22 showing that the production of the data would be impractical or
23 impose an excessive economic burden upon the applicant. All
24 requests for waiver of specific portions of the minimum filing
25 requirements shall be made as early as practicable.

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OPC has noted on many occasions, that a utility's dealings with its affiliated companies, many of which may be nonregulated, are a critical issue to the Citizens. In cases where such affiliations exist, it is almost always a litigated issue. Rather than placing numerous obstacles in the Citizens path, OPC believes this critical information should be part of the MFRs. OPC notes that in many instances utilities are sensitive and less than candid about providing information concerning affiliates to the Staff or OPC. For this reason, the Commission should require that the workpapers be provided as part of the MFRs. The eight month time frame of the file and suspend law would not begin until a utility complies with the requirement. The Citizens believe that this is a simple requirement of fair play which aide the Citizens in fairly evaluating the appropriateness of affiliate relationships.

Staff notes in its comments that it "does not agree with OPC's recommendation to require the workpapers and source documents to be filed as this could be very voluminous and expensive to copy. This information may easily be provided during discovery or audit if a problem appears to exist after the initial review is made." Yet Staff argues, and OPC agrees, that a complete organization chart is needed, as: "A situation could occur where the charge is allocated to only a few entities, especially the regulated ones, and should be allocated to more entities. Without the complete chart, staff may not be aware that any further allocations might be appropriate." OPC believes, that without the workpapers, Staff will still not know if such an allocation was or should be made. The information requested in parts 1, 2, 3, 4, and 5 will not provide the tools necessary to determine to whom any costs are allocated

¹ The Commission was made aware of this "sensitivity" in the Southern Bell case Docket No. 920260-TL on affiliated transactions issues dealing with the NARUC audit. These same types of problems occur in the water and wastewater industry.

² Parts 4 and 5 in the Staff recommendation were previously parts 6 and 7 of OPC's recommendation and should not be confused with parts 4 and 5 addressed above.

STAFF'S COMMENTS

PARTIES' COMMENTS

1 (7) Within 60 days after the issuance of a final order
2 entered in response to an application for increased rates, or, if
3 applicable, within 60 days after the issuance of an order entered
4 in response to a motion for reconsideration of the final order,
5 each utility shall submit a breakdown of actual rate case expense
6 incurred, in total, in a manner consistent with Schedule No. B-10
7 (PSC/WAS Form 17, as described in Section 25-30.427). If the
8 deadline prescribed above cannot be met, an extension may be
9 granted by the Director of the Division of Water and Wastewater for
10 good cause shown.

11 Specific Authority: 367.121, F.S.

12 Law Implemented: 367.081, F.S.

13 History: New 11/9/86, Amended 6/25/90, ____.

other than to the utility itself. Thus, if the Staff wishes to determine whether allocations are appropriate, Staff must, at a minimum, obtain the workpapers which support the allocation factors.

For these reasons OPC renews its request to include in the final rules sections (4)(h)4 and (4)(h)5, as originally proposed.

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STAFF'S COMMENTS

PARTIES' COMMENTS

SSU

25-30.437(6) SSU agrees with the rule as proposed. Recognition that systems already combined in a uniform rate shall be considered as a single system when submitting the MFR schedules outlined in the rule is consistent with Commission policy and practice and permits such systems to achieve the economies and cost savings which flow from uniform rates. Such filing requirements also reflect the reality that utilities with uniform rates operate with one combined rate base, capital structure, etc. At the same time, no harm is sustained by Public Counsel or other interested parties since back-up data supporting used and useful percentages for each system must also be submitted in the initial filing and further information is available through discovery.

OPC

25-30.437 OPC opposes the Staff's recommendation concerning section (6) which deals with the MFR requirements for utilities with uniform rates. The second sentence of this proposed rule reads: "Those systems already combined in a uniform rate shall be considered as a single system when submitting the required information." OPC as well as Southern States interpreted this to mean that in the next Southern States rate case, Southern States will file as a single system with one rate base and one income statement.

This sentence drew considerable debate between OPC, the Staff, Southern States, and the Commissioners at the August 12, 1993 hearings. [Tr. 227-244.] OPC raised the question of whether or not this provision would mean that in the next Southern States case, Southern States would file as one system, as opposed to 127 different systems. At first, the Staff indicated that Southern States would have to file as 127 different systems in its next rate case. [Tr. 227.] Later Staff reversed itself and agreed with OPC that this sentence meant that Southern States would not file as individual systems in its next rate case, but as one system. [Tr. 234-236.] What ensued was a debate about

25-30.437

Staff recommends the Commission adopt all sections of this rule as originally proposed.

25-30.437 Financial, Rate and Engineering Information Required of Class A and B Water and Wastewater Sewer Utilities in an Application for Rate Increase.

Each applicant for a rate increase shall provide the information required by Commission Form PSC/WAS 17 (6/90), entitled "Financial, Rate and Engineering Minimum Filing Requirements - Class A and B Utilities" which is incorporated into this rule by reference. The form may be obtained from the Director, Division of Water and Wastewater Sewer, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-~~0850~~0873. In compiling the required schedules, additional instructions are set forth below:

(1) Each section of this form shall be indexed and tabbed, including a table of contents listing the page numbers of each schedule.

(2) If information requested in the form described above is not applicable to the applicant, so state and provide an explanation of the specific schedule.

(3) If a projected test year is used, provide a complete set of the Commission Form PSC/WAS 17 (6/90), entitled "Financial, Rate and Engineering Minimum Filing Requirements - Class A and B Utilities" (as described above) which require a designation of historical or projected information. Such schedules shall be submitted for the historical base year, and any year subsequent to the base year and prior to the projected test year, in addition to

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STAFF'S COMMENTS

PARTIES' COMMENTS

the projected test year. If no designation is shown on a schedule, submit that schedule for the test year only. In lieu of providing separate pages for the above required schedules, the information required can be combined on the same page by adding additional columns. In the rate base schedules, Section A, the beginning and end of year balances shall be shown. For any intermediate period or year, only the year-end balance shall be shown. If a historical test year is used, Schedule E-13 will not be required. A schedule shall also be included which describes in detail all methods and bases of projection, explaining the justification for each method or basis employed. If an historical test year is used, Schedule E-13 is not required.

(4) Only two copies of Schedule E-14, entitled Billing Analysis Schedules, shall be filed with the application. Each copy shall be submitted in a separate binder from the other required information.

(5) If a petition for interim rates is filed, a utility shall demonstrate that it is earning outside the range of reasonableness on rate of return calculated in accordance with section Chapter 367.082(5), Florida Statutes. In doing such, the utility shall submit schedules of rate base, cost of capital and net operating income on an historical basis, with schedules of all adjustments thereto, consistent with Commission Form PSC/WAS 17 (6/90), (described above).

(6) If a utility is requesting uniform rates for any systems

whether or not this provision should be included in the rules. At different points in time both Commissioners Clark and Laurodo and the Staff agreed with OPC that the rule should be deleted or reworded, such that Southern States would have to file individual systems in its next rate case regardless of whether or not it was granted uniform rates. [Tr. 229-232, 238 and 242, August 12, 1993.]

Commissioner Laurodo summed up the issue at one point in the hearings:

COMMISSIONER LAUREDO: Well, let me explain to you, I think you hit it right on the head. I think we should debate it. I think if it is an issue of controversy within the public policy and it has never come up before the full Commission -- and we will have one or two new Commissioners -- I am from what I call the incremental school of negotiation: Let's get out of the way that which we can agree on; and that which we can't agree on, let's take out.

I think this inclusion creates more problems than it solves. It's a situation where a lot of us still don't understand your point of view versus his point of view, we haven't had the ability or the opportunity to debate it, and I think it's prudent to leave it out. [Tr. 242, August 12, 1993.]

OPC agrees with Commissioner Laurodo that section (6) should be deleted from the rules.

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1 that are not already combined in a uniform rate, the information
2 required by this rule shall be submitted on a separate basis for
3 each system that has not already been combined in a uniform rate.
4 Those systems already combined in a uniform rate shall be
5 considered as a single system when submitting the required
6 information. The following schedules of Form PSC/WAS 17 (6/90),
7 described above, at a minimum, shall be filed on a combined basis
8 for all systems included in the filing: A-1, A-2, A-3, A-17, B-1,
9 B-2, B-3, B-5, B-6, B-13, B-14, B-15, plus all "C", "D" and "E"
10 Schedules (no "F" Schedules are required).

11 (7) In proposing rates, the utility shall use the base
12 facility and usage charge rate structure, unless an alternative
13 rate structure is adequately supported by the applicant. The base
14 facility charge incorporates fixed expenses of the utility and is
15 a flat monthly charge. This charge is applicable as long as a
16 person is a customer of the utility, regardless of whether there is
17 any usage. The usage charge incorporates variable utility expenses
18 and is billed on a per 1,000 gallon or 100 cubic feet basis in
19 addition to the base facility charge. The rates are first
20 established with the 5/8 " x 3/4" meter as the foundation. For
21 meter sizes larger than 5/8", the base facility charge shall be
22 based on the usage characteristics.

23 Specific Authority: 367.121, F.S.

24 Law Implemented: 367.081, F.S.

25 History: New 6/10/75, Amended 10/16/77, 3/26/81, Transferred from

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STAFF'S COMMENTS

PARTIES' COMMENTS

1 25-10.176 and Amended 11/9/86, Amended 6/25/90, ____.

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STAFF'S COMMENTS

PARTIES' COMMENTS

1 25-30.4385 Additional Rate Information Required in

2 Application for Rate Increase.

3 The utility shall file an original and three copies of all
4 revised tariff sheets for each service classification in which any
5 change is proposed, except those tariff sheets in which the only
6 change is to the service rates.

7 Specific Authority: 367.121, F.S.

8 Law Implemented: 367.081, F.S.

9 History: New.

25-30.4385

All participants agreed at the hearing
that the rule as proposed is not
controversial and should be adopted. The
Commission directed staff to present it for
adoption as proposed.

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STAFF'S COMMENTS

PARTIES' COMMENTS

1 ~~25-30.441-Engineering Information Required in Application for~~
2 ~~Rate Increase by Utilities Seeking to Recover the Cost of~~
3 ~~Investment for Plant Construction Required by Governmental~~
4 ~~Authority.~~

5 REPEALED

25-30.441

No comments were submitted on this rule
and staff recommends the Commission repeal it
as originally proposed and adopt Rule 25-
30.4415 to replace it.

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STAFF'S COMMENTS

PARTIES' COMMENTS

25-30.4415 Additional Information Required in Application for

25-30.4415

No comments were submitted on this rule
and staff recommends the Commission adopt it
as originally proposed.

Rate Increase by Utilities Seeking to Recover the Cost of
Investment in the Public Interest.

If an applicant proposes to include in its plant investment
the cost of investment made in the public interest pursuant to
section 367.081(2), F.S., which investment was or will be required
by agency rule, regulation, order or other regulatory directive,
the applicant shall provide the following information to the
Commission:

(1) A copy of the rule, regulation, order, or other
regulatory directive that has required or will require the
applicant to make the improvement or the investment for which the
applicant seeks recovery.

(2) An estimate by a professional engineer, or other person
knowledgeable in design and construction of water and wastewater
plant, to establish the cost of the applicant's investment and the
period of time required for completion of construction.

(3) An analysis showing the portion of the proposed rate
increase that relates to the financial support for the investment
or improvement.

Specific Authority: 367.121, F.S.

Law Implemented: 367.081, F.S.

History: New ____.

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STAFF'S COMMENTS

PARTIES' COMMENTS

25-30.443

No comments were submitted on this rule and staff recommends the Commission adopt it as originally proposed with staff's change to (2)(c) (Composite Exhibit 1, Tab 18, pages 21 - 22). This change makes the Class C MFR instructions consistent with those for the Class A&B MFRs.

25-30.443 Minimum Filing Requirements for Class C Water and Wastewater Sewer Utilities.

(1) A Class C Utility seeking a rate increase shall submit an application which contains the information required by Rules 25-30.436; 25-30.440; 25-30.4385; 25-30.4415 ~~25-30.441~~; and 25-30.442.

(2) Each Class C Utility seeking a rate increase shall also provide the information required by Commission Form PSC/WAS 18 (6/90), entitled "Financial, Rate and Engineering Minimum Filing Requirements - Class C Utilities" which is incorporated into this rule by reference. The form may be obtained from the Director, Division of Water and Wastewater Sewer, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-08500073. In compiling the required schedules, additional instructions are set forth below:

(a) Each section of this form shall be indexed and tabbed, including a table of contents listing the page numbers of each schedule.

(b) If information requested in the form described above is not applicable to the applicant, so state and provide an explanation on the specific schedule.

(c) If a projected test year is used, provide a complete set of the Commission Form PSC/WAS 18 (6/90), entitled "Financial, Rate and Engineering Minimum Filing Requirements - Class C Utilities" (as described above) which require a designation of historical or

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1 projected information. Such schedules shall be submitted for the
 2 historical base year, and any projected year subsequent to the base
 3 year and prior to the projected test year, in addition to the
 4 projected year. If no designation is shown on a schedule, submit
 5 that schedule for the test year only. ~~In lieu of providing~~
 6 ~~separate pages for the above required schedules, the information~~
 7 ~~required can be combined on the same page by adding columns. In~~
 8 ~~the rate case schedules, Section A, the beginning and end of year~~
 9 ~~balances shall be shown. For any intermediate period or year, only~~
 10 ~~the year-end balance shall be shown.~~ If a historical test year is
 11 used, Schedule E-5 will not be required. A schedule shall should
 12 also be included which describes in detail all methods and bases of
 13 projection, explaining the justification for each method or basis
 14 employed.

15 (d) Only two 2 copies of Schedule E-6, entitled Billing
 16 Analysis Schedules shall be filed with the application. Each copy
 17 shall be submitted in a separate binder from the other required
 18 information.

19 (e) In designing rates, the base facility and usage charge
 20 rate structure shall be utilized for metered service.

21 (3) Within 60 days after the issuance of a final order
 22 entered in response to an application for increased rates, or, if
 23 applicable, within 60 days after the issuance of an order entered
 24 in response to a motion for reconsideration of such final order,
 25 each utility shall submit a breakdown of actual rate case expense

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1 incurred, in total, in a manner consistent with Schedule No. B-10
2 (PSC/WAS Form 17, as described in Section 25-30.437). If this
3 deadline cannot be met, an extension may be granted by the Director
4 of the Division of Water and Wastewater for good cause shown.

5 (4) If a petition for interim rates is filed, a utility shall
6 demonstrate that it is earning outside the range of reasonableness
7 on rate of return calculated in accordance with section 367.082(5).
8 F.S. To demonstrate this, the utility shall submit schedules of
9 rate base, cost of capital and net operating income on an
10 historical basis, with schedules of all adjustments thereto,
11 consistent with Commission Form PSC/WAS 18 (6/90), described above.

12 (5) If a utility is requesting uniform rates for systems that
13 are not already combined in a uniform rate, the information
14 required by this rule must be submitted on a separate basis for
15 each system that has not already been combined in a uniform rate.
16 For those systems already combined in a uniform rate, the utility
17 should submit the required information as a single system. At a
18 minimum, the following schedules of Form PSC/WAS 18 (6/90),
19 described above, shall be filed on a combined basis for all systems
20 included in the filing: A-1, A-2, A-3, A-16, B-1, B-2, B-3, B-4,
21 B-5, B-10, B-11, B-12, plus all "C", "D" and "E" schedules (no "F"
22 schedules are required).

23 Specific Authority: 367.121, F.S.

24 Law Implemented: 367.081, F.S.

25 History: New 6/25/90, Amended ____.

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~~struck-through~~ type are deletions from existing law.

STAFF'S COMMENTS

PARTIES' COMMENTS

25-30.455 Staff Assistance in Rate Cases.

(1) Water and wastewater utilities whose with total gross annual operating revenues are of \$150,000 or less for water each service or \$150,000 or less for wastewater service, provided or \$300,000 or less where the services are combined on a combined basis, may petition the Commission for staff assistance in rate filing applications by submitting a completed staff assisted rate case application. In accordance with section 167.0814(4), F.S., a utility that requests staff assistance waives its right to protest by agreeing to accept the final rates and charges approved by the Commission unless the final rates and charges would produce less revenue than the existing rates and charges. If a utility that chooses to utilize the staff assistance option employs outside experts to assist in developing information for staff or to assist in evaluating staff's schedules and conclusions, the reasonable and prudent expense will be recoverable through the rates developed by staff. A utility that chooses not to exercise the option of staff assistance may file for a rate increase under the provisions of Rule 25-30.443, F.A.C.

(2) Upon request, the Division of Water and Wastewater Sewer shall provide the potential applicant with the appropriate application form, Commission Form (PSC/WAS 2 (Rev. 11/86), "Application for Staff Assisted Rate Case", which is incorporated by reference in this rule, and a copy of Rule 25-30.455, F.A.C., governing staff assisted rate cases. The form may be obtained from

25-30.455

At the August hearing, the Commission directed staff to present the rule for adoption as proposed with changes to (6), (10) and (13).

FWWA & FCWC

25-30.455 (6) Add to the end of the sentence, for accepted applicants. This is a minor clarification. As proposed, the wording intimates that staff assistance would be forthcoming regardless of whether the application was accepted or denied.

OPC

25-30.455 The Citizens disagree with the rule as proposed inasmuch as it appears to eliminate a small utility system owned by a large, multi-utility system company that is not on uniform rates. Section (1) should provide that "water and wastewater utility systems whose ~~total~~ gross annual operating revenues are \$150,000 or less for water" may request Staff assistance pursuant to this rule.

The ratepayers, who currently must pay all rate case expense, should enjoy some of the benefits of this option. They should not be excluded simply because the small utility system that services them happens to be owned by a Utilities, Inc., or a Florida Cities Water Company.

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1 the Commission's Division of Water and Wastewater Sewer, 101 East
2 Gaines Street, Tallahassee, Florida 32399-08500453.

3 (3) Upon completion of the form, the petitioner may return it
4 to the Director of Records and Reporting, Florida Public Service
5 Commission, 101 East Gaines Street, Tallahassee, Florida
6 32399-08700453.

7 (4) Upon receipt of a completed application, the Director of
8 Records and Reporting shall acknowledge its each receipt, assign a
9 docket number for identification, and shall forward the application
10 to a committee comprised of one member each of the Commission's
11 Divisions of Water and Wastewater Sewer, Auditing and Financial
12 Analysis, and Legal Services.

13 (5) Within 30 days of receipt of the completed application,
14 the committee shall evaluate the application and determine the
15 petitioner's eligibility for staff assistance.

16 (a) If the Commission has received four or more applications
17 in the previous 30 ~~thirty~~ ~~(30)~~ days; or, if the Commission has 20
18 ~~twenty~~ ~~(20)~~ or more docketed ~~staff~~ ~~assisted~~ ~~rate~~ ~~cases~~ in
19 active status on the date the application is received, the
20 Commission shall deny initial evaluation of an application for
21 staff assistance and close the docket. When an application is
22 denied under the provisions of this subsection, the applicant shall
23 be notified of the date on which the application may be
24 resubmitted.

25 (b) Initially, determinations of eligibility may be

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STAFF'S COMMENTS

PARTIES' COMMENTS

1 conditional, pending an actual examination of the condition of
2 petitioner's books and records. After an initial determination of
3 eligibility, the Division of Auditing and Financial Analysis
4 committee shall examine the books and records of the utility before
5 making a final determination of eligibility.

6 (c) All recommendations of ineligibility shall be in
7 writing and shall state the ~~indicate~~ deficiencies in the
8 application with reference to guidelines set out in subsection (8)
9 of this rule or with reference to subsection (11) of this rule.

10 (6) Upon reaching a decision to officially accept ~~or deny~~ the
11 application, the ~~Director of the~~ Division of Water and Wastewater
12 Sewer shall notify the petitioner by letter and initiate staff
13 assistance. ~~Upon reaching a decision to deny the petition, the~~
14 ~~Division of Water and Wastewater Sewer shall notify the Chairman of~~
15 ~~the Commission. The Chairman shall make the determination with~~
16 ~~regard to the petition and shall notify the petitioner if the~~
17 ~~application has been denied.~~

18 (7) The official date of filing will be 30 days after the
19 date of the letter notifying the applicant of the official
20 acceptance of the application by the Commission.

21 (8) In arriving at a recommendation whether to grant or deny
22 the petition, the following shall be considered:

23 (a) Whether the petitioner qualifies for staff assistance
24 pursuant to subsection (1) of this rule;

25 (b) Whether the petitioner's books and records are organized

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1 consistent with Rule 25-30.110, F.A.C., so as to allow commission
2 personnel to verify costs and other relevant factors within the
3 30-day time frame set out in this rule;

4 (c) Whether the petitioner has filed annual reports;

5 (d) Whether the petitioner has paid applicable regulatory
6 assessment fees;

7 (e) Whether the petitioner has at least 1 one year's actual
8 experience in utility operation;

9 (f) Whether the petitioner has filed additional relevant
10 information in support of eligibility, together with reasons why
11 the information should be considered;

12 (g) Whether the petitioner has complied in a timely manner
13 with all Commission decisions and requests affecting water and
14 wastewater utilities for 2-two years prior to the filing of the
15 application under review;

16 (h) Whether the utility has applied for a staff assisted rate
17 case within the 2-two year period prior to the receipt of the
18 application under review.

19 (9) The Commission will deny the application if a utility
20 does not remit the fee, as provided by section 367.145, Florida
21 Statutes, and Rule 30.020(2)(f), F.A.C., within 30 days after
22 official acceptance.

23 (10) An aggrieved petitioner may request reconsideration which
24 shall be decided by the ~~Full Commission~~ Chairman.

25 (11) A petitioner may request a waiver of any of the

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STAFF'S COMMENTS

PARTIES' COMMENTS

1 guidelines set out in subsection (8) of this rule.

2 (12) A substantially affected person may file a petition to
3 protest the Commission's proposed agency action in a staff assisted
4 rate case within 21 days of issuance of the Notice of Proposed
5 Agency Action as set forth in Rule 25-22.036, F.A.C.

6 (13) In the event of a protest of the Commission's Notice of
7 Proposed Agency Action (PAA Order) in a staff assisted rate case,
8 the utility ~~has the burden of proof in the case. The utility~~
9 shall:

10 (a) Provide prefiled direct testimony in accordance with the
11 procedural order in the case. At a minimum, that testimony shall
12 adopt the Commission's PAA Order in the case;

13 (b) Sponsor a witness to support source documentation
14 provided to the Commission staff in its preparation of the staff
15 audit, the staff engineering and accounting report and the staff
16 PAA recommendation in the case;

17 (c) Include in its testimony the necessary factual
18 information to support its position on any issue that it chooses to
19 take a position different than that contained in the Commission's
20 PAA Order;

21 (d) Meet all other requirements of the order establishing
22 procedures.

23 (14) Failure to comply with the dates established in the
24 procedural order, or to file timely a request for extension of time
25 for good cause shown, may result in dismissal of the staff assisted

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1 rate case and closure of the docket.

2 (15) In the event of a protest of the Commission's PAA Order
3 in a staff assisted rate case the Commission staff shall:

4 (a) File prefiled direct testimony to explain its analysis in
5 the PAA recommendation. In the event the staff wishes to alter its
6 PAA position on any issue, it shall provide factual testimony to
7 support its changed position.

8 (b) Meet all other requirements of the order establishing
9 procedures:

10 (c) Provide to the utility materials to assist the utility in
11 the preparation of its testimony and exhibits. This material shall
12 consist of an example of testimony filed by a utility in another
13 case, an example of testimony that would support the PAA Order in
14 this case, an example of an exhibit filed in another case, and
15 examples of prehearing statements and briefs filed in other cases.

16 Specific Authority: 367.121, 120.54, F.S.

17 Law Implemented 367.0814, 120.53, F.S.

18 History: New 12/8/80, Transferred from 25-10.180 and Amended
19 11/9/86, 8/26/91, ____.

STAFF'S COMMENTS

PARTIES' COMMENTS

25-30.456 Staff Assistance in Alternative Rate Setting.

(1) As an alternative to a staff assisted rate case as described in Rule 25-30.455, F.A.C., water and wastewater utilities whose total gross annual operating revenues are \$150,000 or less for water service or \$150,000 or less for wastewater service, or \$300,000 or less on a combined basis, may petition the Commission for staff assistance in alternative rate setting by submitting a completed staff assisted application for alternative rate setting.

(2) Upon request, the Division of Water and Wastewater shall provide the potential applicant with the application form, PSC/WAS 25 (/), titled "Application for Staff Assistance for Alternative Rate Setting" which is incorporated by reference in this rule, and a copy of the rules governing Staff Assistance in Alternative Rate Setting. The form may be obtained from the Commission's Division of Water and Wastewater, 101 East Gaines Street, Tallahassee, Florida 32399-0850.

(3) Upon completion of the form, the applicant may return it to the Director of Records and Reporting, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0870.

(4) Upon receipt of an application, the Director of Records and Reporting shall acknowledge its receipt, assign a docket number for identification, and shall forward the application to the Commission's Division of Water and Wastewater.

(5) Within 30 days of receipt of the completed application.

25-30.456

At the August hearing, the Commission directed staff to present the rule for adoption as proposed with changes to (6), (10) and (18).

FWWA & FCWC

25-30.456 (6) Add to the end of the sentence, for accepted applicants. This is a minor clarification. As proposed, the wording intimates that staff assistance would be forthcoming regardless of whether the application was accepted or denied.

OPC

25-30.456 OPC opposes section (12) of this proposed rule, which deals with the method of determining the rate increase in an alternative rate setting environment. OPC is not opposed to an alternative rate setting process for Class C utilities. OPC, however, at this time, opposes the implementation of a rule which is untested. The methodology proposed in this rule, has not adequately been tested to determine if it would even yield reasonable results. Furthermore, the rule does not state exactly what comparison will be made to determine the revenue requirement, or if it will be up to the individual Staff member reviewing the case.

In order for such a rule to be adopted by the Commission, much additional analysis of the proposed methodology and the results of the rule should be tested. For this reason, OPC believes that this proposed rule should be stricken in its entirety and the mechanics of the alternative determined separately from the revamp of the water and wastewater rules.

The Staff is critical of OPC's assessment of the proposed rule and indicates in testimony that OPC's untested criticism is a bit of a paradox. [Composite Exhibit 1, Tab 15.] OPC believes however that any proposal could be tested based upon a random selection of past staff assisted rate cases. The Staff and other parties to this rule proceeding could see the results of alternative ratios or tests and see how they might compare to what was actually allowed. If the ratio or test used is constantly higher than what was allowed, then it would obviously need to be fine tuned. However, under the rule as proposed, this fine tuning process will apparently take place on some kind of an experimental basis. OPC is aware that the

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STAFF'S COMMENTS

PARTIES' COMMENTS

1 the Division of Water and Wastewater shall evaluate the application
 2 and determine the petitioner's eligibility for staff assistance.

3 (a) If the Commission has received four or more alternative
 4 rate setting applications in the previous 30 days; or, if the
 5 Commission has 20 or more docketed staff assisted rate cases in
 6 active status on the date the application is received, the
 7 Commission shall deny initial evaluation of an application for
 8 staff assistance and close the docket. When an application is
 9 denied under the provisions of this subsection, the applicant shall
 10 be notified of the date on which the application may be
 11 resubmitted.

12 (b) Determinations of eligibility may be conditional, pending
 13 an actual examination of the condition of petitioner's books and
 14 records.

15 (c) All recommendations of ineligibility shall be in writing
 16 and shall state the deficiencies in the application with reference
 17 to guidelines set out in subsection (8) of this rule or with
 18 reference to subsection (11) of this rule.

19 (6) Upon reaching a decision to officially accept or deny the
 20 application, the Director of the Division of Water and Wastewater
 21 shall notify the applicant by letter and initiate staff assistance.
 22 ~~Upon reaching a decision to deny the application, the Division of~~
 23 ~~Water and Wastewater shall notify the Chairman of the Commission~~
 24 ~~The Chairman shall make the determination with regard to the~~
 25 ~~application and shall notify the applicant if the application has~~

Staff did a brief analysis of a proposal on eight water and wastewater companies. (Exhibit 11.) However, OPC does not believe this is a sufficient analysis, nor does OPC know if the method set forth in Exhibit 11, will be the method used by the Staff in its alternative rate setting process.

Furthermore, the proposal suggested by the Staff, i.e. a ratio of expenses or recovery of expenses, could easily lend itself to manipulation. Clearly, if the utility were to be granted revenues equal to 100% of its expenses, there would be no incentive for the utility to hold down expenses. Instead there would be an incentive to inflate expenses during the test year, obtain the rate increase, and then cut expenses. OPC suggests that a formula that is too simplified, without any checks for reasonableness, has the potential for abuse and unreasonable results.

OPC believes that this proposed rule should be stricken and that the mechanics of an alternative rate setting process should be considered separately.

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1 ~~been denied.~~

2 (7) The official date of filing will be 30 days after
3 official acceptance of the application by the Commission.

4 (8) In deciding whether to grant or deny the application, the
5 following shall be considered:

6 (a) Whether the applicant qualifies for staff assistance
7 pursuant to subsection (1) of this rule:

8 (b) Whether the applicant has filed annual reports:

9 (c) Whether the applicant has paid applicable regulatory
10 assessment fees:

11 (d) Whether the applicant has at least 1 year's actual
12 experience in utility operation:

13 (e) Whether the applicant has filed additional relevant
14 information in support of eligibility, together with reasons why
15 the information should be considered:

16 (f) Whether the applicant has made a good faith effort in a
17 timely manner to comply with all Commission decisions and requests
18 affecting water and wastewater utilities for 2-years prior to the
19 filing of the application under review:

20 (g) Whether the utility has been granted a staff assisted
21 rate case or alternative rate setting within the 2-year period
22 prior to the receipt of the application under review.

23 (9) The Commission shall deny the application if a utility
24 does not remit the fee, as provided by section 367.145, F.S., and
25 Rule 25-30.020(2)(f), F.A.C., within 30 days after official

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1 acceptance.

2 (10) An aggrieved applicant may request reconsideration which
3 shall be decided by the ~~Full~~ Commission Chairman.

4 (11) An applicant may request a waiver of any of the
5 guidelines set out in subsection (8) of this rule.

6 (12) The Commission shall, for the purposes of determining the
7 amount of rate increase, if any, compare the operation and
8 maintenance expenses (O & M) of the utility to test year operating
9 revenues. The Commission shall consider an allowance for return on
10 working capital using the one-eighth of O & M formula approach.

11 (13) The Commission shall limit the maximum increase in
12 operating revenues to 50 percent of test year operating revenues.

13 (14) The Commission shall vote on a proposed agency action
14 (PAA) recommendation establishing rates no later than 90 days from
15 the official filing date as established in Rule 25-30.455(7).
16 F.A.C.

17 (15) A substantially affected person may file a petition to
18 protest the Commission's PAA Order regarding a staff assisted
19 alternative rate setting application within 21 days of issuance of
20 the Notice of Proposed Agency Action as set forth in Rule 25-
21 22.036, F.A.C.

22 (16) In the event of protest of the PAA Order by a
23 substantially affected party, the rates established in the PAA
24 Order may be implemented on a temporary basis. At that time the
25 utility may elect to pursue rates set pursuant to the rate base

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1 determination provisions of Rule 25-30.455, F.A.C.
2 (17) In the event of a protest the maximum increase
3 established in (13) above shall no longer apply.
4 (18) In the event of a protest of the Commission's PAA Order
5 in a staff assisted alternative rate setting application, the
6 utility ~~has the burden of proof in the case.~~ The utility shall:
7 (a) Provide prefiled direct testimony in accordance with the
8 procedural order in the case. At a minimum, that testimony shall
9 adopt the Commission's PAA Order in the case:
10 (b) Sponsor a witness to support source documentation
11 provided to the Commission staff in its preparation of the staff
12 engineering and accounting analysis and the staff PAA
13 recommendation in the case:
14 (c) Include in its testimony the necessary factual
15 information to support its position on any issue that it chooses to
16 take a position different than that contained in the Commission's
17 PAA Order:
18 (d) Meet all other requirements of the order establishing
19 procedures.
20 (19) Failure to comply with the dates established in the
21 procedural order, or to timely file a request for extension of time
22 for good cause shown, may result in dismissal of the staff assisted
23 alternative rate setting application and closure of the docket.
24 (20) In the event of protest of the Commission's PAA Order in
25 a staff assisted alternative rate setting application the

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1 Commission staff shall:

2 (a) File prefiled direct testimony to explain its analysis in
3 the PAA recommendation. In the event the staff wishes to alter its
4 PAA position on any issue it shall provide factual testimony to
5 support its changed position.

6 (b) Meet all other requirements of the order establishing
7 procedures:

8 (c) Provide to the utility materials to assist the utility in
9 the preparation of its testimony and exhibits. This material shall
10 consist of an example of testimony filed by a utility in another
11 case, a sample of testimony that would support the PAA Order in
12 this case, an example of an exhibit filed in another case, and
13 examples of prehearing statements and briefs filed in other cases.

14 Specific Authority: 367.121, 120.54, F.S.

15 Law Implemented 367.0814, 120.53, F.S.

16 History: New 12/8/80, Transferred from 25-10.180 and Amended
17 11/9/86, 8/26/91, ____.

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25-30.460 Application for Miscellaneous Service Charges.

(1) All water and wastewater utilities may apply for miscellaneous service charges. These charges shall be included in each company's tariff and include rates for initial connections, normal reconnections, violation reconnections, and premises visit charges.

(a) Initial connection charges are levied for service initiation at a location where service did not exist previously.

(b) Normal reconnection charges are levied for transfer of service to a new customer account at a previously served location, or reconnection of service subsequent to a customer requested disconnection.

(c) Violation reconnection is a charge that is levied prior to reconnection of an existing customer after discontinuance of service for cause according to Rule 25-30.320(2), F.A.C., including a delinquency in bill payment. Violation reconnection charges are at the tariffed rate for water and actual cost for wastewater.

(d) Premises Visit Charge is levied when a service representative visits a premises at the customer's request for complaint resolution and the problem is found to be the customer's responsibility.

(e) Premises Visit Charge (in lieu of disconnection) is levied when a service representative visits a premises for the purpose of discontinuing service for nonpayment of a due and collectible bill and does not discontinue service because the

25-30.460

All participants agreed at the hearing that the rule as proposed is not controversial and should be adopted. The Commission directed staff to present it for adoption as proposed.

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STAFF'S COMMENTS

PARTIES' COMMENTS

1 customer pays the service representative or otherwise makes
2 satisfactory arrangements to pay the bill. / /

3 (2) A utility may request an additional charge ("after hours
4 charge") for overtime when the customer requests that the service
5 be performed after normal hours. The after hours charge may be at
6 the same rate specified for the existing charge during normal
7 working hours. If the utility seeks a charge other than the normal
8 working hours charge, the utility must file cost support.

9 Specific Authority: 367.121, F.S.

10 Law Implemented: 367.121, F.S.

11 History: New.
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STAFF'S COMMENTS

PARTIES' COMMENTS

25-30.465 Private Fire Protection Rates.

The rate for private fire protection service shall be a charge based on the size of the connection rather than the number of fixtures connected. The rate shall be one-twelfth one-third the current base facility charge of the utility's meter sizes, unless otherwise supported by the utility.

Specific Authority: 367.121, F.S.

Law Implemented: 367.121, F.S.

History: New.

25-30.465

Staff recommends the Commission adopt the rule as originally proposed with staff's recommended change to one-twelfth the base facility charge which is contained in Exhibit BBM-1 (part of Composite Exhibit 1, Tab 20). The current method of determining private fire protection rates using one-third the base facility charge of comparable size meters is based on an evaluation of potential demand, not on cost of service. The recommended rule continues the demand approach by using ISO requirements for fire flow demand. This results in a charge that staff believes is more commensurate with the insurance savings that businesses may receive by installing sprinkler systems, but still provides the utility a contribution towards the maintenance of capacity over and above their peak hour consumptive needs.

FWWA & FCWC

25-30.465 Strongly disagree with Staff reducing rate from 1/3 to 1/12th of BFC. The Staff change is allegedly based on ISO requirements for fire flow demand. But the record shows (TR 118, 5/24/93) that only 30% of the costs recovered in the typical BFC charge are demand related. Therefore, even if the demand cost allocation for private fire protection were set at zero, the Commission would still be justified in charging 70% of the standard BFC for private fire protection service customers. The proposal to reduce the charge for private fire protection to 1/12th BFC, by rule and without the benefit of a study and without knowing what the cost is, may result in shifting some unknown cost onto the residential customer (TR 131, 5/24/93). The implication that having many private sprinkler systems will result in a reduction in the fire fighting capacity requirements of the total system is incorrect. The capacity built into the system is to fight one fire, so as long as there is a demand for public fire protection, the capacity requirements of the system are not reduced. (TR 135, 139, 5/24/93) [This proposed rule is a revision of the position expressed in the Notice of Rulemaking. It imposes an economic impact that was not considered in the Commission's Economic Impact Statement. The impact of this rule should be considered.]

SSU

25-30.465 SSU does not oppose the rule as proposed. SSU believes that when setting rates, the Commission, as well as other state and federal regulators, should be mindful of the effects of regulation and rates on the public health, safety and welfare. For instance, with regard to private fire protection rates, Southern States believes that if fire-fighting experts support the increased use of private fire protection devices and the use of such devices protect the health and safety of SSU's customers and their property, then these facts should be factored into the Commission's rulemaking decision. If the need for more private fire protection is great and their effectiveness in protecting customers is proven, SSU agrees that the private fire protection rate could be set prospectively so as to encourage the installation of private fire protection equipment.

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STAFF'S COMMENTS

PARTIES' COMMENTS

1 25-30.470 Calculation of Rate Reduction After Rate Case

25-30.470

 All participants agreed at the hearing
 that the rule as proposed is not
 controversial and should be adopted. The
 Commission directed staff to present it for
 adoption as proposed.

2 Expense is Amortized.

3 To calculate the rate reduction to be made 4 years after a
4 rate case as required by section 367.0816, F.S., the following
5 methodology shall be used. The annual amount of rate case expense,
6 which is equal to one-fourth of the total allowed rate case
7 expense, shall be divided by the regulatory assessment fee gross up
8 factor. The resulting number shall then be divided by the revenue
9 requirement to determine the percentage of the rate reduction. The
10 percentage is then multiplied against the new rates to determine
11 the amount of the future rate reduction. Revised tariff sheets
12 implementing the reduction shall be filed no later than 1 month
13 before the end of the fourth year.

14 Specific Authority: 367.121, F.S.

15 Law Implemented: 367.121, F.S.

16 History: New.

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STAFF'S COMMENTS

PARTIES' COMMENTS

1 25-30.475 Effective Date of Approved Tariffs. Effective
 2 dates shall be as follows unless otherwise authorized by the
 3 Commission:
 4 (1) For recurring rates or charges:
 5 (a) Metered or flat recurring rates shall be effective for
 6 service rendered as of the stamped approval date on the tariff
 7 sheets provided customers have received notice. The tariff sheets
 8 will be approved upon staff's verification that the tariffs are
 9 consistent with the Commission's decision, that the proposed
 10 customer notice is adequate, and that any required security has
 11 been provided.
 12 (b) If the effective date of the new rates falls within a
 13 regular billing cycle, the initial bills at the new rate may be
 14 prorated. The old charge shall be prorated based on the number of
 15 days in the billing cycle before the effective date of the new
 16 rates. The new charge shall be prorated based on the number of
 17 days in the billing cycle on and after the effective date of the
 18 new rates.
 19 (c) In no event shall the rates be effective for service
 20 rendered prior to the stamped approval date.
 21 (2) Non-recurring charges (such as service availability,
 22 guaranteed revenue charges, allowance for funds prudently invested,
 23 miscellaneous services) shall be effective for service rendered or
 24 connections made on or after the stamped approval date on the
 25 tariff sheets provided customers have received notice. The tariff

25-30.475

The Commission directed staff to present this rule as proposed.

SSU

25-30.475 SSU agrees with the proposed rule permitting pro-rated billing. Public Counsel's concern that pro-rated billing causes customer confusion is without merit as confirmed by Staff at the hearing.

OPC

25-30.475 OPC opposes only section (1)(b) of this proposed rule. This section deals with how rates will be determined if the effective date of the new rate falls within a regular billing cycle. Essentially the proposed rule would allow utilities to prorate their bills. In other words, if the new rates are effective on the 15th of the month, and the utility's billing cycle is the 1st through the 30th, the utility would bill half the month at the old rate and half the month at the new rate. In the following month the utility would bill the entire month at the new rate.

OPC is opposed to the proration provision of this proposed rule simply because it will create customer confusion. A customer during a period of less than a year, could easily see his/her rate changed three times: once for the interim rate increase, once for the prorate period, and then again for final rates. OPC does not believe that it is good public policy to create customer confusion. In addition, OPC would note that prorations do not occur in the electric or telephone industry. For these reasons, OPC recommends that section (1)(b) be deleted.

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STAFF'S COMMENTS

PARTIES' COMMENTS

1 sheets will be approved u. on staff's verification that the tariffs
2 are consistent with the Commission's decision and that the proposed
3 customer notice is adequate. In no event shall the rates be
4 effective for service rendered prior to the stamped approval date.
5 Specific Authority: 367.121, F.S.
6 Law Implemented: 367.121, F.S.
7 History: New.

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STAFF'S COMMENTS

PARTIES' COMMENTS

25-30.515

Staff recommends the Commission adopt the rule as proposed. Major revisions to the Definition section will be addressed in the Phase II rules proceeding.

FWWA & FCWC

25-30.515 Comments will be carried over to Phase II of the rules proceeding.

25-30.515 Definitions. When used in this part or in service availability policies or in service availability contracts or agreements, the following terms have the following meanings:

(1) Active Connection means a connection to the utility's system at the point of delivery of service, whether or not service is currently being provided.

(2) Customer Connection Charge means any payment made to the utility for the cost of installing a connection from the utility's water or wastewater sewer lines, including but not limited to the cost of piping and the meter installation fee.

(3) Contribution-in-aid-of-construction (CIAC) means any amount or item of money, services, or property received by a utility, from any person or governmental agency, any portion of which is provided at no cost to the utility, which represents an addition or transfer to the capital of the utility, and which is utilized to offset the acquisition, improvement, or construction costs of the utility's property, facilities, or equipment used to provide utility services to the public. The term includes, but is not limited to, system capacity charges, main extension charges and customer connection charges.

(4) Contributor means a person, builder, developer or other entity who makes a contribution-in-aid-of-construction.

(5) Customer Installation means all the facilities on the customer's side of the point of delivery.

(6) Developer's Agreement means a written agreement setting

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1 forth in detail the terms and conditions under which a utility will
2 render service to a developer's property.

3 (7) Economic Feasibility means a test by which the operating
4 income of a utility to be earned from prospective customers within
5 the area to be served by a proposed extension of facilities is
6 divided by the investment in such facilities to determine if the
7 utility will earn a fair return on its investment in the proposed
8 extension.

9 (8) Equivalent Residential Connection (ERC) means

10 (a) 350 gallons per day;

11 (b) The number of gallons a utility demonstrates is the
12 average daily flow for a single residential unit; or

13 (c) The number of gallons which has been approved by the
14 Department of Environmental Regulation for a single residential
15 unit.

16 (9) Guaranteed Revenue Charge Agreement means a ~~written~~
17 ~~agreement by which an applicant agrees to pay~~ a charge designed to
18 cover the utility's costs including, but not limited to the cost of
19 operation, maintenance, depreciation, and any taxes, and to provide
20 a reasonable return to the utility, ~~for facilities that are subject~~
21 ~~to the agreement~~, a portion of which may not be used and useful to
22 the utility or its existing customers. Guaranteed Revenues are
23 designed to help the utility recover a portion of its cost from the
24 time capacity is reserved until a customer begins to pay monthly
25 service rates.

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1 (10) Hydraulic Share means the pro rata share of the
2 capabilities of the utility's facilities to be made available for
3 service to the contributor. The pro rate share is multiplied by
4 the unit cost (per gallon) of providing the facilities to determine
5 the proportional share of the cost thereof to be borne by the
6 contributor.

7 (11) Inspection Fee means either the actual or the average
8 cost to the utility of inspecting, or having inspected, the
9 facilities constructed by a contributor or by an independent
10 contractor for connection to the facilities of the utility.

11 (12) Main Extension Charge means a charge made by the utility
12 for the purpose of covering all or part of the utility's capital
13 costs in extending its off-site water or sewer facilities to
14 provide service to specified property. The charge is determined on
15 the "hydraulic share" basis or other acceptable method reasonably
16 related to the cost of providing the service.

17 (13) Meter Installation Fee means the amount authorized by the
18 Commission which is designed to recover the cost of installing the
19 water measuring device at the point of delivery including materials
20 and labor required.

21 (14) Off-Site Facilities means either the water transmission
22 mains and facilities or the sewage collection trunk mains and
23 facilities, or the sewage collection trunk mains and facilities,
24 including, but not limited to, manholes, sewage force mains and
25 sewage pumping stations, the purpose of which is either to provide

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STAFF'S COMMENTS

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1 water service to properties within the service territory of the
2 service utility or to collect sewage received from properties
3 within the territory. /

4 (15) On-Site Facilities means the portion of the water
5 distribution system or the sewage collection and treatment system
6 that has been, or is to be, located wholly within the property to
7 which service is to be extended. If off-site facilities cross the
8 property of the customer via an easement, the on-site facilities
9 shall mean the water distribution system or the sewage collection
10 system that is located on the customer's property, exclusive of the
11 off-site facilities.

12 (16) Refundable Advance means money paid or property
13 transferred to a utility by the applicant for the installation of
14 facilities which may not be used and useful for a period of time.
15 The advance is made so that the proposed extension may be rendered
16 economically feasible. The advance is returned to the applicant
17 over a specified period of time in accordance with a written
18 agreement as additional users connect to the system.

19 (17) Service Availability Policy means the section of the
20 utility's tariff which sets forth a uniform method of determining
21 the system capacity charge or other charges to be paid and
22 conditions to be met, by applicants for service in order to obtain
23 water or sewer service.

24 (18) Special Service Availability Contract means an agreement
25 for charges for the extension of service which is not provided for

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1 in the utility's service availability policy.

2 (19) System Capacity Charge means the charge made by a utility
3 for each new connection to the system which charge is designed to
4 defray a portion of the cost of the utility system.

5 (20) Treatment Facilities means the facilities used for the
6 production and treatment of water or for the treatment and disposal
7 of sewage.

8 (21) Plant Capacity Charge means a charge made by the utility
9 for the purpose of covering all or part of the utility's capital
10 costs in construction or expansion of treatment facilities.

11 Specific Authority: 367.121(1), 367.101, F.S.

12 Law Implemented: 367.101, F.S.

13 History: New 6/14/83.

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STAFF'S COMMENTS

PARTIES' COMMENTS

1 25-30.565 Application for Approval of a New or Revised
 2 Service Availability Policy or ~~Modification of Service Availability~~
 3 Charges.

4 (1) Each application for a service availability policy or
 5 charges shall be filed in original and 12 to 15 copies.

6 (2) Upon filing an application for a new or revised service
 7 availability charge or policy, the utility shall provide notice
 8 pursuant to Rule 25-22.0408.

9 ~~(2) Within twenty days prior to or simultaneously with the~~
 10 ~~filing of an application the utility shall begin providing notice.~~
 11 ~~The notice shall be given:—~~

12 ~~(a) To all existing customers (may be included with regular~~
 13 ~~billing for water and/or sewer service); and~~

14 ~~(b) By publishing an advertisement once each week, for 3~~
 15 ~~consecutive weeks, in a newspaper of general circulation in the~~
 16 ~~service area involved; and~~

17 ~~(c) By certified mail or personal delivery to the governing~~
 18 ~~body of the county in which the system is located within a 4 mile~~
 19 ~~radius, area planning agencies designated pursuant to the Clean~~
 20 ~~Water Act, 33 USC 1288(2) Chapter 750, Title II, section 300 P.L.~~
 21 ~~92-500, P.L. 95-217, the public counsel, and the Commission; and~~

22 ~~(d) By certified mail or personal delivery to anyone who has~~
 23 ~~filed a written request or who has received a written estimate for~~
 24 ~~service within the past 12 months.~~

25 (3) A filing fee as required in Rule 25-30.020 shall be

25-30.565

There were no comments on this rule at
 the hearing and the Commission directed staff
 to present it for adoption as originally
 proposed.

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1 | submitted at the time of application.

2 | ~~(3) The notice shall contain:~~

3 | ~~(a) A statement that the utility has applied for a change in~~
4 | ~~its service availability policy; and~~

5 | ~~(b) A statement that the requested service availability fee~~
6 | ~~increase is to pay for growth in the utility system and the~~
7 | ~~requested increased fees are to be paid by new, and not existing~~
8 | ~~customers; and~~

9 | ~~(c) The location within the service territory where copies of~~
10 | ~~the application are available for inspection; and~~

11 | ~~(d) A comparison of the present and proposed policy and~~
12 | ~~charges; and~~

13 | ~~(e) A statement that any comments concerning the policy~~
14 | ~~changes should be addressed to the Director of Records and~~
15 | ~~Reporting at 101 East Gaines Street, Tallahassee, Florida 32301-~~
16 | ~~8153 (904-488-8371); and~~

17 | ~~(f) The utility's address, telephone number, and business~~
18 | ~~hours.~~

19 | (4) Each application shall include the following, if
20 | applicable:

21 | (a) A statement describing indicating how the notice
22 | provisions have been complied with, including a copy of the actual
23 | notice(s).

24 | (b) The name of the applicant, the applicant's principal
25 | place of business and each local office from which company

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1 operations are conducted. The applicant's name shall be as it
2 appears on the certificate issued by the Commission if one has been
3 issued.

4 (c) The number of the Commission order, if any, which
5 previously considered the charges or service availability policy
6 for the system involved.

7 (d) A statement explaining the basis for the requested
8 changes in charges and conditions.

9 (e) A schedule showing the original cost of any existing
10 treatment plants, the water transmission and distribution system,
11 and the sewage collection system, by Uniform System of Accounting
12 ~~N.A.R.U.C.~~ account numbers as required by Rule 25-30.115 F.A.C.,
13 and the related capacity of each system as of 90 days prior to
14 application.

15 (f) A detailed statement of accumulated depreciation for the
16 plant listed in (e) above as of 90 days prior to application.

17 (g) A schedule showing the number of active customers on line
18 90 days prior to the time of application by meter size, by customer
19 class, and the related equivalent residential connections (ERC) as
20 defined in Rule 25-30.515(8). Describe the method by which an ERC
21 is defined.

22 (h) A detailed statement defining the capacity of the
23 treatment facilities in terms of ERCs as used in developing the
24 proposed service availability charges.

25 (i) A detailed statement defining the capacity of the

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1 distribution or collection system in terms of ERCs as used in
2 developing the proposed service availability charges.

3 (j) Provide a list of outstanding developer agreements.

4 (k) For each developer agreement state indicate whether the
5 agreement is designed to result in contributed property, other than
6 the approved system capacity charge, within the next 24 months; an
7 estimate of the value of the contributed property to be added to
8 the utility's books; and a description of the property.

9 (l) A schedule showing total collections of contributions-in-
10 aid-of-construction (CIAC) as of 90 days prior to the date of
11 application. Detail any prepaid CIAC by amount, the related
12 reserved ERCs, and the anticipated connection date. Reference any
13 appropriate developer agreements.

14 (m) A detailed statement of accumulated amortization of CIAC
15 as listed in (l) above as of 90 days prior to application.

16 (n) Copies of approvals or permits for construction and
17 operation of treatment facilities.

18 (o) A detailed statement by a registered professional
19 engineer showing the cost, by Uniform System of Accounting
20 ~~N.A.A.R.U.C.~~ account numbers, and capacity of proposed plant
21 expansion, and a timetable showing projected construction time.

22 (p) A detailed statement by a registered professional
23 engineer showing how the proposed construction will affect the
24 capacity of the existing systems.

25 (q) If the expansion or plant upgrading is being undertaken

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1 to comply with the mandates of local, state or federal regulatory
2 authorities, copies of the order(s) or correspondence directing the
3 expansion or upgrading. /

4 (r) A schedule showing the projected growth rate for
5 utilization of the existing plant and line capacity and future
6 plant and line capacity.

7 (s) A summary schedule of how the proposed service
8 availability charge was calculated.

9 (t) A schedule showing, by meter size, the cost of meters,
10 connecting fittings, meter boxes or enclosures and also showing
11 sufficient data on labor and any other applicable costs to allow
12 the determination of an average cost for meter installation by
13 type.

14 (u) A statement of the existing and proposed on-site and
15 off-site main installation charges or policy.

16 (v) The company's present capital structure, including the
17 cost of debt in the present capitalization. The availability and
18 cost of other sources of financing the proposed expansion or
19 upgrading of the system also shall be given.

20 (w) An original and three copies of the proposed tariff
21 sheets.

22 (5) Upon filing of the application and supporting exhibits,
23 the utility shall place copies thereof at its local office of the
24 utility serving the area affected by the charges and conditions,
25 and such copies shall be made available for public inspection.

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STAFF'S COMMENTS

PARTIES' COMMENTS

1 (6) Each utility shall demonstrate the appropriateness of
2 justify the requested service availability charges and conditions.
3 ~~by competent substantial evidence.~~
4 Specific Authority: 367.121(1), 367.101, F.S.
5 Law Implemented: 367.101, F.S.
6 History: New 6/14/83, Amended 11/9/86, ____.

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