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RECORDS AND
REPORTING

November 13, 1998

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

RE: Docket No. 980561-WS

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of Citizens' Comments for filing in the above-referenced docket.

Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

RECEIVED & FILED
[Signature]
FPSC-BUREAU OF RECORDS

Sincerely,
[Signature]
Stephen C. Burgess
Deputy Public Counsel

- ACK _____
- AFA _____
- APP Moore SCB/dsb
Enclosures
- CAF _____
- CMU _____
- CTR _____
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DOCUMENT NUMBER-DATE
12759 NOV 13 98
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed Amendment of
Rules 25-30.420, F.A.C.,
Establishment of Price Index,
Adjustment of Rates; Requirement
of Bond; Filings after
Adjustment; Notice to Customers;
and 25-30.425, F.A.C., Pass
Through Rate Adjustment

DOCKET NO. 980561-WS
FILED: November 13, 1998

CITIZENS' COMMENTS

The Citizens of the State of Florida, through their attorney, the Public Counsel, pursuant to Section 120.54(3)(c), Florida Statutes, Rule 28-103.004, Florida Administrative Code, and Order No. PSC-98-1289-PCO-WS, hereby file the following comments:

On October 30, 1998, Florida Water Services Corporation filed the direct testimony of Mr. Brian P. Armstrong. Order No. PSC-98-1289-PCO-WS provides that "any party may then prefile comments or testimony responding to the comments and testimony filed on October 30, 1998."

Mr. Armstrong's principal concern is the requirement that a utility file three years of historic information with its formal notice of pass-through. The PSC staff has expressed its intent to offset a current year's pass-through increase with any nonimplemented prior year's pass-through decrease, if such exists.

Mr. Armstrong appears to be most concerned that the Commission lacks statutory authority to require the additional information or to offset a pass-through increase with any prior year decrease. Mr. Armstrong also seems to believe that a principle of equity (GTE Florida) requires that if the Commission intends to offset with prior nonimplemented decreases, then it should also add any nonimplemented pass-through increases.

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12759 NOV 13 88

FPSC-RECORDS/REPORTING

The Citizens respond that Section 367.081(4)(b), F.S., in fact, does allow the PSC to offset a pass-through increase by the amount of a nonimplemented decrease from a previous period. That section provides that "new rates authorized shall reflect the amount of change" [emphasis added] in the pass-through expense. If an expense has first been reduced and is subsequently increased, the change is the net between the decrease and the increase.

If, however, there are consecutive increases in a pass-through expense, the statute prohibits the compound increase by the following language:

A utility may not use this procedure to increase its rates as a result of [increases] . . . initiated more than 12 months before the filing by the utility.

[emphasis added]

The statute explicitly prohibits compounding consecutive increases, but it does not prohibit offsetting an increase by a previously nonimplemented decrease.

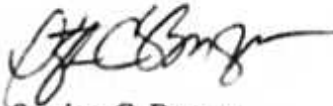
This approach is not only consistent with the statute, it is also eminently fair. A utility exercises almost exclusive control over the decision of whether to seek a pass-through rate change. To allow a utility to forego a pass-through decrease and subsequently to implement a full pass-through increase would render a patently unfair result. Accordingly, the result that Mr. Armstrong decries is not only legal, it is also equitable.

While the provision to which Florida Water Services objects is securely supported by statute, the Commission should be aware that there is another section of the proposed rule change which does run afoul of the empowering statute. The proposed amendment to Rule 25-030.420(1)(a), F.A.C., would change the application of the price index from "major categories of operating costs" to "all operating and maintenance expenses." This proposed change would expand the Commission's

authority beyond the statute which explicitly provides that the index is to apply only to "major categories of operating costs." Section 367.081, (4)(a), F.S. In order to remain within the authority of the statute, the Commission should leave unchanged the operable language in the current Rule 25-30.420(1)(a), F.A.C.

Respectfully submitted,

Jack Shreve
Public Counsel



Stephen C. Burgess
Deputy Public Counsel
Florida Bar No. 286321

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Attorneys for the Citizens
of the State of Florida

**CERTIFICATE OF SERVICE
DOCKET NO. 980561-WS**

I HEREBY CERTIFY that a true and correct copy of the foregoing CITIZENS' COMMENTS has been furnished by hand-delivery(*) or U.S. Mail to the following parties this 13th day of November.

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

Kenneth A. Hoffman, Esquire
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Rutledge, Ecenia, Underwood,
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