Case Assignment and Scheduling Record

Section 1 - Division of Records and Repor . (RA	R) Completes								
Docket No. 960258-WS Date Docketed: 03/01 Company:	/96 Title:		utions	-in-aid	l-of-cor	struct	ion on	e and impute margin reservation.	
Official Filing Date: Bxpiration	ı:								
Referred to: ADM AFA ("()" indicates OPR) X	APP CAF	CMU	RAG	GCL	LEG X	RAR	RRR X	(WAW) _X_	
Section 2 - OPR Completes and returns to RAR in 1	0 workdays.				Time	Sched	ule		***************************************
Program/Module A8 Staff Assignments								SUBJECT	TO REVISION
OPR Staff	Current CASI	revisio	n leve	1				D	ue Dates
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and/or deciding this case:	32.								
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Hearing Examiner Staff	35.								
Date filed with RAR:	37.								
Initiale: OPR Staff Counsel	39.								
Section 3 - Chairman Completes									
	Assignments an	re as fol	lows:					r 	
- Hearing Officer(s)					- Preh	earing	Officer		IMENT NO.
Commissioners Hrg.	: :				Commi	ssioner	8	LDM	12809
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assigned the full Commission decides the case.				Date	. 1	1			

Section 1 - Division of Records and Report 3 (RAR) Completes

Docket No. 960258-WS

Date Docketed: 03/01/1996 Title: Petition to adopt rules on margin reserve and imputation of contributions-in-aid-of-construction on margin reserve

calculation, by Florida Waterworks Association.

Company: Florida Waterworks Association

Official Filing Date: Last Day to Suspend: Expiration: (APP) WAW ADM AFA CAF CMU EAG GCL LEG RAR RRR Referred to: ("()" indicates OPR) X <u> X</u> <u>X</u> <u>X</u>

Section 2 - OPR Completes and returns to RAR in 10 workdays.

Time Schedule

Program/Module	A8	MAD	NING: THIS SCHEDULE IS	MENMANTUE AND CU	DIECT T	O DEUTETON
	Staff Assignments	F	OR UPDATES CONTACT THE		(904)	413-6770
OPR Staff	M Helton	Cur	0		<u>Due E</u> Previous	Current
			FAIL Machan Fill and	T	MONE	07.453.45004
	***************************************		FAW Notice Filed FAW Notice Published		NONE	03/12/1996
			Staff Recommendation		NONE	03/22/1996 04/04/1996
Staff Counsel	M Helton		Agenda - Regular		NONE	04/16/1996
Starr Counset	m net ton		Standard Order		NONE	05/06/1996
OCRs (AFA)	A Causseaux	6.	Standard Order		NONE	
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(RRR)	J Harlow	10.				
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Date filed with	RAR: 03/11/1996	37.				
		30.				
Initials: OPR	f Coursel	39.				
Staf	f Counsel	40.				

Section 3 - Chairman Completes

Assignments are as follows:

- Hearing Officer(s)

	Comm	ission	ners			Hrg. Exam.	Staff
ALL	CL	DS	JN	KS	GR	LAGIII.	
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Where panels are assigned the senior Commissioner is Panel Chairman; the identical panel decides the case. Where one Commissioner, a Hearing Examiner or a Staff Member is assigned the full Commission decides the case.

- Prehearing Officer

	Commi	ission	ners		ADM
CL	DS	JN	KS	GR	
	х				

Approved:

Date: 03/11/1996

PSC/RAR-15 (Rev. 1/96)

COMPLETED EVENTS

ig (RAR) Completes

Date Docketed: 03/01/1996 Title: Petition to adopt rules on margin reserve and imputation of Docket No. <u>960258-WS</u> contributions-in-aid-of-construction on margin reserve calculation, by Florida Waterworks Association. Company: Florida Waterworks Association Official Filing Date: Last Day to Suspend: Expiration: AFA (APP) CMU GCL RRR WAW ADM CAF EAG LEG RAR Referred to: ("()" indicates OPR) <u>X</u> _X_ X Section 2 - OPR Completes and returns to RAR in 10 workdays. Time Schedule Program/Module A8 WARNING: THIS SCHEDULE IS TENTATIVE AND SUBJECT TO REVISION Staff Assignments FOR UPDATES CONTACT THE RECORDS SECTION: (904) 413-6770 Current CASR revision level Due Dates OPR Staff M Helton Previous Current 1. EIS Due NONE 06/28/1996 07/02/1996 Staff Recommendation NONE 3. Agenda - Regular NONE 07/16/1996 4. FAW Notice Filed 07/23/1996 NONE Staff Counsel M Helton 08/02/1996 5. FAW Notice Published NONE OCRs (AFA) 6. Order on Procedure NONE 08/16/1996 A Causseaux Request for Hearing/Comments Due 08/23/1996 NONE 7. Hearing 12/10-11/96 12/10/1996 8. NONE 9. 12/20/1996 Revised CASR Due 10. <u>J Harlow</u> (RRR) 11. 12. 13. 14. 15. (WAW) G Shafer, J Starling, N Walker, 16. J Williams 17. 18. 19. 20. 21. 22. 23. 24. 25.) 26. 27. 28. 29. 30. 31. Recommended assignments for hearing and/or deciding this case: 32. 33. Full Commission X Commission Panel 34 Hearing Examiner ____ Staff 35. 36. Date filed with RAR: 06/17/1996 37. 38. Initials: OPR 39. Staff Counsel 40. Section 3 - Chairman Completes Assignments are as follows: - Hearing Officer(s) - Prehearing Officer Commissioners Hrg. Staff Commissioners ADM Exam. DS JN KS GR CL ALL CL DS JN KS GR Where panels are assigned the senior Commissioner is Panel Chairman; the identical panel decides the case. Approved:

N

Date: - Pending

Where one Commissioner, a Hearing Examiner or a Staff Member is

assigned the full Commission decides the case.

Section 1 - Division of Records and Rep

Section 1 - Division of Records and Reporting (RAR) Completes

Docket No. 960258-WS

Date Docketed: 03/01/1996 Title: Petition to adopt rules on margin reserve and imputation of contributions-in-aid-of-construction on margin reserve

calculation, by Florida Waterworks Association.

Company: Florida Waterworks Association

Official Filing Date: Last Day to Suspend:	Ex	piratio	on: _										
Referred to: ("()" indicates OPR)	ADM	AFA X	(APP) <u>X</u>	CAF	CMU	EAG	GCL	LEG	RAR	RRR X	WAW X		
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Section 2 - OPR	Completes and returns to RAR in	10 workdays. <u>Time Schedule</u>	
Program/Module	8A	WARNING: THIS SCHEDULE IS AN INTERNAL PLANNING DOCUMENT. IT IS TENATIVE AND SUBJECT TO REVISION.	
	Staff Assignments	FOR UPDATES CONTACT THE RECORDS SECTION: (904) 413-6770	Due <u>Dates</u>
OPR Staff	C Moore	2 Prev	ious Current
		1. Transcripts Due NON	
		2. Post-Hearing Filings Due NON	
a. 66 a	0.44	3. Final Recommendated Version of Rule Issued NONI 4. Comments Due NONI	
Staff Counsel	C Moore	5. Staff Recommendation NONI	
OCRs (AFA)	A Causseaux	6. Agenda - Regular NONI	
		7. Revised CASR or File Rule 12/20/	1996 05/05/1997
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Date filed with	RAR: 12/13/1996	37	
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Initials: OPR		39	
Staf	f Counsel	40.	

Section 3 - Chairman Completes

Assignments are as follows:

- Hearing Officer(s)

	Comm	ission	ners			Hrg. Exam.	Staff
ALL	CL	DS	GR	JN	KS	LAGIII.	
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Where panels are assigned the senior Commissioner is Panel Chairman; the identical panel decides the case. Where one Commissioner, a Hearing Examiner or a Staff Member is assigned the full Commission decides the case.

- Prehearing Officer

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Approved:

Date: 12/16/1996

Section 1 - Division of Records and Repc sing (RAR) Completes

Docket No. <u>960258-WS</u>

Date Docketed: 03/01/1996 Title: Petition to adopt rules on margin reserve and imputation of contributions-in-aid-of-construction on margin reserve

Company: Florida Waterworks Association

calculation, by Florida Waterworks Association.

Referred to:		ADM	AFA	(APP)	CAF	CMU	EAG	GCL	LEG	RAR	RRR	WAW		
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Staf	f Counsel			40.										

- Hearing Officer(s)

	Comm		Hrg. Exam.	Staff			
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Where panels are assigned the senior Commissioner is Panel Chairman; the identical panel decides the case. Where one Commissioner, a Hearing Examiner or a Staff Member is assigned the full Commission decides the case.

- Prehearing Officer

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Approved:

Date: 05/29/1997



Section 1 - Division of Records and Repo. ...ng (RAR) Completes

Docket No. 960258-WS

Date Docketed: 03/01/1996 Title: Petition to adopt rules on margin reserve and imputation of contributions-in-aid-of-construction on margin reserve

calculation, by Florida Waterworks Association.

Company: Florida Waterworks Association

Referred to: ("()" indicates	OPR)		ADM	AFA X	(APP) <u>X</u>	CAF	CMU	EAG	GCL	LEG	RAR	RRR X	X		
Section 2 - OPR	Completes	and retur	ns to	RAR in	10 work	days.				Tim	e Sched	lu Le			
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OPR Staff	C Moore						3							Previous	Current
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- Hearing Officer(s)

Commissioners Hrg. Staff Exam. ALL CL DS GR JN KS

Where panels are assigned the senior Commissioner is Panel Chairman; the identical panel decides the case. Where one Commissioner, a Hearing Examiner or a Staff Member is assigned the full Commission decides the case.

- Prehearing Officer

	Commissioners								
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Approved:

Date: 05/29/1997



Case Assignment and Scheduling Record

Docket No. 960258-WS

Company: Florida Waterworks Association

Date Docketed: 03/01/1996 Title: Petition to adopt rules on margin reserve and imputation of

contributions-in-aid-of-construction on margin reserve

calculation, by Florida Waterworks Association.

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Referred to:	ADM	AFA	(APP)	CAF	CMU	EAG	GCL	LEG	RAR	PAI	WAW	
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ection 2 - OPR	<u>Completes</u> and returns to RAR in '	10 workdays. <u>Time Schedule</u>		
rogram/Module	A8	WARNING: THIS SCHEDULE IS AN INTERNAL PLANNING DOCUMENT.		
	Staff Assignments	IT IS TENTATIVE AND SUBJECT TO REVISION. FOR UPDATES CONTACT THE RECORDS SECTION: (850) 413-6770 Current CASR revision level	Date D	
R Staff	C Moore	current CASK revision level	Due D	ates
		4	Previous	Current
		1. Staff Recommendation		10/07/1999
		2. Agenda - Regular		10/19/1999
	6 Wasan	3. FAW Notice Filed		10/29/1999
taff Counsel	C Moore	4. Order Noticing Adoption of Rule 5. File Rule With Secretary of State		11/08/1999 12/01/1999
CRS (AFA)	A Causseaux		NONE	12/01/1999
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nitials: OPR		39.		
Staf	f Counsel	40.		

Section 3 - Chairman Completes

Assignments are as follows:

- Hearing Officer(s)

	Comm	Hrg. Exam.	Staff				
ALL	GR	DS	CL	JN	JC	EXAM.	
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Where panels are assigned the senior Commissioner is Panel Chairman; the identical panel decides the case. Where one Commissioner, a Hearing Examiner or a Staff Member is assigned the full Commission decides the case.

- Prehearing Officer

	Commissioners									
GR	DS	CL	JN	JC						
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Date: 10/07/1999





March 12, 1996

FPSC-RECORDS/REPORTING

Ms. Blanca Bayo Florida Public Service Commission Director of Records & Reporting 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850

Re:

Docket No. 960258-WS

Dear Ms. Bayo:

By this letter, I request that Matthew Feil, Esq. be put on the mailing list for the above-referenced docket. His address is as follows:

> Matthew Feil, Esq. Southern States Utilities, Inc. 1000 Color Place Apopka, FL 32703

If you have any questions, please contact me at (407) 880-0058, ext. 267. Thank you for your assistance with this matter.

Sincerely,

Donna L. Henry Paralegal

cc: Matt Feil DOCUMENT NO

16728-99

State of Floric



Public Service Commission

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

DATE: October 21, 1996

TO: Blanca Bayó, Director of Records and Reporting

FROM: Wilbur Stiles, Assistant to Chairman Clark

FPSC-RECORDS/REPORTING

RE: Communication Received in Docket No. 960258-WS

Attached are copies of letters from the Executive Directors of the South Florida, Southwest, St. Johns River Water Management Districts regarding the above docket. Please place this memorandum and attachments in docket file. Because this correspondence relates to a rulemaking proceeding, it is not necessary to disseminate this information to the parties.

State of Florida

Susan F. Clark Chairman



Gerald L. Gunter Building 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 (904) 413-6040 FAX (904) 487-1716

Public Service Commission

October 21, 1996

Mr. Henry Dean Executive Director St. Johns River Water Management District Post Office Box 1429 Palatka, Florida 32178-1429

Dear Mr. Dean:

I received your letter of October 17, 1996, addressing the Commission's margin reserve rule proceeding.

The Commission will be holding a public hearing on this matter on December 10-11, 1996. The hearing will be in Tallahassee and will begin at 9:30 a.m. You are, of course, welcome to participate in the hearing.

I will place your letter on the correspondence side of the docket file, where it will be available for review. I will also provide the Commission's staff with a copy.

usan T Clark

Susan F. Clark

Chairman

c: Division of Records and Reporting (DN960258-WS) Chris Moore John Williams Greg Shafer



October 17, 1996

Chairman Susan F. Clark Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, Florida 23299-0850

POST OFFICE BOX 1429 TELEPHONE 904-329-4500

Florida Public Service Comm.

Commissioner Clark

PALATKA, FLORIDA 32178-1429

SUNCOM 904-860-4500

TDD SUNCOM 860-4450

(ADMINISTRATION/FINANCE) 329-4508

RMITTING) 329-4315 SERVICE CENTERS .

75 Baymeadows Way Dacks 0.016 Florida 32256 TDD 904-730-7900

305 Fast Drive 407-984-4940 TDD 407-722-5368 OPERATIONS 2133 N Wickham Road Melbourne Florida 32935-8109 TDD 407-253-1203

Florida 32801

407-897-4300 TDD 407-897 5960

Proposed Public Service Commission Margin Reserve Rule Re:

Dear Chairman Clark:

In an effort to coordinate with the Public Service Commission in providing for the safe, reliable, and affordable water supply for the citizens of Florida, this letter is written to provide you with several of the water management districts' collective comments on your rule proposal.

Considering Florida's burgeoning population as well as its increased focus on satisfaction of environmental water supply demands, the water management districts have in recent years expended considerable amounts of staff time and resources on long-term water supply planning and development. The Governor's recent Executive Order and the newly established Water Supply Development and Funding Work Group are reflections of the now intense interest in water supply issues. Our various agencies efforts are generally directed toward satisfying the demands of all uses, human and environmental. As you know, this task requires a delicate balance to satisfy these sometimes competing demands. A significant part of the solution to this state-wide effort involves innovative use of alternative water supplies and an increased focus on water conservation. Future use of alternative supplies is coupled with on-going requirements placed on all permitted users to conserve water. We think coordination between our programs' conservation goals and additional user reliance on alternative sources must be matched with the PSC's rate-setting authority in a manner which fosters accomplishment of the statewide water policies.

The PSC's proposed rule may impact the districts in the areas of long-term planning, water conservation and alternative supply development. Defining the margin reserve period to be eighteen months and the relationship of this component to the "used and useful" rate base determination seems to dissuade utilities from implementing alternative water supply projects designed to meet utilities' anticipated and even permitted demand. Generally, the districts authorize public water supply uses on the basis of anticipated demand projected to occur over the ensuing ten years. In this manner, the districts and utilities are better able to anticipate short-falls in supply and, where appropriate, develop alternative sources. For example, the typical time period necessary to plan, construct and begin supplying reclaimed water will far exceed the proposed 18 month margin reserve period due to the complexities associated with timing of improvements undertaken by the supplier and end-users. While some reuse projects may be for the purpose of accommodating new customers, many reuse projects are for the purpose of allowing utilities to meet existing uses with a lower quality source, thus conserving higher quality sources for the benefit of both existing and future customers. As such, the "used and useful" method of accounting (with the margin reserve period), which seems to be designed to address expansion of capacity,

Kathy Chinoy

JACKSONVILLE

does not appear to be adequate in considering these factors which are unique to reuse and the development of alternative supplies. If "used and useful" is continued to be applied to allow recovery of costs for reuse projects, then the margin reserve period needs to be significantly longer. Over the years, users from all use classes, including public water suppliers, have championed longer duration water use permits to obtain more secure capital financing for the facilities which they forecast will be necessary to satisfy demand during the duration of the permit.

The margin reserve "used and useful" rule appears to be incongruent with this public water supply utility trend. Innovative approaches such as marginal cost rate structures might well be an effective substitute for the proposed rule. Discussions during last week's meeting between several of our respective staffs seemed to indicate an interest on the part of the PSC to entertain alternatives to the margin reserve rule which would support the districts' and public water supply utilities' desire to implement alternative water supply technologies including reuse and conservation. We strongly support continued discussion on this issue between the PSC and the water management districts, and other interested parties.

To address these concerns, we recommend that the published rule be amended to include a specific recognition that reuse and other alternative water supply projects required by a water management district be allowed a significantly larger margin reserve period. Under the spirit of our "MOU" on conservation, we plan to work with the PSC staff to prepare a proposed amendment to the draft language for your consideration during the rule adoption hearing.

In making these comments and recommendations, the districts recognize we are not the only agencies in Florida charged with addressing water supply issues. The PSC clearly plays an important role in this complex arena. Of particular import in regard to the proposed rule is the apparent intent to defer the costs of future facilities away from existing customers. Achieving equity between existing and future water users is certainly an important goal. However, we hope this goal can be accomplished in a manner which recognizes the districts' equally important resource related objectives and the desire to assure an adequate and reliable supply for all water uses. We do understand that the environmental protection mandated by state law and state water policy, often increases the need for planning and imposes higher costs for water and wastewater service. However, we maintain that the objective of maintaining affordable rates for essential water, wastewater, and reuse services can and should be balanced with the need to protect the State's water resources.

We are hopeful that continued dialogue between our agencies as well as joint participation in each agencies' rulemaking processes will improve our collective management of water related issues. Thank you for the opportunity to comment.

Kindest Personal Regards.

Henry Dean/

Sincerely,

Executive Director

CC: Commissioner J. Terry Deason

Commissioner Joe Garcia

Commissioner Julia L. Johnson Commissioner Diane K. Keisling

State of Florida

Susan F. Clark Chairman



Gerald L. Gunter Building 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 (904) 413-6040 FAX (904) 487-1716

of Clark

Public Service Commission

October 21, 1996

Mr. Samuel E. Poole III Executive Director South Florida Water Management District 3301 Gun Club Road West Palm Beach, Florida 33406

Dear Mr. Poole:

I received your letter of October 17, 1996, addressing the Commission's margin reserve rule proceeding.

The Commission will be holding a public hearing on this matter on December 10-11, 1996. The hearing will be in Tallahassee and will begin at 9:30 a.m. You are, of course, welcome to participate in the hearing.

I will place your letter on the correspondence side of the docket file, where it will be available for review. I will also provide the Commission's staff with a copy.

Sincerely,

Susan F. Clark

Chairman

C: Division of Records and Reporting (DN960258-WS) Chris Moore John Williams Greg Shafer



South Florida Water Management District

3301 Gun Club Road, West Palm Beach, Florida 33406 • (407) 686-8800 • FLWATS 1-800-432-2045

GOV 04-34

October 17, 1996

Chairman Susan F. Clark
Commissioner J. Terry Deason
Commissioner Joe Garcia
Commissioner Julia L. Johnson
Commissioner Diane K. Keisling

Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, Florida 23299-0850

RECEIVED

OCT 1 8 1996

Florida Public Service Comm. Commissioner Clark

Subject: Proposed Public Service Commission Margin Reserve Rule

Dear Chairman Clark and Commissioners:

In an effort to coordinate with the Public Service Commission (PSC) in providing for the safe, reliable, and affordable water supply to the citizens of Florida, this letter is written to provide you with several of the water management districts' collective comments on your rule proposal.

Considering Florida's burgeoning population as well as its increased focus on satisfaction of environmental water supply demands, the water management districts have in recent years expended considerable amounts of staff time and resources on long-term water supply planning and development. The Governor's recent Executive Order and the newly established Water Supply Development and Funding Work Group are reflections of the now intense interest in water supply issues. Our various agencies efforts are generally directed toward satisfying the demands of all users, human and environmental. As you know, this task requires a delicate balance to satisfy these sometimes competing demands. A significant part of the solution of this state-wide effort involves innovative use of alternative water supplies and an increased focus on water conservation. Future use of alternative supplies is coupled with on-going requirements placed on all permitted users to conserve water. We think coordination between our programs' conservation goals and additional user reliance on alternative sources must be matched with the PSC's rate-setting authority in a manner which fosters accomplishment of the state-wide water policies.

The PSC's proposed rules may impact the districts in the areas of long-term planning, water conservation and alternative supply development. Defining the margin reserve period to be eighteen months and the relationship of this component to the "used and useful" rate base determination seems to dissuade utilities from implementing alternative water supply projects designed to meet the utilities' anticipated and even permitted demand. Generally, the districts authorize public water supply uses on the basis of anticipated demand projected to occur over the ensuing ten years. In this manner, the districts and utilities are better able to anticipate short-

Chairman Susan F. Clark Commissioner J. Terry Deason Commissioner Joe Garcia Commissioner Julia L. Johnson Commissioner Diane K. Keisling October 17, 1996 Page 2

falls in supply and, where appropriate, develop alternative sources. For example, the typical time period necessary to plan, construct and begin supplying reclaimed water will far exceed the proposed eighteen month margin reserve period due to the complexities associated with timing of improvements undertaken by the supplier and end-users. While some reuse projects may be for the purpose of accommodating new customers, many reuse projects are for the purpose of allowing utilities to meet existing uses with a lower quality source, thus conserving higher quality sources for the benefit of both existing and future customers. As such, the "used and useful" method of accounting (with the margin reserve period), which seems to be designed to address expansion of capacity, does not appear to be adequate in considering these factors which are unique to reuse and the development of alternative supplies. If "used and useful" is continued to be applied to allow recovery of costs for reuse projects, then the margin reserve period needs to be significantly longer. Over the years, users from all use classes, including public water suppliers, have championed longer duration water use permits to obtain more secure capital financing for the facilities which they forecast will be necessary to satisfy demand during the duration of the permit.

The margin reserve "used and useful" rule appears to be incongruent with this public water supply utility trend. Innovative approaches such as marginal cost rate structures might well be an effective substitute for the proposed rule. Discussions during last week's meeting between several of our respective staffs seemed to indicate an interest on the part of the PSC to entertain alternatives to the margin reserve rule which would support the districts' and public water supply utilities' desire to implement alternative water supply technologies including reuse and conservation. We strongly support continued discussion on this issue between the PSC and the water management districts, and other interested parties.

To address these concerns, we recommend that the published rule be amended to include a specific recognition that reuse and other alternative water supply projects required by a water management district be allowed a significantly longer margin reserve period. Under the spirit of our "MOU" on conservation, we plan to work with the PSC staff to prepare a proposed amendment to the draft language for your consideration during the rule adoption hearing.

In making these comments and recommendations, the districts recognize we are not the only agencies in Florida charged with addressing water supply issues. The PSC clearly plays an important role in this complex arena. Of particular import in regard to the proposed rule is the apparent intent to defer the costs of future facilities away from existing customers. Achieving equity between existing and future water users is certainly an important goal. However, we hope this goal can be accomplished in a manner which recognizes the districts' equally important

Chairman Susan F. Clark
Commissioner J. Terry Deason
Commissioner Joe Garcia
Commissioner Julia L. Johnson
Commissioner Diane K. Keisling
October 17, 1996
Page 3

resource related objectives and the desire to assure an adequate and reliable supply for all water users. We do understand that the environmental protection mandated by state law and state water policy often increases the need for planning and imposes higher costs for water and wastewater service. However, we maintain that the objective of maintaining affordable rates for essential water, wastewater and reuse services can and should be balanced with the need to protect the State's water resources.

We are hopeful that continued dialogue between our agencies, as well as joint participation in each agencies' rulemaking processes, will improve our collective management of water related issues. Thank you for the opportunity to comment.

Sincerely,

Samuel E. Poole III Executive Director

South Florida Water Management District

SEP/myk

State of Florida

Susan F. Clark Chairman



Gerald L. Gunter Building 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 (904) 413-6040 FAX (904) 487-1716

Public Service Commission

October 21, 1996

Mr. Peter G. Hubbell Executive Director Southwest Florida Water Management District 2379 Broad Street Brooksville, Florida 34609-6899

Dear Mr. Hubbell:

I received your letter of October 17, 1996, addressing the Commission's margin reserve rule proceeding.

The Commission will be holding a public hearing on this matter on December 10-11, 1996. The hearing will be in Tallahassee and will begin at 9:30 a.m. You are, of course, welcome to participate in the hearing.

I will place your letter on the correspondence side of the docket file, where it will be available for review. I will also provide the Commission's staff with a copy.

Sincerely,

Susan F. Clark

seen T Clark

Chairman

C: Division of Records and Reporting (DN960258-WS)
 Chris Moore
 John Williams
 Greg Shafer



An Equal Opportunity Employer

Roy G. Harrell, Jr. Chairman, St. Petersburg

Joe L. Davis, Jr.

Southwest Florida Water Management District

2379 Broad Street • Brooksville, Florida 34609-6899 • 1-800-423-1476 (Florida Only) or (352) 796-7211 • SUNCOM 628-4150 • T.D.D. Number Only (Florida Only): 1-800-231-6103

7601 Highway 301 North Tampa, Florida 33637-6759 1-800-836-0797 or (813) 985-7481 SUNCOM 578-2070 170 Century Boulevard Bartow, Florida 33830-7700 1-800-492-7862 or (941) 534-1448 SUNCOM 572-6200 115 Corporation Way Venice, Florida 34292-3524 1-800-320-3503 or (941) 486-1212 SUNCOM 526-6900

2303 Highway 44 West Inverness, Florida 34453-3809 (352) 637-1360

October 17, 1996

Chairman Susan F. Clark Commissioner J. Terry Deason Commissioner Joe Garcia Commissioner Julia L. Johnson Commissioner Diane K. Keisling

Florida Public Service Comm.

Commissioner Clark

RECEIVED

OCT 1 8 1996

Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, Florida 32399-0850

Subject:

Proposed Public Service Commission Margin Reserve Rule

Dear Chairman Clark and Commissioners:

In an effort to coordinate with the Public Service Commission (PSC) in providing for the safe, reliable, and affordable water supply for the citizens of Florida, this letter is written to provide you with several of the water management districts' collective comments on your rule proposal.

Considering Florida's burgeoning population as well as its increased focus on satisfaction of environmental water supply demands, the water management districts have in recent years expended considerable amounts of staff time and resources on long-term water supply planning and development. The Governor's recent Executive Order and the newly established Water Supply Development and Funding Work Group are reflections of the now intense interest in water supply issues. Our various agencies efforts are generally directed toward satisfying the demands of all users, human and environmental. As you know, this task requires delicate balance to satisfy these sometimes competing demands. A significant part of the solution of this state-wide effort involves innovative use of alternative water supplies and an increased focus on water conservation. Future use of alternative supplies is coupled with on-going requirements placed on all permitted users to conserve water. We think coordination between our programs' conservation goals and additional user reliance on alternative sources must be matched with the PSC's rate-setting authority in a manner which fosters accomplishment of the state-wide water policies.

Vice Chairman, Wauchula Curtis L. Law Secretary Land O' Lakes Sally Thompson Treasurer, Tampa James L. Allen Bushnell Ramon F. Campo Brandon James L. Cox Lakeland Rebecca M. Eger Sarasota John P. Harllee, IV Bradenton James E. Martin St. Petersbura Virginia S. Roo Tampa

Peter G. Hubbell
Executive Director
Mark D. Farrell
Assistant Executive Director
Edward B. Helvenston
General Counsel

Through Quality Service Letter to Chairman Clark and Commissioners Page 2 October 17, 1996

The PSC's proposed rules may impact the districts in the areas of long-term planning, water conservation and alternative supply development. Defining the margin reserve period to be 18 months and the relationship of this component to the "used and useful" rate base determination seems to dissuade utilities from implementing alternative water supply projects designed to meet utilities' anticipated and even permitted demand. Generally, the districts authorize public water supply uses on the basis of anticipated demand projected to occur over the ensuing 10 years. In this manner, the districts and utilities are better able to anticipate short-falls in supply and, where appropriate, develop alternative sources. For example, the typical time period necessary to plan, construct and begin supplying reclaimed water will far exceed the proposed 18 month margin reserve period due to the complexities associated with timing of improvements undertaken by the supplier and end-users. While some reuse projects may be for the purpose of accommodating new customers, many reuse projects are for the purpose of allowing utilities to meet existing uses with a lower quality source, thus conserving higher quality sources for the benefit of both existing and future customers. As such, the "used and useful" method of accounting (with the margin reserve period), which seems to be designed to address expansion of capacity, does not appear to be adequate in considering these factors which are unique to reuse and the development of alternative supplies. If "used and useful" is continued to be applied to allow recovery of costs for reuse projects, then the margin reserve period needs to be significantly longer. Over the years, users from all use classes, including public water suppliers, have championed longer duration water use permits to obtain more secure capital financing for the facilities which they forecast will be necessary to satisfy demand during the duration of the permit.

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To address these concerns, we recommend that the published rule be amended to include a specific recognition that reuse and other alternative water supply projects required by a water management district be allowed a significantly longer margin reserve period. Under the spirit of our "MOU" on conservation, we plan to work with the PSC staff to prepare a proposed amendment to the draft language for your consideration during the rule adoption hearing.

In making these comments and recommendations, the districts recognize they are not the only agencies in Florida charged with addressing water supply issues. The PSC clearly plays an

Letter to Chairman Clark and Commissioners Page 3 October 17, 1996

important role in this complex arena. Of particular import in regard to the proposed rule is the apparent intent to defer the costs of future facilities away from existing customers. Achieving equity between existing and future water users is certainly an important goal. However, we hope this goal can be accomplished in a manner which recognizes the districts' equally important resource related objectives and the desire to assure an adequate and reliable supply for all water users. We do understand that the environmental protection mandated by state law and state water policy often increases the need for planning and imposes higher costs for water and wastewater service. However, we maintain that the objective of maintaining affordable rates for essential water, wastewater and reuse services can and should be balanced with the need to protect the State's water resources.

We are hopeful that continued dialogue between our agencies, as well as joint participation in each agencies' rulemaking processes, will improve our collective management of water related issues. Thank you for the opportunity to comment.

Sincerely,

Peter G. Hubbell Executive Director

PGH:KAL:cga





Public Service Commission

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

DATE: October 18, 1996

TO: BLANCA BAYO, DIRECTOR OF RECORDS AND REPORTING

FROM: CHRISTIANA T. MOORE, DIVISION OF APPEALS

RE: DOCKET NO. 960258-WS - PETITION TO ADOPT RULES ON MARGIN

RESERVE AND IMPUTATION OF CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION ON MARGIN RESERVE CALCULATION, BY FLORIDA

WATERWORKS ASSOCIATION

Attached for filing in the above-referenced docket is the prefiled testimony of N. D. Walker and Robert Crouch.

CTM Attachments

cc: Persons on attached Certificate of Service

ACK
AFA
APP
CAF
CMU
CMU
EAC
AST
DY
CMU
SEC
WAS
OTH

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by U.S. Mail this 18th day of October, 1996, to the following:

Brian P. Armstrong, Esquire Matthew J. Feil, Esquire Southern States Utilities, Inc. 1000 Color Place Apopka, FL 32703

Wayne L. Schiefelbein, Esquire Gatlin, Woods & Carlson 1709-D Mahan Drive Tallahassee, FL 32308 Mark F. Kramer
Manager of Regulatory Accounting
Utilities, Inc.
2335 Sanders Road
Northbrook, IL 60061-6196

Harold McLean, Esquire
Office of Public Counsel
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400

CHRISTIANA T. MOORE

From: N.D. Walker To: Chris Moore

Subject:

fwd: Margin Reserve - Docket

960258-WS

===NOTE=========10/29/96=10:07am=

CC: John Williams

Two individuals from state agencies would like to be placed on the mailing list for Docket 960258-WS: 1) Janet Llewellyn (Acting Director for Office of Water Policy - DEP) and 2) Charles Aller (Director for Office of Agricultural Water Policy - Department of Agriculture). How should I proceed?

Fwd=by:=Chris=Moore===10/29/96=10:32am=

Fwd to: N.D. Walker

Tell them to write a letter to the Director of Records & Reporting making the request & to copy me please. O.K.?

Have you all (WAW) received copies of all the prefiled testimony/comments?

PLEASE Ad U PCOMU

JANET G. LLEWELLYN ASSISTANT DIRECTOR ACTING DIRECTOR

STATE OF FLORIDA

STATE OF FLORIDA

STATE OF FLORIDA

STATE OF FLORIDA

STATE OF FLORIDA SIATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
2500 BLAIR STONE ROAD, MAIL STATION 2300
TALLAHASSEE, FLORIDA 32399-2400 3000
3900 Common Wealth

(904) 488 0130-

TELEPHONE: (904) 488-3022 FAX: (904) 488-7585

CHARLES C. ALLER DIRECTOR
OFFICE OF AGRICULTURAL WATER POLICY

BOB CRAWFORD, COMMISSIONER
STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES
TALLAHASSEE, FL 32399-0810



Department of Environmental Protect on

96-04-00 NOV 15

Lawton Chiles Governor Twin Towers Office Building 2600 Blair Stone Road Tallahassee. Florida 32399-2400

Virginia B. Wetherell Secretary

November 1, 1996

Commissioner Susan F. Clark Chairperson Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, Florida 32399-0850

Dear Commissioner Clark:

I felt it important to apprise you of our comments on the Commission's proposed Rule 25-30.431, F.A.C., considering our previous correspondence on the margin reserve issue as it relates to certain facilities under the Department's regulatory jurisdiction. We filed those comments with the Commission's Division of Records and Reporting on October 18 according to your rulemaking requirements, and I have enclosed a copy with this letter. I would like to ask your personal attention to ensuring that our recommended rule changes are considered carefully.

Our comments are primarily directed at refining the draft rule to better reflect the realities of planning and designing improvements and expansions to private water and wastewater facilities. Because this Department and the PSC share responsibility for a certain universe of facilities, it is essential that our rules are consistent on those requirements which concern us both. We have recommended changes to the draft rule which would promote this consistency and would enable private facilities to prudently undertake improvements without imposing unreasonable burdens on their customers. We have also proposed changes which would better implement our shared statutory charge to promote the reuse of reclaimed water.

We are committed to working with the Commission on developing the margin reserve rule. If you would like to discuss these issues, please call Mimi Drew, the Director of our Division of Water Facilities, at 487-1855.

Sincerely,

Ginger RECEIVED

Virginia B. Wetherell NOV 0 4 1996 Secretary

Floric

Commissioner Clark

VBW/gm/h
Enclosure
cc: Mimi Drew
Elsa Potts
Van Hoofnagle

"Protect, Conserve and Manage Florida's Environment and Natural Resources"

Printed on recycled paper.

Printed by Don Strickland 12/05/96

3:53pm

From: Chris Moore

To: Don Strickland

Subject: mailing list Dkt 960258 _____

Can you please add the following persons to the mailing list for this rulemaking docket?

Yvonne Gsteiger S.Fla. Water Management District Mail Station # 46 3900 Commonwealth Blvd. Tallahassee, FL 32399-3000

Fax No. is 922-5380

and

Richard Melson, Esq. 123 S. Calhoun St. Tallahassee, FL 32301

Fax No. 224-8551

Richard D. Drew Bureau of Water Facilities Regulation Dept. of Environmental Regulation 2600 Blair Stone RD Tallahassee, FL 32399-2400

fax no. is 414-9031

Thanks.

Page: 1

- Happing Jano Pan

State of Florid



Public Service Commission

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

DATE:

Blanco Bayó, Director, Records and Reporting TO:

FROM: Joy Kelly, Chief, Bureau of Reporting RE: DOCKET NO. 960258
HEARING DATE:

12/10/96

IN RE: rule hearing

DOCUMENT NO. 13778 + 13779

The transcript for the above-described hearing has been completed and is forwarded for placement in the docket file.

Please note that Staff distribution of this transcript was made to:

ezal AFAO PC WAW 6C

The following exhibits are being filed with this transcript:

NONE

The following exhibits have not been furnished to the Bureau of Reporting to date and do not accompany this transcript:

NONE

Acknowledged by: Caroles Selemist

JK/pc

PSC/RAR 28 (Rev 7/94)

Clark



4200 Salzedo Street Room 311 Coral Gables, FL 33146 (305) 669-7602 Fax: (305) 669-5796

December 11, 1996

Susan F. Clark, Chairman Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, Florida 32399-0850

Reference:

Southeast Florida Utility Council Resolution

Dear Chairman Clark:

Following please find a copy of a Resolution recently adopted by the Southeast Florida Utility Council that I would ask you to consider with regard to the Hearing on proposed Rule 25-30.431, Florida Administrative Code (Docket #960258-WS).

I appreciate your consideration of this Resolution for this Hearing and if you should have any questions regarding these statements adopted by the Council, please do not hesitate to contact me at (305) 669-7602 or Mr. Whit Vancott, Vice-Chairman at (954) 921-3301.

Sincerely

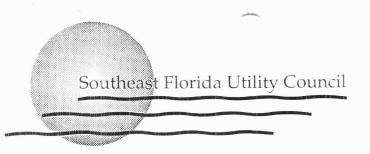
Jorge S. Rodriguez, P.E.

Chairman

RECEIVED

DEC 1 7 1996

Florida Public Service Comm. Commissioner Clark



RESOLUTION NO. 96-1

WHEREAS, The Southeast Florida Utility Council was created in 1992 to provide a communications, networking and support structure for member utilities to continue to provide in a cost effective manner superior quality water supply and wastewater management services to its customers; and

WHEREAS, The Council membership includes water and wastewater utilities from Palm Beach, Broward and Dade Counties which provide potable water and wastewater management services to approximately 4.5 million southeast Florida residents; and

WHEREAS, All water and wastewater utilities serve the public interest and are committed to protecting the environment and the public health and safety; and

WHEREAS, It is important that utilities have sufficient capital to meet the requirements of federal, state and local environmental agencies; and

The member utilities of this organization design and construct facilities which will meet the needs of customers for the next 20 years and which maximize economies of scale to the greatest extent possible; and

WHEREAS, Utility customers can benefit from economies of scale achieved by constructing facilities with large capacity; and

WHEREAS, Under current Florida Public Service Commission (FPSC) policy, investorowned utilities are allowed to recover only that portion of their investment that is "used and useful" by utility customers within 18 months; and

WHEREAS, This FPSC policy promotes smaller plants which may not be as efficient, typically provide lower levels of treatment and are more sensitive to operate;

NOW, THEREFORE, be it resolved that the Southeast Florida Utility Council hereby recommends that investor-owned utilities be permitted to:

Resolution No. 96-1 Page 2

- 1) recover from current customers the full cost of facilities needed for a minimum 5 year planning horizon, and
- 2) recover from current customers the full cost of all facilities needed to meet the requirements of environmental agencies.

The Council further supports the utility industry in its efforts to ensure full cost recovery for facilities needed to serve customers for a minimum of 5 years into the future, either through agency rulemaking or statutory changes, whichever is appropriate.

This Resolution was unanimously approved and adopted by the Council Board of Directors at its meeting of December 9, 1996.

State of Florida

Susan F. Clark Chairman

CTR

OTH ____



Gerald L. Gunter Building 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 (904) 413-6040 FAX (904) 487-1716

Bublic Service Commission

December 18, 1996

960258-WS

The Honorable Virginia Wetherell Secretary Department of Environmental Protection Twin Towers Office Building 2600 Blair Stone Road Tallahassee, Florida 32399-2400

Dear Secretary Wetherell:

Thank you for your letter regarding the Commission's proposed Rule 25-30.431 on margin reserve for water and wastewater facilities.

The Commission conducted a rulemaking hearing on December 10, 1996, and all Commissioners had the opportunity to hear the comments made on behalf of the Department of Environmental Protection, the water management districts, water and wastewater utilities, and the Office of the Public Counsel. I can assure you that I will carefully consider these comments and the written comments that were filed before the hearing.

СК	On February 13, 1997, Commission staff will be submitting	j a
IUN	recommended version of the rule based on the above comments a	
FA		ľhe
pp	Department and other participants will have an opportunity	to
	respond to the final recommended version. The Commission	is
AF	scheduled to make its decision about the rule on April 14, 1997	

Thank you again for your letter.

Sincerely, Susan F. Clark

Chairman

RECORDS/REPORT

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State of Florida

Susan F. Clark Chairman



Gerald L. Gunter Building 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 (904) 413-6040 FAX (904) 487-1716

Public Service Commission

December 31, 1996

Mr. Jorge S. Rodriguez, P.E. Chairman Southeast Florida Utility Council 4200 Salzedo Street, Room 311 Coral Gables, Florida 33146



Dear Mr. Rodriguez:

Thank you for your letter and Resolution dated December 11, 1996, regarding the Commission's proposed Rule 25-30.431 on margin reserve for water and wastewater facilities.

The Commission conducted a rulemaking hearing on December 10, 1996, and all Commissioners had the opportunity to hear the comments made on behalf of the Department of Environmental Protection, the water management districts, water and wastewater utilities, and the Office of the Public Counsel. I can assure you that I will carefully consider these comments and the written comments that were filed before the hearing.

On February 13, 1997, Commission staff will be submitting a recommended version of the rule based on the above comments and those that are filed pursuant to our posthearing procedures. The Department and other participants will have an opportunity to respond to the final recommended version. The Commission is scheduled to make its decision about the rule on April 14, 1997.

Thank you again for your letter.

Sincerely,

Susan F. Clark

Los O. Finda

Chairman

c: Division of Records and Reporting (DN 960258-WS)

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STATE OF FLORIDA

Julia L. Johnson Chairman



CAPITAL CIRCLE OFFICE CENTER 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0854 (904) 413-6044

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JUN 27 1997

FPSC - Records/Reporting

Public Service Commission

June 26, 1997

Ms. K. Lynn Greene, President Tropical Isles Homeowners Association 508 Thames Bluff Ridge Fort Pierce, Florida 34982

Re: Docket No. 960258-WS - Petition to Adopt Rules on Margin Reserve and Imputation of Contributions-in-Aid-of-Construction on Margin Reserve Calculation, by Florida

Waterworks Association

Dear Ms. Greene:

Thank you for your letter of June 7, 1997, concerning the Commission's adoption of rules relative to margin reserve in a rate proceeding. In response, please be advised that on June 10, 1997, the Commission heard our staff's recommendation on this subject and whether additional hearings should be conducted to evaluate the revenue impact of enlarging the margin reserve. Our staff offered three options: a) to hold one or more additional public hearings to receive additional input; b) to permit submission of more data but without additional hearings; or c) to conclude the case based on the existing record. The Commission chose the third alternative. We concluded that the record was sufficient to afford an informed decision without the need to conduct further hearings.

Based upon our review of the record, the Commission adopted rules that define the allowed term for margin reserve and any offsetting imputation of Contributions-in-Aid-of Construction (CIAC). Basically, our decision reflects our traditional policy regarding the allotted term for treatment and disposal facilities - 18 months in the absence of information that would justify a different term. With respect to imputation of CIAC, our decision likewise reflects our current policy and practice - absent further justification, 50% of the projected CIAC should be imputed to thereby offset the provision for margin reserve. Conversely, the utility industry was proposing a five-year provision for margin reserve and discontinuance of the imputation practice.

Since we are essentially maintaining our existing policies for margin reserve and imputation of CIAC, we believe the consequent revenue impact due to these decisions will be modest. In addition, given the fact that our decision was essentially a codification of our existing policy, the Commission determined that additional hearings were not necessary.

Ms. K. Lynn Greene June 26, 1997 Page Two

With respect to the Tropical Isles wastewater plant owned by Florida Water Service Company, our staff informs me that the approximate revenue effect assuming a five year margin reserve period and no imputation of CIAC would probably be less than 4% of the utility's annual revenue requirement. However, as noted above, the rule adopted by the Commission provides an 18 month provision for margin reserve and an offsetting adjustment due to imputation of CIAC.

As to your concern about the adequacy of giving notice to the public through the Florida Administrative Weekly (FAW), Florida law requires that agencies publish public notices in the FAW. Historically, all state agencies have used this method of notification. Our staff has informed me that there is now an internet site for the FAW: @ http://election.dos.state.fl.us/faw/issues.htm.

Let me assure you that the Commission is committed to ensuring that the public is informed and is able to participate in all matters which come before the Commission. Currently, our Division of Consumer Affairs is working to develop new ways through which we can educate and inform customers about issues facing the Commission.

If you have any additional questions, please write or call me.

With kind regards, I am

Sincerely,

Julia Johnson Chairman

JLJ:NDW:ssf

cc: Division of Records and Reporting
Division of Water and Wastewater

STATE OF FLORIDA

Julia L. Johnson Chairman



CAPITAL CIRCLE OFFICE CENTER 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0854 (904) 413-6044

Public Service Commission

RECEIVED

June 26, 1997

FPSC - Records/Reporting

Mr. Jim Goldberg 1251 Trafalgar Drive New Port Richey, Florida 34653

Re:

Docket No. 960258-WS - Petition to Adopt Rules on Margin Reserve and Imputation of Contributions-in-Aid-of-Construction on Margin Reserve Calculation, by Florida Waterworks Association

Dear Mr. Goldberg:

Thank you for your letter of June 6, 1997, concerning the Commission's adoption of rules relative to margin reserve in a rate proceeding. In response, please be advised that on June 10, 1997, the Commission heard our staff's recommendation on this subject and whether additional hearings should be conducted to evaluate the revenue impact of enlarging the margin reserve. Our staff offered three options: a) to hold one or more additional public hearings to receive additional input; b) to permit submission of more data but without additional hearings; or c) to conclude the case based on the existing record. The Commission chose the third alternative. We concluded that the record was sufficient to afford an informed decision without the need to conduct further hearings.

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Mr. Jim Goldberg June 26, 1997 Page Two

With respect to the Aloha Utilities system in Pasco County, our staff informs me that margin reserve has not been a factor in any recent rate proceeding for that company. Therefore, we are unable to accurately predict how margin reserve policies will affect future service rates for customers served by Aloha Utilities.

As to your concern about the adequacy of giving notice to the public through the Florida Administrative Weekly (FAW), Florida law requires that agencies publish public notices in the FAW. Historically, all state agencies have used this method of notification. Our staff has informed me that there is now an internet site for the FAW: @ http://election.dos.state.fl.us/faw/issues.htm.

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If you have any additional questions, please write or call me.

With kind regards, I am

Sincerely,

Julia Johnson Chairman

@ J:NDW:ssf

cc: Division of Records and Reporting
Division of Water and Wastewater

STATE OF FLORIDA

Julia L. Johnson Chairman



CAPITAL CIRCLE OFFICE CENTER 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0854

(850) 41 RECEIVED

JUN 27 1997

FPSC - Records/Reporting

Public Service Commission

June 25, 1997

Honorable Mike Fasano Florida House of Representatives 8217 Massachusetts Avenue New Port Richey, Florida 34653

Re: Docket No. 960258-WS - Petition to Adopt Rules on Margin Reserve and Imputation of Contributions-in-Aid-of-Construction on Margin Reserve Calculation, by Florida Waterworks Association

Dear Representative Fasano:

Thank you for your letter of June 9, 1997, concerning the Commission's adoption of rules relative to margin reserve in a rate proceeding. In response, please be advised that on June 10, 1997, the Commission heard our staff's recommendation on this subject and whether additional hearings should be conducted to evaluate the revenue impact of enlarging the margin reserve. Our staff offered three options: a) to hold one or more additional public hearings to receive additional input; b) to permit submission of more data but without additional hearings; or c) to conclude the case based on the existing record. The Commission chose the third alternative. We concluded that the record was sufficient to afford an informed decision without the need to conduct further hearings.

Based upon our review of the record, the Commission adopted rules that define the allowed term for margin reserve and any offsetting imputation of Contributions-in-Aid-of Construction (CIAC). Basically, our decision reflects our traditional policy regarding the allotted term for treatment and disposal facilities - 18 months in the absence of information that would justify a different term. With respect to imputation of CIAC, our decision likewise reflects our current policy and practice - absent further justification, 50% of the projected CIAC should be imputed to thereby offset the provision for margin reserve. Conversely, the utility industry was proposing a five-year provision for margin reserve and discontinuance of the imputation practice.

Since we are essentially maintaining our existing policies for margin reserve and imputation of CIAC, we believe the consequent revenue impact due to these decisions will be modest. In addition, given the fact that our decision was essentially a codification of our existing policy, the Commission determined that additional hearings were not necessary.

Honorable Mike Fasano June 25, 1997 Page Two

Let me assure you that the Commission is committed to ensuring that the public is informed and is able to participate in all matters which come before the Commission.

If you have any additional concerns, please feel free to contact me.

With kind regards, I am

Sincerely,

Julia L. Johnson

Chairman

JLJ:NDW:ssf

cc: Division of Records and Reporting
Division of Water and Wastewater

STATE OF FLORIDA

Julia L. Johnson Chairman



CAPITAL CIRCLE OFFICE CENTER 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0854 (904) 413-6044

Public Service Commission

RECEIVED

JUN 27 1997

FPSC - Records/Reporting

June 25, 1997

The Honorable Ken Pruitt Florida House of Representatives 2400 S. E. Midport Road, Suite 110 Port St. Lucie, Florida 34952

Re: Docket No. 960258-WS - Petition to Adopt Rules on Margin Reserve and Imputation of Contributions-in-Aid-of-Construction on Margin Reserve Calculation, by Florida Waterworks Association

Dear Representative Pruitt:

Thank you for your recent letter concerning the Commission's adoption of rules relative to margin reserve in a rate proceeding. In response, please be advised that on June 10, 1997, the Commission heard our staff's recommendation on this subject and whether additional hearings should be conducted to evaluate the revenue impact of enlarging the margin reserve. Our staff offered three options: a) to hold one or more additional public hearings to receive additional input; b) to permit submission of more data but without additional hearings; or c) to conclude the case based on the existing record. The Commission chose the third alternative. We concluded that the record was sufficient to afford an informed decision without the need to conduct further hearings.

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The Honorable Ken Pruitt June 25, 1997 Page Two

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If you have any additional concerns, please feel free to contact me.

With kind regards, I am

Sincerely

Julia L. Johnson Chairman

JLJ:NDW:ssf

cc: Division of Records and Reporting
Division of Water and Wastewater

Printed by Don Strickland 1/09/97 2:49pm

From: Chris Moore

To: Don Strickland Subject: fwd: Dkt. 960258-WS

CC: Jo Ann Chase, N.D. Walker

Please add the following person to the mailing list for this rule docket:

Jennifer Springfield, Esq. St. Johns River Water Management District P.O. Box 1429 Palatka, FL 32178-1429

Thanks.

=Fwd by: Don Stricklan=========

Fwd to: Chris Moore



GATLIN, SCHIEFELBEIN & COWDERY, P.A.

Attorneys at Law

The Mahan Station 1709-D Mahan Drive Tallahassee, Florida 32308

B. KENNETH GATLIN WAYNE L. SCHIEFELBEIN KATHRYN G.W. COWDERY TELEPHONE (904) 877-5609 TELECOPIER (904) 877-9031 E-MAIL: bkgatlin@nettally.com

PSC-RECORDS/REPORTING

January 31, 1997

Blanca S. Bayo, Director Division of Records & Reporting Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 HAND DELIVERY

Re: Docket No. 960258-WS

Petition of the Florida Waterworks Association to Adopt Rules on Margin Reserve and Imputation of Contributions-in-aid-of-Construction on the Margin Reserve Calculation

Dear Ms. Bayo:

Enclosed is a copy of the Florida Waterworks Association's Post-Hearing Comments, as filed on January 16, 1997, on diskette. (Wordperfect 5.1)

Please acknowledge receipt of the foregoing by stamping the enclosed extra copy of this letter and returning same to my attention. Thank you for your assistance.

Sincerely,

Wayne L. Schiefelbein

WLS/pav Enclosures

May 6, 1997

To: Blanca S. Bayo

Division of Records and Reporting

Public Service Commission 2540 Shumard Oak Blvd

Tallahassee, FL 32399-0850

From: Cheryl Walla

1750 Dockway Drive

N. Ft. Myers, FL 33903

Dear Ms. Bayo,

I respectfully request to be placed on the mailing list of for Dockett # 960258 as an interested party. May I also request any prior mailings in this dockett from the very beginning.

Respectfully,

(heigh Walla Respectfully, They halla Cheryl Walla

STATE OF FLORIDA



RECEIVED

MAY 12 1997

FPSC - Records/Reporting

Public Service Commission

May 10, 1997

MEMORANDUM

TO:

Blanca Bayo

Director of Records and Reporting

FROM:

Curtis J. Williams

Executive Assistant to Chairman Johnson

SUBJECT:

May 6, 1997, Letter from Senator Anna Cowin

Attached is a letter received by Chairman Johnson from Senator Anna Cowin regarding Docket No. 960258-WS. Please place this memorandum and attachment in the docket file. Because this letter relates to a <u>rulemaking proceeding</u>, it is not necessary to disseminate the letter to the parties.

CJW:ssf

Attachment:

STATE OF FLORIDA

Julia L. Johnson Chairman



CAPITAL CIRCLE OFFICE CENTER 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0854 (904) 413-6044

Public Service Commission

May 9, 1997

Honorable Anna P. Cowin The Florida Senate Post Office Box 490238 716 West Magnolia Street Leesburg, Florida 34748

Dear Senator Cowin:

I am writing to let you know that Commission staff will be filing a recommendation for the June 10 agenda conference in Docket No. 960258-WS (Proposed Rule Changes on Margin Reserve Requirements). Your letter of May 6, 1997, has been placed in the docket file, and your request will be addressed by the Commission at that time.

With kind regards, I am

Julia L. Johnson

Chairman

JLJ:ssf



THE FLORIDA SENATE

Tallahasane, Frinkla 32399-1100 - 97-0 | 30 | MAY -8

COMMITTEES:
Children, Families and Seniors,
Vice Chairman
Education
Natural Resources
Transportation
Ways and Means,
Sub. B (Education)

May 6, 1997

The Honorable Julia L. Johnson, Chairman Florida Public Service Commission 2540 Shumard Oak Boulevard Capital Circle Office Center Tallahassee, Florida 32399-0864

Dear Chairman Johnson:

I am writing to request that you hold public hearings on proposed rule 25-30.431, concerning the margin reserve granted to utilities and any corresponding imputation of contributions-in-aid-of-construction. Your staff's recommendation on the proposed rule is soon to come before you for final vote.

I believe that, unlike the utility industry, which was involved from the inception of this rulemaking process, the ratepayers of Florida were never adequately noticed of the proposed change in your current policy. The only public advertisement for this rule appeared in the Florida Administrative Weekly, and that advertised your intent to adopt a rule implementing your current policy of providing an eighteen-month margin reserve with full implementation of CIAC. I understand that in stark contrast to your policy and the FAW notice, your staff is recommending that a margin reserve of five years be granted for treatment facilities and that no imputation of CIAC be made on the margin reserve. This drastic change in your policy could significantly affect ratepayers' water and wastewater bills and I do not believe this impact is understood by ratepayers nor have they had an opportunity to give the Public Service Commission their input.

You have expressed your intention to inform the public, be informed by the public, and to consider that input. I wholeheartedly endorse your public involvement policy. The water and wastewater industry has been kept informed every step of the way through this rulemaking process. Before a final vote is taken, at a minimum, the public should be made aware of, through local newspapers distributed throughout Florida, your staff's recommended rule, the public hearings to be held, and the effects of the rule on their future rates, and they should have the opportunity to be heard. The public should have an opportunity to hear the utilities' and your staff's rationale as to why they should be required to support future growth with increased rates.

REPLY TO:

If 716 West Magnolia Street, Lessburg, Florida 34748 (362) 315-9335

If 240 Senste Office Building, Tullehassee, Florida 32399-1100 (904) 487-5014

TONI JENNINGS

President

President Pro Tempore

As you are aware, the Senate and the House declined to enact proposed legislation granting the utilities an increased margin reserve of up to 5 to 7 years.

Please advise me as soon as possible whether you will grant my request and, if not, the rationale behind your decision. Thank you for your continuing cooperation and assistance.

Sincerely,

Anna P. Cowin Senator, District 11

cc: Senate President Jennings
Senator Brown-Waite
Senator Bankhead
Senator Ostalkiewicz
Senator Kurth
Senator Crist
Representative Argenziano



STATE OF FLORIDA

OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legialature 111 West Madison Street Room 812 Tallahasses, Florida 32389-1400 904-488-9330 JUN - 5 1997

June 5, 1997

RECEIVED

JUN 05 1997

Mr. Bill Talbott Executive Director Florida Public Service Commission 101 East Gaines Street Tallahassee, Florida 32399-0863

FPSC - Records/Reporting

Re: Docket No. 960258-WS

Dear Mr. Talbott:

The Citizens of the State of Florida hereby make this public records request pursuant to Chapter 119, Florida Statutes. We wish to review all documents, including any written, recorded, filmed or graphic matter, whether produced, reproduced, or on paper, cards, tapes, film, electronic facsimile, computer storage device or any other media, including, but not limited to, memoranda, notes, minutes, records, correspondence, telegrams, diaries, reports, studies, charts, graphs, statements, notebooks, handwritten notes, agreements, books, pamphlets, periodicals, records and recordings of oral conversations, work papers, and notes which were created by or for, or were examined by, relied upon or were used otherwise by any Florida Public Service Commission staff member in preparing the staff's analysis of and/or response to the model developed by the industry for use in the above-referenced rulemaking docket.

We appreciate your prompt attention to this public records request and specifically ask for a response within twenty-four hours.

Sincerely,

Jack Shreve
Public Counsel

Shreve-

JS/dj

cc: Charles H. Hill

JACK SHREVE

PUBLIC COUNSEL

STATE OF FLORIDA

OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature 111 West Madison Street Room 812 Tallahassee, Florida 32399-1400 904-488-9330

June 5, 1997

Mr. Bill Talbott **Executive Director** Florida Public Service Commission 101 East Gaines Street Tallahassee, Florida 32399-0863

Re: Docket No. 960258-WS

Dear Mr. Talbott:

The Citizens of the State of Florida hereby make this public records request pursuant to Chapter 119, Florida Statutes. We wish to review all documents, including any written, recorded, filmed or graphic matter, whether produced, reproduced, or on paper, cards, tapes, film, electronic facsimile, computer storage device or any other media, including, but not limited to, memoranda, notes, minutes, records, correspondence, telegrams, diaries, reports, studies, charts, graphs, statements, notebooks, handwritten notes, agreements, books, pamphlets, periodicals, records and recordings of oral conversations, work papers, and notes which were created by or for, or were examined by, relied upon or were used otherwise by any Florida Public Service Commission staff member in preparing the staff's analysis of and/or response to the model developed by the industry for use in the above-referenced rulemaking docket.

We appreciate your prompt attention to this public records request and specifically ask for a response within twenty-four hours.

Sincerely,

Jack Shreve

Public Counsel

hreit

JS/dj

cc: Charles H. Hill



Public Service Commission

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

DATE: October 31, 1997

TO: Blanca Bayó, Director, Records and Reporting

FROM: Joy Kelly, Chief, Bureau of Reporting

RE: DOCKET NO. 960258-WS, AGENDA CONFERENCE HELD 6-10-97

RE: Petition to adopt rules on margin reserve and imputation of contributions-in-aid-of-construction on margin reserve calculation, by Florida Waterworks Association.

DOCUMENT NO: 11197, 10-30-97

The transcript for the above transcribed hearing has been completed and is forwarded for placement in the docket file, including attachments.

Please note that Staff distribution of this transcript was made to:

LEGAL, AFAD, WAW

Acknowledged	by:
Mas	
JK/pc	

PSC/RAR 28 (Rev7/94)

Henry Dean, Executive Director John R. Wehle, Assistant Executive Director



POST OFFICE BOX 1429

PALATKA, FLORIDA 32178-1429

TELEPHONE 804-328-4500 TDD 904-329-4450 TDD SUNCOM (Legal) 329-4465 (Permitting) 329-4318

SUNCOM 804-860-4500 TDD SUNCOM 860-4450

(Administration/Finance) 329-4506

14:32

(Planning and Acquisition) 329-4848

818 E. South Street Orlande, Florida 32801 407-897-4300 TDD 407-497-5980

7775 Baymabdows Way Jacksonville, Florida 32256 804-730-8270 TDD 804-448-7900

SERVICE CENTERS 305 East Drive Melbourne, Florida 32904 407-984-4840 TOD 407-722-5368

2133 H. Wickham Reed Melhourne, Florida 32835-8108 407-782-3189 TDD 487-752-3162

June 9, 1998

Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850

RE: Fax Number

TO WHOM IT MAY CONCERN:

Please change the fax number for Jennifer B. Springfield, Esquire in the Legal Department at St. Johns River Water Management District to (904) 329-4485. If you have any questions, please call me at (904) 329-4309.

Sincerely,

Kim Player

im Player Legal Staff Assistant

:kp

930256-WS 960258-WS 961321-WS 971186 - AS SU 980670 - WS

960258-WS



Public Service Commission

State of Florida -M-E-M-O-R-A-N-D-U-M-

DATE: May 24, 1999

TO: JOE GARCIA, CHAIRMAN

J. TERRY DEASON, COMMISSIONER SUSAN F. CLARK, COMMISSIONER JULIA JOHNSON, COMMISSIONER E. LEON JACOBS, COMMISSIONER

WILLIAM TALBOTT, EXECUTIVE DIRECTOR

JAMES WARD, DEPUTY EXECUTIVE DIRECTOR/ADM.

MARY BANE, DEPUTY EXECUTIVE DIRECTOR/TECH.

ROB VANDIVER, GENERAL COUNSEL DAVID SMITH, DIRECTOR OF APPEALS

NOREEN DAVIS, DIRECTOR OF LEGAL SERVICES

TIM DEVLIN, DIRECTOR OF AUDITING & FINANCIAL ANALYSIS

WALTER D'HAESELEER, DIRECTOR OF COMMUNICATIONS

STEVE TRIBBLE, DIRECTOR OF ADMINISTRATION BEV DEMELLO, DIRECTOR OF CONSUMER AFFAIRS

JOE JENKINS, DIRECTOR OF ELECTRIC & GAS

DAN HOPPE, DIRECTOR OF RESEARCH & REGULATORY REVIEW

BLANCA BAYO, DIRECTOR OF RECORDS & REPORTING CHUCK HILL, DIRECTOR OF WATER AND WASTEWATER

FROM: CHRISTIANA T. MOORE, DIVISION OF APPEALS

RE: FLORIDA PUBLIC SERVICE COMMISSION V. FLORIDA WATERWORKS

ASSOCIATION, ET AL., FIRST DISTRICT COURT OF APPEAL CASE NO. 98-1280; DOAH CASE NOS. 97-3480RP & 97-3481RP; PSC DOCKET NO. 960258-WS

On May 10, 1999, the First District Court of Appeal issued its decision in the above appeal, reversing the final order which had invalidated the Commission's proposed rule on margin reserve and imputation of contributions-in-aid-of-construction (CIAC).

After a seven-day hearing in a rule challenge brought by Florida Waterworks Association (FWA) and Florida Water Services Corporation (FWSC), Division of Administrative Hearings (DOAH) Administrative Law Judge Don W. Davis (the ALJ) had found that proposed rule 25-30.431 was an invalid exercise of delegated legislative authority on numerous grounds: 1) the rule was not supported by competent substantial evidence; 2) the rule contravened the law by a) not providing for full cost recovery of governmental agency-required expenditures, b) by being inconsistent with Department of Environmental Protection and Water Management District times for planning plant expansions; and c) by not including a provision that reuse facilities are 100 percent used and useful; 3) the rule conferred unbridled discretion on the Commission because it does not clearly delineate what standard will be used in determining whether a margin reserve period other than eighteen months should be approved; and 4) the revised Statement of Estimated Regulatory Costs (SERC)

was deficient for failing to analyze the different permitting costs other agencies might incur, thus constituting a material failure to follow rulemaking procedures. The ALJ also retained jurisdiction to award attorneys fees and costs against the Commission.

On appeal, the Commission argued the ALJ's conclusion that the rule was invalid resulted from a misapprehension of the function of the rule and a fundamental misinterpretation of the ratesetting statute implemented by the rule. In particular, the ALJ overlooked that the eighteenmonth provision set up a rebuttable presumption--a starting point only--and that the law provides that the burden of proof is always on the utility to justify a change in rates. Thus, the difference between the "presumptively correct" five-year period urged by the utilities, and the eighteen-month period chosen by the Commission, was which party would bear the burden of proof in a rate case to justify a different margin reserve.

The Court issued an eighteen-page opinion, reversing the ALJ on every ground. A copy of the opinion is attached.

Presumptive Eighteen-Month Margin Reserve Period

The proposed rule provides for an eighteen-month margin reserve period unless otherwise justified. The Court held that the ALJ's conclusion that there was no competent substantial evidence to support this presumptive period was error because the issue is "essentially a matter of Commission procedure" The Court recognized that that the provision is a rebuttable presumption that affords utilities the opportunity to avoid litigation expense.

Imputation of CIAC

Similarly, the Court held that the ALJ's analysis of the CIAC imputation provision as invalid because not supported by competent substantial evidence was "inapposite." Although the argument was not made by the parties to this appeal, the Court tied the Commission's policy of imputing CIAC on the margin reserve allowance to the provision in section 367.081(2)(a) that prohibits inclusion of CIAC in rate base. Citing as examples Commission water and wastewater utility rate case orders issued in 1985 and 1986, the Court stated that since the statute was amended in 1980 to include the disallowance provision, the Commission has interpreted it "to require that margin reserve be decreased by the imputation of [CIAC]." Thus, the Court concluded that imputation is "in keeping with the treatment the statute requires."

Rule Criteria

The rule provides three factors the Commission must consider in determining whether a margin reserve period other than eighteen months is justified. The ALJ concluded that the rule fails to give adequate notice of what the utilities must prove to get a longer margin reserve period. The Commission pointed out that it was the utilities that initially proposed the criteria, and that it is the statute--not the rule--that confers the discretion on the Commission in setting rates. We further argued that simply because the rule does not entirely extinguish that discretion by specifying standards for the exercise of the discretion (and leave nothing for determination in the rate proceeding itself), does not make the rule invalid. In a holding that will be useful in future rulemaking and in responding to comments of the Joint Administrative Procedures Committee, the Court agreed, holding that no rule is properly invalidated simply because the governing statutes,

rather than the rule, confer discretion.

Statement of Estimated Regulatory Costs

As to the ALJ's conclusion about the SERC, the Court agreed with the Commission that the ALJ's analysis ignores the fact that the actual margin reserve period in a given case will depend on the evidence adduced in that case; and that with regard to the period, the proposed rule "would do no more than create what is in effect a procedural rule in ratemaking cases." In addition, the Court found that the analysis in the SERC was extensive and that the ALJ erred in finding it inadequate. The Court also recognized that the utilities' proposal of a five-year margin reserve simply shifted the costs to other parties.

Other Provisions

The ALJ's conclusions that the rule contravened the law for various other reasons--mostly for what was <u>not</u> included in the rule--were also reversed. The Court essentially agreed with the Commission that the rule applied to only one limited aspect of ratesetting and could not be invalidated based on its limited scope; that is, for failing to provide for "full cost recovery of governmental agency-required expenditures" as the ALJ concluded. Nor could the rule be invalidated on the basis that it doesn't include a provision that reuse facilities must be considered 100 percent used and useful. On this last ground for invalidity the Court found the ALJ's final order "plainly mistaken."

Further Proceedings

The Court's decision is not final until May 25, 1999, or until any motions for rehearing are disposed of. If this decision becomes final, there will be no further proceedings at DOAH, except perhaps to dismiss FWA's and FWSC's petitions for attorney's fees and costs. Ordinarily, the Commission could file the rule for adoption with the Secretary of State at that point. During this past session, however, the Legislature amended section 367.081, Florida Statutes, to provide for a five-year margin reserve period, unless there is clear and convincing evidence that a greater period is justified, and to prohibit the imputation of CIAC. As of this date, the Governor has not signed the legislation. If the amendments become law, changes to the rule will be necessary.

CTM/

cc:

All Attorneys
Bill Lowe
Marshall Willis
John Williams
Bob Crouch
Craig Hewitt
Tom Ballinger

opn-memo.mr

We cannot conceive of how the private financial information of the two parents of the incompetent spouse has any relevance to the issues before the court in these two consolidated proceedings. Their personal, individual finances should play no part in the court's determination to award attorney's fees to either Reba or to Alan, against the other, or to award of costs and expenses. It is true that pursuant to section 752.01, grandparents may be ordered to contribute to an opposing spouses' attorney's fees in a grandparent visitation proceeding. But neither of the consolidated cases are grandparent visitation cases. The orders quoted above clarify that point.

The disclosure of personal financial information may cause irreparable harm to a person forced to disclose it, in a case in which the information is not relevant. Woodward v. Berkery, 714 So.2d 1027 (Fla. 4th DCA), rev. denied, 717 So.2d 528 (Fla. 1998). Because there is no basis to conclude the personal financial information sought in this cause is relevant, we grant the writ and quash the discovery order under review. Cf., Universal Engineering Testing Co., Inc. v. Israel, 707 So.2d 900 (Fla. 5th DCA 1998). However, this opinion does not bar discovery of assets or accounts which belong in whole or part, to Alan Mogul, albeit held in his name, or jointly with another person, including Max Mogul or Reba Mogul.

Petition for Writ of Certiorari GRANTED; Order QUASHED. (HARRIS and ANTOON, JJ., concur.)

Criminal law—Purse snatching—Act of snatching defines crime, not amount snatched

REESE MOORE, Petitioner, v. STATE OF FLORIDA, Respondent. 5th District. Case No. 99-1064. Opinion filed May 14, 1999. Petition for Writ of Habeas Corpus, A Case of Original Jurisdiction. Counsel: Reese Moore, Gainesville, prose. No Appearance for Respondent.

(GRIFFIN, C.J.) We have received correspondence which we treat as a petition for writ of habeas corpus. Petitioner asserts he is being illegally held because the crime he committed—snatching a purse containing only \$12—is not a felony. He fails to recognize that it is the "snatching" that defines his crime, not the amount snatched.

PETITION DENIED. (COBB and PETERSON, JJ., concur.)

Administrative law-Water and wastewater utilities-Rates-Administrative law judge erred in declaring invalid proposed Public Service Commission rule which would authorize immediate imputation of fifty percent of projected contributions-in-aid-ofconstruction against margin reserves, and would engender a rebuttable presumption that an eighteen-month margin reserve period is appropriate—Administrative law judge erroneously found that statement of estimated regulatory costs was inadequate—No record support for order's assertion that SERC contains no analysis as to extra permitting costs incurred by agencies or assertion that SERC contains no analysis as to cost to utilities, or cost to customers as result of presumptive eighteen-month margin reserve period in contrast with longer period—Administrative law judge erroneously found proposed rule deficient in explicating factors for PSC to consider in deciding whether a margin reserve period should be longer than eighteen months in a given ratemaking case—Proposed rule did not create discretion not articulated in the statute it implements-Administrative law judge erroneously concluded that proposed rule was invalid for failure to provide a mechanism for full-cost recovery of capital improvement required by governmental regulations—Order's conclusion that proposed rule would have unlawful effect of denying a utility recovery of its reuse costs through rates is mistaken-Administrative law judge erroneously concluded that there was an absence of competent substantial evidence to support the presumptive eighteen-month margin reserve period contemplated by proposed rule, and to support proposed rule's imputation of fifty percent of contributions-in-aid-of-construction against margin reserves

FLORIDA PUBLIC SERVICE COMMISSION and CITIZENS OF THE STATE

OF FLORIDA, Appellants, v. FLORIDA WATERWORKS ASSOCIATION and FLORIDA WATER SERVICES CORPORATION, Appellees. 1st District. Case No. 98-1280. Opinion filed May 10, 1999. An appeal from the Division of Administrative Hearings. Don W. Davis, Administrative Law Judge. Counsel: Robert D. Vandiver; General Counsel; Christiana T. Moore, Associate General Counsel, Public Service Commission, Tallahassee, for Appellant Florida Public Service Commission. Jack Shreve, Public Counsel; Stephen C. Burgess, Deputy Public Counsel, Office of Public Counsel, Tallahassee, for Appellant Citizens of the State of Florida. B. Kenneth Gatlin and Wayne L. Schiefelbein of Ruden, McClosky, Smith, Schuster & Russell, P.A., Tallahassee, for Appellee Florida Waterworks Association. Kenneth A. Hoffman and J. Stephen Menton of Rudedge, Ecenia, Underwood, Purnell & Hoffman, P.A., Tallahassee; Matthew Feil, Florida Water Services Corporation, Apopka; and Arthur J. England, Jr., of Greenberg Traurig, P.A., Miami, for Appellee Florida Water Services Corporation.

(BENTON, J.) The Florida Public Service Commission and the Citizens of the State of Florida by and through the Office of Public Counsel appeal a final administrative order invalidating the Public Service Commission's proposed rule 25-30.431. An administrative law judge declared the proposed rule invalid on multiple grounds. We reverse.

Invoking section 120.54(5), Florida Statutes (1995), the Florida Waterworks Association (FWA) petitioned the Public Service Commission (PSC) to initiate rulemaking. As a result, the PSC published notice of rulemaking on August 2, 1996, proposing to adopt a rule on margin reserves which differed in two major particulars from the proposal on the subject FWA had attached to its petition to initiate rulemaking.

FWA then challenged the PSC's proposed rule by filing a petition for determination of invalidity of proposed rule under section 120.54(4), Florida Statutes (1995). On August 23, 1996, Florida Water Services Corporation (as it is now known) filed its own petition for determination of invalidity of proposed rule.

Simultaneously Florida Water Services Corporation (FWSC) submitted what was in effect a copy of the FWA proposal, which it denominated a "proposed lower cost regulatory alternative to the proposed rule." Responding in a revised statement of regulatory cost, the PSC took the position that the alternative did not facilitate just, reasonable, and compensatory rates, and did not therefore "substantially accomplish the objectives of the law being implemented." § 120.541(1)(a), Fla. Stat. (1997).

In due course, the PSC held a rulemaking hearing in which FWA, FWSC, other utilities, the Office of Public Counsel (OPC), the Department of Environmental Protection (DEP), and PSC staff participated. Apparently because of presentations made at the rulemaking hearing, the PSC published a notice of change reflecting changes in the proposed rule regarding the treatment of contributions-in-aid-of-construction in relation to margin reserves. Although the changes the PSC proposed worked in their favor, FWA and FWSC filed new petitions for determination of invalidity of proposed rule addressed to the proposed rule as changed.

All challenges to the proposed rule were consolidated for hearing before an administrative law judge, who found that "[p]roposed Rule 25-30.431, Florida Administrative Code is an invalid exercise of delegated legislative authority and may not be utilized by the PSC for its stated regulatory purposes." A wide-ranging final order concluded that (1) the PSC's revised statement of estimated regulatory costs did not meet the requirements of section 120.541 and was so deficient as to be a material failure to follow rulemaking procedures under section 120.52(8)(a); (2) the proposed rule made it "impossible for a utility to determine the nature and extent of the presentation necessary to obtain a margin reserve period of longer than 18 months"; (3) the proposed rule contravened the statute it was implementing by failing to provide a means for utilities to recover costs expended on projects required by governmental regulations; (4) the proposed rule denied the utility full recovery of reuse costs through rates; and (5) no competent substantial evidence supported the proposed rule.

Margin Reserves And
Contributions-In-Aid-Of-Construction
A margin reserve reflects the extent to which a utility's invest-

Art. I, § 23, Fla. Const.

²Allstate Insurance Co. v. Langston, 655 So.2d 91, 95, n. 2 (Fla. 1995).

^{3§ 61.16(1),} Fla. Stat. (1997).

ment in property available for future use—although not being used to serve current rate payers—is deemed used and useful in the public service and treated as investment on which a utility is entitled to earn a fair rate of return from current rates. The Legislature has directed the PSC to

fix rates which are just, reasonable, compensatory, and not unfairly discriminatory. In every such proceeding, the commission shall consider... the cost of providing the service, which shall include. but not be limited to, debt interest; the requirements of the utility for working capital; maintenance, depreciation, tax, and operating expenses incurred in the operation of all property used and useful in the public service; and a fair return on the investment of the utility in property used and useful in the public service. However, the commission shall not allow the inclusion of contributions-in-aid-of-construction in the rate base of any utility during a rate proceeding; and accumulated depreciation on such contributions-in-aid-of-construction shall not be used to reduce the rate base, nor shall depreciation on such contributed assets be considered a cost of providing utility service. The commission shall also consider the investment of the utility in land acquired or facilities constructed or to be constructed in the public interest within a reasonable time in the future, not to exceed, unless extended by the commission, 24 months from the end of the historical test period used to set final

§ 367.081(2)(a), Fla. Stat. (1997) (emphasis supplied). We noted in Rolling Oaks Utilities v. Florida Public Service Commission, 533 So. 2d 770, 773 (Fla. 1st DCA 1988):

Although the Commission does not have a formal rule or policy requiring a utility to maintain a reserve capacity, in given cases it makes an adjustment to a utility's rate base which, in a sense, rewards the utility for its investment in plant capacity which the utility has readily available, but not currently in use. By allowing a margin reserve increment to the rate base, the Commission permits the utility to charge its existing customers a portion of the cost necessary to have service available for future customers.

As future customers requiring new connections come on line, they are required to pay service availability fees which may be capitalized, in whole or in part, as contributions-in-aid-of-construction.

"Contribution-in-aid-of-construction" means any amount or item of money, services, or property received by a utility, from any person or governmental authority, any portion of which is provided at no cost to the utility, which represents a donation or contribution to the capital of the utility, and which is used to offset the acquisition, improvement, or construction costs of the utility property, facilities, or equipment used to provide utility services.

§ 367.021(3), Fla. Stat. (1997). When a utility's rate base includes a margin reserve and contributions-in-aid-of-construction accompany new connections, the utility's own investment in anticipation of the new customers' need for service is supplanted by the new customers' contributions-in-aid-of-construction each time a new customer connects to the system. Incrementally these contributions-in-aid-of-construction replace the utility's own original investment

in reserve capacity.

"Moneys received as contributions-in-aid-of-construction cannot be included 'in the rate base of any utility during a rate proceeding.' §367.081(2)(a), Fla. Stat. (1997). See Florida Waterworks Ass'n v. Florida Public Serv. Comm'n, 473 So.2d 237, 243 (Fla. 1st DCA 1985).'' Southern States Utils. v. Florida Pub. Serv. Comm'n, 714 So. 2d 1046, 1057 (Fla. 1st DCA 1998). Consistently since the statute was amended to disallow contributions-in-aid-of-construction in rate base, Ch. 80-99, § 10, at 383, Laws of Fla., the PSC has interpreted section 367.081 to require that margin reserves be decreased by the imputation of contributions-in-aid-of-construction. See, e.g., In re Application of Marion Oaks Utils., 86 F.P.S.C. 10:403, 10:406 (1986); In re Application of Twin County Util. Co., 85 F.P.S.C. 5:149, 5:152 (1985).

The Proposed Rule
As changed, the rule the PSC proposed to adopt would authorize

immediate imputation of only fifty percent (instead of one hundred percent as the PSC originally proposed) of projected contributions-in-aid-of-construction against the margin reserve. The proposed rule would also engender a rebuttable presumption that an eighteenmonth margin reserve period is appropriate. Proposed rule 25-30.431 reads:

(1) "Margin reserve" is defined as the amount of plant capacity needed to preserve and protect the ability of utility facilities to serve existing and future customers in an economically feasible manner that will preclude a deterioration in quality of service and prevent adverse environmental and health effects.

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

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

(4) Unless otherwise justified, the margin reserve period for water source and treatment facilities will be 18 months. In determining whether another margin reserve period is justified, the Commission shall consider the rate of growth in the number of equivalent residential connections (ERCs); the time needed to meet the guidelines of the Department of Environmental Protection (DEP) for planning, designing, and construction of plant expansion; and the other technical and economic options available for sizing increments of plant expansion.

(5)(a) Margin reserve for water source and treatment facilities and wastewater treatment and effluent disposal facilities shall be

calculated as follows:

EGxMPxD = MR

where:

EG = Equivalent annual Growth in ERCs determined pursuant to (b) or (c) below

MP = Margin Reserve Period determined pursuant to subsection (4)

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

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

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

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

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

(7) Contributions-in-aid-of-construction (CIAC) shall be imputed when a margin reserve is authorized. The amount of imputed CIAC shall be determined based on 50 percent of the number of ERCs included in the margin reserve period and the projected CIAC that will be collected from those ERCs. However,

the imputed CIAC shall not exceed the rate base component associated with margin reserve.

(Emphasis supplied.) FWA and FWSC favor a rebuttable presumption of a five-year margin reserve period instead of the eighteenmonth period the PSC chose. FWA and FWSC also maintain that the utilities' margin reserves should never be reduced to reflect contributions-in aid-of-construction that the utilities receive as part of service availability fees they collect when making connections.

Statement Of Estimated Regulatory Costs

Although rulemaking began before October 1, 1996, it continued thereafter. All parties have assumed that amendments to the Administrative Procedure Act that took effect on October 1, 1996, apply. We proceed on the same assumption. See Life Care Ctrs. of Am. v. Sawgrass Care Ctr., 683 So. 2d 609 (Fla. 1st DCA 1996). Among the requirements effective October 1, 1996, is that an agency make a statement of estimated regulatory costs whenever a substantially affected person submits "a good faith written proposal



for a lower cost regulatory alternative to a proposed rule." § 120.541(1)(a), Fla. Stat. (Supp. 1996). This requirement supersedes the economic impact statement requirement that existed under prior law.

In the order under review, the administrative law judge found fault with the PSC's revised statement of estimated regulatory costs. Apparently assuming (in this portion of the order) that every margin reserve period the PSC might allow under the proposed rule would last eighteen months, the final order states:

No analysis has been done as to the extra permitting costs incurred by the agencies, cost to the utilities, or cost to customers as a result of the 18-month margin reserve period in contrast with a longer period. The evidence established that costs to the permitting agencies would be reduced with a margin reserve period of greater than 18 months.

This analysis of the revised statement of estimated regulatory costs (SERC) ignores the fact that the actual margin reserve period in a given case depends on the evidence adduced in that case. The PSC can set a longer (or shorter) period as the evidence dictates.

The burden of proof in ratemaking cases in which a utility seeks an increase in rates rests on the utility. See South Fla. Natural Gas Co. v. Florida Pub. Serv. Comm'n, 534 So. 2d 695 (Fla. 1988); Florida Power Corp. v. Cresse, 413 So. 2d 1187, 1191 (Fla. 1982); Sunshine Utils. v. Florida Pub. Serv. Comm'n, 577 So. 2d 663, 666 (Fla. 1st DCA 1991). By relieving the utility of its burden of proof as to an initial eighteen-month period, the proposed rule would lessen the utility's burden. The proposed rule does not specify a margin reserve period for any particular ratemaking case or for any particular utility. With respect to the margin reserve period, the proposed rule would do no more than create what is in effect a procedural rule in ratemaking cases.

In ratemaking cases in which a utility sought a margin reserve period of greater than eighteen months but not more than five years, the alternative presumptive five-year period proposed by FWA and FWSC would in effect shift the burden of proof to ratepayers, the PSC, or the Office of Public Counsel. In such cases, costs to the PSC under the challengers' alternative would not be "reduced with a [presumptive] margin reserve period of greater than 18 months. On the contrary, as the SERC points out, "adoption of [the PSC's proposed] rule regarding margin reserve and CIAC imputation may reduce the Commission staff effort required to prepare for and attend hearings on these issues." As for costs to government entities other than the PSC, the SERC acknowledges that "DEP . . . may incur costs participating in future proceedings regarding the margin reserve period for individual utilities." The record contradicts the final order's assertion that the SERC contains no analysis "as to the extra permitting costs incurred by the agencies.'

The record also belies the final order's assertion that the SERC contains no analysis "as to the . . . cost to the utilities, or cost to customers as a result of the [presumptive] 18-month margin reserve period in contrast with a longer period." The analysis is, indeed, extensive. It includes the following:

A review of the file and suspend rate cases completed from 1993 through 1995 revealed that in a slight majority of the cases, the Commission determined that utility plant was 100 percent used and useful. Therefore, margin reserve was not a relevant issue in those cases.

The proposed rule requires two additional data filings . . . for those utilities requesting margin reserve; however, the cost impact on the utility is expected to be minimal. The rule requires utilities to submit their most recent wastewater capacity analysis report to the Commission. This should result in minimal costs for the utilities because the report is currently prepared for DEP. Utilities are also expected to provide a linear regression of annual equivalent residential connections (ERCs) for the last five years. Although this calculation is currently performed by Commission staff, it is relatively straightforward and can be performed with a hand calculator.

The adoption of a Commission rule regarding margin reserve is expected to benefit ratepayers, the utilities, and Commission staff

by reducing file and suspend rate case expenses. Rule adoption may help reduce rate case expenses by limiting testimony on margin reserve to special circumstances. However, if planned system additions include larger capacity than the minimum required for 18 months of growth, but which include economies of scale savings for the company and future customers, there may be additional time spent on related proceedings.

The SERC also points out that "[t]he proposed alternative would effectively remove the burden of justifying a longer margin reserve period from the utility and place greater risk on ratepayers for the costs of a larger, excessively-sized plant." Burdens "effectively removed" from utilities would logically come to rest on parties having to prove facts justifying margin reserve periods of five years or less. The administrative law judge erred in finding that the SERC was inadequate.

Rule Criteria Governing Rebuttal
Of The Margin Reserve Period Presumption

Nor was the administrative law judge correct in declaring the proposed rule deficient in explicating factors for the PSC to consider in deciding whether a margin reserve period should be longer than eighteen months in a given ratemaking case. The proposed rule provides in pertinent part:

In determining whether another [greater-than-18-month] margin reserve period is justified, the Commission shall consider the rate of growth in the number of equivalent residential connections[3] (ERCs); the time needed to meet the guidelines of the Department of Environmental Protection (DEP) for planning, designing, and construction of plant expansion; and the other technical and economic options available for sizing increments of plant expansion.

These are the very factors FWA advocated in its petition to initiate rulemaking and FWSC incorporated in its alternate proposal as criteria for shortening a presumptive five-year margin reserve period. The question of estoppel aside, we reject the contention that these criteria render the proposed rule invalid.

Making a reference to "rules that confer unbridled discretion," the order under review concludes that the proposed rule "fails to give utilities adequate notice of what they must prove to obtain a margin reserve period of more than 18 months." But the terms the rule uses do not require regulatees of common intelligence and understanding to guess at their meaning. See generally State v. Rodriguez, 365 So. 2d 157 (Fla. 1978).

The administrative law judge's reliance on our decision in *Cortes* v. State, Board of Regents, 655 So. 2d 132 (Fla. 1st DCA 1995), is misplaced. There the "challenged rule itself confer[red] unguided discretion on . . . [administrators] that they did not have before the rule was promulgated." We said:

An administrative rule which creates discretion not articulated in the statute it implements must specify the basis on which the discretion is to be exercised. Otherwise the "lack of ... standards ... for the exercise of discretion vested under the ... rule renders it incapable of understanding ... and incapable of application in a manner susceptible of review." Staten v. Couch, 507 So.2d 702 (Fla. 1st DCA 1987).

Cortes, 655 So. 2d at 138. A rule which "fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency," § 120.52(8)(d), Fla. Stat. (Supp 1996), is invalid. But no rule is properly invalidated simply because "governing statutes, not the challenged rule, confer... discretion." Cortes, 655 So. 2d at 138. The proposed rule at issue here is not one "which creates discretion not articulated in the statute it implements." Id.

Unlike the proposed rule in *Cortes*, the rule the PSC has proposed here articulates criteria that would channel the exercise of statutory authority formerly constrained only by what the record in an individual ratemaking case contained. See In re Application of Palm Coast Util. Corp., 96 F.P.S.C. 11:27 (1996), appeal filed, No. 97-1720 (Fla. 1st DCA May 8, 1997) (finding eighteen-month margin reserve period appropriate); In re Application by Fla. Cities Water Co. (North Ft. Myers Div.), 96 F.P.S.C. 9:139 (1996) (finding

three-year margin reserve period appropriate); In re Application by Fla. Cities Water Co. (Golden Gate Div.), 95 F.P.S.C. 6:136 (1995) (finding nineteen-month margin reserve period appropriate). The PSC has, in numerous ratemaking cases decided over many years, established margin reserve periods on the authority of the statute alone—authority all parties, including FWA and FWSC, properly take for granted and assume as the basis for their respective rule proposals.

Recovery Of Expenditures Made For Environmental And Other Regulatory Compliance

For reasons that are not entirely clear, the administrative law judge concluded that the proposed rule was invalid for failure "to provide a mechanism for full-cost recovery of capital improvements required by governmental regulations." In Florida Cities Water Company v. State, Florida Public Service Commission, 705 So. 2d 620, 623 (Fla. 1st DCA 1998), we held:

'The commission shall ... consider the investment of the utility in land acquired or facilities constructed or to be constructed in the public interest within a reasonable time in the future § 367.081(2)(a), Fla. Stat. (1995). Capital expenditures necessary to comply with governmental regulations must be "considered" because they are "in the public interest." But utilities are entitled to a fair return only "on the investment of the utility in property used and useful in the public service." Id. Capital expenditures not "used and useful" at present are properly excluded from the rate base, even though reasonably incurred in the public interest. While such expenditures are presumably a proper basis for an allowance for funds prudently invested, no such allowance was requested in the

To require the PSC to add to the rate base any and all expenditures another governmental agency's regulations require a utility to make, without regard to whether the expenditures are "used and useful" for current customers, would in effect transfer ratemaking authority from the PSC to the governmental agency requiring the expenditures.

But the proposed rule has only the most tenuous connection with these ratemaking issues. (Nor does its limited scope furnish a basis for invalidation.) The proposed rule does not purport to include or exclude any particular type or class of expenditure from rate base. It does not govern recovery of capital improvements of any kind based on the nature or purpose of the improvements.

Recovery Of Reuse Costs

The final order's conclusion that "the proposed rule would have the unlawful effect of denying a utility recovery of its reuse costs through rates, contrary to Sections 403.064(10) and 367.0817(3), Florida Statutes," is plainly mistaken. "[I]n order to comply with the statutory mandate requiring that the entire cost of a prudently constructed reuse facility be recovered in rates, such a reuse facility must be treated as if it were one hundred percent used and useful.' Southern States, 714 So. 2d at 1058. No question concerning a margin reserve arises as to property that is already "treated as if it were one hundred percent used and useful." Nothing in the text of the proposed rule would have any impact whatsoever on reuse facilities or their financing.

Competent Substantial Evidence Analysis Inapposite

Finally, the administrative law judge concluded that there was a fatal absence of competent substantial evidence to support the presumptive eighteen-month margin reserve period contemplated by the proposed rule, and to support the proposed rule's imputation even of only fifty per cent of contributions-in-aid-of-construction against margin reserves. This was error. While numerous expert witnesses offered views on both of these questions, the former is essentially a matter of Commission procedure and the latter is statutory policy at the core of the legislative prohibition against including contributions-in-aid-of-construction in rate base. See § 367.081(2)(a), Fla. Stat. (1997).

A rebuttable presumption, like the one the proposed rule would engender, giving structure to administrative proceedings at which facts may be fully and fairly litigated, presents a wholly different question than an irrebuttable presumption promulgated by an agency

seeking to foreclose a meaningful evidentiary showing altogether. See Jenkins v. State, Dep't of Health and Rehabilitative Servs., 618 So. 2d749,751 (Fla. 1st DCA 1993); McDonald v. Department of Prof'l Regulation, Bd. of Pilot Comm'rs, 582 So. 2d 660, 664 (Fla. 1st DCA 1991). The proposed rule's rebuttable presumption affords utilities the opportunity to avoid the expense of litigating the initial eighteen months of any margin reserve period.

'[C]ontributions-in-aid-of-construction cannot be included 'in the rate base of any utility during a rate proceeding." "Southern States, 714 So. 2d at 1056. The contributions-in-aid-of-construction in question here accrue, contribution by contribution, over the whole life of the property held in reserve for future use. Thus initially imputing less than one hundred percent against the margin reserve (or otherwise treating as an offset to rate base all projected contributions-in-aid-of-construction) is justified by the time value of money. But, with reference to contributions-in-aid-of-construction, we have said unequivocally that the "Legislature has. specified a particular accounting treatment by statute which the PSC is not at liberty to ignore." Id. The proposed rule's refusal to allow more than a fifty per cent setoff is in keeping with the treatment the statute requires.

Reversed. (BOOTH and VAN NORTWICK, JJ., CONCUR.)

¹A statement of estimated regulatory costs shall include:

(a) A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.

(b) A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed

rule, and any anticipated effect on state or local revenues.

(c) A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. As used in this paragraph, "transactional costs" are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, and the cost of monitoring and reporting.

(d) An analysis of the impact on small businesses as defined by s. 288.703, and an analysis of the impact on small counties and small cities as defined by

s. 120.52.

(e) Any additional information that the agency determines may be useful. (f) In the statement or revised statement, whichever applies, a description of any good faith written proposal submitted under paragraph (1)(a) and either a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

§ 120.541(2), Fla. Stat. (Supp. 1996).

The proposed rule would increase the burden for opposing litigants correspondingly. No party subject to an increased burden has challenged the 18-month

presumption, however.

³Although undefined in the proposed rule, the term "equivalent residential connection" is a term of art FWA and FWSC have never suggested caused anyone concern. See generally Southern States, 714 So. 2d at 1056 ("Equivalent residential connections (ERCs) are calculated by counting the number of water meters connected and adjusting for the size of any meter larger than the standard meter for a single family dwelling."); Sun Bank v. Edmunds, 624 So. 2d 753, 754 (Fla. 1st DCA 1993); Sunshine Utils. of Cent. Fla. v. Florida Pub. Serv. Comm'n, 624 So. 2d 306, 311 (Fla. 1st DCA 1993); Fla. Admin. Code R. 25-30.515(8).

⁴FWSC proposed the following language: In determining the margin reserve period, the Commission shall consider, but not be limited to, the rate of growth in customers and demand, the time needed to meet the guidelines of the Department of Environmental Protection for planning, design and construction of plant expansion, and the available technical and economic options available for sizing increments of plant expansion. Unless otherwise justified, the margin reserve period for water source and treatment facilities and wastewater treatment and effluent disposal facilities is set at five years.

Criminal law-Sentencing-Correction-Claim that defendant initially received true split concurrent sentences of ten years with entire sentence suspended on condition that defendant successfully complete two years of community control, and that, upon revocation of community control, trial court imposed concurrent 25-year sentences—Motion legally sufficient

JOHN W. STOUTAMIRE, Appellant, v. STATE OF FLORIDA, Appellee. 1st District. Case No. 99-306. Opinion filed May 10, 1999. An appeal from the Circuit Court for Columbia County. Thomas J. Kennon, Jr., Judge. Counsel: Appellant pro se. Robert A. Butterworth, Attorney General: Charmaine Millsaps,