



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

April 23, 1993

Mr. Steve Tribble, Director
Division of Records and Reporting
Florida Public Service Commission
101 E. Gaines Street
Tallahassee, FL 32399-0863

RE: Docket No. 911082-WS

Dear Mr. Tribble:

Enclosed please find the original and fifteen (15) copies of Citizens' Comments for filing in the above-referenced docket. Also enclosed are ten (10) additional copies for distribution to any parties unknown to the Office of the Public Counsel.

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

- ACK _____
- AFA _____
- APP 1 _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LE3 1 _____
- LIN 6 _____
- OPC _____
- RCH 1 _____
- SEC 1 _____
- WAS _____
- OTH _____

Sincerely,

H F. Mann, II
Associate Public Counsel

HFM/gr
Enclosures

DOCUMENT NUMBER-DATE

04489 APR 23 88

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed Revision to Rules)
25-30.020, 25-30.025, 25-30.030, 25-30.32,)
25-30.033, 25-30.034, 25-30.035, 25-30.36,)
25-30.037, 25-30.060, 25-30.111, 25-30.135,)
25-30.320, 25-30.335, 25-30.360, 25-30.430,)
25-30.436, 25-30.437, 25-30.443, 25-30.455,) Docket No. 911082-WS
25-30.515, 25-30.565; NEW RULES 25-30.0371,) Filed April 23, 1993
25-30.038, 25-30.039, 25-30.090, 25-30.117,)
25-30.432 to 25-30.435, 25-30.4385,)
25-30.4415, 25-30.456, 25-30.460, 25-30.465,)
25-30.470, and 25-30.475; AND REPEAL OF RULE)
25-30.441, F.A.C., Pertaining to Water and)
Wastewater Regulation)
_____)

CITIZENS' COMMENTS

Jack Shreve
Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400

(904) 488-9330

Attorney for the Citizens
of the State of Florida

DOCUMENT NUMBER-DATE

04489 APR 23 83

FPSC-RECORDS/REPORTING

COMMENTS

The Citizens of the State of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, hereby offer the following comments on the proposed rules as set forth in Order No. PSC-93-0455-NOR-WS, issued 03/24/93.

In many instances the Office of the Public Counsel has offered comments on the proposed rules and, where possible, has offered an alternative rule for consideration. In some instances the Office of the Public Counsel has only offered comments, without an alternative rule. It is the Office of the Public Counsel's intention to offer alternative rules for consideration at or before the hearings. Finally, where appropriate, the Office of the Public Counsel has offered new subsections of the proposed rules for consideration.

DISCUSSION

Rule 25-30.025

25-30.025 Official Date of Filing.

(1) The "official date of filing" is the date on which a utility has filed completed sets of the minimum filing requirements (MFRs) for any application that has been accepted by the Director of the Division of Water and Wastewater as being complete and paid the appropriate filing fee to the Director of Records and Reporting.

OPC Comment: The Citizens believe that for consistency, this rule should also contain the requirement, pursuant to 25-30.436(2), that the utility's direct testimony be filed with the utility's initial filing of its MFRs.

Accordingly, the Citizens offer the following alternative rule for consideration.

OPC Proposed Rule:

25-30.025 (1) The "official date of filing" is the date on which a utility has filed completed sets of the minimum filing requirements (MFRs), including the utility's direct testimony, for any application that has been accepted by the Director of the Division of Water and Wastewater as being complete and paid the appropriate filing fee to the Director of Records and Reporting.

Rule 25-30.033

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

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

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

(r) a detailed statement (balance sheet), certified if available, of the financial condition of the applicant, that shows all assets and liabilities of every kind and character.

The statement shall be prepared in accordance with Rule 25-30.115, Florida Administrative Code;

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

OPC Comment: The Citizens believe that additional information should be required from the utility when it files for an original certificate. Specifically, information necessary to evaluate the finances of the utility before granting reasonable initial rates and charges.

Accordingly, the Citizens offer the following alternative rule for consideration.

OPC Proposed Rule:

25-30.033 (c) the name(s) and address(es) of all corporate officers, directors, partners, or any other person(s) owning an interest in the applicant's business organization; and a description of the nature and identity of all parent companies, affiliated companies, and related parties.

(r) a detailed financial statements (balance sheet, income statement, and source and application of funds), certified if available, of the financial condition of the applicant, that shows all assets and liabilities of every kind and character. The financial statements shall be prepared in accordance with Rule 25-30.115, Florida Administrative Code;

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

25-30.033 (u) a cost study including customer growth projections supporting the proposed rates, charges and service availability charges. A sample cost study, and assistance in preparing initial rates and charges, are available from the Division of Water and Wastewater;

OPC Comment: The Citizens believe it is necessary to clarify terminology used in this rule.

Accordingly, the Citizens offer the following alternative rule for consideration.

OPC Proposed Rule:

25-30.033 (u) a cost of service study including customer growth projections supporting the proposed rates, charges and service availability charges. A sample cost of service study, and assistance in preparing initial rates and charges, are available from the Division of Water and Wastewater;

Rule 25-30.035

25-30.035 Application for Grandfather Certificate.

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

- (1) the utility's complete name and address;
- (2) the nature of the utility's business organization, i.e., corporation, partnership, limited partnership, sole proprietorship, association, etc.;

OPC Comment: The Citizens believe that additional information should be required concerning transfers.

Accordingly, the Citizens offer the following alternative rule for consideration.

OPC Proposed Rule:

25-30.035 (2) the nature of the utility's business organization, i.e., corporation, partnership, limited partnership, sole proprietorship, association, etc.; and a description of the nature and identity of all parent companies, affiliated companies, and related parties;

Rule 25-30.037

25-30.037 Application for Authority to Transfer.

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

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

(c) the nature of the buyer's transferee's business organization, i.e., corporation, partnership, limited partnership, sole proprietorship, or association;

(g) a copy of the contract for sale, which shall include:

1. purchase price and terms of payment, and
2. a list of the assets purchased and liabilities assumed or not assumed;

OPC Comment: The Citizens believe that additional information should be required concerning transfers.

Accordingly, the Citizens offer the following alternative rule for consideration.

OPC Proposed Rule:

25-30.037 ~~(2)(4)~~ Each application for transfer of certificate of authorization, facilities or any portion thereof, to a non-governmental entity shall include the following information.;

(c) the nature of the buyer's transferee's business organization, i.e., corporation, partnership, limited partnership, sole proprietorship, or association; and a description of the nature and identity of all parent companies, affiliated companies, and related parties;

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

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

25-30.037 ~~(2)(4)~~(k) a list of all entities which have provided, or will provide, funding to the buyer transferee, and an explanation of the manner and amount of such funding, which shall include their financial statements and copies of any financial agreements with the utility. This requirement shall not apply to any person or entity holding less than 10 percent ownership interest in the utility, unless that person or entity is also providing

other funding (other than funding to secure an ownership interest) to the utility;

OPC Comment: The Citizens believe that additional information should be required concerning transfers.

Accordingly, the Citizens offer the following alternative rule for consideration.

OPC Proposed Rule:

25-30.037 Application for Authority to Transfer.

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

25-30.037 (3)(2)(g) a list of all entities that have provided, or will provide, funding to the buyer, and an explanation of the manner and amount of such funding, which shall include their financial statements and copies of any financial agreements with the utility. This requirement shall not apply to any person or entity holding less than 10 percent

ownership interest in the utility, unless that person or entity is also providing other funding (other than funding to secure an ownership interest) to the utility;

OPC Comment: The Citizens believe that additional information should be required concerning transfers.

Accordingly, the Citizens offer the following alternative rule for consideration.

OPC Proposed Rule:

25-30.037 ~~(3)~~(2)(g) a list of all entities that have provided, or will provide, funding to the buyer, and an explanation of the manner and amount of such funding, which shall include their financial statements and copies of any financial agreements with the utility, ~~including all auxiliary or supplemental agreements.~~ This requirement shall not apply to any person or entity holding less than 10 percent ownership interest in the utility, unless that person or entity is also providing other funding (other than funding to secure an ownership interest) to the utility;

Rule 25-30.0371

25-30.0371 Rate Base Established at Time of Transfer.

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

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

OPC Comment: The Citizens disagree with the inclusion of Construction Work in Progress (CWIP) in the determination of rate base. It has been the Commission's practice not to include Construction Work in Progress in rate base. These assets earn a return through Allowance for Funds Used During Construction (AFUDC) and should not be included in rate base to earn a current return. While this rule appears to be related to the establishment of net book value and rate base at the time of transfer, the Citizens are concerned that the utility will, at a future point in time, claim that the Commission has already established a rate base at the time of transfer to include CWIP.

The Citizens are also concerned about the provision which indicates that the Commission shall consider the condition of the utility assets purchased in deciding if a purchased asset should be removed from the rate base calculation. While the Citizens agree with this concept, Citizens believe that any assets which have been poorly or improperly maintained should be excluded from rate base and that the rules should be so written.

Accordingly, the Citizens offer the following alternative rule for consideration.

OPC Proposed Rule:

25-30.0371 (1) For the purposes of this rule and Rule 25-30.037 and 25-30.038, rate base is defined as the net book value of the utility assets involved. Net book value is calculated as Utility Plant In Service less Accumulated Depreciation plus Construction Work in Progress less Contributions In Aid of Construction less Advances for Construction plus Accumulated Amortization of Contributions In Aid of Construction. Construction Work in Progress will not be included in rate base at the time the Commission determines the rates for the purchased utility. The Commission shall also consider the condition of the utility assets purchased. Any assets which have been poorly or improperly maintained will be removed from the rate base calculation.

25-30.0371 (2) In the absence of extraordinary circumstances, the purchase of a utility system at a premium or at a discount shall not affect the rate base calculation.

OPC Comment: The Citizens are opposed to this rule. The Citizens do not believe that establishing a rule which allows the purchasing utility to earn a return on a "phantom" investment, in the case of a negative acquisition adjustment, is in the best interests of the ratepayers. While there may be many reasons why a utility would be willing to sell its assets at less than book value, one compelling and frequent reason is that the assets are in a state of disrepair, necessitating the investment of substantial additional funds to bring the system into good working order. Clearly, such a situation would require that customers pay twice to bring the purchased utility system into good working order: Once because rate base has been established as the rate base of the purchased utility; and again when the needed investment and repairs are made.

The Citizens contend the opportunity to earn a fair rate of return on the actual monies invested should be incentive enough for a regulated utility to purchase the assets of another utility. As such, any negative acquisition adjustment should be included in rate base. However, the Citizens recognize that the Commission believes that some additional incentives should be provided to the purchasing utility so that larger more viable utilities will purchase smaller less viable utilities. Toward this end the Citizens would offer a proposed rule that shares the difference between the purchase price and net book value when such difference results in a negative acquisition adjustment. Specifically, the

Citizens believe that a reasonable incentive would be provided by attributing to the purchasing utility's stockholders 20% of the benefit of the negative acquisition adjustment, if the utility can demonstrate that customers will benefit from the acquisition. The remainder, 80%, would be attributed to the ratepayers and included as an offset to rate base. If the purchasing utility is unable to demonstrate that the acquisition will be economically beneficial to the customers, then 100% of the benefit of the negative acquisition adjustment should be attributed to the ratepayers.

The Citizens are opposed to including any positive acquisition adjustment in rate base. The Citizens cannot conceive of any rationale that would warrant such inclusion. For example, one reason a utility might be willing to pay more than book value would be for the potential and opportunity for future growth of the system it is acquiring. Under these circumstances, if the Commission were to allow the inclusion of a positive acquisition adjustment in rate base, then current customers would essentially be required to pay for the growth to be occasioned by future customers. Clearly, inclusion in rate base of monies paid for potential future growth opportunity would be unfair to existing customers.

In the event that the Commission does not adopt the Citizens' preferred proposed rule, then the Citizens are offering an alternative, which is similar to the rule originally proposed by the Commission's Staff.

Accordingly, the Citizens offer the following alternative rules for consideration.

OPC Proposed Rule:

25-30.0371 (2) ~~In the absence of extraordinary circumstances, the purchase of a utility system at a premium or a discount shall not affect the rate base calculation. The purchase of a utility system at a discount should be treated as follows: The negative acquisition adjustment will be calculated in accordance with subsection (1). If the utility can demonstrate that the acquisition is in the best interests of ratepayers, the amount of the negative acquisition adjustment will be shared between the utility's stockholders and ratepayers such that 20% of the benefit is attributed to stockholders and 80% of the benefit is attributed to ratepayers. If the utility is unable to demonstrate that the acquisition is in the best interests of ratepayers, then 100% of the benefit of the negative acquisition adjustment shall be attributed to ratepayers.~~

OPC Alternative Rule:

25-30.0371 (2) ~~In the absence of extraordinary circumstances, the purchase of a utility system at a premium or a discount shall not affect the rate base calculation. When a negative acquisition adjustment occurs, it is the utility's burden to prove that the negative acquisition adjustment should not be included in rate base.~~

25-30.0371 (3) If requested by the acquiring utility, rate base including any acquisition adjustment, will be determined in the order approving the transfer.

OPC Comment: None at present, except as Construction Work in Progress is addressed in subsection (1) above and as the recognition of an acquisition adjustment is addressed in subsection (2) above.

25-30.0371 (4) Where the buyer demonstrates that it has engaged in a good faith effort to obtain original cost documentation, and has been unable to obtain such documents, the Commission may establish rate base based upon competent substantial evidence reconstructing and estimating the original cost of plant in service and the amount of contributions-in-aid-of-construction.

OPC Comment: While the Citizens believe that the intent of this proposed rule has merit, the Citizens do not believe that it is sufficient to protect the interests of ratepayers. Specifically, the Citizens do not believe that it provides the necessary incentive for the utility to engage in a good faith effort to obtain original cost documentation. In order to provide such an incentive, the Citizens recommend that the Commission modify this rule to provide the utility with a realistic incentive to engage in a good faith effort to obtain original cost documentation.

Accordingly, the Citizens offer the following alternative rule for consideration.

OPC Proposed Rule:

25-30.0371 (4) Where the buyer demonstrates that it has engaged in a good faith effort to obtain original cost documentation, and has been unable to obtain such documents, the Commission may establish rate base based upon competent substantial evidence reconstructing and estimating the original cost of plant in service and the amount of contributions-in-aid-of-construction. Where the buyer does not demonstrate that it has engaged in a good faith effort to obtain original cost documentation, and does not obtain such documents, the Commission shall establish rate base at zero.

Rule 25-30.038

25-30.038 Expedited Application for Acquisition of Existing Small System.

25-30.038 (1) This rule is an alternative to Rule 25-30.037, Florida Administrative Code, and applies to any existing Class A or B water or wastewater utility which has a current annual report on file with the Commission and is requesting approval to acquire an existing small system and either institute initial rates and charges or change the existing rates and charges of the small system. For purposes of this rule, an existing small system is one whose total gross annual operating revenues are \$150,000 or less for water service or \$150,000 or less for wastewater service, or \$300,000 or less on a combined basis.

OPC Comment: The Citizens are opposed to this rule in its entirety and believe that it should be stricken. The Commission has no experience with such an experimental policy and to implement it on a generic basis, without any experience as to its ramifications, could be detrimental to the Citizens of the State of Florida.

Rule 25-30.117

25-30.117 Accounting for Pension Costs.

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

OPC Comment: The Citizens believe that language should be included in the rule that requires all pension costs to be funded and correctly escrowed. If these costs are going to be recovered from the ratepayers, the Commission should take steps to ensure that the monies are used for the purpose for which it was collected.

Accordingly, the Citizens offer the following alternative rule for consideration.

OPC Proposed Rule:

25-30.117 Accounting for Pension Costs.

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

Rule 25-30.432

25-30.432 Used and Useful in Rate Case Proceedings

(1) The Commission shall allow a utility to recover through authorized rates, charges and fees, the costs incurred in meeting its statutory obligations to provide safe, efficient and sufficient service. The utility's investment, prudently incurred, in meeting its statutory obligations shall be considered used and useful.

OPC Comment: The Citizens are opposed to the adoption of any rules on the used and useful issues raised in a typical rate case. The Citizens believe that used and useful issues should be decided on a case by case basis. However, the Citizens are offering the comments and suggestions indicated below, in the event the Commission does not adopt the Citizens' primary recommendation which is to disregard this proposed rule.

If the Commission adopts this rule the Citizens raise the following questions:

1) Why is the margin reserve calculated on the greater of permitted or actual ERC capacity when "firm reliable capacity" is always used in the denominator of the default formulas? This is an obvious mismatch and will always be to the detriment of the ratepayer by giving the utility a higher percentage of used and useful plant to be paid for by the current as well as future customer. If a margin reserve is allowed at all it should be based on ERCs presently served by the system(s) since present ERCs would be an

indication of past growth patterns.

2) Why is fire flow allowed in the used and useful calculation even when a utility is incapable of delivering this service?

3) Fill-in lots or Fill-in ERCs could lead to collaboration between the utilities and developers to assure that "pockets" of 25% density exist throughout a service territory therefore making the system 100% used and useful.

25-30.432 (1) The Commission shall allow a utility to recover through authorized rates, charges and fees, the costs incurred in meeting its statutory obligations to provide safe, efficient and sufficient service. The utility's investment, prudently incurred, in meeting its statutory obligations shall be considered used and useful.

OPC Comment: The Citizens object to the inclusion of the last sentence in proposed Rule 25-30.432(1). A utility's investment may be prudently incurred but not be used and useful to current ratepayers.

Accordingly, the Citizens offer the following alternative rule for consideration.

OPC Proposed Rule:

25-30.432 (1) The Commission shall allow a utility to recover through authorized rates, charges and fees, the costs incurred in meeting its statutory obligations to provide safe, efficient and sufficient service. ~~The utility's investment, prudently incurred, in meeting its statutory obligations shall be considered used and useful.~~

25-30.432 (4) To encourage long-term planning and least cost system design, the Commission, at a minimum, shall consider as used and useful the level of investment that would have been required had the utility designed and constructed the system to serve only its existing customer base.

OPC Comment: The Citizens are opposed to this rule. It essentially requires that all economies of scale associated with building a larger plant are to be attributed to future customers. Both current and future customers contribute to a utility's ability to build larger, less-cost-per-unit plants. This benefit should be attributed to both current and future customers. The utility, through AFPI, will still have the opportunity to recover the cost of a prudent investment. This rule may have the effect of causing utilities to build plant larger than necessary. Furthermore, in the past the Commission has not adopted this position. For these reasons, the Citizens believe that this rule should be stricken in its entirety.

25-30.432 (5) For the purpose of calculating used and useful, the following specific factors shall apply. When applying these factors, references to customer demand shall mean the demand per equivalent residential connection (ERC) used for design or permitting or the actual historical demand per ERC, whichever is greater.

(a) Margin Reserve

1. The Commission recognizes that for a utility to meet its statutory responsibility, it must have sufficient capacity and investment to meet the existing and changing demands of present customers and the demands of potential customers within a reasonable time. The investment needed to meet the demands of potential customers and the changing demands of existing customers is defined as margin reserve. As a matter of policy, the Commission recognizes margin reserve as a component of used and useful rate base.

OPC Comment: Margin reserve should not be a burden placed on current ratepayers. Therefore, the Citizens object to this entire rule on margin reserve and believe that it should be stricken.

25-30.432 (6) Used and useful default formulas.

OPC Comment: The Citizens are opposed to some of the default formulas. However, the Citizens have proposed alternative formulas which Citizens believe are superior to the ones contained in the proposed rules.

Accordingly, the Citizens offer the following alternative default formulas for consideration.

- (a) Small water systems (less than 1 million gallons per day (MGD) capacity).

OPC: (a) Small Water Systems (less than 1 million gallons per day (MGD) capacity) adequate storage, fire protection

1. Small water systems (less than 1 MGD capacity) with adequate reliable finished water storage capacity to meet the local fire flow ordinances and to meet the peak hour demand of its customers shall use the following formulas:

OPC: 1. Small water systems (less than 1 MGD capacity) with adequate reliable finished water storage capacity to meet the local fire flow ordinances and to meet the peak hour demand of its customers shall use the following formulas: (Finished water storage capacity sufficient for fire protection alone without the necessary pumping capacity to deliver the flow to the fire hydrant is not fire protection)

- a. Water source of supply:
(Maximum Day Demand + Margin Reserve) / Firm Reliable Capacity
- OPC: a. Water source of supply:
(Maximum Day Demand + ~~Margin Reserve~~) / Firm Reliable Capacity
- b. Water treatment equipment:
(Maximum Day Demand + Margin Reserve) / Firm Reliable Capacity
- OPC: b. Water treatment equipment:
(Maximum Day Demand + ~~Margin Reserve~~) / Firm Reliable Capacity
- c. Finished water storage:
(Equalization Volume + Fire Flow Requirement + Emergency Storage + Margin Reserve) / Firm Reliable Capacity
- OPC: c. Finished water storage:
(Equalization Volume + Fire Flow Requirement + ~~Emergency Storage + Margin Reserve~~) / Firm Reliable Capacity
- d. Water high service pumping:
(Instantaneous Demand + Margin Reserve) / Firm Reliable Capacity
or, if the utility chooses:
(Peak Hour Demand + Fire Flow Requirement + Margin Reserve) / Firm Reliable Capacity
- OPC: d. Water high service pumping:
(Instantaneous Demand + ~~Margin Reserve~~) / Firm Reliable Capacity
or, if the utility chooses:
(Peak Hour Demand + Fire Flow Requirement + ~~Margin Reserve~~) / Firm Reliable Capacity

- e. Other water facilities: 100 percent used and useful
- OPC: e. Other water facilities: ~~100 percent used and useful~~
Number of test year connections ERCs/Capacity ERCs
- f. Water transmission system: 100 percent used and useful
- OPC: f. Water transmission system: ~~100 percent used and useful~~
Number of test year connections ERCs/Capacity ERCs
- g. Water distribution system - non-developer related: 100% used and useful
- OPC: g. Water distribution system - non-developer related: ~~100% used and useful~~
Number of test year connections ERCs/Capacity ERCs
- h. Water distribution system - developer related, single family developments:
((Lots Served + Fill-in Lots + Margin Reserve) / Lots with Service Available)
+ Fire Flow Allowance
- OPC: h. Water distribution system - developer related, single family developments:
~~((Lots Served + Fill-in Lots + Margin Reserve) / Lots with Service Available)~~
~~+ Fire Flow Allowance~~
Number of test year connections ERCs/Capacity ERCs
- i. Water distribution system - developer related, mixed developments (e.g.,
single family, multi-family and commercial):
((Connected ERCs + Fill-in ERCs + Margin Reserve) / ERC Capacity) + Fire
Flow Allowance
- OPC: i. Water distribution system - developer related, mixed developments (e.g.,
single family, multi-family and commercial):
~~((Connected ERCs + Fill-in ERCs + Margin Reserve) / ERC Capacity) + Fire~~
~~Flow Allowance~~
Number of test year connections ERCs/Capacity ERCs

2. Small water systems (less than 1 MGD capacity) with no storage facilities other than hydropneumatic tanks or with insufficient storage to buffer the instantaneous demands of its customers shall use the following formulas:

a. Water source of supply:
(Instantaneous Demand + Margin Reserve) / Firm Reliable Capacity
or, if the utility chooses:
(Maximum Day Demand + Fire Flow Requirement + Margin Reserve) / Firm Reliable Capacity

OPC: a. Water source of supply:
(Instantaneous Demand + Margin Reserve) / Firm Reliable Capacity
or, if the utility chooses:
(Maximum Day Demand + Fire Flow Requirement + Margin Reserve) / Firm Reliable Capacity

b. Water treatment equipment:
(Instantaneous Demand + Margin Reserve) / Firm Reliable Capacity
or, if the utility chooses:
(Maximum Day Demand + Fire Flow Requirement + Margin Reserve) / Firm Reliable Capacity

OPC: b. Water treatment equipment:
(Instantaneous Demand + Margin Reserve) / Firm Reliable Capacity
or, if the utility chooses:
(Maximum Day Demand + Fire Flow Requirement + Margin Reserve) / Firm Reliable Capacity

c. Finished water storage: 100 percent used and useful

OPC: c. Finished water storage: 100 percent used and useful
Number of test year connections ERCs/Capacity ERCs

d. Water high service pumping:
(Instantaneous Demand + Margin Reserve) / Firm Reliable Capacity
or, if the utility chooses:
(Peak Hour Demand + Fire Flow Requirement + Margin Reserve) / Firm
Reliable Capacity

OPC: d. Water high service pumping:
(Instantaneous Demand + Margin Reserve) / Firm Reliable Capacity
or, if the utility chooses:
(Maximum Day Demand + Fire Flow Requirement + Margin Reserve) / Firm
Reliable Capacity

e. Other water facilities: 100 percent used and useful

OPC: e. Other water facilities: 100 percent used and useful
Number of test year connections ERCs/Capacity ERCs

f. Water transmission system: 100 percent used and useful

OPC: f. Water transmission system: 100 percent used and useful
Number of test year connections ERCs/Capacity ERCs

g. Water distribution system - non-developer related: 100 percent used and
useful

OPC: g. Water distribution system - non-developer related: 100 percent used and
useful
Number of test year connections ERCs/Capacity ERCs

h. Water distribution system - developer related, single family developments:
 $(\text{Lots Served} + \text{Fill-in Lots} + \text{Margin Reserve}) / \text{Lots with Service Available} + \text{Fire Flow Allowance}$

OPC: h. Water distribution system - developer related, single family developments:
 $(\text{Lots Served} + \text{Fill-in Lots} + \text{Margin Reserve}) / \text{Lots with Service Available} + \text{Fire Flow Allowance}$
Number of test year connections ERCs/Capacity ERCs

i. Water distribution system - developer related, mixed developments (e.g., single family, multi-family and commercial):
 $((\text{Connected ERCs} + \text{Fill-in ERCs} + \text{Margin Reserve}) / \text{ERC Capacity}) + \text{Fire Flow Allowance}$

OPC: i. Water distribution system - developer related, mixed developments (e.g., single family, multi-family and commercial):
 $((\text{Connected ERCs} + \text{Fill-in ERCs} + \text{Margin Reserve}) / \text{ERC Capacity}) + \text{Fire Flow Allowance}$

(b) Medium water systems (1 MGD to 5 MGD Capacity):

1. Medium water systems (1 MGD to 5 MGD capacity) with adequate reliable finished water storage capacity to meet the local fire flow ordinances and to meet the peak hour demand of its customers shall use the following formulas:

a. Water source of supply:
 $(\text{Maximum Day Demand} + \text{Margin Reserve}) / \text{Firm Reliable Capacity}$

OPC: a. Water source of supply:
 $(\text{Maximum Day Demand} + \text{Margin Reserve}) / \text{Firm Reliable Capacity}$

b. Water Treatment Equipment:
(Maximum Day Demand + Margin Reserve) / Firm Reliable Capacity

OPC: b. Water Treatment Equipment:
(Maximum Day Demand + ~~Margin Reserve~~) / Firm Reliable Capacity

c. Finished water storage:
(Equalization Volume + Fire Flow Requirement + Emergency Storage + Margin Reserve) / Firm Reliable Capacity

OPC: c. Finished water storage:
(Equalization Volume + Fire Flow Requirement + ~~Emergency Storage + Margin Reserve~~) / Firm Reliable Capacity

d. Water high service pumping:
(Peak Hour Demand + Margin Reserve) / Firm Reliable Capacity
or, if the utility chooses:
(Maximum Day Demand + Fire Flow Requirement + Margin Reserve) / Firm Reliable Capacity

OPC: d. Water high service pumping:
(Peak Hour Demand + ~~Margin Reserve~~) / Firm Reliable Capacity
or, if the utility chooses:
(Maximum Day Demand + Fire Flow Requirement + ~~Margin Reserve~~) / Firm Reliable Capacity

e. Other water facilities: 100 percent used and useful

OPC: e. Other water facilities: ~~100 percent used and useful~~
Number of test year connections ERCs/Capacity ERCs

f. Water transmission system: 100 percent used and useful

OPC: f. Water transmission system: ~~100 percent used and useful~~
Number of test year connections ERCs/Capacity ERCs

g. Water distribution system - non-developer related: 100 percent used and useful

OPC: g. Water distribution system - non-developer related: ~~100 percent used and useful~~
Number of test year connections ERCs/Capacity ERCs

h. Water distribution system - developer related, single family developments: ((Lots Served + Fill-in Lots + Margin Reserve) / Lots with Service Available) + Fire Flow Allowance

OPC: h. Water distribution system - developer related, single family developments: ~~((Lots Served + Fill-in Lots + Margin Reserve) / Lots with Service Available) + Fire Flow Allowance~~
Number of test year connections ERCs/Capacity ERCs

i. Water distribution system - developer related, mixed developments (e.g., single family, multi-family and commercial): ((Connected ERCs + Fill-in ERCs + Margin Reserve) / ERC Capacity) + Fire Flow Allowance

OPC: i. Water distribution system - developer related, mixed developments (e.g., single family, multi-family and commercial): ~~((Connected ERCs + Fill-in ERCs + Margin Reserve) / ERC Capacity) + Fire Flow Allowance~~
Number of test year connections ERCs/Capacity ERCs

2. Medium water systems (1 MGD to 5 MGD capacity) with no storage facilities other than hydropneumatic tanks or with insufficient storage to buffer the instantaneous demands of its customers shall use the following formulas:

OPC: Note: This system has no fire flow

- a. Water source of supply:
(Peak Hour Demand + Margin Reserve) / Firm Reliable Capacity
or, if the utility chooses:
(Maximum Day Demand + Fire Flow Requirement + Margin Reserve) / Firm
Reliable Capacity

OPC: a. Water source of supply:
(Peak Hour Demand + Margin Reserve) / Firm Reliable Capacity
or, if the utility chooses:
(Maximum Day Demand + Fire Flow Requirement + Margin Reserve) / Firm
Reliable Capacity

- b. Water treatment equipment:
(Peak Hour Demand + Margin Reserve) / Firm Reliable Capacity
or, if the utility chooses:
(Maximum Day Demand + Fire Flow Requirement + Margin Reserve) / Firm
Reliable Capacity

OPC: b. Water treatment equipment:
(Peak Hour Demand + Margin Reserve) / Firm Reliable Capacity
or, if the utility chooses:
(Maximum Day Demand + Fire Flow Requirement + Margin Reserve) / Firm
Reliable Capacity

- c. Finished water storage: 100 percent used and useful

OPC: c. Finished water storage: 100 percent used and useful
100% (hydropneumatic tank)

d. Water high service pumping:
(Peak Hour Demand + Margin Reserve) / Firm Reliable Capacity
or, if the utility chooses:
(Maximum Day Demand + Fire Flow Requirement + Margin Reserve) / Firm
Reliable Capacity

OPC: d. Water high service pumping:
(Peak Hour Demand + Margin Reserve) / Firm Reliable Capacity
or, if the utility chooses:
(Maximum Day Demand + Fire Flow Requirement + Margin Reserve) / Firm
Reliable Capacity

e. Other water facilities: 100 percent used and useful

OPC: e. Other water facilities: ~~100 percent used and useful~~
Number of test year connections ERCs/Capacity ERCs

f. Water transmission system: 100 percent used and useful

OPC: f. Water transmission system: ~~100 percent used and useful~~
Number of test year connections ERCs/Capacity ERCs

g. Water distribution system - non-developer related: 100 percent used and useful

OPC: g. Water distribution system - ~~non-developer related: 100 percent used and useful~~
Number of test year connections ERCs/Capacity ERCs

- h. Water distribution system - developer related, single family developments:
~~((Lots Served + Fill-in Lots + Margin Reserve) / Lots with Service Available)~~
+ Fire Flow Allowance
- OPC:** h. Water distribution system - developer related, single family developments:
~~((Lots Served + Fill-in Lots + Margin Reserve) / Lots with Service Available)~~
~~+ Fire Flow Allowance~~
Number of test year connections ERCs/Capacity ERCs
- i. Water distribution system - developer related, mixed developments (e.g., single family, multi-family and commercial):
~~((Connected ERCs + Fill-in ERCs + Margin Reserve) / ERC Capacity) + Fire Flow Allowance~~
- OPC:** i. Water distribution system - developer related, mixed developments (e.g., single family, multi-family and commercial):
~~((Connected ERCs + Fill-in ERCs + Margin Reserve) / ERC Capacity) + Fire Flow Allowance~~
Number of test year connections ERCs/Capacity ERCs

(c) Large water systems (over 5 MGD Capacity):

1. Large water systems (over 5 MGD capacity) with adequate reliable finished water storage capacity to meet the local fire flow ordinances and to meet the peak hour demand of its customers shall use the following formulas:

OPC: NOTE:Ground storage without pumping capacity does not meet fire flow requirement - fire flow must be at the fire hydrant

a. Water source of supply:
(Average 5 Maximum Days Demand + Margin Reserve) / Firm Reliable Capacity

OPC: a. Water source of supply:
(Average 5 Maximum Days Demand ~~+Margin Reserve~~) / Firm Reliable Capacity

b. Water treatment equipment:
(Average 5 Maximum Days Demand + Margin Reserve) / Firm Reliable Capacity

OPC: b. Water treatment equipment:
(Average 5 Maximum Days Demand ~~+ Margin Reserve~~) / Firm Reliable Capacity

c. Finished water storage:
(Equalization Volume + Fire Flow Requirement + Emergency Storage + Margin Reserve) / Firm Reliable Capacity

OPC: c. Finished water storage:
(Equalization Volume + Fire Flow Requirement + ~~Emergency Storage + Margin Reserve~~) / Firm Reliable Capacity

d. Water high service pumping:
(Peak Hour Demand + Margin Reserve) / Firm Reliable Capacity
or, if the utility chooses:
(Maximum Day Demand + Fire Flow Requirement + Margin Reserve) / Firm Reliable Capacity

OPC: d. Water high service pumping:
(Peak Hour Demand + ~~Margin Reserve~~) / Firm Reliable Capacity
or, if the utility chooses:
(Maximum Day Demand + Fire Flow Requirement + ~~Margin Reserve~~) / Firm Reliable Capacity

e. Other water facilities: 100 percent used and useful

OPC: e. Other water facilities: ~~100 percent used and useful~~
Number of test year connections ERCs/Capacity ERCs

f. Water transmission system: 100 percent used and useful

OPC: f. Water transmission system: ~~100 percent used and useful~~
Number of test year connections ERCs/Capacity ERCs

- g. Water distribution system - non-developer related: 100 percent used and useful
- OPC: g. ~~Water distribution system - non-developer related: 100 percent used and useful~~
~~Number of test year connections ERCs/Capacity ERCs~~
- h. Water distribution system - developer related, single family developments: ((Lots Served + Fill-in Lots + Margin Reserve) / Lots with Service Available) + Fire Flow Allowance
- OPC: h. ~~Water distribution system - developer related, single family developments: ((Lots Served + Fill-in Lots + Margin Reserve) / Lots with Service Available) + Fire Flow Allowance~~
~~Number of test year connections ERCs/Capacity ERCs~~
- i. Water distribution system - developer related, mixed developments (e.g., single family, multi-family and commercial): ((Connected ERCs + Fill-in ERCs + Margin Reserve) / ERC Capacity) + Fire Flow Allowance
- OPC: i. ~~Water distribution system - developer related, mixed developments (e.g., single family, multi-family and commercial): ((Connected ERCs + Fill-in ERCs + Margin Reserve) / ERC Capacity) + Fire Flow Allowance~~
~~Number of test year connections ERCs/Capacity ERCs~~

2. Large water systems (over 5 MGD capacity) with no storage facilities other than hydropneumatic tanks or with insufficient storage to buffer the instantaneous demands of its customers shall use the following formulas:

OPC: NOTE: No Fire Protection

a. Water source of supply:
(Maximum Day Demand + Fire Flow Requirement + Margin Reserve) / Firm Reliable Capacity

OPC: a. Water source of supply:
(Maximum Day Demand + Fire Flow Requirement + Margin Reserve) / Firm Reliable Capacity

b. Water treatment equipment:
(Maximum Day Demand + Fire Flow Requirement + Margin Reserve) / Firm Reliable Capacity

OPC: b. Water treatment equipment:
(Maximum Day Demand + Fire Flow Requirement + Margin Reserve) / Firm Reliable Capacity

c. Finished water storage: 100 percent used and useful

OPC: c. Finished water storage: ~~100 percent used and useful~~
100% (hydropneumatic tank)

- d. Water high service pumping:
(Peak Hour Demand + Fire Flow Requirement + Margin Reserve) / Firm
Reliable Capacity
- OPC: d. Water high service pumping:
(Peak Hour Demand + Fire Flow Requirement + Margin Reserve) / Firm
Reliable Capacity
- e. Other water facilities: 100 percent used and useful
- OPC: e. Other water facilities: 100 percent used and useful
Number of test year connections ERCs/capacity ERCs
- f. Water transmission system: 100 percent used and useful
- OPC: f. Water transmission system: 100 percent used and useful
Number of test year connections ERCs/capacity ERCs
- g. Water distribution system - non-developer related: 100 percent used and useful
- OPC: g. Water distribution system - non-developer related: 100 percent used and useful
Number of test year connections ERCs/capacity ERCs
- h. Water distribution system - developer related, single family developments: ((Lots Served + Fill-in Lots + Margin Reserve) / Lots with Service Available) + Fire Flow Allowance
- OPC: h. Water distribution system - developer related, single family developments: ((Lots Served + Fill-in Lots + Margin Reserve) / Lots with Service Available) + Fire Flow Allowance
Number of test year connections ERCs/capacity ERCs

i. Water distribution system - developer related, mixed developments (e.g., single family, multi-family and commercial):
((Connected ERCs + Fill-in ERCs + Margin Reserve) / ERC Capacity) + Fire Flow Allowance

OPC: i. Water distribution system - developer related, mixed developments (e.g., single family, multi-family and commercial):
((Connected ERCs + Fill-in ERCs + Margin Reserve) / ERC Capacity) + Fire Flow Allowance
Number of test year connections ERCs/capacity ERCs

(d) Wastewater systems:

1. Wastewater collection system and pumping stations -non-developer related:
100 percent used and useful

OPC: 1. Wastewater collection system and pumping stations -non-developer related:
100 percent used and useful
Number of test year connections ERCs/capacity ERCs

2. Wastewater collection system and pumping stations - developer related, single family developments:
(Lots Served + Fill-in Lots + Margin Reserve) / Lots with Service Available

OPC: 2. Wastewater collection system and pumping stations - developer related, single family developments:
(Lots Served + Fill in Lots + Margin Reserve) / Lots with Service Available
Number of test year connections ERCs/capacity ERCs

3. Wastewater collection system and pumping stations - developer related, mixed developments (e.g., single family, multi-family and commercial):

$$\frac{(\text{Connected ERCs} + \text{Fill-in ERCs} + \text{Margin Reserve})}{\text{ERC Capacity}}$$
- OPC:** 3. Wastewater collection system and pumping stations -developer related, mixed developments (e.g., single family, multi-family and commercial):

$$\frac{(\text{Connected ERCs} + \text{Fill-in ERCs} + \text{Margin Reserve})}{\text{ERC Capacity}}$$
4. Wastewater force mains: 100 percent used and useful
- OPC:** 4. Wastewater force mains: ~~100 percent used and useful~~

$$\frac{\text{Number of test year connections ERCs}}{\text{capacity ERCs}}$$
5. Wastewater treatment equipment:

$$\frac{(\text{Maximum Month Flow} + \text{Margin Reserve})}{\text{Firm Reliable Capacity}}$$
- OPC:** 5. Wastewater treatment equipment:

$$\frac{(\text{Maximum Month Flow} + \text{Margin Reserve}) - \text{excessive infiltration-inflow}}{\text{Firm Reliable Capacity disposal capacity}}$$
6. Effluent disposal facilities:

$$\frac{(\text{Maximum Month Flow} + \text{Margin Reserve})}{\text{Firm Reliable Capacity}}$$
- OPC:** 6. Effluent disposal facilities:

$$\frac{(\text{Maximum Month Flow} + \text{Margin Reserve}) - \text{excessive infiltration-inflow}}{\text{Firm Reliable Capacity disposal capacity}}$$
7. Other wastewater facilities: 100 percent used and useful
- OPC:** 7. Other wastewater facilities: ~~100 percent used and useful~~

$$\frac{\text{Number of test year connections ERCs}}{\text{capacity ERCs}}$$

25-30-432 (7) Definitions

(e) Fill-in Lots - The total number of unoccupied residential lots on isolatable sections of the distribution system in which at least 25 percent of the lots are currently, or in the past have been provided active water or wastewater service, as applicable.

OPC Comment: The Citizens are against the inclusion of Fill-in-lots or Fill-in-ERCs being included in the used and useful calculation. Therefore, this definition should be stricken.

(f) Fire Flow Allowance - an allowance for the capacity of a water distribution system, calculated using the following formula: Fire Flow Allowance = (Fire Flow Requirement / (Fire Flow Requirement + Maximum Day Demand)) X (1 -((Average number of ERCs connected to the distribution system + Margin Reserve in ERCs) / Capacity of the distribution system in ERCs))

OPC Comment: The Citizens disagree that fire flow is a function of the water distribution system. However, it is a function of the pumping and storage facilities. Also, a fire flow allowance should only be considered for systems that are capable of delivering this service.

Accordingly, the Citizens offer the following definition for consideration.

OPC Proposed Definition:

Fire flow allowance shall be what the system can provide at the fire hydrant without exceeding governmental fire flow requirements.

(k) Lots Served - the total number of residential lots that are currently, or in the past have been, provided active water or wastewater service, as applicable, plus lots occupied but never connected to the system that are capable of being provided service by the existing distribution or collection system.

OPC Comment: The Citizens disagree with the above definition.

Accordingly, the Citizens offer the following definition for consideration.

OPC Proposed Definition:

Lots Served - the total number of residential lots that are currently, or in the past have been, provided active water or wastewater service, as applicable, plus lots occupied but never connected to the system that are capable of being provided service by the existing distribution or collection system.

Rule 25-30.433

25-30.433 Rate Case Proceedings.

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

25-30.433 (1) The Commission in every rate case shall make a determination of the quality of service provided by the utility. This shall be derived from an evaluation of three separate components of water and wastewater utility operations: quality of utility's product (water and wastewater); operational conditions of utility's plant and facilities; and the utility's attempt to address customer satisfaction. Sanitary surveys, outstanding citations, violations and consent orders on file with the Department of Environmental Regulation (DER) and county health departments (HRS) or lack thereof over the preceding 3-year period shall also be considered. DER and HRS officials' testimony concerning quality of service as well as the testimony of utility's customers shall be considered.

OPC Comment: The Citizens believe that the Commission should add to this rule an imposition of a penalty if the utility does not meet the Commission's quality of service standard. The Commission has imposed such penalties in the past, and the Citizens

believe that this should be part of the rule. Because of the different circumstances facing each utility it is not possible to put forth a penalty that would be applicable to each situation or each utility. Nevertheless, the rule can still indicate that an appropriate penalty will be assessed.

Accordingly, the Citizens offer the following alternative rule for consideration.

OPC Proposed Rule:

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

25-30.433 (2) Working capital shall be calculated as one-eighth of operation and maintenance expenses.

OPC Comment: The Citizens disagree with calculating working capital using the one-eighth method, as it is inexact and more often than not results in a larger working capital allowance than necessary.

Accordingly, the Citizens offer the following alternative rule for consideration.

OPC Proposed Rule:

25-30.433 (2) Working capital shall be calculated using the balance sheet approach.

25-30.433 (4) The averaging method used by the Commission for rate base and cost of capital is the simple beginning and end-of-year average.

OPC Comment: The simple average of beginning and end of year can overstate the utility's rate base. The 13-month average will correct this overstatement.

Accordingly, the Citizens offer the following alternative rule for consideration.

OPC Proposed Rule:

25-30.433 (4) The averaging method used by the Commission for rate base and cost of capital is the simple beginning and end of year 13-month average.

25-30.433 (5) Non-used and useful plant adjustments shall be applied to the applicable depreciation expense.

OPC Comment: The Citizens believe that property taxes should be added to the expense accounts to which non-used and useful plant adjustments should be applied. This has been the Commission's practice in the past and there is no compelling reason to change it. Property taxes, like depreciation, are a function of the plant investment. If the investment is not used and useful, then all related expenses should be treated as non-used and useful. The typical utility responses, i.e. taxes are a current expense, economies of scale, and property assessed values are different than plant in service values, are not adequate or valid reasons for changing the Commission's past policy. To the extent that different counties treat non-used and useful property differently than used and useful property for tax assessment purposes, this can be taken into consideration on a case by case basis.

Accordingly, the Citizens offer the following alternative rule for consideration.

OPC Proposed Rule:

25-30.433 (5) Non-used and useful plant adjustments shall be applied to the applicable depreciation expense and property taxes.

25-30.433 (6) CIAC shall not be imputed on the margin reserve calculation.

OPC Comment: While the Citizens disagree with the concept of margin reserve, if one is allowed, the Citizens believe that CIAC should be imputed on the margin reserve calculation. This proposed rule is a deviation from past Commission policy. The Citizens believe that the Commission should continue with its past policy and impute CIAC on margin reserve. This would properly match future customers' contribution with the investment allowed through margin reserve.

Accordingly, the Citizens offer the following alternative rule for consideration.

OPC Proposed Rule:

25-30.433 (6) CIAC shall ~~not~~ be imputed on the margin reserve calculation.

25-30.433 (8) Non-recurring expenses shall be amortized over a 5-year period unless a shorter or longer period of time can be justified.

OPC Comment: The Citizens believe that non-recurring expenses should be amortized over a 4-year period and that rates should be adjusted downward in the same fashion rates are adjusted at the end of the 4-year amortization period for rate case expense. The Citizens would only recommend a 4-year amortization period if and only if rates are adjusted downward at the end of four years. If this aspect of the proposed rule is not adopted, then the Citizens would recommend that the proposed 5-year amortization period be adopted.

Accordingly, the Citizens offer the following alternative rule for consideration.

OPC Proposed Rule:

25-30.433 (8) Non-recurring expenses shall be amortized over a ~~5-year~~ 4-year period unless a shorter or longer period of time can be justified. At the end of the fourth year, rates shall be adjusted downward in the same manner as in Rule 25-30.470.

25-30.433 (9) The amortization period for forced abandonment or the prudent retirement, in accordance with the National Association of Regulatory Utility Commissioners Uniform System of Accounts, of plant assets prior to the end of their depreciable life shall be calculated by taking the ratio of the net loss (original cost less

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

OPC Comment: The Citizens believe that the proposed rule is unfair to ratepayers. It essentially ensures that, absent some kind of unusual circumstances, the utility will recover the investment in its abandoned plant over a period of time that is typically shorter than over the remaining depreciable life of the plant. The Citizens believe that the cost of abandoned plant should not be recovered from ratepayers. In the alternative, the Citizens recommend that abandoned plant be amortized over the remaining life of the plant or 15-years whichever is shorter, with the unamortized balance of the plant excluded from rate base.

Accordingly, the Citizens offer the following alternative rule for consideration.

OPC Proposed Rule:

25-30.433 (9) The amortization period for forced abandonment or the prudent retirement, in accordance with the National Association of Regulatory Utility Commissioners Uniform System of Accounts, of plant assets prior to the end of their depreciable life shall be ~~calculated by taking the ratio of the net loss (original cost less accumulated depreciation and contributions in aid of construction (GIAC) plus accumulated amortization of GIAC plus any costs incurred to remove the asset less any salvage value) to the sum of the annual depreciation expense, net of amortization of GIAC, plus an amount equal to the rate of return that would have been allowed on the net invested plant that would have been included in rate base before the abandonment or retirement,~~ over the remaining depreciable life of the abandoned plant or 15 years, whichever is shorter. The unamortized balance of the abandoned plant shall not be included in rate base. This ~~formula~~ method shall be used unless the specific circumstances surrounding the abandonment or retirement demonstrate a more appropriate amortization period.

New Rule 25-30.433 (12)

OPC Comment: A utility's investment in nonutility operations should be removed from the equity component of the utility's capital structure. This has been a standard practice of this Commission. Accordingly, in the spirit of these proposed rules, the Citizens believe that the practice should be adopted as a rule.

OPC Proposed Rule:

25-30.433 (12) The investment in nonutility operations shall be removed from the equity component of the utility's capital structure.

New Rule 25-30.433 (13)

OPC Comment: In calculating income tax expense, interest expense should be calculated by synchronizing the cost of debt included in the capital structure with the rate base, including attributing an interest expense on Investment Tax Credits that earn a rate of return. Where applicable, interest expense should also include the tax effect of parent debt. This treatment of a utility's interest expense for calculating income tax expense has been a standard practice of this Commission. Accordingly, in the spirit of these proposed rules, the Citizens believe that the practice should be adopted as a rule.

OPC Proposed Rule:

25-30.433 (13) In calculating income tax expense, interest expense shall be calculated by synchronizing the cost of debt included in the capital structure with the rate base, including attributing an interest expense on Investment Tax Credits that earn a rate of return. Where applicable, interest expense shall also include the tax effect of parent debt, in accordance with the methodology set forth in Schedule C-8 of Commission Form PSC/WAS 17 (as described in Rule 25-30.437).

New Rule 25-30.433 (14)

OPC Comment: The Citizens believe that income taxes should not be allowed if a utility has sufficient loss carryforwards. Accordingly, the Citizens offer the following new rule for consideration.

OPC Proposed Rule:

25-30.433 (14) Income tax expense shall not be allowed for utilities that have sufficient loss carryforwards at the utility or parent level to offset any tax liability in the foreseeable future regardless of whether a tax sharing agreement exists between the utility and its parent.

New Rule 25-30.433 (15)

OPC Comment: The Citizens believe that the Commission should establish a rule to address rate case expense. As all parties to this rule making proceeding are aware, in the water and wastewater industry, rate case expense can often account for a significant portion of a utility's requested rate relief. Citizens are concerned that without some immediate guidance, rate case expense will continue to grow to the point of making it prohibitive for customers to take an active role in the rate setting process. For these reasons, the Citizens are of the opinion, that the Commission must address this problem and that it should be done in the context of this rule making proceeding. The Citizens have not at this point in time formulated a rule, but would offer the following

suggestions as food for thought.

1) A standard for consultant and legal fees could be set based upon some factor, like the size of the water/wastewater company, the complexity of the case, etc. Any fees incurred in excess of this standard would be borne by the utility's stockholders, except under extraordinary circumstances.

2) Consultants and Attorneys hired by the utility should be required to provide the utility with an estimate (bid) of what their consulting and legal fees will be for the anticipated rate case. Too often, consultants and attorneys hired by the utilities, provide no estimate of their anticipated fees.

The Citizens believe that standards such as those suggested above would encourage utilities to make a concerted effort to "hold the line" on rate case expense. While utilities often argue that they make every effort to hold down rate case expense, proving or disproving such an argument is almost impossible.

Rule 25-30.434

25-30.434 Application for Allowance For Funds Prudently Invested (AFPI) Charges.

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

OPC Comment: To be consistent with the Citizens' proposal under 25-30.433(5), property taxes must be added to this subsection.

Accordingly, the Citizens offer the following alternative rule for consideration.

OPC Proposed Rule:

25-30.434 (i) The amount of depreciation expense, and composite depreciation rate, and property taxes related to the non-used and useful plant by system.

Rule 25-30.435

25-30.435 Application for a Rate Increase by an Applicant that Owns Multiple Systems.

This section applies to any applicant filing under Chapters 367.081 or 367.082, F.S., that owns more than one regulated system, either water or wastewater, regardless of county boundaries. This section does not apply to an applicant filing under Chapter 367.0814.

(1) The applicant shall include and file the required information on all jurisdictional systems owned in the application for a rate increase regardless of whether or not the applicant is seeking a rate increase for all systems.

(2) The determination of the need for a rate increase shall be made based upon the total earnings of all jurisdictional water and wastewater systems owned by the applicant.

(3) After an applicant has filed an application under this rule, any need for a rate decrease shall be based on the total earnings of all jurisdictional systems owned by the applicant.

(4) The applicant shall file sufficient data for non-jurisdictional systems to demonstrate that the allocation of joint and common costs to the jurisdictional systems is appropriate.

OPC Comment: While the Citizens believe there is some merit to this proposed rule, the Citizens do not understand how the proposed rule will work. For example, if all systems but one are overearning, will the utility be denied the requested increase for its one

system, or will the one system receive an increase and the other systems receive a decrease? The Citizens are also not sure to what the "required information" in subsection (1) refers. Is the information required, the Minimum Filing Requirements, for each such system? Furthermore, the Citizens believe that clarification is needed with respect to the definition of a system. In particular, the Citizens view the word "system" to mean each separate water and sewer operation of a utility which is not interconnected.

In addition, the Citizens are concerned that in some instances, particularly, the case of Southern States, the burden of analyzing every system is excessive. For this reason, the Citizens would propose that the language in the proposed rule be clarified and that some alternative means be established for evaluating the rate request of a Company with more than 10 systems.

Moreover, the Citizens believe the language "sufficient data for non-jurisdictional systems to demonstrate that the allocation of joint and common costs to the jurisdictional systems is appropriate" in subsection (4) is vague and that more specific information should be set forth in the rule.

At this time the Citizens are not prepared to offer an alternative rule, but hereby put the parties on notice that the Citizens intend to address this rule at the hearings.

Rule 25-30.436

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

(4) In the rate case application:

(h) Any system that has costs allocated to it from any source in addition to those costs reported on Schedule B-12 of Commission Form PSC/WAS 17 (as described in Rule 25-30.437) shall file additional schedules that show the following information:

1. The total costs being allocated prior to any allocation as well as the source of the allocation.
2. A detailed description of the costs being allocated.
3. The allocation method used and the bases for using that method.

OPC Comment: The Citizens agree with this proposed rule. However, the Citizens believe that it can be improved upon by requiring additional information.

Accordingly, the Citizens offer the following alternative rule for consideration.

OPC Proposed Rule:

25-30.436 (h) Any system that has costs allocated or charged to it from an affiliated company, parent company, or related party, ~~any source~~ in addition to those costs reported on Schedule B-12 of Commission Form PSC/WAS 17 (as described in Rule 25-30.437) shall file additional schedules that show the following information:

1. The total costs being allocated or charged prior to any allocation or charging as well as the source name of the entity from which the costs are being allocated or charged and its relationship to the utility. of the allocation.
2. A detailed description and itemization of the costs being allocated or charged and the amount of each itemized cost which is allocated or charged to the utility.
3. The allocation or direct charging method used and the bases for using that method.
4. The workpapers used to develop the allocation method, including but not limited to the numerator and denominator of each allocation factor.
5. The workpapers and source documents used to develop, where applicable, the basis for the direct charging method.
6. A detailed organizational chart of the relationship between the utility and its parent and affiliated companies and the relationship of any related party, i.e. brother, sister, etc.
7. A copy of any contracts or agreements between the utility and its parent or affiliated companies for services rendered between or among each other.

Rule 25-30.455

25-30.455 Staff Assistance in Rate Cases.

(1) Water and wastewater utilities whose with total gross annual operating revenues are of \$150,000 or less for water each service or \$150,000 or less for wastewater service, provided or \$300,000 or less where the services are combined on a combined basis, may petition the Commission for staff assistance in rate filings applications by submitting a completed staff assisted rate case application. In accordance with section 367.0814(4), F.S., a utility that requests staff assistance waives its right to protest by agreeing to accept the final rates and charges approved by the Commission unless the final rates and charges would produce less revenue than the existing rates and charges. If a utility that chooses to utilize the staff assistance option employs outside experts to assist in developing information for staff or to assist in evaluating staff's schedules and conclusions, the reasonable and prudent expense will be recoverable through the rates developed by staff. A utility that chooses not to exercise the option of staff assistance may file for a rate increase under the provisions of Rule 25-30.443, F.A.C.

OPC Comment: The Citizens believe that some form of arbitration should be mandated with respect to Staff assisted rate cases which are protested. The Citizens are unsure how such arbitration might work, but believe that it should be seriously considered during these rule hearings.

Rule 25-30.456

25-30.456 Staff Assistance in Alternative Rate Setting.

(12) The Commission shall, for the purposes of determining the amount of rate increase, if any, compare the operation and maintenance expenses (O & M) of the utility to test year operating revenues. The Commission shall consider an allowance for return on working capital using the one-eighth of O & M formula approach.

OPC Comment: The Citizens are not opposed to an alternative rate setting process for Class C utilities. The Citizens, however, at this time, oppose the implementation of a rule which is untried and untested. The methodology proposed in this rule, to the best of the Citizens knowledge, has not been tested to determine if it would even yield reasonable results. Furthermore, the rule does not state what the apparent comparison benchmark might be, or if it will be up to the individual Staff member reviewing the case. In order for such a rule to be adopted by the Commission, much additional analysis of the proposed methodology and the results of the rule must be tested. For this reason, the Citizens believe that this proposed rule should be stricken in its entirety and the mechanics of the alternative determined separately from the revamp of the water and wastewater rules.

**CERTIFICATE OF SERVICE
DOCKET NO. 911082-WS**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by *hand delivery or by U.S. Mail to the following parties on this 23rd day of April, 1993.

WAYNE L. SCHIEFELBEIN, ESQUIRE
Carlson & Cowdery
1709-D Mahan Drive
Tallahassee, FL 32308

*MATTHEW FEIL, ESQUIRE
*CHRISTIANA MOORE, ESQUIRE
Division of Legal Services
Florida Public Service
Commission
101 East Gaines Street
Tallahassee, FL 32399-0863

BUDDY DEWAR,
Executive Director
Florid Sprinkler Association,
Inc.
200 West College Avenue
Suite 313
Tallahassee, FL 32301

F. MARSHALL DETERDING, ESQUIRE
Rose, Sundstrom & Bentley
2548 Blairstone Pines Drive
Tallahassee, FL 32301

FLOYD SELF, ESQUIRE
Messer, Vickers, Caparello,
Madsen, Lewis and Metz, P.A.
First Florida Bank Building
215 South Monroe Street
Suite 701
Tallahassee, FL 32303

PHILIP HEIL, ESQUIRE
Jacksonville Suburban
Utilities, Inc.
Post Office Box 8004
Jacksonville, FL 32239



H. F. Mann, II
Associate Public Counsel