

ORIGINAL  
FILE COPY

RUTLEDGE, ECENIA, UNDERWOOD, PURNELL & HOFFMAN  
PROFESSIONAL ASSOCIATION  
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A. ECENIA  
KENNETH A. HOFFMAN  
THOMAS W. KONRAD  
R. DAVID PRESCOTT  
HAROLD F. X. PURNELL  
GARY R. RUTLEDGE  
R. MICHAEL UNDERWOOD  
WILLIAM B. WILLINGHAM

POST OFFICE BOX 551, 32302-0551  
215 SOUTH MONROE STREET, SUITE 420  
TALLAHASSEE, FLORIDA 32301-1841

GOVERNMENTAL CONSULTANTS:  
PATRICK R. MALOY  
AMY J. YOUNG

TELEPHONE (904) 681-6788  
TELECOPIER (904) 681-6515

January 16, 1997

Ms. Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Betty Easley Conference Center  
Room 110  
Tallahassee, Florida 32399-0850

**HAND DELIVERY**

Re: Docket No. 960258-WS

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Florida Water Services Corporation are the following documents:

1. The original and fifteen copies of Post-Hearing Comments of Florida Water Services Corporation; and
2. A disk in Word Perfect 6.0 containing a copy of the Comments.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,



Kenneth A. Hoffman

ACK 1  
 AFA 1  
 APP 1  
 CAF \_\_\_\_\_  
 CMU \_\_\_\_\_  
 CTR \_\_\_\_\_  
 EAG \_\_\_\_\_ KAH/rl  
 LEG 1  
 LIN 5 Trib. 3  
 OPC \_\_\_\_\_  
 RCH 1  
 SEC 1  
 WAS 1  
 OTH \_\_\_\_\_

cc: All Parties of Record

DOCUMENT NUMBER-DATE  
00592 JAN 16 97  
FPSC-RECORDS/REPORTING

ORIGINAL  
COPY

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition to Adopt Rules	)	Docket No. 960258-WS
on Margin Reserve and Imputation	)	
of Contributions-In-Aid-Of-	)	
Construction on Margin Reserve	)	Date: January 16, 1997
Calculation, by Florida	)	
Waterworks Association	)	

---

**POST-HEARING COMMENTS OF  
FLORIDA WATER SERVICES CORPORATION**

Florida Water Services Corporation ("Florida Water"), formerly Southern States Utilities, Inc., hereby submits these comments in support of the rules proposed by the Florida Water Works Association ("FWWA"), as amended during the rulemaking hearing,<sup>1</sup> and the rule proposed by the Department of Environmental Protection, and states as follows:

1. The facts and information presented during the rulemaking hearing confirm that it is more cost effective to both the utilities and their customers for facilities to be built in larger increments to achieve economics of scale. The study presented by Mr. Gerald Hartman on behalf of Florida Water established that the economic savings of economics of scale are realized when major facilities are constructed with no less than a seven year planning capacity margin. (See Hartman Prefiled Comments and Exhibits, Composite Exhibit No.1.) The Economy of Scale Evaluation prepared by Mr. Hartman ("the Hartman Report"), which was received in

---

<sup>1</sup> See Exhibit No. 6.; Hearing Transcript pp. 234.

DOCUMENT NUMBER-DATE

00592 JAN 16 97

FPSC-RECORDS/REPORTING

evidence in Docket No. 950495-WS and is in all relevant respects identical to the version of same submitted in this docket, was previously described by Commission Staff as "compelling" and "persuasive." Commission Staff again confirmed that the Hartman Study was "compelling" and "persuasive." (Hearing Transcript, pp. 291-292.) No flaws in the Hartman Study's analysis or results were identified.

2. The Department of Environmental Protection ("DEP") and water management districts ("WMD's") participated in this proceeding and supported, as a minimum, a five-year margin reserve for water withdrawal, water treatment, wastewater treatment, and effluent disposal facilities (other than reuse). (See DEP Prefiled Comments, Composite Exhibit No. 1; Hearing Transcript pp. 30, 32, 146, 149-150.) Indeed, each of those state agencies expressed some support for larger margin reserve periods than contained in the FWWA proposal. (Hearing Transcript pp. 20, 34-35, 147.)

3. Mr. Van Hoofnagle, Drinking Water Program Administrator of DEP, commented that absent at least a five (5) year margin reserve, Commission-regulated utilities would be foreclosed from receiving the low-cost state revolving loan funds ("SRF") made available by the 1996 Amendments to the Safe Drinking Water Act to meet their capital needs. Mr. Hoofnagle confirmed that absent at least a five year margin reserve for eligible facilities, the DEP did not believe a Commission-regulated utility could ever meet the cost effectiveness test expected in the federal Environmental Protection

Agency ("EPA") guidelines for the SRF program. (Hearing Transcript, pp 14-21, 33-36.)

4. Ms. Debbie Swain and Mr. Arsenio Milian presented an additional study on behalf of the FWWA which confirms, among other things: (1) building utility plant in small increments costs the utilities and their customers considerably more, even in the short-run and (2) anything less than the FWWA's proposed rule assures utilities will not earn their authorized rates of return.<sup>2</sup> (See Swain Prefiled Comments and Exhibits, Composite Exhibit No. 1; Hearing Transcript, p. 112-113; Composite Exhibit No. 4.) The record convincingly establishes that the FWWA's proposed rule is a lower-cost alternative to the Commission's proposed rule for achieving the statutory objectives of Chapter 367, Florida Statutes.<sup>3</sup>

5. The utility industry affirmed and reaffirmed that under current margin reserve and CIAC imputation policy, utilities are forced to build facilities in the only manner which permits a reasonable chance of recovery of its investment and a return on its

---

<sup>2</sup> The second of these proofs even assumed the utility would recover every penny of its operations and maintenance expenses and depreciation expense through service rates and Allowance for Funds Prudently Invested charges and that there is no regulatory lag -- a perfect world the industry does not often experience.

<sup>3</sup>Pursuant to Chapter 120, Florida Statutes, the Commission must adopt the rule which poses the lowest cost for achieving the statutory objective. §§120.52(8)(g), 120.54(d), Florida Statutes (1996 Supp.). Refer to Florida Water's First Amended Petition for Administrative Determination of Invalidity of Proposed Rule filed December 16, 1996, with the Division of Administrative Hearings ("DOAH") in consolidated case numbers 96-3809RP and 96-3949RP.

investment -- that is, by building capacity to provide service for the margin reserve period only. The Commission has been aware of this fact since at least as early as 1990 when sixteen of seventeen responding utilities (many of whom are no longer in business) informed the Commission of this fact in response to a Commission Staff survey. (Hearing Transcript p. 210, Exhibit No. 7.)

6. It is no answer to refer to the allowance of funds prudently invested ("AFPI") mechanism as a device which satisfies the Commission's obligation to provide utilities a reasonable opportunity to recover its investment and a fair return thereon. The AFPI mechanism is no substitute for a utility's right to recover its prudently incurred investment and costs from current customers, particularly when the record reflects the benefits bestowed on current customers. (Hartman Prefiled Comments, Harvey Prefiled Comments, Composite Exhibit No. 1; Hearing Transcript pp. 46-48, 78-79.) These benefits include lower rates (due to a lower per unit cost), better service, higher levels of assurance of safety of the water, better water quality, higher levels of assurance of the protection of the environment and public health. These benefits are enjoyed by current customers today. However, the AFPI mechanism artificially defers the associated costs for collection from future connections.

7. The record clearly establishes that the AFPI mechanism does not work, in theory or in practice. (Hearing Transcript, pp. 88-101.) Aside from AFPI's other problems, Ms. Swain stated that

for AFPI even to work in theory, from one rate case to the next, the utility and the Commission would have to devise a way to track plant investment, plant capacity, connections, and carrying cost, each as they tie to one another on a direct basis -- a task she suggested was wholly impractical if not impossible. (Hearing Transcript, p. 90, 100.) More importantly, however, the most clear demonstration of the erroneous belief that AFPI permits a utility the lawfully required opportunity to recover its prudent investment and costs lies in the fact that although the Commission doubled the amount of Florida Water's non-used and useful investment over that presented in Florida Water's 1996 minimum filing requirements ("MFRs"), the Commission drastically reduced the AFPI charges previously in existence. (Hearing Transcript, pp. 97-98, 203-204.) Thus, AFPI revenues decreased from approximately \$1 million annually before the Florida Water rate case to approximately \$100,000 (projected) after. (Hearing Transcript, pp. 97-98, 203-204.) Obviously, Florida Water has been deprived of an opportunity to recover its investment and costs which the Commission previously had confirmed to have been prudently made and/or expended in the rendition of service to its customers. In light of this, it would be disingenuous at best for any participant in this proceeding to suggest that the AFPI mechanism permits recovery of prudently incurred investment and expenses but simply allocates a portion to future customers -- it does not.

8. No participant in these proceedings, including Commission

Staff, supported the Commission's current practice of imputing contributions in aid of construction ("CIAC") against the margin reserve with the exception the Office of Public Counsel ("OPC"). OPC presented no expert in support of the CIAC imputation, nor any analysis or study which demonstrates in any way that the current practice is proper much less beneficial to utilities or their customers. For the reasons presented by the industry representatives and Commission Staff member Walker, CIAC imputation must be rejected.

9. As asserted by the utility industry, DEP and the WMDs, reuse facilities should be considered 100% used and useful and, therefore, margin reserve not a consideration for reuse facilities. (Prefiled Comments of Hartman, Harvey, Seidman, DEP, Composite Exhibit No. 1; Hearing Transcript pp. 66, 85, 145, 150.) Reuse is a critical state water policy objective, and if the Commission is to encourage reuse and comply with state law,<sup>4</sup> it must consider reuse facilities 100% used and useful. Accordingly, Florida Water supports the rule revisions on reuse which DEP proposed in its prefiled comments.

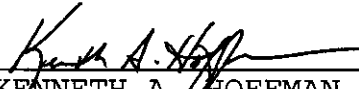
For the foregoing reasons, Florida Water Services Corporation supports the adoption of the Florida Waterworks Association's proposed rules, as amended, supports the adoption of the Florida Department of Environmental Protection's proposed rule, and requests that the Commission's proposed rule be rejected.

---

<sup>4</sup>§§367.0817(3) and 403.064(10), Florida Statutes.

POST-HEARING COMMENTS  
PAGE 7

Respectfully submitted,

  
\_\_\_\_\_  
KENNETH A. HOFFMAN, ESQ.  
Rutledge, Scenia, Underwood,  
Purnell & Hoffman, P.A.  
P. O. Box 551  
Tallahassee, FL 32302-0551  
(904) 681-6788

and

BRIAN P. ARMSTRONG, ESQ.  
MATTHEW FEIL, ESQ.  
Florida Water Services Corporation.  
P.O. Box 609520  
Orlando, FL 32860-9520  
(407) 880-0058



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by United States Mail to the following persons this 16 day of January, 1997:

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

Wayne L. Schiefelbein, Esquire  
Counsel for Florida Waterworks  
Association  
Gatlin, Woods & Carlson  
1709-D Mahan Drive  
Tallahassee, Florida 32308

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

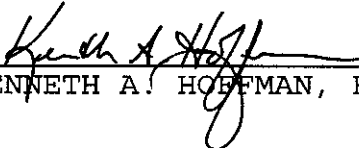
Mark F. Kramer  
Manager of Regulatory Accounting  
Utilities, Inc.  
2335 Sanders Road  
Northbrook, Illinois 60062-6196

Ms. Mimi Drew, Director  
Water Facilities Division  
Florida Department of Environmental Regulation  
2600 Blair Stone Road, MS 3500  
Tallahassee, Florida 32399-2400

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

Henry Dean, Executive Dir.  
St. Johns River Water  
Management District  
P. O. Box 1429  
Palatka, Florida 32178-1429

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

  
\_\_\_\_\_  
KENNETH A. HOFFMAN, ESQ.