FLORIDA PUBLIC SERVICE COMMISSION
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M E M O R A N D U M

September 25, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER & WASTEWATER (MERCHANT, FUCHS, GALLOWAY)
DIVISION OF LEGAL SERVICES (VACCARO)

RE: DOCKET NO. [redacted] - GULF UTILITY COMPANY - INVESTIGATION OF RATES FOR POSSIBLE OVEREARNINGS

[redacted]-WS - GULF UTILITY COMPANY - APPLICATION FOR AN INCREASE IN WASTEWATER RATES AND CHARGES, AND A DECREASE IN WATER RATES AND CHARGES.

COUNTY: LEE

AGENDA: 10/7/97 - REGULAR AGENDA - POST HEARING DECISION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\WAW\WP\960329WS.REC
ORAL ARGUMENT WAS NOT REQUESTED

CASE BACKGROUND

Gulf Utility Company (Gulf or utility) is a Class A utility which serves approximately 7,040 water and 2,435 wastewater customers in Lee County, Florida. The utility is located in a water use caution area as designated by the South Florida Water Management District (SWFWMD). Rate base was last established for Gulf's wastewater facilities by Order No. 20272, issued November 7, 1988, in Docket No. 880308-SU. Rate base for water facilities was last established by Order No. 24735, issued July 1, 1991, in Docket No. 900718-WU.

By Order No. PSC-96-0501-FOF-WS, issued April 11, 1996, in Docket No. 960234-WS, the Commission initiated an overearnings investigation and held $353,492 in annual water revenues subject to refund. As noted by that order, the overearnings investigation has been combined with this rate proceeding.

On June 27, 1996, Gulf filed an application for an increase in wastewater rates, approval of a decrease in water rates, and approval of service availability charges. The minimum filing requirements (MFRs) were satisfied on August 23, 1996, which was established as the official filing date pursuant to Section 367.083, Florida Statutes. The utility's requested test year for interim purposes is the historical year ended December 31, 1995. The requested test year for final rates is the projected year ending December 31, 1996.

By Order No. PSC-96-1310-FOF-WS, issued October 28, 1996, the Commission suspended Gulf's proposed rates, approved interim wastewater rates subject to refund, and granted the utility's request to reduce its water rates and held additional water revenues subject to refund. The Prehearing Conference was held on February 17, 1997. The technical and customer hearings were held on March 5 and 6, 1997 at the Elks Club of Bonita Springs in Bonita Springs, Florida.

By Order No. PSC-97-0847-FOF-WS, issued July 15, 1997 (Final Order), the Commission approved final water and wastewater rates and charges for Gulf. On July 30, 1997, Gulf timely filed a Motion For Reconsideration of Order No. PSC-97-0847-FOF-WS. Gulf also filed a Motion to Release Escrow Funds on July 30, 1997. OPC filed a response to the Motion For Reconsideration on August 11, 1997, after an extension of time approved by the Commission. On September 18, 1997, Gulf filed a Request for Administrative Notice for a letter provided by an engineering firm to support the in-

service time frame for the one million gallon reject holding tank. This recommendation addresses Gulf's Request for Administrative Notice, the Motion for Reconsideration and the Motion to Release Escrow Funds, and OPC's response to Gulf's Motion for Reconsideration.

ISSUE 1: Should Gulf's Request for Administrative Notice be granted?

RECOMMENDATION: No. (VACCARO)

STAFF ANALYSIS: On September 18, 1997, Gulf filed a Request for Administrative Notice, in which it requests that the Commission take administrative notice of a letter provided by an engineering firm which purports to set forth the time period in which Gulf's one million gallon reject holding tank will reach start-up and be fully operational. Gulf has requested reconsideration of the Commission's decision to exclude this tank from rate base, as discussed in Issue No. 4. As grounds for its request, Gulf alleges that the facts stated in the letter should be administratively noticed, "because they are capable of accurate and ready determination by the Commission and staff," as provided in Section 90.202(12), Florida Statutes.

Section 90.202(12), Florida Statutes, provides that the following may be administratively noticed:

> Facts that are not subject to dispute because they are capable of accurate and ready determination by resort to sources **whose accuracy cannot be questioned**. (Emphasis added.)

Examples of such facts are the exchange rate between American and Canadian currency and whether or not a specific location falls within county boundaries. See MacDonald v. International Chemalloy Corporation, 473 So. 2d 760 (Fla. 4th DCA 1985); and Liberty Mutual Insurance Company v. Magee, 389 So. 2d 1090 (Fla. 4th DCA 1980), respectively. These examples are facts which do not require formal proof because they are indisputable. Staff does not believe that the start-up and operational dates of a holding tank are the types of facts contemplated by the statute. Further, in the MacDonald case, the Court held that a letter from counsel was not sufficient authority to base judicial notice on the American/Canadian exchange rate. 473 So. 2d at 761. Likewise, staff does not believe that the letter provided by Gulf is sufficient authority upon which to base administrative notice of the facts alleged.

Staff also notes that pursuant to Section 90.901, Florida Statutes, "[a]uthentication or identification of evidence is

required as a condition precedent to its admissibility." Gulf has not provided a witness to authenticate the letter in question and, at any rate, the record in this Docket is closed, barring inclusion of any new evidence. Based on the foregoing, the Commission should deny Gulf's Request for Administrative Notice.

ISSUE 2: Should the Commission reconsider Order No. PSC-97-0847-FOF-WS based on Gulf's assertion that the order violates the "end result doctrine?"

RECOMMENDATION: No, the Commission should not reconsider Order No. PSC-97-0847-FOF-WS based on Gulf's assertion that it violates the "end result doctrine." (VACCARO)

STAFF ANALYSIS: In its Motion for Reconsideration Gulf requests that the Commission reconsider its Final Order on the basis that the Commission's order does not consider the effects it will have on the financial integrity of the utility, and, therefore, ignores the "end result doctrine." Citing Federal Power Commission v. Hope Natural Gas, 320 U.S. 591, 602 (1944), Gulf states that "the end result doctrine establishes the constitutional principle that rates which do not 'enable the company to operate successfully, to maintain its financial integrity, to attract capital and to compensate investors for the risk assumed' result in an unlawful confiscation of the utility's property." Gulf further states that "the end result doctrine applies in every rate case to determine whether just and reasonable rates have been set." Gulf cites, among others, the following cases in support of its statement: Tamaron Homeowners Association, Inc. v. Tamaron Utilities, Inc., 460 So. 2d 347, 353 (Fla. 1984); Westwood Lake, Inc. v. Dade County, 264 So. 2d 7, 9 (Fla. 1972).

In its motion, Gulf provided an Affidavit of Mr. James Moore, President of Gulf, which allegedly details the effect which the Final Order will have on the utility. In summary, the Affidavit provides that Gulf will not have a sufficient return to provide confidence in the financial integrity of the business, maintain its credit, and attract capital on reasonable terms. Gulf also states that "[t]he end result of the Final Order is that there is inadequate revenue from utility operations to pay bond interest on Gulf's outstanding debt securities." Finally, Gulf states that the Commission has set rates which are $438,037 less than it requested; therefore, the Commission has set rates which are not fair, just and reasonable.

In its response to Gulf's motion, OPC agrees with the holdings of the cases cited by Gulf. However, OPC asserts that the hardships alleged in Mr. Moore's affidavit, are due to the issuance of excessive debt in 1988. OPC states that Mr. Moore testified at hearing that the utility borrowed $10,000,000 in 1988, yet it was

not required to borrow this much money. (TR 578) OPC further states that on cross-examination, Mr. Moore conceded that the amount of Industrial Development Revenue Bonds issued by the utility was a decision made by the utility, not customers. (TR 579) Likewise, Mr. Moore admitted that the losses sustained because of these bonds were the result of management decisions, not customer or developer decisions. (TR 579-580) OPC asserts that the loss depicted in Attachment 1 to Mr. Moore's Affidavit is due solely to the issuance of bonds which greatly exceeded the capital requirements of the utility. OPC concludes that a loss sustained by the company's excessive debt should be sustained by the utility, not the customers, and Gulf's Motion for Reconsideration should be denied.

The standard for determining whether reconsideration is appropriate is set forth in Diamond Cab Company of Miami v. King, 146 So. 2d 889 (Fla. 1962). In Diamond Cab, the Court held that the purpose for a petition for reconsideration is to bring to an agency's attention a point of fact or law which was overlooked or which the agency failed to consider when it rendered its order in the first instance, and it is not intended as a procedure for rearguing the case merely because the losing party disagrees with the judgment. Id. at 891. In Stewart Bonded Warehouse v. Bevis, 294 So. 2d 315 (Fla. 1974), the Court held that a petition for reconsideration should be based upon specific factual matters set forth in the record and susceptible to review. Staff has applied these standards in its analysis of Gulf's Motion for Reconsideration.

Staff agrees with the holdings in the case law cited by Gulf, but staff does not agree with the applicability of the cases to the instant situation. According to these cases, end results are rates which are just and reasonable. Staff believes that the Commission is well aware of its obligation to set just, reasonable and compensatory rates under Section 367.081(2)(a), Florida Statutes. By Order No. PSC-97-0847-FOF-WS (the Final Order), the Commission approved rates that would allow the utility the opportunity to earn a 9.20% rate of return on its investment and to recover its allowed level of expenses. The Commission fully considered all evidence presented and found that the final rates were just, fair and reasonable. It is apparent from Gulf's arguments that it is merely dissatisfied with the outcome of the hearing. Therefore, Gulf's arguments are inappropriate for reconsideration under the Diamond Cab case. Furthermore, staff notes that Gulf inappropriately

relies on Mr. Moore's Affidavit and attachment, neither of which are a part of the record in this case. See Stewart Bonded Warehouse v. Bevis, 294 So. 2d 315 (Fla. 1974). Accordingly, staff believes that the Commission should not reconsider Gulf's motion.

Further, staff agrees with OPC that Gulf's excessive debt is not the responsibility of the ratepayers. The Commission correctly allowed the utility to collect interest on its rate base only, and, therefore, did not make a mistake of fact or law. Based on the foregoing, the Commission should deny Gulf's Motion for Reconsideration.

ISSUE 3: If the Commission approves Gulf's Motion for Reconsideration, should it authorize Gulf to collect the difference between its interim and final rates in the form of a surcharge from those customers who received service during the interim period?

RECOMMENDATION: No. (VACCARO)

STAFF ANALYSIS: In its Motion For Reconsideration, Gulf requests the Commission to authorize it to collect the difference between its interim and final rates in the form of a surcharge from customers who received service during the interim period, if the Commission approves Gulf's Motion. In support of its request, Gulf states that if its Motion is approved, Gulf's revenue requirement for water will be greater than the revenue allowed for interim rates. Gulf alleges that, under case law, "utility companies must be allowed to recoup through a surcharge revenue deficiencies caused by interim rates set lower than final rates." In support of its argument, Gulf cites Southern States Utilities, Inc. v. Florida Public Service Commission, 22 Fla. L. Weekly D1492 (Fla. 1st DCA June 17, 1997) citing GTE v. Clark, 668 So. 2d 971 (Fla. 1996).

In its response to Gulf's Motion, OPC states that the utility's request should be denied. OPC states that Gulf misconstrues the Court's finding in Southern States. Further, OPC states that the Commission's rules and the Florida Statutes provide a different method of calculating interim and final rates, such that Gulf's requested surcharge would nullify the requirements of Section 367.082, Florida Statutes.

Staff believes that Gulf's request is inappropriate for reconsideration for several reasons. First, the utility raises new arguments regarding subject matter not previously contained in the record of this proceeding. See Stewart Bonded Warehouse 294 So. 2d at 317. Second, Gulf's request does not relate to whether the Commission made a mistake of fact or law in making its final decision on rates. See Diamond Cab 146 So. 2d at 891 (Fla. 1962). Therefore, Gulf's request is outside the scope of reconsideration.

Third, Gulf's argument is unsupported by case law. The Southern States decision is not applicable. As OPC asserts, Gulf misconstrues the Court's finding in Southern States. In the Southern States case, the Commission directed Southern States Utilities, Inc. (SSU) to make refunds to customers who overpaid under erroneously approved uniform final rates, but denied SSU a

surcharge for customers who underpaid under the uniform rate structure. The Court determined that SSU could collect the surcharge from customers who underpaid and, citing the GTE case, stated that "equity applies to both utilities and ratepayers **when an erroneous rate order is entered**." Southern States, 22 Fla. L. Weekly at D1492. Because the Southern States and GTE cases only address surcharges involving erroneously approved final rates, neither case supports Gulf's position. In the present case, Gulf has never alleged that the Commission's determination of interim rates was in any way erroneous.

Finally, the determination of the appropriate interim amount is one strictly made following the formula found in Section 367.082, Florida Statutes. Interim rates "protect utilities from 'regulatory lag' associated with full blown rate proceedings." Citizens of the State of Florida v. Public Service Commission, 425 So. 2d 534, 540 (Fla. 1981). These rates provide the utility relief pending the Commission's final decision on rates, requiring only a prima facie showing of entitlement to relief. As such, interim rates are not intended to provide a utility with the same level of relief which may be established by a complete evidentiary hearing. Gulf's requested surcharge would undermine the purpose of interim rates. The interim statute does not contemplate a true-up or surcharge of any alleged deficiency later. Therefore, staff believes that a surcharge would defeat the purpose of interim rates. Based on the foregoing, staff recommends that the Commission deny Gulf's requested surcharge.

ISSUE 4: Should the Commission reconsider its decision to exclude the one million gallon reject holding tank for the Corkscrew Water Treatment Plant from rate base?

RECOMMENDATION: No. (FUCHS, VACCARO)

STAFF ANALYSIS: Gulf states on pages 6 and 7 of its Motion for Reconsideration that the Commission misapprehended Section 367.081(2), Florida Statutes, in excluding the cost of construction of the one million gallon reject holding tank from rate base. That section states, in part:

> 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 period used to set rates.

According to Gulf, the language plainly states that the Commission shall consider the investment in facilities to be constructed "24 months from the end of the historical test period." In its motion, Gulf references a statement from page 12 of the Final Order in this case which stated, "had there been at least a signed contract to construct the reject holding tank, we could have considered its inclusion in some manner." Gulf maintains in its petition, that the Final Order overlooked Gulf's legal argument that the holding tank should be in rate base because it is required by Gulf's Florida Department of Environmental Protection (DEP) permit, and that the minimum filing requirements (MFRs) contain all information required by Rule 25-30.4415, Florida Administrative Code (FAC), in order to include the cost of this tank in rate base. Furthermore, Gulf requests the docket be kept open until the completion of the million gallon holding tank project for the purpose of including it in rate base.

In regard to keeping the docket open, OPC points out, in its response to Gulf's Motion, "Such a procedure might be a reasonable option if the Commission could satisfy itself that a material savings could be realized for the ratepayers. However, upon verification that the facilities have been completed, the Commission must also verify the proper amount of CIAC to offset the investment and the proper used and useful percentage of the facilities."

OPC, in its Response to Motion for Reconsideration states, "The Company had the obligation to present the evidence, which is made a part of the record, to support the inclusion of this facility in its rate base. At the hearing, the company clearly failed to meet this burden." OPC further states that, "It is not appropriate for Gulf to now utilize a motion for Reconsideration to supplement the record to bolster its case on this issue, after the hearing has been completed. That is not the purpose of a Motion for Reconsideration, per the Diamond Cab Co. case." OPC further states that the plain language of Section 367.081(2), Florida Statues, only requires the Commission to consider the investment of the utility in land acquired or facilities constructed within a reasonable time in the future...."

The utility chose an historic test year ending December 31, 1996. As of the end of the utility requested test year, there was no construction initiated, nor firm contract signed, for construction of the holding tank. Staff provided Gulf ample opportunity to produce firm evidence of a signed contract or other proof of construction up to and including the customer hearing dates of March 5-6, 1997. Utility witness Moore was asked at the hearing regarding the disposition of plans for the tank. His responses indicated that the tank had not been constructed nor were any contracts in hand to indicate construction would be initiated in the foreseeable future. (TR 128-129) There is no evidence in the record to support the utility's position for reconsideration. Staff agrees with OPC's position that language provided in Section 367.081(2), Florida Statutes, only requires the Commission to give **consideration** to future investments in land or facilities. At the hearing, several questions were asked of Mr. Moore to permit the utility to show some proof of a firm contract or to provide positive, satisfactory evidence of an intent for imminent initiation of construction of the tank. No such evidence was provided.

The utility's argument, that the Final Order overlooked the legal argument that the reject holding tank should be included in rate base because of DEP permit requirements and that the MFRs contain all information required by Rule 25-30.4415, FAC, to include the cost of the tank, is invalid. This rule only states the filing requirements for requesting recovery of such plant costs; it does not automatically authorize recovery without further supporting evidence. Again, Gulf was given opportunities at the hearing in March to produce evidence of construction or firm

contracts for construction of the tank. Neither was forthcoming. The responses to staff questions produced no firm information that would satisfy the requirement of completion within the 24 month period in question. Gulf has the option of initiating a limited proceeding or another rate case in order to place the holding tank in rate base.

With respect to keeping the docket open for possible inclusion of the investment for the million gallon reject holding tank, staff agrees with OPC. This is more involved than simply including new investment dollars in rate base. While leaving this docket open might possibly result in lower rates for customers in this docket, it would set a precedent for future dockets. The record in this docket has been closed. Parties and the Commission should note that another docket can be opened at a subsequent time to readdress Gulf's rates.

Based on the evidence in the record, the Commission did not make a mistake of fact or law in its decision on this issue. Therefore, staff recommends that the Commission deny the Motion For Reconsideration to include the one million gallon holding tank in rate base. Staff further recommends that the Commission deny the request to leave this docket open to include the million gallon holding tank investment in rate base.

ISSUE 5: Should the Commission reconsider it decision to use 1995 flows in lieu of 1996 flows when calculating used and useful percentages for the water and wastewater treatment plants?

RECOMMENDATION: No. (FUCHS, VACCARO)

STAFF ANALYSIS: Gulf states in its Motion for Reconsideration, that the Final Order in this docket is in error due to the use of 1995 flows instead of test year 1996 flows in determining used and useful percentages for the water and wastewater plants. The motion states that the Commission overlooked the inclusion of flows for the Florida Gulf Coast University and overlooked inclusion of additional flows required by the 1996 growth of 430 equivalent residential connections (ERCs) in the water operations and 495 ERCs in the wastewater operations.

In its response to Gulf's Motion for Reconsideration, OPC agrees that the calculations utilizing single family ERCs of 396 gallons per day (GPD) for water and 250 GPD for wastewater presented by the Utility were high, as revealed at the hearing.

Gulf chose a test year ending in December 1996. The utility filed MFRs containing 1995 flows with no projections for 1996. There is no precedent for the Commission utilizing growth figures by projecting future flows in lieu of the flows provided by a utility in its filing. The utility further argues that the Commission overlooked the flows of the Florida Gulf Coast University in its calculations. Flow projections provided by the utility for the university were based on single family ERC flows of 396 GPD for water and 250 GPD for wastewater. This figure was found to be inaccurate during the hearing in March of 1997. Testimony at the service hearing revealed current ERC flow to be 206 GPD for water and 158 GPD for wastewater. (TR 176-177) Gulf calculated flows equal to 183 ERCs at 396 GPD per ERC totaling 73,000 GPD. Actual University water flows utilizing the corrected ERC GPD should be 183 ERCs times 206 GPD or 37,698 GPD, a reduction of 35,302 GPD. The capacity of the water plant is 4.215 million gallons per day (MGD) and its current average of five day maximum flow is 2.746 MGD. The 37,698 GPD for the university is 1.4% of the average five day maximum flow, which staff believes is an insignificant increase on the existing flows. Furthermore, the university flows were not even scheduled to begin until opening day in August of 1997, well past the end of the 1996 test year.

The utility argues the staff overlooked inclusion of additional flows required by the 1996 growth of 430 ERCs in the water and 495 ERCs in the wastewater operations recognized by the Commission. Those flows were included in the margin reserve allowance granted by the Commission. The margin reserve allowance includes an 18-month growth period. Therefore, not only all of 1996 flows, but half of 1997 flows are included in the margin reserve allowance. To further include them as the utility requests in its Motion for Reconsideration, Appendix D, would amount to a double dipping of the flows in the used and useful calculations.

Based on the evidence in the record, staff does not believe that the Commission made a mistake of fact or law in its decision. Therefore, staff recommends that the Commission should not reconsider its decision to use 1995 flows in lieu of 1996 flows as argued by Gulf.

ISSUE 6: Should the Commission reconsider its calculation of non-used and useful investment in wastewater plants?

RECOMMENDATION: No. (FUCHS, VACCARO)

STAFF ANALYSIS: Gulf argues, in its Motion for Reconsideration, that the Commission erred by applying the non-used and useful percentage to total investment in the wastewater treatment plants. Gulf further states that this is a clear inconsistency within the order and a mistake of fact, and that the non-used and useful investment should only apply to the chlorine contact chamber and Phase 3 of the Three Oaks Wastewater Treatment Plant (WWTP).

OPC argues, in its response to Gulf's motion, that the Commission correctly applied its used and useful adjustment only to the Three Oaks WWTP. Further, OPC contends that the Commission found that the old plant is an integral part of the new plant and it is consistent with that determination to apply the used and useful percentages to the entire plant.

Staff agrees with the utility that, in the interest of complete accuracy, the Commission should have removed the investment in the San Carlos and old portion of the Three Oaks WWTPs from the used and useful investment before calculating the percentage. The Commission, however, is required to use only information contained in the record. Gulf did not segregate the funds by individual plant in its filing. We believe it is incumbent on a utility to state its case in its own best interest. To submit the segregated data in its Motion for Reconsideration, which was not included in the record, and request that it now be included as foundation to reconsider used and useful is inappropriate under the Stewart Bonded Warehouse case.

OPC's argument regarding the findings of the Commission with regard to the application of used and useful percentages is without merit. The fact is this Commission did approve different levels of used and useful for the various plants. It is also true that the Commission applied the used and useful percentage of one plant to the entire investment. The reason for the application in this case was not consistency but necessity. Based on the record, there was no way to segregate the actual dollars invested in the various plants.

Based on the record, staff recommends that the Commission should not reconsider its calculation of non-used and useful investment in the wastewater plants of Gulf.

ISSUE 7: Should the Commission reconsider its decision to impute CIAC on the margin reserve for the wastewater operations?

RECOMMENDATION: No. The Commission did not make an error of fact or law on the imputation of CIAC on the margin reserve. However, the Final Order on page 33 should be corrected to state that the gross amount of CIAC collected on the margin reserve should be $594,000, not $1,594,000. This typographical error does not change the end result of the imputation of CIAC on margin reserve. (MERCHANT)

STAFF ANALYSIS: Gulf argued in its Motion For Reconsideration that the Final Order is in error in the wastewater operations on the imputation of CIAC on the margin reserve. This is related to Gulf's previous argument (addressed in Issue 5) that the San Carlos and Phases 1 and 2 of the Three Oaks wastewater treatment plants were found by the Commission to be 100% used and useful without a margin reserve. Gulf contended that the only margin reserve available was in Phase 3 of the Three Oaks wastewater treatment plant. As such, In its Motion, Gulf argued that the Final Order overstated CIAC and understated rate base for wastewater.

Gulf attached Appendix "F" to its Motion For Reconsideration to support its contention that the Commission improperly imputed CIAC. The appendix describes the adjustment that was made by the Commission in the Final Order and compares it to what Gulf contends is the net plant and used and useful amounts for the Three Oaks Phase 3 treatment plant. While Gulf believes that this appendix supports its calculation, the dollar amount of the net plant for the Three Oaks Phase 3 treatment plant is not contained in the record. As such, staff cannot recommend that this appendix be considered by the Commission. See Stewart Bonded Warehouse, 294 So. 2d 315 (Fla.1974).

In its Response to the Motion For Reconsideration, OPC stated that the commission made no error with respect to the Three Oaks wastewater treatment plant. Therefore, OPC concluded that no adjustment to imputed CIAC is required and the Commission should reject Gulf's request for reconsideration.

In the Final Order, the Commission fully analyzed the evidence in the record regarding the issue of imputation of CIAC on the margin reserve, as well as the issue of prepaid CIAC and how those amounts should be considered in rate base. Based on the utility's arguments in its Motion For Reconsideration, Gulf is not disputing the rationale used by the Commission to impute CIAC or reclassify prepaid CIAC to used and useful CIAC. The issue in dispute is what amount of net plant should have been included in the margin

reserve. Staff believes that the Commission used the same methodology to impute CIAC that was used to calculate non-used and useful plant and the number or ERCs included in the wastewater margin reserve.

As discussed in Issue 5, staff has recommended that the Commission did not make an error of fact or law in its determination of non-used and useful wastewater plant. Accordingly, staff believes that the Commission did not make a corresponding error in the imputation of CIAC on the margin reserve. However, in staff's review of the Final Order, staff found a typographical error on page 33. In the first sentence of the last paragraph, the Final Order states that the gross amount of CIAC collected on the margin reserve would be $1,594,000. The correct amount is $594,000, which is calculated by multiplying 743 ERCs times the $800 plant capacity charge, as detailed in the second sentence of that paragraph. While this typographical error does not change the end result of the imputation of CIAC on margin reserve, staff believes that the Final Order should be corrected.

ISSUE 8: Was there an issue that addressed the valuation date of CIAC, and if so, should the Commission reconsider its decision?

RECOMMENDATION: No, there was no issue identified in the case that dealt with the valuation date of CIAC. Regardless, the Commission should not reconsider its decision in the Final Order. (MERCHANT, VACCARO)

STAFF ANALYSIS: In its Motion For Reconsideration, the utility argued that the Commission used an unapproved test period to determine the amount of CIAC. The utility alleged that the Commission ignored the approved projected test year and used a test year ended September 30, 1996. The utility argued that the Final Order was in error when it increased CIAC by $115,371 for water and $98,456 for wastewater. It contended that the Commission compared the 13-month average balance of CIAC at September 30, 1996 to the 13-month average at December 31, 1996. The utility argued that the Commission took the difference between these two amounts and added the difference to the December 31, 1996 balance of CIAC. It concluded that the amounts were already included in the 1996 test year and that there was a doubling of CIAC. As a result, rate base was understated.

In support of its argument, Gulf attached Appendix G to its motion, which Gulf purported to be pages 5 and 6 of the Commission Staff Audit Report, identified and entered into the record as Exhibit 24. For clarification purposes, staff points out that Gulf's Appendix G is not pages 5 and 6 of Exhibit 24. It is a re-typed version of the last paragraph of page 5 and all of page 6. The title, subject, statement of fact and the beginning of the auditor's opinion were omitted from this appendix.

In its Response to the Motion For Reconsideration, OPC stated that the utility made the same argument regarding the unapproved test period during the hearing and that the Commission rejected the argument. OPC agreed that the Commission used the 13-month average ended September 30, 1996 to test the reasonableness of the utility's projections, and that analysis proved that those projections were not reasonable. As such, the Commission did not use an unapproved test year as alleged by the utility. OPC stated that the utility is merely rearguing a position that was rejected by the Commission and the utility's suggestion of error should be dismissed.

At first glance, staff was confused as to which issue Gulf's arguments related. No issue in the prehearing order, or subsequently identified at the hearing, addressed the issue of the valuation date of CIAC. In the table of contents of the Final

Order, the only issues regarding CIAC were for the Caloosa Group lines, prepaid CIAC, imputation of CIAC on the margin reserve, and the grant received from the SFWMD. Upon further review, staff realized that the dollar amount of the adjustment that the utility quoted related to the issue on accumulated amortization of CIAC regarding the correct amortization rate to be used. That issue, however, had no relevance to the valuation date of CIAC.

That issue arose because the utility was not amortizing its CIAC in compliance with Rule 25-30.140, Florida Administrative Code. The evidence in the case reflected that the staff auditor recalculated the 13-month average balance of accumulated amortization of CIAC (AACIAC) for the historical year ended August, 1996. This clearly was not the projected test year ended December 31, 1996, approved for this case. However, the utility had ample opportunity by Late-filed Exhibit 50 to recalculate what the appropriate test year average would have been using the methodology according to the rule. For whatever reason, the utility did not make this calculation and simply reiterated its position that the rule allowed this "alternative" methodology employed by Gulf. The Commission, in the Final Order, stated that Gulf had not used the appropriate methodology to amortize its CIAC and relied on the best information in the record to correct this error. The Commission also stated that if the utility wished to have AACIAC corrected to a fully-supported balance, it is not precluded from requesting that adjustment in its next filing.

Based on the above, staff does not believe that the utility has shown that the Commission made an error or mistake of fact or law in its Final Order.

ISSUE 9: Should the Commission reconsider its decision to disallow an annual customer satisfaction survey?

RECOMMENDATION: No, the Commission should not reconsider its decision. The Commission did not make a mistake of fact or law when it determined that an annual survey is not necessary and the same results could be achieved by including a questionnaire in the monthly bill. (MERCHANT, VACCARO)

STAFF ANALYSIS: By Order No. PSC-97-0847-FOF-WS, the Commission allowed the costs associated with the utility's customer satisfaction survey; however, the costs were amortized over five years. Thus, test year expenses were reduced by $5,145 for water and $2,650 for wastewater to reflect the amortization of the $9,744 expense. The Commission found that it is important for a utility to be aware of its customers opinions regarding its quality of service and that a survey is a legitimate method for Gulf to determine those opinions. However, due to the utility's current and historical high quality of service, an annual survey was not necessary. Further, the utility could receive feedback from the customers by including a questionnaire in the monthly bill. The Commission commended the utility for the level of service that Gulf provides to its customers.

In its Motion For Reconsideration, the utility argued that the survey was necessary on an annual basis because it would allow management to anticipate problems and solve them more quickly. An annual survey is a better method to anticipate problems and correct them early rather than waiting until problems develop. Gulf argued that the full cost should be allowed as an operating expense.

In its response to the utility's motion, OPC agreed with the Commission's decision that a survey is not necessary every year and that the same results could be accomplished at essentially no cost by including a questionnaire with the customers' bills.

Staff believes that the utility's motion with regard to the customer survey is a mere reargument of the position taken during hearing. The utility has not shown that the Commission has erred by failing to consider evidence in the record or made any mistake of fact or law according to the standard for reconsideration set forth in the Diamond Cab case. Accordingly, the utility's Motion For Reconsideration of this issue should be denied.

ISSUE 10: Should the Commission consider inclusion of added labor and chemical costs for the water operations that were not included in the utility's minimum filing requirements (MFRs)?

RECOMMENDATION: No, the Commission should not consider these costs, because the utility did not ask for recovery of such costs in the MFRs. (MERCHANT, VACCARO)

STAFF ANALYSIS: In its Motion For Reconsideration, Gulf asked for the inclusion of added labor and chemical costs associated with the Corkscrew water treatment plant (WTP). The utility has requested an additional $49,594 in chemical costs for stabilizing water in the distribution system, and $56,764 for the labor cost of two additional operators needed with the expansion of the Corkscrew WTP. The utility contended that, even though these costs were unknown at the time of filing this case, the staff auditors recognized such costs in the audit report. Therefore, the utility argued that the Commission overlooked case law which requires the Commission to recognize factors which affect future utility rates, and that test year data must be adjusted for known changes. The utility cited the following cases in its motion: Floridians United v. Public Service Commission, 475 So. 2d 241 (Fla. 1985) and Gulf Power Company v. Bevis, 289 So. 2d 401 (Fla. 1974).

The Final Order, according to Gulf, is contrary to Section 367.081(3), Florida Statutes, which states that:

> The commission, in fixing rates, may determine the prudent cost of providing service during the period of time the rates will be in effect following the entry of a final order relating to the rate request of the utility and may use such costs to determine the revenue requirements that will allow the utility to earn a fair rate of return on its rat base.

Gulf argued that these costs were a prudent cost of providing service in 1996, as well as when the new rates are in effect, and should have been included in the revenue requirement.

In its response to the utility's motion, OPC stated that it is not the Commission's duty to include expenses in the test year which were not requested by the utility. OPC further pointed out that these costs were not identified as an issue in the Prehearing Order. OPC argued that the utility was not in compliance with Rule 25-22.056, (3) (a), Florida Administrative Code, which states that: "In the event that a new issue is identified by a party in a post-hearing statement, that new issue shall be clearly identified as such, and a statement of position thereon shall be included."

OPC added that Gulf's only mention of this issue in its post-hearing brief was a note buried in an appendix which was referenced as additional documentation to Issue 51. OPC concluded that the Commission should reject the utility's motion because it was Gulf who failed to include the allowance in the MFRs, it was Gulf who continued to fail to identify it as an issue (even after staff's audit report was released), and it was Gulf who failed to properly identify or discuss this allowance in its post-hearing brief. It is Gulf's responsibility to make its case, not staff's, and so the consequences should be borne by Gulf.

Staff believes that it is the utility's burden to prove that its requested expenses are prudent. See Florida Power Corp. v. Cresse, 413 So. 2d 1187, 1191 (Fla. 1982). If the utility fails to ask for relief, staff agrees with OPC that it is not the Commission's responsibility to provide that relief. Regardless, this Motion for Reconsideration is the improper vehicle to request costs not requested, nor ever considered by the Commission in the record of this docket. This request falls out of the parameters established by Diamond Cab for the Commission to address on reconsideration. Accordingly, staff recommends that the Commission should not consider these costs, because the utility did not request recovery of such costs in this application and because the request is not appropriate during reconsideration.

ISSUE 11: Should the Commission reconsider its decision to reallocate the salaries of Gulf's employees that also provide services for the Caloosa Group?

RECOMMENDATION: No. The Commission relied on competent substantial evidence in the record to reallocate these common salaries and the utility has not shown that the Commission made any errors of fact or law. (MERCHANT, VACCARO)

STAFF ANALYSIS: In the Final Order, the Commission reallocated the salaries and benefits of five of Gulf's employees that also provide services to the Caloosa Group (Caloosa). Caloosa is a land developer that has the same owners with the same proportionate ownership interests as Gulf. Utility witness Cardey testified that he performed a review of the services provided to Caloosa. Based on his review, no salary expense allocation to Caloosa was needed as his estimate was approximate to what was actually paid. Both OPC witness Dismukes and staff witness Welch testified that the hourly rate charged to Caloosa was less than the rate charged to Gulf. Both witnesses relied upon the utility's Earnings and Deductions reports (Exhibit 32), which detailed the earnings for each of the five employees, along with the hours worked during each period. Utility witness Cardey testified on rebuttal that the reports were based on information from 1988 and the hours were set for computer payroll purposes and his actual review of employees hours was necessary. The Commission found that Mr. Cardey did not provide a solid basis on which to determine the reasonableness of the Caloosa salaries and found his explanations and analysis insufficient regarding this issue. As such, the Commission relied upon the breakdown of hours as reflected on the Earnings and Deductions reports, as provided to the OPC and staff witnesses by the utility.

In its Motion For Reconsideration, Gulf argued that the Final Order misapplied the law by failing to take into account actual, updated information in allocating salaries and other expenses between Gulf and Caloosa. It again cited Sunshine Utilities v. Public Service commission, 624 So. 2d 306 (Fla. 1st DCA 1993), where the Court found that in a rate case, "the best way to allocate employee expenses was actual time." Gulf's Motion even included the statement (outside of the record) that the report called "Earnings and Deductions" has been updated, and today shows salary only, which conforms to the actual practice of the Company. In the Final Order, the Commission also reallocated some of the common administrative and general costs between Gulf and Caloosa based on payroll costs. As a result of this alleged incorrect salary reallocation to Caloosa, Gulf argued that the common

administrative and general costs were also incorrect in the Final Order.

OPC, in its response, argued that Gulf's arguments are nothing more than a reargument of positions debated at the hearing. Further, Exhibit 32 was a document produced by the Company and was a September 1995 through August 1996 "Earnings and Deductions" Report. It reflected the time spent on Caloosa projects as well as the related salary. It was objective evidence provided by the utility and the Commission, as well as the staff and OPC witnesses, had good reasons to rely on this document to determine the amount of salaries that should be allocated or charged to Caloosa. Third, OPC argued that the newly updated "Earnings and Deductions" Report referred to by Gulf in its brief, was not in evidence and hence could not have been relied upon by the Commission.

OPC also contested the utility's suggestion that Mr. Cardey's analysis was based upon "actual time" which would comport with the requirements of the Sunshine case. OPC continued that Mr. Cardey's analysis was not, as alleged, based upon actual time, as none of the employees that worked for both the utility and Caloosa kept time records of the amount of time they spent working for each company. Mr. Cardey's analysis, as the Commission agreed, was based upon subjective judgements, not objective records. In Sunshine, the Court found that "actual time sheets" were submitted to support the allocation advocated by the utility. No such time sheets were submitted in the instant docket. OPC concluded that the Commission should reject Gulf's request for reconsideration as it raises no matters of fact or law overlooked or errors made by the Commission concerning the salary reallocation.

Staff agrees with OPC that the utility's Motion For Reconsideration is merely a reargument of the issues of the case. Further, Gulf's attempt to persuade the Commission that what the Earnings and Deductions reports reflect today, is inappropriate. This new document is outside of the record in this case, as well as irrelevant, as it fails to provide sufficient proof of the actual number of hours that the employees spend on Gulf or Caloosa work. Staff believes that actual time sheets would have been the most conclusive support for how much time each employee spent performing their assigned duties. Absent this information in the record, the Commission relied on the utility's own internal documents, the Earnings and Deduction reports (Exhibit 32). The Commission found that Mr. Cardey's review, without other substantive means of validation of how much time was spent on Caloosa work did not satisfy the utility's burden of proof. Staff believes that the Commission fully considered the evidence in the record and made no errors of fact or law in considering that evidence. As such, staff

believes that the Commission should not reconsider its adjustment to reallocate either the salaries and benefits. Correspondingly, the Commission should not reconsider its adjustment to the common administrative and general expenses.

ISSUE 12: Should the escrow funds or any portion of the escrow funds be released as requested in the utility's Motion to Release Escrow Funds?

RECOMMENDATION: Yes. Escrow funds in the amount of $104,000 should be released from the utility's escrow account. (GALLOWAY, VACCARO)

STAFF ANALYSIS: Pursuant to Order No. PSC-96-1310-FOF-WS, issued October 28, 1996, the total amount of potential refunds for the water and wastewater systems was calculated at $439,653. This amount considered potential overearnings addressed in Order No. PSC-96-0501-FOF-WS, for the water system, any additional potential overearnings, and the potential refund amount associated with the interim wastewater revenue increase.

An escrow account was established by the utility to comply with the security requirements set forth in Order No. PSC-96-1310-FOF-WS. As stated in the utility's Motion to Release Escrow Funds, which was filed on July 30, 1997, the escrow account balance as of June 30, 1997 was $555,332. The utility is requesting that a portion of this balance be released given that the current balance is in excess of the security requirement as referenced above.

Staff believes that a portion of the escrow funds may be released for several reasons. When the security amount was calculated initially, staff considered potential overearnings as addressed in Order No. PSC-96-0501-FOF-WS along with any additional potential overearnings for the water system plus the interim wastewater revenue increase. Pursuant to Order No. PSC-97-0847-FOF-WS, issued July 15, 1997, final rates were approved allowing the utility the opportunity to earn a Commission approved revenue requirement. While the Commission ordered a revenue decrease for the water system, a revenue increase was ordered for the wastewater system. The result, in terms of security, is that the entire initial calculation of $439,653 is not necessary for refund purposes.

Considering the revenue requirements and the refunds approved in Order No. PSC-97-0847-FOF-WS, staff has recalculated the appropriate security amount necessary for refunds. The updated security amount is $255,778. Staff believes that releasing $104,000 from the escrow account, as requested by the utility in its motion, will not harm the customers. Staff believes that the

release of this portion of the escrow balance will not put any customer at risk of not receiving the appropriate refund. Therefore, staff is recommending the release of $104,000 from the utility's escrow account.

ISSUE 13: Should the docket be closed?

RECOMMENDATION: Yes. This docket should be closed after the time for filing an appeal has run, upon staff's verification that the utility has completed the required refunds with interest and the proper revised tariff sheets and customer notice have been filed by the utility and approved by staff. Further, the utility's escrow account can be closed upon staff's verification that the refund has been completed. (MERCHANT, VACCARO)

STAFF ANALYSIS: This docket should be closed after the time for filing an appeal has run, upon staff's verification that the utility has completed the required refunds with interest and the proper revised tariff sheets and customer notice have been filed by the utility and approved by staff. Further, the utility's escrow account can be closed upon staff's verification that the refund has been completed.