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February 11, 2003

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Annual Reestablishment of Price Index - PSC Docket No. 030005-WS

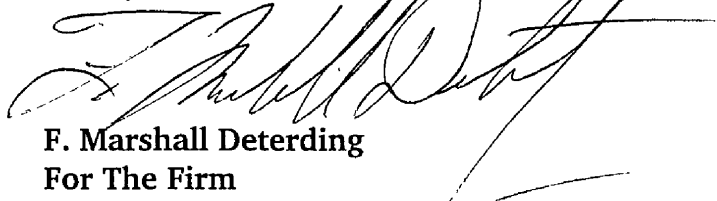
Dear Ms. Bayo:

Attached for filing are the original and 15 copies of a Petition for Formal Administrative Hearing on Proposed Agency Action Order No. PSC-03-0149-PAA-WS issued in the above-referenced docket on January 28, 2003. Also attached in accordance with the requirements of that Order is the Direct Testimony of David Porter, P.E. on behalf of the Florida Waterworks Association.

Should you have any questions in this regard, please let me know.

Sincerely,

ROSE, SUNDBSTROM & BENTLEY



F. Marshall Deterding
For The Firm

FMD/tms

cc: Jennifer Rodan, Esq.

fwwa\bayo.fmd

DOCUMENT NUMBER DATE

01414 FEB 11 03

FPSC-COMMISSION CLERK

FLORIDA PUBLIC SERVICE COMMISSION

In re: Annual reestablishment of
price increase or decrease index
of major categories of operating
costs incurred by water and waste-
water utilities pursuant to Section
367.081(4)(a), F.S.

Docket No. 030005-WS

PETITION FOR FORMAL ADMINISTRATIVE HEARING

The Petitioner, Florida Waterworks Association, Inc. (hereinafter "Petitioner" or "FWA"), by and through its undersigned counsel, and pursuant to Sections 120.569 and 120.57(1), Florida Statutes, hereby petitions the Florida Public Service Commission for a formal administrative hearing on Order No. PSC-03-0149-PAA-WS issued in Docket No. 030005-WS on January 28, 2003, and in support thereof states:

1. The name of the Petitioner is:

Florida Waterworks Association
2548 Blairstone Pines Drive
Tallahassee, Florida 32301

2. The name and address of the Florida Waterworks Association attorney is:

F. Marshall Deterding
Rose Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
(850) 877-6555

3. The name and address of the Respondent is the State of Florida Public

Service Commission (“FPSC”), 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399.

4. The Petitioner’s counsel received notice of the Order by U.S. Mail on February 2, 2003.

5. The Florida Waterworks Association is a voluntary association of water and sewer utilities doing business in the State of Florida. A substantial number of its members are regulated by and subject to the rules and orders of the FPSC, pursuant to Chapter 367, Florida Statutes. As such, Petitioner Association is subject to the above noted Order issued pursuant to the provisions of Section 367.081(4), Florida Statutes.

6. The FPSC has adopted, through rule, filing requirements for price index under Rule 25-30.420, Florida Administrative Code, as specifically authorized by the provisions of Section 367.081(4), Florida Statutes.

7. The FWA represents the general scope in business activities of its members, including representation before state agencies considering orders of general applicability which affect its members. These members have a direct interest in the regulation of their operations by the FPSC, and those members hold certificates granted by the FPSC authorizing them to provide water and wastewater utility services.

8. The provisions of Order No. PSC-03-0149-PAA-WS include a requirement

for a new Affirmation not otherwise authorized by statute adopted by reference by rule. The new Affirmation constitutes a statement of general applicability to the water and wastewater utility industry regulated by the FPSC, and is a form which imposes new requirements and solicits information not specifically required by statute or an existing rule.

9. Requested by the FWA is the elimination of a requirement for filing of the new Affirmation as outlined on Pages 8 of 15 of Attachment 1 to the Order and as outlined in the form attached as Attachment 1 to the Order.

10. The FWA also requests that the FPSC eliminate the requirement from the Order that prefiled testimony be submitted with the petition, as such a requirement is effectively an attempt to deny due process by further shortening an already abbreviated protest period and requiring an interested party to present its case as part of a protest provides no opportunity for investigation or discovery, and which is not otherwise required by the provisions of Sections 120.569 and 120.57(1), Florida Statutes, when seeking a formal evidentiary hearing on the provisions of a Proposed Agency Action Order.

11. The FWA submits that the provisions of the Order requiring the new Affirmation to be filed as part of a Price Index filing by a utility: is contrary to the authority granted to the FPSC under Section 367.081(4), Florida Statutes; is contrary to and in conflict with the requirements of the FPSC's own rule outlining the filing

requirements for such applications; is vague and contains undefined terms; and places a burden on the utilities not contemplated by the above-referenced statutes or rule. In addition, the requirement that the utility file prefiled testimony with its petition, places an unreasonable burden not contemplated by the provisions of Chapter 120.57(1), Florida Statutes, which allows an affected party the right to a hearing. The requirement that prefiled testimony be submitted effectively denies such a utility due process of law.

12. Among the disputed issues of material fact which are involved in this proceeding are:

- a. Any and all facts which the FPSC contends support an implementation of the new Affirmation as a filing requirement for a price index rate increase under 367.081(4), Florida Statutes, and Rule 25-30.420, Florida Administrative Code.
- b. Any and all facts which the FPSC contends support the required filing of testimony with a petition seeking a hearing on Order No. PSC-03-0149-PAA-WS.
- c. Any and all facts which the FPSC contends support utilization of or definition of the terms “active complaints,” “corrective orders,” or “outstanding citations” as utilized in the Affirmation and the provisions of Order No. PSC-03-0149-PAA-WS and the

Affirmation contained as Page 8 of 15 as Attachment 1 thereto.

- d. Whether the FPSC's proposal to require the Affirmation contained as Page 8 of 15 of Attachment 1 to Order No. PSC-03-0149-PAA-WS constitutes an unadopted rule subject to de novo review;
- e. Whether the FPSC's Order No. PSC-03-0149-PAA-WS requiring submission of the Affirmation contained as Page 8 of 15 of Attachment 1 to that Order, exceeds the FPSC's legislatively delegated authority and contravenes the requirements of Section 367.081(4), Florida Statutes.
- f. Whether the FPSC's requirement for the Affirmation contained as Page 8 of 15 of Attachment 1 to that Order is arbitrary and capricious and unsupported by any applicable statute or rule.
- g. Whether the FPSC's Affirmation and the terms utilized therein as outlined on Page 8 of 15 of Attachment 1 to that Order is unreasonably vague, establishes inadequate standards for agency decisions and vests unbridled discretion in the agency.
- h. Whether the inclusion of the FPSC's proposed new Affirmation is unsupported by competent substantial evidence.
- i. Whether the FPSC's action in requiring the Affirmation contained

as Page 8 of 15 of Attachment 1 to that Order imposes excessive regulatory cost upon the FWA's members and all the water and wastewater utilities regulated by the FPSC.

13. The ultimate facts which warrant reversal of the FPSC's Order and removal of the Affirmation contained at Page 8 of 15 of Attachment 1 to the Order as requirements of Price Index filing are:

- a. The requirement of the Affirmation included as Page 8 of 15 of Attachment 1 to Order No. PSC-03-0149-PAA-WS is plainly contrary to the delegated legislative authority of the FPSC under Section 367.081(4), Florida Statutes, and the requirements of Rule 25-30.420, Florida Administrative Code;
- b. That such requirement is unreasonably vague and undefined; and that Petitioner and all regulated utilities in the State of Florida are entitled to implement a price index rate increase without the additional requirement of the Affirmation being imposed with such a filing; and
- c. That parties are entitled to a hearing by filing an appropriate petition pursuant to the requirements of Sections 120.569 and 120.57(1), Florida Statutes, without the additional requirement of prefiling testimony with that petition.

14. The specific statutes and rules which require reversal of the FPSC's actions include Sections 367.081(4), 120.569 and 120.57(1), Florida Statutes; and Rules 25-30.420, Chapter 28-106. The FPSC's exceptions to Uniform Rules in Chapter 25-22.029, Florida Administrative Code.

15. The relief sought by the Petitioner is that the FPSC immediately eliminate the requirement of the additional Affirmation as contained in Page 8 of 15 of Attachment 1 to Order No. PSC-03-0149-PAA-WS and the underlying provisions of the Order requiring the filing of such an Affirmation as a prerequisite to the implementation of a price index increase authorized pursuant to Section 367.081(4), Florida Statutes, and Rule 25-30.420, Florida Administrative Code; and that the FPSC eliminate the requirement that any interested person petitioning for a hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes, include prefiled testimony with the petition.

WHEREFORE, Petitioner requests that:

a. This matter be forwarded to the Division of Administrative Hearing for assignment to an Administrative Law Judge to conduct a formal administrative hearing; or that in the alternative, the FPSC conduct such an administrative hearing on the issues contained herein;

b. The Recommended and/or Final Orders be entered eliminating the requirement for filing of the Affirmation contained as Page 8 of 15 of Attachment 1

to Order No. PSC-03-0149-PAA-WS as a prerequisite to the implementation of an index authorized under Section 367.081(4), Florida Statutes.

c. The Recommended and/or Final Order be issued which do not require submission of prefiled direct testimony with a petition for hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes, as part of such petition; and

d. Petitioners be granted such other and further relief as is deemed proper.

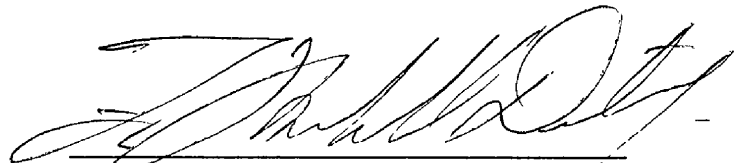
Respectfully submitted this 11th day of February, 2003.



F. MARSHALL DETERDING
Fla. Bar #515876
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Tallahassee, Florida 32301
(850) 877-6555
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and fifteen copies of the foregoing has been furnished by Hand Delivery to Blanca S. Bayo, Division of the Commission Clerk and Administrative Services, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399 with a copy to Jennifer Rodan, Esquire, this 11th day of February, 2003.



F. MARSHALL DETERDING

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