

1 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

2 FLORIDA WATERWORKS ASSOCIATION

3 DOCKET NO. 030005-WS

4 DIRECT TESTIMONY OF DAVID W. PORTER, P.E., C.O.

5 Q. Please state your name and professional address.

6 A. David W. Porter, P.E., C.O., Water/Wastewater System
7 Consulting Engineer, 3197 Ryans Court, Green Cove
8 Springs, Florida, 32043.

9 Q. Have you been retained by Florida Waterworks
10 Association to provide testimony in this proceeding.

11 A. Yes, I have been asked by the FWA to provide
12 testimony.

13 Q. Please provide a brief resume of you training and
14 experience as it relates to this proceeding.

15 A. I hold a BSCE degree from the University of
16 Massachusetts where the emphasis of my studies was in
17 water and wastewater treatment technology. I have 29
18 years experience in the operation, management, design,
19 construction and troubleshooting water and wastewater
20 facilities. During that time I have been employed as a
21 treatment plant operator and administrator, a design
22 engineer, principal engineer, vice president and
23 general manager of a engineering firm that specialized
24 in the design of water and wastewater facilities,
25 principal engineer for a international water and

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1 wastewater equipment manufacturing firm that provides
2 state-of-the-art equipment for high purity water
3 systems and wastewater treatment systems worldwide.
4 For 14 years I taught water and wastewater treatment
5 technology as an adjunct instructor at community
6 colleges, universities and State sponsored short
7 schools. I have authored numerous technical papers and
8 trade magazine articles related to treatment facility
9 design, troubleshooting, operation and management. I
10 have served as the chairman of the American Water
11 Works Association's Pipeline Rehabilitation Standards
12 Committee and have served on numerous technical
13 advisory committees for the Water Environment
14 Federation, the American Water Works Association and
15 governmental regulatory agencies such as the Florida
16 Department of Environmental Regulation. I am an A
17 Class Licensed Plant Operator in the State of Florida,
18 a Grade VII Licensed Plant Operator in the
19 Commonwealth of Massachusetts, and a Registered
20 Professional Engineer in the States of Florida and
21 Virginia.

22 Q. What is the specific purpose of your testimony here
23 today?

24 A. To discuss the new Affirmation required under the
25 provisions of the Commission's Order and specifically,

1 the requirements dealing with "active complaints,"
2 "corrective orders" or "outstanding citations" issued
3 by the DEP, the Health Department or the PSC.

4 Q. What are your problems with these provisions?

5 A. First of all, there is no definition of these terms

6 "active complaint," "corrective order," or

7 "outstanding citations." These are not terms that are

8 defined anywhere by PSC or by DEP rule or order. As

9 such, a utility is completely at a loss as to what is

10 being requested in this Affirmation. When the

11 Affirmation requires that a statement be sworn to

12 under penalty of law, the terms should be clear and

13 concise.

14 Secondly, it is difficult for me to imagine what could

15 be a reasonable definition for these items, or why in

16 any circumstances, the Commission would need this

17 information to evaluate quality of service.

18 Take the term "active complaints." First of all, I do

19 not know what is meant by an active complaint, either

20 at the Health Department, the DEP, or the PSC. Quite

21 frequently, utilities receive notification after a

22 plant inspection or in the normal course of business,

23 from the DEP alleging a violation of some rule, order

24 or permit requirement. Once the utility responds to

25 that letter, quite often the DEP, if it agrees with

1 the response that there is no violation, will not
2 issue any consummating order or letter, but will
3 simply drop the subject without any further
4 correspondence with the utility.

5 Sometimes, the DEP will issue a Notice of Violation
6 and the utility will contest that Notice of Violation.
7 As a result, a utility and the DEP will be heading
8 toward litigation on the issues alleged in that letter
9 or other notice of alleged violation. Until such time
10 as that hearing has been held and a final decision has
11 been rendered finding a violation, the utility does
12 not technically have a "outstanding citation" or a
13 "corrective order." The utility is entitled to a
14 hearing before a decision can be reached on whether
15 the initial allegation from the DEP or Health
16 Department rises to that level. As such, I do not
17 believe such situations fall within a quote
18 "outstanding citation" or a "corrective order" or an
19 "active complaint."

20 In addition, it is my understanding that the
21 Commission staff intends for these undefined terms to
22 include situations where a Consent Agreement is
23 entered into between the utility and the regulatory
24 agency. I do not agree with that conclusion.
25 A Consent Agreement occurs in a situation where the

1 DEP alleges a violation, the utility denies that a
2 violation has occurred, and the parties who were
3 otherwise headed to hearing on the matter, agree not
4 to litigate the issue and the agency never enters a
5 finding that a violation has occurred. Instead the
6 parties agree to some course of action that may take
7 many years to actually implement. As long as the
8 parties conform to the agreed upon terms of the
9 Consent Agreement, no further action is taken and no
10 violation is found to have existed. Therefore, not
11 only does a Consent Agreement not fit within the
12 definition of one of these items that the Commission
13 staff is looking for, but to claim that it does,
14 defeats one of the purposes of the Consent Agreement,
15 which is to resolve an issue short of any such finding
16 or adjudication whether a violation exists.
17 In addition, as noted, such an order can require
18 action for many years. Certainly, the Commission does
19 not expect a utility to state that it has a
20 "corrective order" or an "outstanding citation" with
21 the DEP where a Consent Agreement has been entered
22 into ten years ago and the utility is still operating
23 under the terms of that agreement and doing things
24 that were agreed upon under that Consent Agreement.
25 That, to me, seems wholly inappropriate.

1 Q. The PSC staff has indicated that they believe that
2 they have been using these terms you have concerns
3 with and asking questions of the DEP and the local
4 health departments for many years using those terms,
5 and have not encountered any problems. What is your
6 response to such a statement?

7 A. While I have not talked to the staff specifically
8 about this, if they have been utilizing these terms
9 with the DEP, I would be curious to know how the DEP
10 defines those terms since they are not contained in
11 any DEP rule or order to my knowledge, which would
12 give us direction in knowing how they interpret the
13 use of those terms when questioned by the PSC staff.
14 In addition, different staff members may interpret
15 those terms differently, since they are not contained
16 in any such rule or order and there is no evidence to
17 my knowledge, that the PSC has ever attempted to find
18 out whether such a variation in interpretation exists.
19 In other words, I do not believe that such a statement
20 resolves my concerns at all.

21 Q. What would be your suggestion under these
22 circumstances?

23 A. I understand there is a real issue about whether or
24 not the Commission has appropriately adopted this new
25 proposal through an order, rather than through

1 rulemaking. However, assuming for the moment that the
2 attorneys for the association and the members of the
3 industry involved do not have a problem with the
4 Commission asking for an Affirmation, I believe the
5 terms have to be well-defined, and I believe the terms
6 should be such that they only apply to situations
7 where the utility has been noticed of an alleged
8 violation, and has had an opportunity for hearing and
9 has either declined that opportunity or that hearing
10 has been held, and a final decision has been reached
11 finding that they are in violation. Under those
12 circumstances, I can see where a utility could file an
13 Affidavit stating that they have been found in
14 violation of a rule, statute or order by that agency,
15 which continues to require action by a utility as of
16 the date of the Affirmation. Any use of the undefined
17 terms proposed or use of terms that apply to an
18 initial allegation by the agency or case where a
19 Consent Agreement has been entered into by the
20 parties, is not a reasonable basis upon which the
21 Commission staff or the Commission should be looking
22 at a utility's quality of service. Since that is the
23 alleged reason for reviewing these issues, it is
24 inappropriate for the Commission in my mind, to be
25 drawing conclusions based upon an allegation that has

1 not yet become a final decision finding the utility in
2 violation.

3 Q. Do you have any further testimony to provide at this
4 time?

5 A. No, I do not.

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