

**REQUEST TO ESTABLISH DOCKET**

(Please Type)

Date: 5/30/2007      Docket No.: 070345-WS

1. Division Name/Staff Name: Economic Regulation / Brady

2. OPR: P. Brady pb

3. OCR:

4. Suggested Docket Title: Ordinance by the Board of County Commissioners of Columbia County to regulate private water, wastewater, and effluent reuse utilities in Columbia County.

5. Suggested Docket Mailing List (attach separate sheet if necessary)

A. Provide NAMES OR ACRONYMS ONLY if a regulated company.

B. Provide COMPLETE NAME AND ADDRESS for all others. (Match representatives to companies.)

1. Parties and their representatives (if any):


2. Interested persons and their representatives (if any):

Lisa Roberts	
Board Of County Commissioners Of Columbia County	
P.O. Box 1529	
Lake City, Fl 32056-1529	
Tel: (386) 758-1005	Fax: (386) 758-2182

6. Check one:

Documentation is attached.

Documentation will be provided with recommendation.

DOCUMENT NUMBER-DATE

04413 MAY 30 5



## FLORIDA DEPARTMENT OF STATE

**CHARLIE CRIST**  
Governor

STATE LIBRARY AND ARCHIVES OF FLORIDA

**KURT S. BROWNING**  
Secretary of State

May 14, 2007

Ms. Lisa K.B. Roberts  
Assistant County Manager  
Columbia County  
Post Office Box 1529  
Lake City, Florida 32056-1529

Dear Ms. Roberts:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letter dated May 7, 2007 and certified copies of Columbia County Ordinance No. 2007-15, which were filed in this office on May 11, 2007.

As requested, the date stamped original and one additional certified copy are being returned for your records.

Sincerely,

A handwritten signature in cursive script that reads "Liz Cloud".

Liz Cloud  
Program Administrator

LC/lbh  
Enclosures

#### DIRECTOR'S OFFICE

R.A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250  
850.245.6600 • FAX: 850.245.6735 • TDD: 850.922.4085 • <http://dls.dos.state.fl.us>

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COUNTY OF COLUMBIA, FLORIDA

ORDINANCE NO. 2007-15

RECORDED IN ORDINANCE BOOK 8, PAGE 3070

AN ORDINANCE OF COLUMBIA COUNTY, FLORIDA, RELATING TO REGULATION OF WATER AND WASTEWATER UTILITIES WITHIN COLUMBIA COUNTY, FLORIDA; PROVIDING A TITLE AND AUTHORITY; PROVIDING DEFINITIONS; ESTABLISHING AND PROVIDING FOR AUTHORITY, POWERS AND DUTIES; PROVIDING UTILITY RELATED REGULATIONS; PROVIDING FOR A POINTMENT OF HEARING OFFICERS; PROVIDING FOR THE FIXING OF RATES; PROVIDING FOR THE ISSUANCE, EXTENSION, SALE, ASSIGNMENT OR TRANSFER, OR AMENDMENT OF FRANCHISES; PROVIDING FOR THE ESTABLISHMENT OF FEES AND CHARGES; PROVIDING FOR CONDUCT OF HEARINGS; PROVIDING REPORTING REQUIREMENTS; PROVIDING FOR PROCEDURES, NOTICES, AND CONDUCT OF HEARINGS; PROVIDING FOR ENFORCEMENT AND PENALTY PROVISIONS; PROVIDING FOR APPELLATE REVIEW; PROVIDING A REPEAL PROVISION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

FILED  
2007 NOV 11 PM 0:01  
CLERK OF STATE  
TALLAHASSEE, FLORIDA

WHEREAS, the Board of County Commissioners of Columbia County, Florida, has made the following determinations:

1. Section 367.171, Florida Statutes, authorizes the Board of County Commissioners to regulate private water, wastewater and effluent reuse utilities seeking to do business in the County.
2. Section 125.01(t), Florida Statutes, authorizes a county to adopt ordinances and resolutions as needed to exercise its power and authority.

NOW THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Columbia County, Florida:

SECTION 1. TITLE, AUTHORITY AND INTENT.

(A) This Ordinance shall be known as the "Columbia County Utilities Regulatory Ordinance."

(B) It is the intent of the Board of County Commissioners of Columbia County (the "Board") that mediation be attempted to settle all disputed matters before the Board before utilizing more formal dispute resolution procedures.

(C) All references in this Ordinance to Florida Statutes and Rules in the Florida Administrative Code shall automatically include all amendments to all of the same without inserting any such changed reference into this Ordinance or in the Rules of the Board. The Board may incorporate rules of the Florida Public Service Commission (the "FPSC") by specific reference thereto. In the absence of a conflicting rule in this ordinance or subsequent ordinances or resolutions of this Board, the Board may apply FPSC rules.

(D) The Board may refer to all Procedural Rules of the FPSC that relate to water and wastewater utilities for guidance on how to determine an issue of procedure that is not specified in this Ordinance or by Rule of the Board.

**SECTION 2. DEFINITIONS.** For the purposes of this Ordinance the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory. The word "may" is precatory.

**"Advocate"** shall mean an Attorney, experienced in utility regulatory matters, appointed and compensated by the Board to represent the interests of the Utility's ratepayers.

**"Board"** shall mean the Board of County Commissioners of Columbia County, Florida.

**"Clerk of the Board"** or **"Clerk"** shall mean the Clerk of the Columbia County Board of County Commissioners.

**"Bulk Water Utility"** shall mean any Person or business entity of any kind whatsoever, lessee, trustee, or receiver owning, operating, managing, or controlling a System or proposing

construction of a System to provide untreated or treated water to a Utility, bulk user or distributor of water for compensation.

**"Contributions-In-Aid-Of-Construction"** or **"CIAC"** shall mean any amount or item of money, services or property, or any combination thereof directly or indirectly received by a Utility, at no cost to the Utility or which have value in excess of the consideration given by the Utility for the same, the excess of which represents a gift, donation, or contribution to the capital of the Utility and is used or planned to be used to offset the acquisition, improvement or construction costs of the Utility's property, facilities, or equipment used to provide Service to the customers of the Utility. The term CIAC includes payments to the Utility such as system capacity charges, main extension charges, plant expansion fees, customer connection charges, and other similar monetary or in kind payments to the Utility.

**"Corporate Undertaking"** shall mean the unqualified guarantee of a Utility to pay a refund and any interest, as may be required by the Board.

**"County"** shall mean Columbia County, a political subdivision of the State of Florida.

**"Domestic Wastewater"** shall mean wastewater principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants.

**"Franchise Certificate"** or **"Franchise"** shall mean a privilege granted by the Board to authorize a Utility to provide Utility services within the boundaries of a specified geographic area or areas pursuant to this Ordinance.

**"Governmental Authority"** shall mean a political subdivision as defined in section 1.01, Florida Statutes, authorized to provide water, wastewater or effluent reuse Service, a regional water supply authority created pursuant to section 373.1962, Florida Statutes or an authority created pursuant to Section 163.07 (7)(g)(i), Florida Statutes.

**"Industrial Wastewater"** shall mean wastewater not otherwise defined as Domestic Wastewater, including runoff and leachate from areas that receive pollutants associated with industrial or commercial storage, handling, or processing.

**"Official Date of Filing"** shall mean the date specified by the Board, or its designee, pursuant to this Ordinance which certifies that a Utility has filed with the Board complete minimum filing requirements established by this Ordinance and/or the Board, for the respective application or proceeding.

**"Person"** shall mean any individual, corporation, Governmental Authority or its representative, estate, trust, partnership, association, fiduciary, and all other groups or combinations thereof, or any other entity.

**"Presiding Officer"** shall mean the hearing officer, Chair of the Board, or the Chair's designee when conducting a hearing under this Ordinance.

**"Pro Forma Year"** shall mean the twelve month period immediately following the Test Year. Data presented is limited to adjustments for known and anticipated changes which are expected to occur during the Pro Forma Year.

**"Rule of the Board"** shall mean a rule or resolution approved by the Board pursuant to this Ordinance. Rules of the Board may not be amended, or repealed without a public hearing. "Rule" always includes the plural "rules" unless the context indicates the contrary.

**"Service"** shall mean the readiness and ability on the part of a Utility to furnish and maintain water and/or wastewater and/or effluent reuse Service to a point of delivery for any lot and/or tract, or pursuant to applicable rules and/or regulations of any applicable government agency having jurisdiction.

**"System"** shall mean utility facilities and land used and useful in providing Service, and, upon a finding by the Board, may include a combination of functionally related facilities and land.

**"Territory"** shall mean the geographical Service area described as such in a Utility's Franchise Certificate or Franchise. Territory may be referred to herein and in Rules as "service area(s)," or "certificated areas."

**"Test Year"** shall mean a twelve month period, commencing no more than eighteen months prior to the Official Date of Filing of an application. The data presented in any statement by a Utility concerning a Test Year shall be limited to actual income and expenses, without alteration, as determined on an accrual basis during the subject time period. Adjustments may be identified by the Utility pursuant to rules of the Board. A Test Year may consist of at least six months actual and not more than six projected months, if the Test Year data is updated during the rate case to reflect actual income and expenses. At its option, the Utility may also present a Test Year which includes known material capital additions that go beyond the Test Year.

**"Utility"** shall mean any Person, government, authority, or business entity, lessee, trustee, and/or receiver, owning, operating, managing, controlling a System or proposing construction of a System, who or which is providing or proposes to provide or offers to provide or holds itself available to provide potable water and/or non-potable water, bulk water, wastewater service, effluent reuse water, or any combination thereof, within the County to the public for compensation, except as provided in Section 3(B).

**"Utility Trust Account"** shall mean an account to be known as the Water and Wastewater Utility Regulatory Fund maintained by the Columbia County Clerk of Court for the purpose of receiving, holding and expending Utility funds, fees and penalty monies necessary to perform regulatory activities, as provided under this Ordinance.

**"Wastewater," "Sewage," or Sewerage"** shall mean a combination of the liquid and water-carried pollutants from any residence, commercial building, industrial plant, or institution together with any groundwater, surface runoff, or leachate that may be present.

**"Wastewater System," "Sewer System," or "Sewerage System"** shall mean any and all plant, System, facility or property, and additions, extensions and improvements constructed or acquired as a part thereof, useful or necessary or then having capacity for future use in connection with the collection, treatment, purification and disposal of effluent and/or sludge and/or Sewage of any nature, originating from any source, and, includes but is not limited to treatment plants, pumping stations, lift stations, valves, force mains, intercepting sewers, laterals, pressure lines, mains and all necessary appurtenances and equipment; all Wastewater mains and laterals for the reception and collection of Sewerage connected therewith; all real and personal property and any interest therein, rights, easements, and franchisees of any nature relating to any such System and necessary or convenient for the operation thereof.

**"Water System"** shall mean any and all plant, facility or property, and additions, extensions and improvements thereto, constructed or acquired as a part thereof, useful or necessary or having the present capacity for future use in connection with the development of sources, treatment, purification or distribution of water, and, including but not limited to wells, water treatment facilities, membrane processing "concentrate disposal" facilities, fire hydrants, reservoirs, storage tanks, lines, valves, pumping stations, laterals and pipes for the purpose of carrying water to the premises connected with such System; the term also includes all real and personal property and any interests or rights therein, easements, and franchises of any nature whatsoever relating to any such System and necessary or convenient for the operation thereof.

### **SECTION 3. POWERS AND DUTIES OF THE BOARD.**

(A) The Board possesses all of the powers and rights provided pursuant to its home rule powers in addition to the powers, rights and duties identified in Chapter 125, Florida Statutes, and reasonably derived therefrom. Those powers include, but are not limited to, the authority:



- (1) To grant, amend, deny, modify, revoke, suspend, transfer, or otherwise act related to a Franchise of a Utility;
- (2) To institute litigation;
- (3) To fix rates which are just, reasonable, compensatory, not unfairly discriminatory and fairly balance the interest of the Utility and the ratepayers pursuant to United States and Florida Constitutions and decisions of the United States and Florida Courts;
- (4) To approve, modify, or deny the filing of any tariff, or other rule or regulation proposed to be established by or on behalf of an applicant or Utility;
- (5) To establish, and from time-to-time amend a uniform system and classification of accounts for all regulated Utilities which among other things, shall establish adequate, fair and reasonable depreciation rates and charges. The uniform system and classification of accounts to be utilized shall be the latest class of accounts as published by the National Association of Regulatory Utility Commissioners (the "NARUC"), unless otherwise specified by the Board.
- (6) To require regular or emergency reports from a Utility including, but not limited to, financial reports, as the Board deems necessary. If the Board finds a financial report to be incomplete, incorrect, or inconsistent with the uniform system and classification of accounts, the Board may require a new report or supplemental report, either of which the Board, for good cause, may require to be certified by an independent public accountant licensed under Florida Statute;
- (7) To compel repairs, improvements, additions and/or extensions of any Utility facility or to require the construction of a new facility, if deemed reasonably necessary by the Board to provide safe, adequate and proper Service to any Person entitled to such Service; except that no Utility shall be required either to extend its Utility Service outside the Service Territory described in its Franchise Certificate, or to make additions to its plant or equipment to

serve outside such Service Territory unless the Board first finds that the Utility is financially able to make such additional investment without impairing its capacity to serve its existing customers;

(8) To compel interconnections of Service or facilities between Utilities; and to approve any plant capacity charges or rates related to either interconnections of service or facilities, provided the Board first finds that the Utility is financially able to make such additional investment without impairing its ability or capacity to serve its existing customers;

(9) To enter orders regarding any matter pertaining to the regulation of Utilities deemed by the Board to be necessary or convenient to carry out this Ordinance or Rule of the Board;

(10) To issue charging documents to any Utility or franchisee for enforcement of a legal order, mandate, decree, or instruction of the Board and/or for violation of any provision of this Ordinance, or the rules of the Board; and to take all actions necessary to fully prosecute said charges as provided for in this Ordinance;

(11) To hold hearings with respect to the provisions of this Ordinance or to appoint a hearing officer for the purpose of conducting hearings on such matters involving Utilities as the Board may designate, including, but not limited to, rates, fees, charges, rules, regulations, conditions of Service and franchise applications, extensions, renewals, suspensions, and revocations;

(12) To adopt rules for the conduct of such hearings;

(13) To take testimony under oath, if deemed necessary by the Board;

(14) To require the filing of reports and/or other information and data by a Utility and/or any affiliated companies, including its parent company, regarding transactions or allocations of common and other costs among the Utility and such affiliated companies; the Board may also require reports or other data necessary for it to ensure that the Utility's

ratepayers do not subsidize non-Utility activities. It shall be in the Board's discretion to make a determination as to what shall constitute an affiliate. However, if there is a dispute as to whether such entity is an affiliate, all reports required by the Board for that entity shall be promptly supplied but shall be kept confidential by the Board pending an opinion by a court of competent jurisdiction as to the "affiliate" status of the entity and the claimed basis for confidentiality by the Utility or its affiliate;

(15) To employ, contract with or appoint, and fix the compensation of accountants, Advocates, technical, legal, clerical employees and experts necessary to carry out this Ordinance. Compensation shall be consistent with normal charges by experts of similar experience in the State of Florida. The budget shall be not greater than the revenues anticipated for the year and available from prior years, unless otherwise approved by the Board. The Board, at its option, may employ or contract with, and fix the compensation of accountants, technical, legal, clerical and other employees and experts as the Board, in its sole discretion may determine to be necessary to support the Board's regulatory activities to be carried out under this Ordinance.

(16) To take actions, including seeking injunctive relief, to effectuate any provision of this Ordinance;

(17) For all matters not covered by this Ordinance or reserved to the Board, or any regulation in the future adopted by the Board, the Board may follow the appropriate rules of the Florida Public Service Commission (the "FPSC"), currently Chapter 25-30, Florida Administrative Code, for guidance as needed. No rule of the FPSC shall per se grant to any Person or entity any procedure or substantive right or privilege not granted in this Ordinance, or in any Rule of the Board, or require any duty or obligation not required or authorized to be required by this Ordinance, or any Rule of the Board;

(18) To issue subpoenas;

(19) To enact rules to carry out its duties and responsibilities and to apply and effectuate the provisions of this Ordinance;

(20) Unless prohibited by law, the Board, for good cause, may grant extensions to time periods specified in this Ordinance or in rules of the Board;

(21) To appoint, at its sole discretion, hearing officers to hear any or all disputes pertaining to this Ordinance or Utility Service in the County. The hearing officer shall promptly render to the Board a written recommended order containing findings of fact, conclusions of law and recommendations;

(22) To prescribe standards of quality and measurements and to prescribe Service rules to be observed by each Utility, except to the extent such authority is expressly given to another governmental agency;

(23) To prescribe and amend forms for use by Utilities in compliance with any provision of this Ordinance or Rules of the Board;

(24) To have the staff or experts employed or contracted by the Board inspect any and all Utility facilities and plant; and

(25) To otherwise do all things necessary or convenient to full and complete exercise of its jurisdiction and/or duties under this Ordinance.

(B) The following are not subject to regulation by the Board as a Utility nor are they subject to the provisions of this Ordinance, except as expressly provided in this Ordinance or other valid ordinance of the Board:

(1) Property used solely or principally in the business of bottling, selling, distribution or furnishing bottled water or portable treatment facilities;

(2) Systems owned, operated, managed, or controlled by a Governmental Authority, including water or wastewater facilities operated by private firms under water or wastewater facility privatization contracts as defined in section 153.91, Florida Statutes; and

non-profit corporations formed for the purpose of acting on behalf of a political subdivision with respect to a water or wastewater facility;

(3) Manufacturers providing such Utility Service solely in connection with their own manufacturing operations;

(4) Each public lodging establishment providing such Utility Service solely in connection with lodging Service to its guests;

(5) Each landlord or Homeowners Association providing Service solely to their own tenants or unit owners without compensation for such Utility Service;

(6) Nonprofit corporations, associations, or cooperatives providing Service solely to members who own and control such nonprofit corporations, associations, or cooperatives;

(7) Any Person who resells water or wastewater Service at a rate or charge which does not exceed the actual purchase price thereof, if such Person files at least annually with the Board a list of charges and rates for all water or wastewater Service sold, the source and actual purchase price thereof, and any other information required by the Board to justify the exemption;

(8) Wastewater treatment plants operated exclusively for disposing of Industrial Wastewater;

(9) The sale of bulk supplies of desalinated water to a Governmental Authority;

(10) Any Person providing only nonpotable water for irrigation purposes in a geographic area where potable water Service is available from a governmentally or privately owned Utility or a private well; or

(11) The sale for resale of bulk supplies of water to a Governmental Authority or to a Utility regulated pursuant to this Ordinance.

(C) The Board shall establish and amend regulatory assessment fees and other regulatory fees. The amount of regulatory assessment fees and other regulatory fees shall be determined by the Board from time-to-time by public hearing, but shall never become effective earlier than sixty days after adoption of each such implementing resolution. The regulatory assessment fee upon adoption of this Ordinance shall be equal to four and one-half percent (4.5%) of gross revenue of the Utility, payable as set forth later in this Ordinance.

(D) In addition to the regulatory assessment fees payable each year by Utilities regulated by the Board and other Regulatory fees as may be authorized in this Ordinance or subsequently by the Board, the Board may order each Utility to pay the County's cost for Hearing Officers, attorneys, experts and administrative costs incurred by the County to process any application submitted by the Utility for consideration by the Board. The Board shall provide for recovery by the Utility of the costs paid in this manner in the Utility's pending or future rate filing. The costs shall be recovered by the Utility over a four year period or in the same manner as the Board permits each Utility to recover its rate filing costs as provided in this Ordinance or rule or other policies of the Board.

(E) The Board, through its rules, may provide for declaratory statements and for any other procedures not otherwise provided for in this Ordinance.

(F) Minutes of each Board meeting addressing Utilities, Utility Services and the regulation of either Utilities or Utility Services pursuant to this Ordinance shall be kept and prepared under the general supervision and direction of the Clerk of the Board.

(G) County employees shall keep an accurate record of any time they spend on regulatory matters pursuant to this Ordinance.

#### **SECTION 4. APPOINTMENT, POWERS AND DUTIES OF HEARING OFFICERS.**

(A) Appointment of Hearing Officers. The Board may appoint hearing officers for the purpose of conducting public hearings on such matters involving Utilities as the Board may

designate, including, but not limited to rates, fees, charges, rules, regulations, conditions of service, transfers, and franchise applications, extensions, amendments, renewals, suspensions, and revocations.

(1) Hearing officers shall be attorneys licensed to practice in the State of Florida who have demonstrated expertise in Utility regulatory litigation, including ratemaking.

(2) The Board may select a pool of three hearing officers with the authority to conduct hearings and to issue recommended orders to the Board. Appointments as hearing officers shall be made for a term of two years. Any hearing officer may be reappointed at the discretion of the County Manager. There shall be no limit to the number of reappointments that may be given to any individual hearing officer; provided, however, that a determination as to removal or reappointment must be made for each hearing officer at the end of each term. The Board has the authority to remove hearing officers with or without cause. Appointments to fill any vacancy shall be for the remainder of the unexpired term.

(3) Hearing officers shall not be County employees, but shall be compensated at a rate to be established by the Board. In addition, hearing officers may be reimbursed for such travel, mileage, and per diem expenses as may be authorized by the Board.

(4) Detailed invoices from the hearing officer for costs and fees must be submitted to the Clerk for review.

(5) Approved costs and fees for hearing officers shall be paid out of the Utility Trust Account in accordance with Section 7.

(B) Hearing Procedures. All hearing procedures established in this Ordinance shall be followed by the hearing officer.

## **SECTION 5. RATES AND CHARGES.**

(A) Except as otherwise provided in this Ordinance, a Utility may only charge rates and charges that have been approved by the Board.

(B) Any franchisee may apply to the Board to establish or change rates, fees and charges, rules and regulations or conditions of service. The application shall specify in detail any changes requested and supply copies of the current tariff, and current tariff modified with the requested changes highlighted. The application shall set forth the relief requested and shall be accompanied by a complete written transcript of any testimony expected to be submitted in support of the pleadings and shall be accompanied by the documentary evidence expected to be offered by the Utility. The specific content of such application, including the minimum filing requirements (the "MFRs"), until changed by the Rules of the Board, are as required or described in this Ordinance.

(C) The Board shall set a date for all hearings necessary to dispose of such applications, including public and evidentiary hearings, and shall require the Utility to publish notice of such hearings as specified in the Rules of the Board; except that setting evidentiary hearing dates will be within the authority of a hearing officer if one is appointed.

(D) The Board shall approve, modify or reject the application based on the criteria prescribed in this Ordinance within ninety days after receipt of the recommended order from the hearing officer.

(E) Until changed by Rules of the Board, all Applications for initial rates and all applications for rate adjustments by Utilities with a gross annual revenue in excess of fifty thousand dollars (\$50,000) for water or wastewater Service shall include the following minimum filing requirements (MFRs):



- (1) A statement of financial operations in historical form for the previous three fiscal years and a statement of financial operations for the Test Year and for the Pro Forma Year at existing and proposed rates;
- (2) A balance sheet for the Test Year, for the previous three (3) fiscal years, and for the Pro Forma Year;
- (3) A schedule of existing rates, fees and charges, and of actual revenues and number of customers by rates and by class for the Test Year and Pro Forma Year at existing and proposed rates;
- (4) A statement of the proposed increases or changes which will result in increases. Such statement shall set forth the proposed rate structure with reasonable clarity and with appropriate rate classification where applicable, including bill comparisons between existing and proposed rates;
- (5) A detailed statement of annualized revenues by class of customers by meter size served by rate applicant at the end of the Test Year, including the number of customers by class;
- (6) A detailed schedule of all fixed assets needed to serve customers during the Test Year and Pro Forma Year including their original cost, depreciated costs and an explanation of the depreciation. Such depreciation rates are subject to Board review and approval;
- (7) Actual and pro forma expense adjustments with supporting detail set forth by the accounts effected. Such adjustments shall be supported by competent substantial evidence and shall not include estimates based solely on speculation and conjecture;
- (8) A comparative schedule of operation and maintenance expenses in historical form, classified according to the Utility's chart of accounts, for the Test Year and prior three (3) fiscal years;

- (9) A detailed statement of rate case expenses;
- (10) Rate base and rate of return in historical form for the prior three (3) fiscal years, and for the Test Year and the Pro Forma Year, at existing and proposed rates;
- (11) A schedule of the cost of capital and rate of return;
- (12) Federal income tax calculation for the Utility for the Test Year and Pro Forma Year computed at the present and proposed rates;
- (13) Calculation of state taxes based on income for the Test Year and Pro Forma Year, computed at both the existing and proposed rate;
- (14) Detailed schedules showing the computation of the property used and useful in the provision of Service to the public to arrive at the percentage reduction of rate base for existing capacity. Identify in detail the capacity of the Utility System by functional component (treatment, transmission, collection, etc.); and the portions thereof that are used and useful in the provision of Service to the public;
- (15) Detailed maps showing the service area of the franchise, lines in the ground and lots served. Lots presently being served and proposed extensions shall be distinguished from lots not presently connected;
- (16) A listing of the Utility's connection and extension fees together with a statement of the Utility's service extension policy, general rules and regulations, and any proposed changes in any of the foregoing. All such changes are subject to Board review and approval;
- (17) A schedule of connection fees proposed as well as previously authorized by the Board and other Contributions in Aid of Construction;
- (18) Detailed schedules to determine the percentage for reduction in *ad valorem* taxes and depreciation expenses due to excess capacity where applicable;

(19) A detailed schedule of services or commodities supplied to and received from affiliated companies including associated revenue or expenses, as may be applicable;

(20) Any orders or requirements imposed or likely to be imposed by any other regulation or regulatory authority; and

(21) Any other information which the Utility or the Board deems relevant under the particular circumstances.

(22) For Utilities seeking initial rates, all of the information indicated in Subsections 5(E)(1) through 5(E)(21) above shall be required. However, where actual information is not available, pro forma information shall be supplied.

(F) Until changed by Rules of the Board, all applications for a rate adjustment by Utilities with current gross revenues up to and including fifty thousand dollars (\$50,000) for water and wastewater shall include the following information:

(1) A brief description of the System;

(2) Detailed maps showing the service area of the franchise, lines in the ground, and lots served. Lots presently being served and proposed extensions shall be distinguished from lots not presently connected;

(3) The rates, fees and charges the Utility is presently charging and the proposed rates, fees and charges;

(4) The number of customers served by the Utility, itemized by classes and presented on such seasonal or annual basis as is appropriate;

(5) A statement of the Utility's revenue for the Test Year at both the existing and proposed rates by customer class;

(6) An income statement and balance sheet for the Test Year at existing rates;

(7) A pro forma income statement showing the estimated results for the Test Year at the proposed rates;

(8) A detailed statement of fixed assets;

(9) The calculation of the rate base and rate of return for the Test Year and for the Pro Forma Year;

(10) A copy of the tariff, terms and conditions of service, and service availability policy;

(11) Detailed schedules showing the computation of the property used and useful in the provision of service to the public to arrive at the percentage reduction of rate base for existing capacity. Identify in detail the capacity of the Utility System by functional component (treatment, transmission, collection, etc.) and the portions thereof that are used and useful in the provision of service to the public;

(12) Any orders or requirements imposed or likely to be imposed by any other regulation or regulatory authority; and

(13) Any other information which the Utility or the Board may deem relevant under the particular circumstances.

(G) In addition to the requirements stated in this Section, all applications shall include the following information for both the Test Year and Pro Forma Year:

(1) An itemized comparison of operating expenses since rates last were established by the Board giving reasons for the major changes in excess of five percent (5%);

(2) An itemized comparison of rate base since rates last were established by the Board giving detailed reasons for any changes;

(3) A comparison of actual cost of capital and pro forma cost of capital.

(H) In determining rates, the Board:

- (1) Shall consider the value and quality of Service and the cost of providing the Service;
- (2) Shall include in the cost of providing Service, at a minimum, debt interest, working capital, maintenance, depreciation, tax, and operating expenses incurred in the operation of all property used and useful in the public service;
- (3) Shall include a fair return on the Utility's investment in all property used and useful in the public service, which return shall be no less than the Board approved weighted cost of the capital of the Utility, including debt and equity;
- (4) Shall not include Contributions-in-Aid-of-Construction (CIAC) in the rate base of any Utility;
- (5) Shall not reduce rate base by any accumulated depreciation on CIAC;
- (6) Shall not include depreciation on CIAC as a cost of providing service;
- (7) Shall 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 twelve months, unless extended by the Board, from the end of the historical test period used to set final rates;
- (8) Shall reduce rate base by accumulated deferred and unamortized income tax and investment tax credit.
- (9) For purposes of determining rate base, the Board shall not consider a Utility's investment in any new construction, expansion or replacement of a Utility's water treatment plant, wells, wastewater treatment plant, lift stations or effluent disposal facilities to be either prudently incurred or used and useful in the public service unless the Utility presents evidence that (i) the Utility notified each government, Governmental Authority or other water and wastewater utility provider which operates a utility system within the County of the Utility's intent to construct, expand or replace such utility property; (ii) the Utility determined the cost and

feasibility of interconnecting the Utility's property with the utility system operated by such local government, Governmental Authority or other provider in lieu of such construction, expansion or replacement; (iii) the local government, Governmental Authority and water and wastewater utility provider was given the opportunity to provide a competitive bid to the Utility on not less than ninety days notice for the interconnection of the Utility's property to the utility system operated by the local government, Governmental Authority or other utility provider in lieu of such construction, expansion or replacement; and (iv) the local government, Governmental Authority or other utility provider (a) failed to respond to the Utility's notice, (b) agreed with the Utility that interconnection of the Utility's property was not feasible or (c) presented a bid for interconnection which was not the least cost alternative available to the utility and not otherwise preferable to the construction, expansion or replacement proposed by the Utility for public health and safety or environmental reasons.

(I) The Board in establishing initial rates for a Utility may project the financial and operational data as set out in this Section, to a point in time when the Utility is expected to be operating at a reasonable level of capacity.

(J) In fixing rates, the Board 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 rate base.

(K) Pass through increases and price index adjustments:

(1) The Board may, in the Board's sole discretion, authorize or require pass through increases or decreases by Rule.

(2) On or before March 31 of each year, the Board at its sole discretion may by order establish a price increase or decrease index for major categories of operating costs incurred by Utilities subject to its jurisdiction reflecting the percentage of increase or decrease in

costs from the most recent twelve month historical data available. The Board may by Rule establish the procedure to be used in determining such indices and a procedure by which a Utility, without further action by the Board, or the Board on its own motion, may implement an increase or decrease in rates based upon the application of the indices to the amount of the major categories of operating costs incurred by the Utility during the immediately preceding calendar year, except to the extent of any disallowances or adjustments for those expenses of that Utility in its most recent rate proceeding before the Board. The Rules, if established, shall provide that, upon a finding of good cause, including for inadequate service, the Board may order a Utility to refrain from implementing a rate increase hereunder unless implemented under a bond or corporate undertaking. A Utility may not use this procedure, if such a procedure has been established, between the Official Date of Filing of the rate proceeding and one year thereafter, unless the case is completed or terminated at an earlier date. A Utility may not use this procedure to increase any operating cost for which an adjustment has been made to increase its rates by application of a price index or pass-through, other than the most recent price index, if any, authorized by the Board at the time of filing;

(3) Before implementing a change in rates under this Subsection, the Utility shall file an affirmation under oath as to the accuracy of the figures and calculations upon which the change in rates is based, stating that the change will not cause the Utility to exceed the range of its last authorized rate of return on equity. Whoever makes a false statement in the affirmation required hereunder, which statement he or she does not believe to be true in regard to any material matter, is guilty of a felony of the third degree, punishable as provided in sections 775.082, 775.083, or 775.084, Florida Statutes;

(4) If, within fifteen months after the filing of a Utility's annual report, the Board finds that the Utility exceeded the range of its last authorized rate of return on equity after an adjustment in rates as authorized by this Subsection was implemented within the year for

which the report was filed or was implemented in the preceding year, the Board may order the Utility to refund, with interest, the difference to the ratepayers and adjust rates accordingly;

(5) Notwithstanding anything herein to the contrary, a Utility may not adjust its rates under this Subsection more than two times in any twelve month period. For the purpose of this Subsection, a combined application or simultaneously filed applications that were filed under provisions of Subsection 5(K)(1) and Subsection 5(K)(2) shall be considered one rate adjustment;

(6) The Board may regularly establish a leverage formula or formulae that reasonably reflects the range of returns on common equity for an average water or wastewater Utility and which, for purposes of this Section, shall be used to calculate the last authorized rate of return on equity for any Utility which otherwise would have no established rate of return on equity. In any other proceeding in which an authorized rate of return on equity is to be established, a Utility, in lieu of presenting evidence on its rate of return on common equity, may move the Board to adopt the range of rates of return on common equity that has been established under this paragraph. The Board in its sole discretion may require the Utility to present evidence on its rate of return on common equity and not allow the Utility to use the range of rates on common equity that has been established under this paragraph. The Board in its sole discretion may adopt the leverage formula established annually by the Florida Public Service Commission;

(7) No Utility shall implement any rate change pursuant to this Ordinance unless it has filed with the Board its current annual financial report and all other reports required by the Board and is then current in the payment of its fees to the Board.

(L) An application for rate change must be accompanied by a fee as set by the Board, or if not yet set by the Board, by the fee that would have been payable to the FPSC if the Utility had been subject to FPSC regulation.



(M) The Board may withhold consent to the operation of any rate request or any portion thereof by a vote to that effect within sixty days after the Official Date of Filing or within a shorter period established by Rule of the Board. The order shall state a reason or statement of good cause for the withholding of consent. The Board shall provide a copy of the order to the Utility and all interested Persons who have requested notice. The Board shall take final action on the docket and enter its final order within twelve (12) months of the Official Date of Filing.

(N) Rate Case Expenses:

(1) The Board shall determine the reasonableness of rate case expenses and shall disallow all rate case expenses determined to be unreasonable. No rate case expense determined to be unreasonable shall be paid by the consumer. The Utility shall provide detailed expense reports in support of its request for rate case expenses. Such reports shall include the time spent by each Person generating that expense and a detailed explanation of the activities performed related specifically to the each phase of the preparation and prosecution of the rate case, to enable a determination of the validity of such expenses. Hourly rates will be based on the marketplace in Florida for like experience and quality. Time will be assessed on the basis of a reasonable number of hours for the tasks performed and the elimination of duplication;

(2) The amount of rate case expense determined by the Board pursuant to the provisions of this Section to be recovered through a Utility's rates shall be apportioned for recovery over a period of four years. At the conclusion of the recovery period, the rate of the Utility shall be reduced immediately by the amount of the rate case expense previously included in rates.

(O) Until such time as the Board may implement Rules which amplify or modify this Subsection, the following procedures shall be utilized by utilities in all rate change applications. The Utility may present additional information using different procedures in its rate case filing. However, the Utility has the burden of proof to show that the procedures that the

Utility proposes that the Board utilize provide a more fair balance of ratepayer and Utility interests.

Rate Base Standards: (1) Absent extraordinary occurrences, the Utility shall use a thirteen month average rate base;

(2) The Utility must prove its entitlement to a margin reserve by, at a minimum, providing evidence of its planning cycle, historic and planned development of its System including timing of significant investments by the Utility, its developer agreement policy, present and historic, and payments to the Utility by its parent and/or affiliated companies for providing utility services;

(3) Economies of scale factor shall not be used;

(4) The cost of a Utility's transmission and distribution system shall be allocated between present and future customers based on the ratio of lots occupied to lots available; and

(5) The Utility's working capital requirements shall be calculated in accordance with FPSC Rule 25-30.433. The calculated working capital shall be added to rate base if it is a positive number and subtracted from rate base if it is a negative number.

(P) Cost Of Capital:

(1) At the discretion of the Board, the Utility shall establish the cost of equity either by expert rate of return testimony or by utilizing the Board's leverage formula or, if that formula has not been established, by using the FPSC's leverage formula in effect at the time of the Board's decision;

(2) The cost of debt shall be the Utility's actual cost of long term debt and of short term debt unless the Board determines that such cost is unreasonable or excessive due to acts or omissions of the Utility;

(3) The Utility's stand alone capital structure shall be used by the Utility in its filing if that structure is appropriate for a regulated utility and accurately reflects the total cost of capital.

(Q) Net Operating Income: The average number of customers and consumption shall be used to calculate Test Year revenues and Service rates.

(R) Rate Investigations. On its own motion or on a written complaint signed by a Person applying for or receiving Services, or by request of the Utility itself, the Board may investigate to determine if the rates charged or collected by a Utility, or the Utility's practices affecting the rates, are unjust, unreasonable, discriminatory, or non-compensatory, or are in violation of this Ordinance, or Rule of the Board. If it appears that any change may be appropriate, the Board shall hold a public hearing to determine just and reasonable rates, fees, or practices to be implemented thereafter. Public notice of the public hearing shall be published one time in a newspaper of general circulation in the County at least ten days before the hearing. Notice of the hearing shall be given to the Utility and to the complainant, if any, at least thirty days before the date of the hearing.

(S) The Board may require a Utility to provide Service for resale. However, before requiring the provision of Service, the Board shall first find that the Utility is financially able to make such additional investment as is required without impairing its capacity to serve its existing customers. Any Utility which provides Service for resale shall provide such Service upon such terms and conditions established by the Board, and no Utility shall discontinue such Service without the approval of the Board.

(T) If the furnishing of service by a Utility requires the extension of or addition to its existing facilities, the Utility may require the applicant for such Service to pay reasonable sums or reasonable deposits guaranteeing compensatory revenues from the service area to be served, or reasonable CIAC to help defray the costs of facilities which will be used and useful in

furnishing that Service, or reasonable construction or other advances evidenced by refundable or non-refundable advance written agreement(s) or combination thereof, as a condition precedent to furnishing Service. Upon execution and as a condition precedent to the effectiveness of such agreements, each franchisee must provide a copy of any such agreement to the Board and the Board shall review such agreements and either approve the agreement, modify its terms or deny the Utility the authority to make the agreement effective.

(U) Each Utility shall provide to each Person reasonably entitled thereto such safe, efficient, and sufficient Service as is prescribed by the Florida Safe Drinking Water Act and the Florida Air and Water Pollution Control Act and/or rules adopted pursuant thereto, or the applicable chapters of the Florida Administrative Code, or other applicable Federal, State and local laws, ordinances and rules promulgated thereunder, or the successor in function to each; also such Service shall not be less safe, less efficient or less sufficient than is consistent with the approved engineering design of the particular System and reasonable and proper operation of the Utility in the public interest. If the Board finds that Utility has failed to provide its customers with water or wastewater that meets the standards promulgated by the Department of Environmental Protection, the appropriate water management district, or other Federal, State, or local regulatory authority, the Board may issue a final order to reduce the Utility's return on equity with a corresponding decrease in the Utility's rates until such time as the standards are met.

#### **SECTION 6. FRANCHISE.**

(A) Each Utility shall make application for a franchise by filing with the Board the following:

- (1) A detailed map of its existing System, or System under construction, and planned extensions;
- (2) A legal description of the Service area for which a Franchise is requested;

(3) A tariff listing all rates, fees, service classifications and charges of every kind which the Utility requests authority from the Board to implement and setting forth the Utility's operating regulations and procedures which shall remain in effect until thereafter lawfully changed by the Board;

(4) The proposed rate base of the Utility which, if approved by the Board, shall be the rate base of the Utility until thereafter lawfully changed by the Board;

(5) Information establishing the ability of the applicant to provide Service, the planned service area, all facilities involved, the need for Service in the planned service area, and the existence or nonexistence of Service from other sources within nearby geographical proximity to the service area applied for;

(6) An affidavit that the applicant has issued notice in a newspaper of general circulation in the County of its intention to file an application for the new franchise, which notice also must be delivered by mail or other actual delivery to the Board, and each Governmental Authority and water and wastewater provider in the County and to such other Persons and in such other manner as may be ordered by the Board or prescribed by Rule of the Board. Such newspaper notice shall be given at least twenty days prior to the filing of the application for franchise;

(7) A certified copy of its certificate of incorporation or other business organization documents, if any; audited financial statements for the past five years; an inventory of assets; and other information such that the Board can determine whether or not the applicant is qualified to be issued a franchise. The Board may require the applicant to post a bond, satisfactory to the Board in form and sureties, to guarantee compliance with any conditions imposed by the Board for issuance of the franchise(s);

(8) Evidence that the applicant owns the land upon which Utility facilities are to be located or a copy of the agreement which provides for the unencumbered, continued use

of the land, such as a ninety-nine year lease. The Board may consider a written easement or other cost effective alternative, at the Board's sole discretion;

(9) The application fee established by the Board, or if no fee has been established, the fee that would be required by the FPSC for the same type of application; and

(10) Other minimum filing requirements as may be required by Rule of the Board.

(B) No Person shall provide Service, or build, install, maintain, or operate any privately owned public water or wastewater System or Bulk Water Utility in any area of the County unless the Board has granted a franchise to the Person, or unless the Person is exempt under this Ordinance and the Rules adopted by the Board.

(C) No Utility shall create or give an undue or unreasonable preference or advantage to any Person or locality, or subject any Person or locality to any undue or unreasonable prejudice or disadvantage in any respect.

(D) A franchisee shall have the responsibility of serving the entire area covered by the franchise upon acceptance of the franchise.

(E) The franchise and the service area identified therein which is not then being provided service by Utility shall have no monetary value if the County or any other appropriate governmental agency or Governmental Authority seeks to acquire the Utility by any lawful means.

(F) The issuance of the franchise is not a bar to the acquisition of the Utility by the County or any other Governmental Authority.

(G) No franchisee shall provide water or wastewater Service to any customer for new construction unless the customer provides evidence to the franchisee that all applicable building permits or other authorization required by the County or other government entity have been issued.

(H) The application shall be signed by the Person who will be the holder of the franchise or the senior executive officer of such franchisee.

(I) The applicant shall establish to the Board's satisfaction that the applicant has met all other Federal, State and Local requirements for a new Utility.

(J) The Board may issue an order approving the Franchise in whole or in part, with or without modification, or deny any Franchise. No Utility shall be granted greater authority than that requested in the application and any amendments thereto. The Board shall not issue an order to grant a Franchise for a proposed System or for the extension of an existing System which will be in competition with, or a duplication of, any other System or portion of a System, unless it first determines that such other System or portion thereof is not adequate to meet the reasonable needs of the service area and all other Service commitments.

(K) If the Board does not receive a written objection to an application for a franchise within forty-five days following the Official Date of Filing of the application, the Board may issue an order on the application without a public hearing.

(L) If, within forty-five days following the Official Date of Filing of such an application, the Board receives from a Utility, a Governmental Authority or other government entity, or any consumer that would be substantially affected by the requested franchise, a written objection requesting a hearing, the Board shall conduct a public hearing, generally within one hundred twenty days from actual receipt of the written objection, unless the hearing date is extended by the Board. The Board may appoint a hearing officer to conduct an evidentiary hearing. The Board also may order that a hearing be held at its sole discretion.

(M) A hearing shall result in an order issued by the Board, if the Board conducts the hearing. If a hearing officer conducts the hearing and issues a recommended order, the Board should review the matter and may hear legal arguments concerning the recommended order

within sixty days of the issuance of such recommended order. Based upon such review and any such legal arguments presented, the Board shall enter a final order on the matter.

(N) The Board may deny any application or require amendment to any Franchise on the ground that such Service will violate the established local comprehensive plan adopted by the County pursuant to Florida Statutes.

(O) In reviewing the application, the Board shall consider, but is not limited to considering, the following:

(1) The availability to Applicant of sufficient resources to build, install and operate the proposed Utility and provide the proposed Services both in a manner consistent with all applicable regulations and the origin and composition of such resources;

(2) The ability of the applicant to provide the proposed Service(s) to the area with the proposed facilities involved, the need for Service in the area, and the existence or nonexistence of availability of such Service from other sources within the geographical proximity to the area for which the Utility has applied; and

(3) Whether the application conflicts with the County's local comprehensive plan, including all relevant capital improvement programs adopted by the Board.

(P) Each Franchise applied for and entered by the County with an applicant therefore, shall specify and acknowledge:

(1) Such terms and conditions as may be deemed necessary by the Board to protect the public health, safety and welfare;

(2) That the Utility must serve the entire area(s) identified in the Franchise;

(3) That the Franchise is no impediment to acquisition of the Utility or any part of its area by the County and/or any other governmental agency, by purchase, condemnation, or otherwise and that an area not provided Service by the franchisee at the time



of such an acquisition has no value to the franchisee and no compensation shall be due to the franchisee therefore;

(4) That the County has full power and authority to grant a license or franchise to any other Person or entity to construct, maintain, repair, operate, and remove lines for the transmission of water, wastewater, gas, power, television, telephone, and/or any other public utilities whatsoever, under, on, over, across, through, and/or along every public road, public highway, other public right-of-way, or utility easement for use by any other entity or governmental agency, by purchase, gift, devise, dedication, prescription, or by any other means;

(5) That the Utility shall prevent the creation of and shall not allow or suffer to continue the obstruction or any other conditions which are or may become physically dangerous to any member of the general public or otherwise conflict with any license or franchise granted by County to third parties;

(6) That the Utility shall repair any and all damage and/or injury to public and private streets, roads, highways, and all other tangible property caused by reason of the exercise of any privileges granted in the franchise and at no cost to the County, or other governmental agency, third party licensee or franchisee of County, or the County's residents, and that the Utility shall promptly repair all such damage or injury to all public and private streets, roads, highways, and other tangible property, restoring each to a condition at least equal to the condition that existed immediately prior to the infliction of such physical damage or injury by or on behalf of the Utility;

(7) That the Utility shall indemnify and hold harmless the County, the Board, and its members, and all employees and members of all of the above, from any claims, suits, and damages that may result, directly or indirectly, from any exercise of or failure to exercise any rights, privilege(s) and/or licenses granted or authorized by the Franchise;

(8) That in the event of widening, repairing, relocating, or reconstruction by the County or other governmental agency or Governmental Authority of any public street, public road or public right-of-way, the Utility shall, at no cost to the County or any other government agency, relocate as needed all lines and other tangible property of the Utility;

(9) That the issuance of the Franchise shall not entitle the franchisee to any consideration and shall not otherwise prevent, bar, or hinder the County and/or any other governmental agency or Governmental Authority from closing, abandoning, relocating, vacating, discontinuing, improving, or reconstructing any public street, road, or other right-of-way or easement, except those that are private;

(10) That the Utility shall comply with all applicable rules, regulations, and standards pertaining to such Utility from all governmental agencies having jurisdiction;

(11) That the Utility shall always maintain and keep all improvements in good repair and shall provide all Services within a reasonable time to all Persons requesting such Service within the service area identified in the Franchise;

(12) That if the Board determines that it is appropriate for the Utility to install fire hydrants for the purposes of combating fires, the County may order the Utility to install fire hydrants and the Utility shall install fire hydrants and make such connections, and labor and materials used in the installation of said fire hydrants and other appurtenances necessary for furnishing water from the Utility's distribution System to the fire hydrants, together with a fair return on the Utility's investment therein, shall be recoverable in Utility's authorized rates;

(13) That the issuance of a Franchise by the Board shall not be deemed to constitute a County requirement that any landowner use the Utility's water, nor shall this Ordinance be construed to constitute a County imposed prohibition against any landowner using well water for consumption, irrigation, recreation and/or yard maintenance.

(14) Provision for revocation of the Franchise in the event of any violation of its terms, violation of this Ordinance, and/or violation of any other Federal, State or local law, ordinance or rule;

(15) Provisions for the reasonable time within which the Service authorized in the Franchise shall be made available in the entire service area identified in the Franchise, including a schedule of estimated dates by which each Service will be provided to customers; and that if no such Service is provided within the time prescribed, that the franchise shall be automatically void as to the service area to which Service is not made available unless the Board extends that time for good cause shown provided that an application for such an extension of time is made by the Utility before expiration of the time prescribed in the Franchise for the initiation of Service. The grant of a time extension shall include additional conditions that the Board deems appropriate, at the Board's sole discretion, to assure the provision of adequate Service within a reasonable time;

(16) That in addition to other rights of purchase of the Franchise and System by the County as may be available to County pursuant to home rule powers, Florida Statutes or as set forth elsewhere in this Ordinance, the County may purchase the Utility by at a date no later than upon expiration of the Franchise, at the County's sole discretion, for a purchase price equal to the then existing rate base of the Utility and upon such other terms and conditions as the Board shall determine to be proper to best serve the public health, safety and/or welfare;

(17) That the System shall be approved by all appropriate governmental agencies as to design, construction, operation, capacity, maintenance, expansion and otherwise;

(18) That if a Utility requires a deposit from its customers, it shall once each year credit to each respective customer account, pro rata, all interest accrued on the

principal. Such accrued and unpaid interest shall be credited or paid to the customer when the customer's deposit is discontinued;

(19) Such additional provisions as may be required from time-to-time by Ordinance or Rule of the Board; and

(20) Such modifications of any provisions authorized under the preceding paragraphs as may be necessary.

(Q) Claim of Exemption from Regulation. Each Person or entity that claims an exemption from regulation by the County must request an exemption by filling an application therefore with the Board together with an affidavit sworn to upon personal knowledge and signed by the affiant, who must be an authorized representative of the applicant. The application must contain the name of the Utility, its complete street and mailing address, and sufficient information describing the System so that a determination as to the applicant's asserted exempt status can be ascertained by the Board, plus citation to the specific exemption claimed. The affiant must swear to the accuracy of the facts identified in the application. Such application for declaration of exemption may be granted by final order of the Board without a public hearing thereon, but if a complaint is filed by any Person or entity with standing, or upon the Board's own discretion, the Board may hold a public hearing to consider and decide the merits of the application for exemption.

(R) Transfer of Franchise, Facilities, or Control. No Utility shall sell, assign, or otherwise transfer its Franchise, its System facilities or any portion thereof, or majority organizational control, without determination and approval from the Board that the proposed sale, assignment, or transfer is in the public interest and that the buyer, assignee or any other transferee can and will fulfill the commitments, duties and obligations of the existing Utility including, but not limited to, the terms of the proposed transferor's franchise. The minimum filing requirements shall be as specified by rules of the Board.

(1) The Board may grant or deny an application upon findings pertaining to whether:

- (a) The application is made in good faith;
- (b) The transferee has sufficient resources to serve the area which is sought to be transferred;
- (c) The transferor Utility is in compliance with applicable franchise, laws, ordinances, rules and, if not, the proposed transferee's ability to achieve compliance;
- (d) The known and projected economic impact of the transfer on the Utility's customer base;
- (e) The proposed transferee's knowledge and experience in providing Services;
- (f) The application's compliance and compatibility with the County's master land use plan, including capital improvement elements; and
- (g) Such other criteria as the Board may deem relevant.

(2) Any transfer approval in accordance with this Ordinance is subject to the agreement that the Board shall retain the right to regulate Utility rates pertaining to any Utility under its authority.

(S) The transferor shall remain liable for any outstanding regulatory and franchise fees, assessment fees, fines of the Utility due to the County or refunds of the Utility due to its customers.

(T) Following a determination by the Board that the application is complete and the identification of the Official Date of Filing, the Board may grant, deny, or amend the application upon such conditions as it deems proper and after requiring such further relevant information as it deems necessary.

(U) A request for authorization to transfer a franchise, facilities, System or any portion thereof shall include the following:

- (1) The complete name and address of the seller;
- (2) The complete name and address of the buyer;
- (3) The nature of the buyer's business organization, i.e., corporation, partnership, limited partnership, sole proprietorship or association with documentation supporting same;
- (4) The name(s) and address(es) of all of the buyer's corporate officers, directors, partners or any other Person(s) who will own an interest in the Utility with documentation supporting same;
- (5) Same as Subsections 3 and 4 above for all affiliates of buyer, i.e., parent corporation, affiliated corporation or other related entities with documentation supporting same;
- (6) The date and state of incorporation or organization of the buyer;
- (7) The names and location of any other water or wastewater Systems owned by the buyer or entities in any way affiliated with the buyer;
- (8) A list of penalties, fines, and regulatory procedures imposed within the last five years on the buyer or any related entities resulting from the operation of water and/or wastewater Systems, wherever located;
- (9) A detailed list of all governmental regulatory entities, with addresses, phone numbers and e-mail information for appropriate contact persons or departments of such entities, having regulatory jurisdiction over any aspect of the business of the seller and buyer or any of its affiliates;
- (10) A copy of the contract for sale and all auxiliary or supplemental agreements, which shall include, if applicable:
  - (a) purchase price and terms of payment;

(b) 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

(c) a description of all consideration of any kind to be exchanged between the parties, or individuals employed or to be employed by either party;

(11) The contract for sale shall also provide for the disposition, where applicable, of the following:

(a) customer deposits and interest accrued thereon;

(b) any guaranteed revenue contracts;

(c) developer agreements;

(d) customer advances;

(e) debt of Utility; and

(f) leases.

(12) A statement describing the financing of the purchase price in detail;

(13) A statement indicating how the transfer is in the public interest, including a summary of the buyer's experience in water or wastewater operations, a showing of the buyer's financial ability to provide Service, and a statement that the buyer will fulfill the commitments, obligations and representations of the seller with regard to all Utility matters;

(14) A list of all entities providing funding to the buyer, and an explanation of the manner and amount of such funding, which shall include financial statements of the lender or equity investor and copies of any financial agreements with the Utility;

(15) The proposed net book value of the System as of the date of the proposed transfer. If rate base has been established by the Board, state the order number and date issued and identify all adjustments made to update this rate base to the date of transfer and provide a certified copy of the order;

(16) If the books and records of the seller are not available for inspection by the Board or are not adequate for the purpose of establishing the net book value of the System, a statement by the buyer that a good faith, extensive effort has been made to obtain such books and records for inspection by the Board and detailing the steps taken to obtain the books and records;

(17) A statement from the buyer that it has obtained or will obtain copies of all of the federal income tax returns of the seller from the date the Utility was first established or rate base was last established by the Board, or if the tax returns have not been obtained, a statement from the buyer detailing the steps taken to obtain the returns;

(18) A statement from the buyer that after reasonable investigation, the System being acquired is in satisfactory condition and in compliance with all applicable standards set by the Department of Environmental Protection (the "DEP"), the applicable water management district and any other entity possessing regulatory authority, or, if the System is in need of repair or improvement, has any outstanding Notice of Violation, has any outstanding consent order from a regulatory authority or is otherwise not in compliance with any applicable law, rule, ordinance, permit or other requirement, the buyer shall provide a list of improvements and repairs needed and the approximate cost to make them, a list of the action taken by the Utility with regard to the violation, a copy of the Notice of Violation(s), a copy of the consent order and a list of the improvements and repairs consented to and the approximate cost to make them and a schedule of when and how the improvements are to be made and a list of any improvements or repairs necessary to achieve compliance with any other applicable requirement, the cost thereof and schedule for achieving compliance;

(19) Evidence that the Utility owns the land upon which Utility facilities are located, or a copy of the agreement which provides for the continued, unencumbered use of the



land, such as a ninety-nine (99) year lease. The Board may consider a written easement or other cost-effective alternative, at the Board's sole discretion;

(20) A statement regarding the disposition of any outstanding regulatory and franchise fees, fines or refunds owed;

(21) The original and two copies of sample tariff sheets reflecting the proposed change in ownership; and

(22) The Utility's current Franchise(s), or if not available, provide an explanation of the steps the applicant took to obtain the Franchise(s).

(V) In a request for a change in majority organizational control, the application shall include the following:

(1) The complete name and address of the seller;

(2) The complete name and address of the buyer;

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

(4) The name(s) and address(es) of all of the buyer's corporate officers, directors, partners or any other Person(s) who will own an interest in the Utility;

(5) Same as in Subsections (3) and (4) above for all affiliates of buyer, i.e., parent corporation, affiliated corporation or other related entities;

(6) The date and state of incorporation or organization of the buyer;

(7) The names and location of any other water or wastewater Systems owned by the buyer or entities affiliated with the buyer;

(8) A list of penalties, fines, and regulatory procedures imposed within the last five years on the buyer or its related entities resulting from the operation of water and/or wastewater Systems;

- (9) A copy of the contract for sale and all auxiliary or supplemental agreements, which shall include the purchase price and terms of payment;
- (10) A statement describing the financing of the purchase price;
- (11) A statement indicating how the transfer is in the public interest, including a summary of the buyer's experience in water or wastewater operations, a showing of the buyer's financial ability to provide Service, and a statement that the buyer will fulfill the commitments, obligations and representations of the seller with regard to Utility matters;
- (12) A list of all entities upon which the applicant is relying to provide funding to the buyer, and an explanation of the manner and amount of such funding, which shall include financial statements of the lender or equity investor and copies of any financial agreements with the Utility;
- (13) A statement from the buyer that after reasonable investigation, the System being acquired is in satisfactory condition and in compliance with all applicable standards set by the DEP, the applicable water management district and any other regulatory authority, or, if the System is in need of repair or improvement, has any outstanding Notice of Violation(s), has any outstanding consent order from a regulatory authority or is otherwise not in compliance with any applicable law, rule, ordinance, permit or other requirement, the buyer shall provide a list of improvements and repairs needed and the approximate cost to make them, a list of the action taken by the Utility with regard to the violation, a copy of the Notice of Violation(s), a copy of the consent order and a list of the improvements and repairs consented to and the approximate cost to make them, and a list of any improvements or repairs necessary to achieve compliance with any other applicable requirement, the cost thereof and a schedule to achieve compliance;
- (14) Evidence that the Utility owns the land upon which Utility facilities are located, or a copy of the agreement which provides for the continued, unencumbered use of the

land, such as a ninety-nine year lease. The Board may consider a written easement or other cost-effective alternative;

(15) The original and two copies of sample tariff sheets reflecting the proposed change in ownership; and

(16) The Utility's current Franchise(s), or if not available, provide an explanation of the steps the applicant took to obtain the Franchise(s).

(W) Deletion of Territory:

(1) Each Utility, within the time established in the Franchise, shall provide Service to the service area identified in its Franchise. If the Board finds that a Utility has failed to provide Service to any Person reasonably entitled thereto, or finds that extension of Service to any such Person can be accomplished only at an unreasonable cost or that transfer of subject area to another Utility is reasonable, economical and feasible, it may issue an order to amend the Franchise to delete the area not being Serviced or not being properly served by the Utility. If Service has not been provided consistent with the Franchise terms to any part of the area which a Utility is authorized to serve, whether or not there has been a demand for such Service, within five years after the date of the Utility's first authorization for such Service, the Board may issue an order deleting that area from the franchise area of the Utility. Each franchisee shall acknowledge and agree, in the Franchise entered with the County, that the deletion of territory pursuant to this Subsection shall in no way entitle the franchisee to any compensation from the Board or any other entity.

(2) Each applicant who requests deletion of territory from a Utility's service area identified in a Franchise shall:

(a) Provide the minimum filing requirements, which shall include a detailed explanation of the ability or lack of ability of the Utility to provide the Utility Service in the area sought to be deleted, the need or lack of need for the Service in that area, and the

existence or nonexistence of Service from other sources within close geographical proximity to that area.

(b) Submit a sworn affidavit based on personal knowledge that the applicant has caused notice of its intention to file an application to delete the service area to be delivered by mail or other means of actual delivery to the Board and, if applicable, to the Utility. Such notice shall be delivered at least twenty days prior to the initial filing of that application.

(3) If the Board does not receive written objection to the application within thirty days following the Official Date of Filing of the application, the Board may issue an order on the application without a hearing.

(4) If within thirty days following the Official Date of Filing of an application seeking deletion of a part of a Utility's service area, the Board receives a written objection requesting a hearing from any governmental agency, from another Utility, from a Person who would be substantially affected by deletion of any part of the requested area, from the Utility, if applicable, or upon the Board's sole discretion, the Board may conduct a hearing thereon and issue an order on the application. The Board may appoint a hearing officer to conduct such hearing.

(5) The Board shall consider the same criteria and standards as apply when the Board is considering whether to grant or deny an original application for a Franchise.

(X) Additional Service Area:

(1) Service outside of the service area approved by the Board and identified in a franchise shall not be commenced by a Utility until the Utility first obtains an amended Franchise from the Board.

(2) An application to amend a Franchise to add to the Utility's area shall be made at any time within sixty days following the completion of all notice

requirements. The application shall be filed with the applicable application fee, or if no fee has been established, the fee that would be required by the FPSC for the same application, and shall contain a map and legal description of all additional area proposed to be served, along with such other minimum filing requirements as may be established by the Board.

(3) Except in exceptional instances and always based on necessity, the Board will not authorize extension of a service area to any land that is not contiguous to the Utility's existing Service area, or in such manner as to create pockets of unserved areas. Any application for extension of any Service area that is not in accord with this policy shall specify in detail the necessity for variance from this policy and how the public interest will be served notwithstanding lack of adherence to this policy.

(4) The Board may render its decision upon such conditions as the Board deems proper, and may require such further relevant information as it deems necessary. The Board shall consider, at minimum, whether:

- (a) The application is made in good faith;
- (b) The applicant has sufficient resources to serve the area for which the extension is sought;
- (c) The Utility has sufficient capacity to serve the proposed area;
- (d) The conceptual plan that shows the layout of the proposed System and the time schedule for completing construction thereof as filed by the applicant demonstrates that, as applicable, the source of water, method of treatment of water, method of treatment of wastewater, and method of disposing of Sewage effluent are adequate to protect the public health, safety, and welfare;
- (e) The application conflicts with the County's local comprehensive plan, including capital improvement elements.

(f) The applicant's history for providing Service, both within and outside the County including, but not limited to, consideration of the applicant's compliance with applicable laws, rules, ordinances, permits and other legal requirements and applicant's history of litigation.

(5) The Board may hold hearings to consider an application for any service area boundary change. The Board may also appoint a hearing officer to conduct such hearing.

(6) The Utility, at no cost to the County, shall file with the Board a copy of the construction plans for the System which plans must be approved as required by applicable governmental agencies prior to any Utility construction being initiated by Utility.

(Y) Abandonment. Water or wastewater Service to customers of a Utility shall not be interrupted by the actual or constructive abandonment or placement into receivership of a Utility. To that end:

(1) No Person owning, operating, managing or controlling a Utility shall abandon the Utility without giving at least one hundred and twenty days advance written notice of such intent to the Board. Anyone who violates the provisions of this Subsection is guilty of an offense in the manner of a misdemeanor punishable pursuant to section 162.21, Florida Statutes.

(2) After receiving such notice, the Board, absent compelling circumstances, may petition the Circuit Court to appoint a receiver, which may be any Person deemed appropriate by the court. The receiver shall operate the Utility from the date of abandonment until such time as the receiver disposes of the property of the Utility in a manner designed to continue the efficient and effective operation of Services. All costs of the receivership, including expenses of the receiver operating and disposing of the Utility, plus attorney's fees incurred by the receiver and by the Board, if any, shall be assessed as a lien against and paid by the owner of the Utility;

(3) The notice to the County under Subsection (1), above, is sufficient cause for revocation, suspension, or amendment of the Franchise of the Utility as of the date of the abandonment. The Person designated to operate such Utility pursuant to court-ordered receivership shall automatically be considered to hold temporary authorization to operate from the Board.

(Z) Revocation of a Franchise. No Franchise shall be revoked until the Board or an appointed hearing officer has held an evidentiary hearing on such matter. Notice of intent to consider revocation shall be given to the Utility in writing at least sixty days before the date of the evidentiary hearing. Such notice shall be issued by the Board and shall specify all reasons on which revocation is sought, stating the facts on which such reasons for revocation are based. If the Board determines after the evidentiary hearing that a basis for revocation has been established, the Board shall issue an order to revoke the Franchise or may require any other remedy provided for in this Ordinance or otherwise provided by law.

#### **SECTION 7. FEES.**

(A) Regulatory Assessment Fee. Each Utility shall pay a Regulatory Assessment Fee to the Board in quarterly installments. So long as a Utility is regulated by the Board there will be no period of time for which the Regulatory Assessment Fee is not applicable. Each quarterly installment must be paid within thirty days of the end of that annual quarter, i.e. the payments are made thirty days in arrears. With each payment, the Utility shall file with the Board a statement of gross receipts for the applicable quarter, verified under oath by the senior financial officer of the Utility.

(B) The Regulatory Assessment Fee shall be four and one-half percent (4.5%) of the Utility's gross revenue, derived from the Utility's gross receipts billed within the County for the quarter. Such fee shall continue until amended by the Board.

(C) The Regulatory Assessment Fee shall be charged *pro rata* to the Utility's customers and each Utility may add to its customer invoices a separate line item for the then applicable fee paid to the County if the Utility also lists as a separate line item all governmental fees and taxes paid by the Utility.

(D) Each Utility that fails to promptly submit to the County all required Regulatory Assessment Fees and an accurate statement of gross receipts within the prescribed period shall pay the County a late charge of one percent (1%) of the delinquent fee per month, or fraction of a month, plus all costs incurred by the Board in collecting the fee.

(E) All fees, costs and administrative penalties collected by the County from Utilities pursuant to this Ordinance shall be placed in a separate enterprise fund to be called the Water and Wastewater Utility Regulatory Fund (the "Utility Trust Account") and such funds shall at all times remain separate and distinct from other County funds unless and until the regulation of Utilities shall be by an entity other than the Board, and in such event regulatory fees remaining after paying all expenses may be refunded, with any interest accrued thereon, *pro rata* to each then regulated Utility for refund to its customers or, at the Board's sole discretion, may be transferred by the County to the new regulatory authority. All such funds in the Utility Trust Account at the end of each fiscal year of the County shall automatically become the beginning balance for the succeeding fiscal year.

(F) The Regulatory Assessment Fees are to be used to pay for the ongoing costs of supervising and regulating Utilities in the County in the manner provided in this Ordinance and enforcing and administering this Ordinance, including the County's costs for court appointed receivers, and for operation, maintenance, and/or repair to abandoned franchised Utilities, which may include extraordinary repairs to protect the health, safety and welfare of the general public. Extraordinary repairs are those that are neither typical nor customary and which occur infrequently, and payment of which shall require Board approval.



(G) Application Fees. The Board may establish or amend application fees or adopt such fees as set forth in FPSC rules. Any application filed by a Utility shall be accompanied by the applicable application fee. Such fees may be based upon the existing or proposed capacity of the System.

(H) Miscellaneous Fees. The Board may set a reasonable fee that may be charged by the Utilities for the examination and testing of meters used for measuring any Service. Any Person may have a meter tested by the Utility upon payment to the Utility of the applicable fee fixed by Rule or resolution or as otherwise may be approved by the Board. Utility customers, at their discretion, may pay the fee at the time of the request or have the Utility include the fee in the next regularly scheduled bill. However, the fee shall be repaid to the customer if the meter is found to have been incorrect to the disadvantage of the customer in excess of the degree or amount of tolerance allowed for such meters, or otherwise as may be provided in the rules or resolutions of the Board.

#### **SECTION 8. REPORTING REQUIREMENTS.**

(A) Each Utility shall annually, within ninety days of the close of its fiscal year, file with the Board a financial report of its operation during the fiscal year which shall be known as the "Annual Report." Such Annual Report shall be sworn to by the senior financial officer of the Utility. End-of-fiscal-year adjustments in the total Regulatory Assessment Fee and other fees payable by the Utility to the County during the fiscal year then being reported shall be paid concurrently with submission of the Annual Report. Where an Annual Report correctly shows that overpayments of regulatory assessment fees or other fees had been paid by the Utility during the fiscal year being reported, a final order allowing credit for the next fiscal year in the amount of the overpayment shall be issued by the Board, provided the Utility is not then delinquent in the payment of any other monies owed to the County.

(B) If the Utility has an outstanding loan that is secured by Utility assets, the Utility must describe in its annual financial report the status of the loan and the status of the Utility improvement paid for by such borrowed funds.

(C) Each franchisee that fails to promptly submit to the County all required fees, fines, or penalties, and an accurate annual financial report within the prescribed time shall pay to the Board a late charge of one percent (1%) of the delinquent fee per month, or fraction thereof, plus all costs incurred by the Board in collecting the required fee.

### **SECTION 9. PROCEDURES, NOTICES, AND CONDUCT OF HEARINGS.**

(A) The requirements of this Section are in addition to other provisions in this Ordinance regarding hearings and shall apply to hearings conducted by the Board or by its appointed hearing officer. The Utility shall provide notice of each hearing as specified.

(1) The hearing officer or presiding officer shall have the authority to:

(a) Administer oaths and affirmations;

(b) Subpoena witnesses or production of documents or things for the purpose of taking the testimony of such witnesses and inspection of documents at a public hearing;

(c) Take, or cause to be taken, depositions of witnesses whenever the ends of justice would be served thereby;

(d) Regulate the course of hearings;

(e) Rule upon offers of proof and receive relevant and material evidence;

(f) Dispose of procedural requests, objections and similar matters;

(g) Hold conferences for simplification of issues by consent of the parties;

(h) Enter such orders as are necessary to effectuate the intent and purposes of this Ordinance relating to Utility matters; and

(i) Cause the testimony at hearings and other proceedings to be preserved.

(2) The hearing officer or presiding officer shall have the authority to request at the conclusion of a hearing that all parties submit proposed findings of fact, conclusions of law, and proposed recommended orders or legal briefs on the issues within a time designated by the hearing officer.

(a) Proposed findings of fact shall be entitled as such, and must be presented on a document separate from all other post-hearing memoranda, and may not be contained in an extensive narrative or contain mixed questions of fact and law.

(b) Each proposed finding of fact shall be separately stated and numbered consecutively, and shall contain citations to the record in support.

(3) The hearing officer shall timely file a recommended order, which shall include a caption, time and place of hearing, appearances entered at hearing, statement of the issues, findings of fact and conclusions of law, separately stated, and recommendation for final Board action.

(4) Exceptions and replies.

(a) Parties may file exceptions to a recommended order within fifteen days of the entry of the recommended order. Such exceptions shall fully set forth the error claimed and the basis in law therefor. A party's failure to serve or timely file written exceptions shall constitute a waiver of any objections to the recommended order.

(b) Any other party may reply to the exceptions by filing and serving such reply within ten days of the filing of the exceptions.

(5) A notice of each public hearing before the Board or its hearing officer shall contain the name of the applicant, an accurate description of the purposes of the hearing, and the date and time of the hearing before the Board;

(6) If the public hearing is for the purpose of making a final decision regarding a rate increase, the affected Utility shall mail a notice to each of its customers by regular mail or such notice shall be placed in its regular bills, but such notice must be received by the Utility's customers at least ten days before the date of the scheduled hearing;

(7) If the notice is for a public hearing on a matter initiated by the Board, such notice shall be served by the Board by certified mail, return receipt requested, on the affected Utility at least thirty days before the first day of the public hearing and the Utility shall publish such notice one time in a newspaper of general circulation in the County at least ten days before the first day of the public hearing.

(8) If the notice is for a public or evidentiary hearing to establish or change rates, fees, charges, other tariff items, or conditions of Service, the Utility shall publish notice of the hearing, the topic of the hearing and its location in a newspaper of general circulation in the County once a week for two consecutive weeks, the first publication being at least twenty-one days before the date of hearing. Said notice shall be in a display type advertisement no less than one-eighth ( $1/8$ ) of a page and shall include the current rates and any proposed changes in rates in total dollars and percentages, and identify the effect, as accurately as possible, of the proposed changes on each class of customers. The notice is subject to the Board's approval or approval of the Board's designee before publication.

(9) Notice of any hearing, other than those specified herein, shall be as established by Rules of the Board.

(B) The following rules apply to all hearings before the Board or before a hearing officer:

(1) All hearings shall be recorded and minutes shall be kept. All hearings of the Board or before a hearing officer shall be open to attendance by the general public except at such times, if any, when the specific subject to be discussed is exempt from public attendance by application of Florida Statutes.

(2) Each matter before the Board or a hearing officer shall be presented by the party who initiated the matter or that Person's designated representative. All parties to the matter shall be provided an opportunity to appear and present evidence, cross-examine witnesses, and present arguments on each matter.

(3) Each party shall be entitled to receive copies of all pleadings, motions, notices, orders, and all other matters filed in the proceeding unless exempt from such disclosure by Florida Statute, administrative rule of the Florida Administrative Code, or any other controlling law, rule or regulation. Matters which would be exempt from public disclosure and thereafter subject to a process to maintain confidentiality if the proceedings were before the FPSC shall be exempt from public disclosure in Board proceedings or proceedings before hearing officers and the confidentiality of such matters shall be maintained in the manner accorded by the FPSC.

(4) Terms and conditions for filing, service of documents, computation of time, and other similar procedural matters shall conform to the Florida Rules of Civil Procedure.

(5) The initial pleading shall be either an application or other filing by a Utility, or by a Person with standing in the matter, by resolution of the Board, or by appropriate charging document.

(6) Pleadings shall substantially conform to the Florida Rules of Civil Procedure as to content, form, size, signatures, and certifications, and shall be served upon all parties. The original and seven copies shall be submitted to the Board, except applications for

any change in rates, which shall require an original and twelve copies. In each specific case the Board may require the applicant to submit additional copies.

(7) The Board or hearing officer may issue an order to require the filing of pre-hearing statements.

(8) The Board or hearing officer may require the parties to hold such conferences, exchange such information and submit such papers as may aid in the organization of the proceeding and efficient disposition of the matter or part thereof. The Board or hearing officer may participate in such informal conferences as appropriate.

(9) Upon seven days written notice to the parties, one or more pre-hearings may be conducted for the purpose of hearing arguments on pending motions, clarifying or simplifying issues, discussing possibility of settlement of issues or the entire matter, examining documents and exhibits, exchanging names and addresses, and otherwise attempting to resolve the matter.

(10) The Board or hearing officer may issue pre-hearing orders.

(11) Parties may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.400 Florida Rules of Civil Procedure (FRCP). The Board or hearing officer may issue appropriate orders to effectuate the purposes of discovery and to prevent delay and unnecessary expenses, and may impose appropriate sanctions under rule 1.380 FRCP, other than contempt, or award any expenses, fee, or damages. Sanctions may include dismissal of the entire proceeding.

(12) All testimony at a hearing shall be under oath and shall be recorded. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent Persons in the conduct of their affairs shall be admissible, whether or not

such evidence would be admissible in a trial in the courts of Florida. All witnesses who testify shall be subject to cross-examination.

(13) At the conclusion of hearings conducted by a hearing officer or as soon thereafter as practicable, the hearing officer shall issue a recommended order containing findings of fact based on the evidence in the record, and conclusions of law.

(14) Decisions of the Board shall be by motion approved by at least three members present and voting.

(15) Except for pass-throughs or indexing, Persons other than the original parties who can demonstrate a substantial interest in the proceeding and who desire to become a party may petition the Board or hearing officer for leave to intervene. Each petition must be received by the Board or hearing officer at least five days prior to commencement of the next scheduled hearing date and must include allegations sufficient to demonstrate that the intervener is entitled to participate in the matter as a matter of law. Interventions may be allowed at any time into the specific proceeding, but all interveners shall take the matter as they find it. Intervention shall never be allowed if the intervention would unduly prejudice any party if the intervener could have entered into the proceeding at an earlier date.

(16) For procedures involving expert witnesses, subpoenas, recordation, due process protection, evidence, post hearing procedures, motions for reconsideration, stay pending judicial review, and receivers, and dismissals, the rules of the Board will control.

(17) The Board or hearing officer may grant a continuance of a hearing for good cause shown or upon stipulation of all parties. Requests for a continuance shall be made in writing or upon oral motion at a hearing. Except in cases of emergency, requests for continuance must be made at least five days prior to the date noticed for the start of the hearing.

(C) Procedures for Board Consideration of A Recommended Order of a Hearing Officer.

(1) In order for a recommended order of a hearing officer to be effective, it must be approved by an order or resolution issued by the Board, with or without modifications, at any regular or special meeting of the Board.

(2) Any party, including an individual customer of a Utility, who is dissatisfied with any recommended order of a hearing officer may object to possible approval of such order by the Board by filing with the Clerk of the Board a written notice of objection, together with written exceptions to the recommended order and the basis in law therefor within fifteen days of issuance of the recommended order. Upon the filing of such notice, the Board may set a public hearing to consider that recommended order, shall review any record from the proceedings before the hearing officer, and may hear legal arguments related to that recommended order. Based upon such information, the Board shall decide whether to approve, amend and approve, reverse the recommended order, remand the matter back to the hearing officer or take such other action as the Board deems appropriate.

(3) In the event a notice of objection is not filed within fifteen days of issuance of a recommended order, the Board may confirm such order without a hearing, whereupon the recommended order shall take effect as specified by the Board. Unless otherwise specified, the order shall become fully effective upon approval by the Board.

(4) A final order of the Board shall take effect as directed by the Board.

(5) At any public hearing before the Board for the consideration of a recommended order, the Board shall consider the record of the proceedings before the hearing officer and the legal arguments of the affected Utility, any party, and of the staff. No recommended order of a hearing officer shall be binding on the Board. The Board may rely on the findings of fact found by the hearing officer unless the Board determines that the specific



finding of fact was not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law. If the Board determines that any finding of fact cannot be relied upon, it shall refer the matter back to the hearing officer to establish such additional record evidence.

**SECTION 10. ENFORCEMENT AND PENALTY PROVISIONS.**

(A) Any person violating any of the provisions of this Ordinance shall be prosecuted in the same manner as misdemeanors are prosecuted. Such violations shall be prosecuted in the name of the State of Florida in a court having jurisdiction of misdemeanors by the prosecuting attorney thereof and, upon conviction, shall be punished by a fine not to exceed Five Hundred Dollars (\$500.00) or by imprisonment in the County jail not to exceed sixty days or by both fine and imprisonment as provided in sections 125.69 and 162.22, Florida Statutes. Each incident or separate occurrence of any act that violates this Ordinance shall be deemed a separate offense. In addition to the penalties provided under this Section, violators of this Ordinance shall be subject to any other appropriate civil or criminal action provided by law in a court of competent jurisdiction including, but not limited to, injunctive relief and code enforcement under Chapter 162, Florida Statutes.

(B) For any violation of a Franchise or this Ordinance or any written Rule of the Board under this Ordinance for which a penalty is not otherwise specified in this Ordinance, the Board may assess an administrative penalty not exceeding five hundred dollars (\$500), which may be collected in a civil court of law of competent jurisdiction. Each day a violation continues may be considered as a separate violation.

(C) For any refusal to comply with or willful violation of any rule, order of the Board, or of this Ordinance, the Board may amend, suspend or revoke any Franchise issued by it. Each day that such refusal or violation continues shall constitute a separate offense.

(D) Whenever any filing requirement of any Utility, including all required fees and accompanying documentation are not filed within the applicable prescribed time period, the Utility shall be notified of the delinquency by certified mail or other means of actual delivery. The Board may conduct an independent audit of the books and records of the Utility to determine the amount of any fee that is due, or may calculate the fee by projecting the fee from the Utility's most recent experience. If the County calculates any such fees because the Utility has not done so in a prompt and complete manner, the Utility shall be liable for all applicable late charges plus all of the County's costs, including a attorney's fees, cost of collection and costs of legal action(s) to enforce collection.

(E) Any Utility officer, agent, or employee, or other Person convicted under the provisions of this Ordinance shall pay, to the fullest extent allowed by the law, all costs and expenses involved in the case.

(F) Any penalty authorized and established pursuant to this Ordinance shall be a lien upon the real and personal property of the Utility, enforceable by the Board as a statutory lien under Chapter 85, Florida Statutes.

(G) The County may take such other lawful action in any court of competent jurisdiction as the County deems necessary to prevent or remedy any refusal to comply with, or any violation of, this Ordinance and/or any Rule or order of the Board. Such actions may include and shall not be limited to an equitable action for injunctive relief, or any action at law for damages or other relief or remedy.

(H) Notwithstanding the enforcement and penalty provisions of this Section 10, any violation of federal or state law, which is also a violation of this Ordinance, may be prosecuted under the applicable federal or state law.

**SECTION 11. APPELLATE REVIEW.** Any Person directly aggrieved by an order, resolution or other action of the Board may have it reviewed by the Circuit Court on petition for a

writ of certiorari, pursuant to Rule 9.100, Florida Rules of Appellate Procedure or its successor rule, as then applicable.

**SECTION 12. SEVERABILITY.** If any section, subsection, sentence, clause, phrase or provision of this Ordinance is held to be unconstitutional or otherwise invalid by a court of competent jurisdiction, such unconstitutionality or invalidity shall not be construed as to render unconstitutional or invalid the remaining provisions of the Ordinance.

**SECTION 13. REPEALER.** All Ordinances, Resolutions and Rules or parts of Ordinances, Resolutions and Rules in conflict herewith are, to the extent of such conflict, hereby repealed.

**SECTION 14. CODIFICATION.** The provisions of this Ordinance shall be made a part of the Columbia County Code. The codifier of the Code shall change headings and reletter and renumber sections hereof as necessary for that purpose.

**SECTION 15. EFFECTIVE DATE.** This Ordinance shall take effect upon filing with the Department of State, as provided by section 125.66, Florida Statutes.

**ADOPTED** this 3rd day of May, 2007, by the Board of County Commissioners of Columbia County, Florida.

**COLUMBIA COUNTY BOARD OF  
COUNTY COMMISSIONERS**

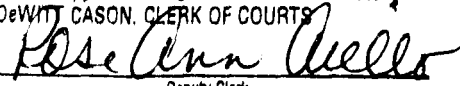
**ATTEST:**

  
DeWitt P. Cason, Clerk

  
Elizabeth Porter, Chairperson

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STATE OF FLORIDA, COUNTY OF COLUMBIA  
I HEREBY CERTIFY, that the above and foregoing  
is a true copy of the original filed in this office.  
P. DeWITT CASON, CLERK OF COURTS

By   
Deputy Clerk  
Date May 8 2007