

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a) DOCKET NO. 910756-SU
wastewater rate increase for)
the North Fort Myers division) ORDER NO. PSC-92-0088-PCO-SU
in Lee County by FLORIDA)
CITIES WATER COMPANY) ISSUED: 3/23/92
_____)

Pursuant to notice, a prehearing conference was held on March 18, 1992, before Commissioner Susan F. Clark, as Prehearing Officer, in Tallahassee, Florida.

APPEARANCES:

B. KENNETH GATLIN, Esquire, and KATHRYN G.W. COWDERY, Esquire, Gatlin, Woods, Carlson & Cowdery, 1709-D Mahan Drive, Tallahassee, Florida 32308
On behalf of Florida Cities Water Company

H.F. MANN II, Esquire, Office of the Public Counsel, c/o Florida House of Representatives, Claude Pepper Building, 111 West Madison Street, Room 801, Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida

CATHERINE BEDELL, Esquire, and LILA A. JABER, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0863
On behalf of the Commission Staff

CINDY MILLER, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0863
Counsel to the Commission

PREHEARING ORDER

I. CASE BACKGROUND

On October 14, 1991, Florida Cities Water Company (Florida Cities or utility) completed the minimum filing requirements (MFRs) for a general rate increase, for its North Fort Myers system, and that date was established as the official filing date for this proceeding. The approved test year for this proceeding is the projected twelve-month period ended June 30, 1993. Florida Cities has requested final rates designed to generate annual wastewater

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revenues of \$2,263,769, which exceed annualized test year revenues by \$1,439,216 (174.5 percent).

By Order No. 25528, issued December 24, 1991, this Commission suspended Florida Cities proposed rates and granted an interim wastewater rate increase, subject to refund. The Office of Public Counsel's (OPC) intervention on behalf of the Citizens of the State of Florida was acknowledged by Order No. PSC-92-0074-PCO-SU, issued March 17, 1992.

This case is scheduled for an administrative hearing on March 25 and 26, 1992.

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 367.156, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 367.156, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 367.156, Florida

Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

III. PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by Florida Cities and the Staff of this Commission (Staff) has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

IV. ORDER OF WITNESSES

<u>Witness</u>	<u>Appearing for</u>	<u>Issues #</u>
<u>Direct</u>		
Douglas T. Harrison	Florida Cities	3, 4, 6-19, 21-32
Robert B. Gordon	Florida Cities	
Paul H. Bradtmiller	Florida Cities	1
James A. Elder	Florida Cities	2, 3
Stephen E. Bailey	Florida Cities	21
Gerald S. Allen	Florida Cities	2, 5
Larry E. Griggs	Florida Cities	20
Jocelyn Y. Stephens	Staff	1
James Grob	Staff	1

V. BASIC POSITIONS

Utility: The application for an increase in wastewater rates should be approved and that a fair and reasonable return on applicant's rate base is 9.72 percent for wastewater.

OPC: Florida Cities in this rate case has overstated its rate base and return requirements, which include a requested recovery of federal and state income tax expense. Miscellaneous service revenues appear to be understated and projected expenses are overstated. The utility's capital structure does not reflect the proper balance of deferred taxes or debt.

Staff: The information gathered through discovery and prefiled testimony indicates, at this point, that the utility is entitled to some level of increase. The specific level cannot be determined until the evidence presented at hearing is analyzed.

VI. ISSUES AND POSITIONS

QUALITY OF SERVICE

ISSUE 1: Is the quality of service satisfactory?

POSITIONS:

UTILITY: Yes.

OPC: No position pending customer testimony at hearing.

STAFF: No position pending customer testimony at hearing.

RATE BASE

ISSUE 2: Was the decision to add advanced wastewater treatment facilities without increasing plant capacity prudent in relation to other economic alternatives?

POSITIONS:

UTILITY: Yes.

OPC: No position at this time.

STAFF: No position at this time.

ISSUE 3: Should Florida Cities' proposed \$4,786,742 provision for the Waterway Estates Wastewater Treatment Plant be included in rate base?

POSITIONS:

UTILITY: Yes.

OPC: No.

STAFF: No position at this time.

ISSUE 4: What is the appropriate amount of used and useful treatment plant?

POSITIONS:

UTILITY: Agrees with Staff.

OPC: No position at this time.

STAFF: The treatment plant is 100% used and useful, including no allowance for margin reserve.

ISSUE 5: What is the appropriate amount of used and useful lines?

POSITIONS:

UTILITY: 100%.

OPC: No position at this time.

STAFF: It appears that the collection lines are not fully contributed, therefore, a used and useful adjustment may be necessary based upon evidence presented at hearing.

ISSUE 6: Should a margin reserve be included for all plant facilities?

POSITIONS:

UTILITY: No.

OPC: No.

STAFF: Yes. It should be calculated using linear regression.

ISSUE 7: Should margin reserve be offset by prepaid CIAC?

POSITIONS:

UTILITY: No.

OPC: Yes, prepaid or not.

STAFF: To the extent a margin reserve is allowed, this provision should be offset by prepaid CIAC.

ISSUE 8: Should plant be adjusted to correct errors in accounting for power operated equipment?

POSITIONS:

UTILITY: Agrees with Staff.

OPC: Yes. Agree with Staff.

STAFF: Yes. Plant should be reduced by \$20,357. Corresponding adjustments to accumulated depreciation and depreciation expense are also needed.

ISSUE 9: Should rate base be reduced to exclude a \$15,000 civil penalty paid to DER pursuant to Consent Order 90-1747?

POSITIONS:

UTILITY: No.

OPC: Yes. Agree with Staff.

STAFF: Rate base should be reduced to the extent this item is included in plant.

ISSUE 10: Should accumulated depreciation be adjusted?

POSITIONS:

UTILITY: Agrees with Staff.

OPC: No position at this time.

STAFF: Yes, as reflected in audit, but additional adjustments may be necessary.

ISSUE 11: Is accumulated amortization of CIAC understated?

POSITIONS:

UTILITY: Agrees with Staff.

OPC: No position at this time.

STAFF: This account appears to be understated by \$7,624.

ISSUE 12: What is the appropriate provision for working capital?

POSITIONS:

UTILITY: Agrees with Staff.

OPC: The balance sheet method should be used. The utility is large enough and has in-house accounting expertise available.

STAFF: Working capital should be derived using the formula approach (1/8 of Operation and Maintenance Expense) applied to the approved provision for operating and maintenance expenses.

ISSUE 13: What is the rate base amount?

POSITIONS:

UTILITY: The rate base ending June 30, 1993, in the amount of \$6,343,419, subject to adjustment based upon audit disclosure findings.

OPC: No position at this time.

STAFF: The final rate base amount is subject to the resolution of other issues.

COST OF CAPITAL

ISSUE 14: Should the provision for debt capital be adjusted?

POSITIONS:

UTILITY: Agrees with Staff.

OPC: No position at this time.

STAFF: Yes, reducing debt capital may be appropriate to the extent that the utility's overstatement of its credit line is not offset by understatement of other loans.

ISSUE 15: Should the interest rate for debt capital be adjusted?

POSITIONS:

UTILITY: Agrees with Staff.

OPC: Yes. Agree with Staff.

STAFF: Yes. The interest rate should be reduced to correct amortization of issue costs. Also, the interest rate should be adjusted to reflect the current prime rate applied to the utility's line of credit.

ISSUE 16: What is the appropriate provision for accumulated deferred income taxes to be included in the test year capital structure?

POSITIONS:

UTILITY: Agrees with Staff.

OPC: No position at this time.

STAFF: The appropriate provision for accumulated deferred income taxes to be included in the test year capital structure, before reconciliation, is \$5,855,543.

ISSUE 17: What is the appropriate amount of investment tax credits and its associated cost to be included in the test year capital structure?

POSITIONS:

UTILITY: Agrees with Staff.

OPC: No position at this time.

STAFF: The final dollar amount is subject to the resolution of other issues.

ISSUE 18: What is the appropriate Return on Equity?

POSITIONS:

UTILITY: Agrees with Staff.

OPC: Agrees with Staff.

STAFF: The appropriate return on equity should be based on the leverage formula, as stipulated, with a range of plus or minus one percent.

ISSUE 19: What is the overall cost of capital?

POSITIONS:

UTILITY: Agrees with Staff.

OPC: No position at this time.

STAFF: The final determination for the overall cost of capital is subject to the resolution of other issues.

NET OPERATING INCOME

ISSUE 20: What adjustments should be made to pumping and treatment expenses since the plant is treating more wastewater than is being sold?

POSITIONS:

UTILITY: None.

OPC: All affected O&M expenses should be reduced for excess infiltration.

STAFF: No position at this time.

ISSUE 21: Should the utility's proposed provisions for added chemical, electrical and sludge hauling expenses be approved?

POSITIONS:

UTILITY: Yes.

OPC: No.

STAFF: No position at this time.

ISSUE 22: Should other operating expenses be adjusted?

POSITIONS:

UTILITY: Rate Case Expense should be increased as shown on Exhibit DTH-3.

OPC: No position at this time.

STAFF: No position at this time.

ISSUE 23: Should depreciation expense be adjusted?

POSITIONS:

UTILITY: Yes, to the extent it complies with findings in Staff's audit disclosures.

OPC: No position at this time.

STAFF: Determination of any depreciation expense adjustments depends upon the resolution of other issues.

ISSUE 24: What is the appropriate provision for rate case expense?

POSITION:

UTILITY: \$109,893.

OPC: The filing fee plus the minimum cost for filing the MFR's. When determining rate case expense, the Commission should consider the additional cost to the customers for setting this case straight for hearing instead of using the Commission's Proposed Agency Action process.

STAFF: No position at this time.

ISSUE 25: Should taxes other than income taxes be adjusted?

POSITION:

UTILITY: No.

OPC: Yes. Agree with Staff, plus expense associated with nonused and useful property should be eliminated.

STAFF: Yes, removal of the provision for increased property taxes may be appropriate since those added expenses may be recovered in a pass-through proceeding based on actual amounts paid. Other adjustments may be appropriate.

ISSUE 26: What is the appropriate amount of the parent debt adjustment?

POSITIONS:

UTILITY: Agrees with Staff.

OPC: No position at this time.

STAFF: The final dollar amount is subject to the resolution of other issues.

ISSUE 27: What is the appropriate amount of income tax expense to be included in the test year?

POSITIONS:

UTILITY: Agrees with Staff.

OPC: No position at this time.

STAFF: The final dollar amount is subject to the resolution of other issues.

ISSUE 28: What is the test year operating income amount?

POSITIONS:

UTILITY: Agrees with Staff.

OPC: No position at this time.

STAFF: The final dollar amount is subject to the resolution of other issues.

REVENUE REQUIREMENT

ISSUE 29: What is the appropriate annual revenue requirement?

POSITIONS:

UTILITY: Florida Cities should be allowed to increase its revenues in the amount of \$1,439,216 annually based on the test year ending June 30, 1993.

OPC: No position at this time.

STAFF: The appropriate annual revenue requirement amount is subject to the resolution of other issues.

ISSUE 30: Should rate case expense be reduced in compliance with Section 367.0816, Florida Statutes?

POSITIONS:

UTILITY: No. This is a legal issue.

OPC: Any reduction should be imposed to the full extent until the bottom of the utility's range of its return on equity is reached.

STAFF: Whether rate case expense must be reduced in compliance with Section 367.0816, Florida Statutes, is subject to resolution of other issues.

RATES AND RATE STRUCTURE

ISSUE 31: What are the appropriate final wastewater rates?

POSITIONS:

UTILITY: As reflected in the MFRs.

OPC: No position.

STAFF: The appropriate final wastewater rates will depend upon the resolution of other issues.

ISSUE 32: Should the service availability charges be adjusted?

POSITIONS:

UTILITY: No.

OPC: No position.

STAFF: No position pending further development of the record.

VII. EXHIBITS

<u>Witnesses Proffered By</u>		<u>I.D. No.</u>	<u>Description</u>
Harrison	Florida Cities	DTH-1 (Composite)	(MFRs) Application for Increase in Rates, Test Year Ending 6/30/93
		DTH-2 (Composite)	(MFRs) Additional Information Related to the Application for Increase in Rates, Test Year Ending 6/30/93
		DTH-3 (Composite)	Rate Case Expense
Allen	Florida Cities	GSA-1	Milestone Dates Relative to Upgrading Waterway Estates Wastewater Treatment Plant
Allen	Florida Cities	GSA-2	Excerpts from Preliminary Engineering Reports of ESE (8/87)
Stephens	Staff	JYS-1	Audit Report

VIII. PROPOSED STIPULATIONS

At the prehearing conference, Florida Cities, OPC, and Staff agreed to the following:

1. The residential wastewater maximum cap should be lowered from 8,000 gallons to 6,000 gallons.
2. The leverage formula in effect at the time of the Agenda setting final rates is appropriate to use in calculating the return on equity.

IX. RULINGS


1. The withdrawal of OPC's Prehearing Statement, filed on March 13, 1992, is acknowledged.
2. Florida Cities' Oral Motion to allow Supplemental Direct Testimony for Witnesses Allen, Griggs, and Elder, is granted.

Parties and Staff reserve the right to identify exhibits for the purpose of cross-examination.

Based upon the foregoing, it is

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings unless modified by the Commission.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 23rd day of MARCH, 1992.



SUSAN F. CLARK, Commissioner
and Prehearing Officer

(S E A L)

CB/LAJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

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Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.