BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a rate increase for North Ft. Myers Division in Lee County by Florida Cities Water Company - Lee County Division.	DOCKET NO. 950387-SU ORDER NO. PSC-99-0691-FOF-SU ISSUED: April 8, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
JULIA L. JOHNSON

APPEARANCES:

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On behalf of Florida Cities Water Company, North F. Myers Division in Lee County.

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On behalf of the Citizens of the State of Florida.

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On behalf of the Commission Staff.

NOTICE OF PROPOSED AGENCY ACTION ORDER CORRECTING AND REMOVING USED AND USEFUL ADJUSTMENTS TO REUSE FACILITIES,
AND
FINAL ORDER SETTING WASTEWATER RATES, REQUIRING REFUNDS, AND GRANTING IN PART AND DENYING IN PART MOTION TO MAKE RATES PERMANENT

BY THE COMMISSION:

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NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein concerning the correction and removal of used and useful adjustments to reuse facilities is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code. All other aspects of this Order are issued as final agency action.

I. CASE BACKGROUND

Florida Cities Water Company - Lee County Division Florida Cities, FCWC or utility) is a Class A utility that has two wastewater service divisions in Ft. Myers, Florida: a northern

division and a southern division. The North Ft. Myers wastewater system, the applicant in this proceeding, was serving about 2,559 customers at December 31, 1994. Because many multi-family units are master-metered, about 4,590 equivalent residential connections were actually being served.

The utility serves an area that has been designated by the South Florida Water Management District as a critical use area. At the time of the application, wastewater treatment was provided by a 1.0 million gallons per day (mgd) advanced wastewater treatment plant (AWTP), and effluent was disposed of by discharge to the Caloosahatchee River, with plans to provide reuse water to a golf course in the service area.

On May 2, 1995, the utility filed an application for increased rates pursuant to Section 367.081, Florida Statutes. The petition did not satisfy the minimum filing requirements (MFRs) and submission of additional data was necessary. The missing information was received on May 19, 1995, which date was declared the official date of filing pursuant to Section 367.083, Florida Statutes. The utility's last rate case was finalized on July 1, 1992, by Order No. PSC-92-0594-FOF-SU in Docket No. 910756-SU. In 1994, the utility's rates were increased due to an index proceeding. The rate case application was initially processed using the proposed agency action (PAA) procedures identified in Section 367.081(8), Florida Statutes.

The utility did not request interim rates. Schedules in the filing indicate receipt of a 6.71 percent return on average investment in 1994. The utility's last allowed overall rate of return was 9.14 percent. The utility maintained that rate increases were needed to reflect added investments and expenses, including an expenditure of approximately $1,600,000 in 1995 to increase the capacity of its wastewater plant from 1.0 mgd to 1.25 mgd. This construction project was scheduled to be completed prior to the close of 1995. The utility believes the magnitude of this investment justifies an end-of-period rate base determination.

The test year for this proceeding is the twelve-month period ending December 31, 1995. This period is based upon actual costs for the historical base year ended December 31, 1994, with applicable adjustments. During the base year, the utility's wastewater revenues were $2,085,157, with a corresponding net operating income of $474,319. The utility proposed rates designed to generate $2,591,990 in annual revenues, reflecting a $480,078

(22.73 percent) overall increase. The requested net operating income amount of $763,108 would yield a 9.08 percent return on the projected $8,404,278 rate base balance.

On November 2, 1995, we issued PAA Order No. PSC-95-1360-FOF-SU. However, this order was timely protested by twelve customers. On December 1, 1995, the utility filed its notice of intent to implement the PAA rates pursuant to Section 367.081(8), Florida Statutes. By Order No. PSC-96-0038-FOF-SU, issued January 10, 1996, we acknowledged the implementation of PAA rates on an interim basis subject to refund. The PAA rates were effective December 13, 1995. Also, by Order No. PSC-96-0356-PCO-SU, issued March 13, 1996, we acknowledged the intervention of the Office of the Public Counsel (OPC or Citizens). An administrative hearing was held on April 24-25, 1996.

Subsequent to this hearing, we issued Order No. PSC-96-1133-FOF-SU (original Final Order), on September 10, 1996. However, on October 7, 1996, the utility filed its notice of administrative appeal of that Order. Pursuant to this appeal, the First District Court of Appeal (Court or First District), among other things, reversed our use of annual average daily flow (AADF) in the numerator of the used and useful equation. The First District said this was a departure from Commission policy which was not supported by competent substantial evidence (unsupported "by expert testimony, documentary opinion, or other evidence appropriate to the nature of the issue involved"). Florida Cities Water Company v. FPSC, 705 So. 2d 620, 626 (Fla. 1st DCA 1998) (hereinafter Florida Cities). Although the Court reversed us on this issue, it went on to say that the Commission "must, on remand, give a reasonable explanation, if it can, supported by record evidence (which all parties must have an opportunity to address) as to why average daily flow in the peak month was ignored." Id.

Based on this language, we issued Order No. PSC-98-0509-PCO-SU on April 14, 1998. By that Order, in compliance with the First District's remand, we set the capacity of the wastewater treatment plant at 1.25 mgd, reopened the record for a limited purpose, and granted in part and denied in part the utility's request for consideration of additional rate case expense. Specifically, we decided to reopen the record to take evidence on what flows should be used in the numerator of the used and useful equation when the Department of Environmental Protection (DEP) permits the wastewater treatment plant based on AADF. In addition to this issue, we decided to take evidence on the issue of additional rate case

expense associated with reopening the record and the non-legal rate case expense associated with the utility's successful appeal of Order No. PSC-96-1133-FOF-SU. No other issues were identified by Order No. PSC-98-0509-PCO-SU.

Additional testimony and evidence were taken on those issues identified in Order No. PSC-98-0509-PCO-SU, at a second administrative hearing held December 8 and 9, 1998. Briefs were filed on January 8, 1999. This Order addresses those issues. In addition, in light of the decision of the First District in Southern States Utils., Inc. v. FPSC, 714 So. 2d 1046 (Fla. 1st DCA 1998), we have determined that it is necessary to correct the used-and-useful adjustments we made to facilities designated as reuse. Finally, this Order also addresses Florida Cities' motion to make rates permanent, which was filed on January 26, 1999.

II. RATE BASE -- USED AND USEFUL PLANT

The utility believes that, in determining the wastewater treatment plant's used and useful percentage, it is improper to use AADF in the numerator, and that such use ignores maximum month average daily flows (MMADF) experienced by the wastewater treatment plant. Utility witness Acosta testified that a determination of used and useful must be concerned with the maximum flows the treatment plant may experience in order to allow for such an event, and that this would be the only way to ensure that safe, adequate service was continuously provided. Utility witness Acosta further testified that when flows on a monthly basis exceed AADF, sufficient plant must be in place and available to receive and treat those flows above AADF. Utility witness Acosta argues that if AADF is used, and not MMADF, then the plant required to treat the peak flows would not be recognized for ratemaking purposes.

Both OPC and our staff witness agree that the utility must be able to treat peak flows, and that MMADF flows should not be ignored. However, in permitting the plant based on AADF, DEP takes into account that there may be peak days, peak months, or peak three months greater than the AADF. Utility witness Young, employed by DEP, testified that DEP would require the design engineer to show that use of AADF in the permit was appropriate. He further testified that for a beach community that received a significant influx of seasonal residents, AADF might not be appropriate. However, in the case at hand, DEP approved the utility's request to use AADF, and the use of AADF takes into

account that there may be peak days, peak months or peak three months greater than the permitted AADF.

Further, OPC witness Biddy stated that peak capacities of the plant and those facilities within the plant that handle the peak flows are included in the plant design. Those dollars needed to construct the necessary plant capacity to handle the peak flows are in the cost of the plant and, therefore, in rate base. OPC contends that matching of the numerator and denominator in the used and useful calculation does not ignore the peak flows and also provides the appropriate used and useful percentage for the wastewater treatment plant.

We understand the concern of the utility in regards to making sure plant constructed to handle peak flows is included in rate base. We believe this was accomplished during the plant design. Utility witness Cummings testified that the plant capacity is 1.25 mgd based upon AADF and the waste concentration associated with this flow. Utility witness Cummings further testified that based on the analysis of historical data, it was Black and Veatch's professional opinion that a 1.3 mgd plant was the appropriate and necessary and economically sized plant to treat the flows, including peak flows and to properly treat the pollutant loading associated with those flows. Witness Cummings clearly states that peak flows based on historical data are taken into consideration in the plant design.

OPC witness Biddy provided several examples of the importance of matching like units in the used and useful equation:

Example 1 Wastewater Plant A:
Plant Design & Permit Capacity = 1.0 mgd on MMADF basis
or 0.8 mgd on AADF basis

Plant AADF = 0.7 mgd during the test year
Plant MMADF = 0.9 mgd during the test year

Then, Used and Useful% = 0.7 mgd/0.8 mgd = 87.5%
or 0.9 mgd/1.0 mgd = 90%

Example 2 Wastewater Plant A:
Plant Design & Permit Capacity = 1.0 mgd on AADF basis
Plant MMADF = 0.9 mgd during the test year

Then, Used and Useful% = 0.9 mgd/1.0 mgd = 90%

In Example 1, the procedure for determining the used and useful percentage was properly applied. The flows in either MMADF and AADF were divided by the capacity in the respective category and similar used and useful percentages were achieved. However, in Example 2, the flows in MMADF were divided by the plant capacity in AADF to produce an artificially inflated used and useful percentage. OPC witness Biddy testified that this latter method of computing the used and useful percentage artificially inflates the results. These examples exclude any adjustments for margin reserve or excess inflow and infiltration.

Staff witness Crouch agreed that it was important to express the numerator and denominator in like terms. He also agreed with OPC witness Biddy when he testified that peak capacities of the plant and those facilities within the plant that handle the peak flows are included in the plant design. Those dollars needed to construct the necessary plant capacity to handle the peak flows are in the cost of the plant and, therefore, in rate base. Therefore, use of AADF in the numerator does not ignore average daily flow in the peak month.

Moreover, the utility argues that a change in the wording of the DEP permit does not correspond to a real change in operating capacity. All parties agree that the change in the wording on the DEP permit application to indicate the basis for design capacity does not reflect a change in the operating capacity of a wastewater treatment plant. DEP witness Addison testified that around 1994, the DEP instituted a new policy of showing the design capacity of a wastewater treatment plant as that provided by the applicant. Simply showing the design capacity time frame as provided by the applicant on the permit does not affect the capacity of the treatment plant. Whether the applicant chooses to use AADF, MMADF, or three maximum-month average daily flow (3MADF) as the basis for determining the plant capacity, the actual capacity of the plant does not change.

By Order No. PSC-96-1133-FOF-SU, we found the wastewater treatment plant to be 65.9 percent used and useful with a plant capacity of 1.5 mgd, the disposal system to be 76.0 percent used and useful, and the collection system to be 100 percent used and useful. However, with the reversal and remand of the First District, the plant capacity was found to be 1.25 mgd, based on AADF. Id. at 627. The Court directed us to reexamine the record to determine the correct flows which should be compared with the

plant capacity to determine the correct used and useful percentage for the wastewater treatment plant.

In order to determine what flows should be used in the numerator and what capacity should be used in the denominator, it is important to understand the role of the used and useful analysis in the rate making process. The calculation of used and useful percentages is a rate setting concept. Rate setting encompasses all aspects of utility operations, financial as well as physical. Historically, we have established expense levels, revenues and utility investment based on a 12-month test period. Rates are established to achieve a revenue target based upon that 12-month period. This accounts for fluctuations, daily, weekly or monthly, including peaks and valleys, in expenses, revenues and necessary investment. Thus, on average, a reasonably accurate determination of the utility's needs over the test year is achieved.

Pursuant to Section 367.081, Florida Statutes, the utility is entitled to a fair return on that part of utility property that is used and useful in the public service. We make used and useful determinations to balance the interests of current customers, future customers and the utility, i.e., the public interest. In layman's terms, used and useful analysis tells us what percentage of the utility's investment is necessary to provide service to current customers and to stand ready to serve some additional customers. Although current customers should not be required to fund the utility's return on investment related to serving all future customers, we do recognize the utility's obligation of readiness to serve future customers in a finite short-term period. In calculating used and useful in this case, we applied a formula which employs the use of the capacity of the wastewater treatment plant taken from the permit issued by the DEP in the denominator and the actual AADF for the test year in the numerator.

The utility contends, through witness Acosta, that we have historically used the MMADF for the test year in question plus the margin reserve flow equivalent divided by the design plant capacity to determine the used and useful percentage of a wastewater treatment plant. The utility believes that peak flows experienced by the wastewater treatment plant should be used to determine the wastewater treatment plant's used and useful percentage. Utility witness Acosta testified that a determination of used and useful must be concerned with the maximum flows the treatment plant may experience in order to allow for such an event, and that this is the only way to ensure that safe, adequate service

is continuously provided. Utility witness Acosta further testified that when flows on a monthly basis exceed AADF, sufficient plant must be in place and available to receive and treat those flows above AADF. Utility witness Acosta also believes that use of AADF in the numerator and denominator does not recognize, for rate making purposes, that additional necessary plant.

The formula put forth by witness Acosta is as follows: Used and Useful Percentage = MMADF + Margin Reserve Flow/Design Capacity. Witness Acosta further provided that the use of MMADF recognizes the inevitable peaks in treatment plant flows that the plant experiences and that must be treated to water quality standards established by DEP. Witness Acosta believes that the MMADF should be used in the numerator to represent the actual flows going to the plant; and that the use of AADF in the numerator completely misses the seasonal population fluctuations, does not recognize the sufficient capacity to accommodate the maximum month flows, and is not consistent with DEP Rule 62-600, Florida Administrative Code.

OPC believes that the numbers used in the numerator and denominator of the used and useful equation should be of the same origin. That is, if the numerator is expressed in AADF, then the denominator should be expressed in AADF. If the numerator is expressed in MMADF, then the denominator should be expressed in MMADF. Consistency in units should be maintained throughout this equation. Witness Dismukes testified that in the most basic terms, used and useful is a comparison of the capacity of a plant to the load (or flows) it must treat. In order to reach a meaningful result, the capacity (denominator) and the load (numerator) must be expressed in the same units of measurement. OPC witness Dismukes further testified that where the DEP has permitted a wastewater treatment plant in terms of AADF, the load should be expressed in the same units. Expressing the load in terms of monthly peak flows, as argued by the utility, where the same plant is rated in AADF will not only yield a meaningless result, but it will also overstate the used and useful percentage.

In addition, OPC witness Biddy stated that if the plant capacity is permitted or designed on the basis of AADF, then the test year AADF should be used for the numerator. On the other hand, if the plant capacity is permitted on the basis of MMADF, then the test year MMADF should be used. Generally, the designed capacity is the same as the DEP permitted capacity.

Staff witness Crouch testified that used and useful is determined by dividing the flows during the test year by the capacity of the treatment plant. Witness Crouch also stated that for many years, the Commission staff has relied upon the permits issued by DEP to determine the permitted capacity of a wastewater treatment plant. That permitted capacity was used in the denominator of the equation. Prior to 1992, the DEP-issued permit did not indicate the basis which the utility specified. Because the basis was not shown on the permit, our staff had no way of knowing what the basis was. Therefore, our staff, presuming the worst case scenario, selected the MMADF as the flow to be used in the numerator. Inadvertently, our staff, and subsequently, the Commission, may have been mismatching the plant capacity and flow data in some of our cases when determining the used and useful percentages for wastewater treatment plants prior to 1992. This may have occurred due to our staff having had no knowledge of what the plant capacity on the DEP permit was based on and incorrectly applying the MMADF to the used and useful equation. However, starting approximately 1992, DEP began to show on the face of their permits the basis for determining permitted flow (AADF, MMADF, 3MADF) which was selected by the utility in its permit application process. The selection of flows is based on the particular characteristics of the plant as determined by the plant designer. When DEP started listing flow basis in the permits (the denominator), there was no longer any doubt as to the basis and it became imperative that the same basis be used in the numerator flow data. Staff witness Addison, employed by the DEP as a professional engineer in the Domestic Wastewater Section, testified that he agrees that whichever unit is used in the denominator should be used in the numerator.

The utility argues that capacity is capacity, and that, despite the fact that its design engineer chose AADF as the basis for the permitted capacity, we must continue to use MMADF as the measure of used and useful. Staff witness Addison testified that with the change in DEP rules, the time frame associated with permitted capacity must be specified in the permit. In this case, the utility, in filling out Wastewater Form 2A, had the choice of MMADF, 3MADF, or AADF (or other). It chose AADF.

Although it states that capacity is capacity, the utility specifically recognizes that the plant actually has additional capacity to treat peak flow. Utility witness Cummings testified that the plant has the hydraulic capacity to pass 2.5 mgd per day. Witness Cummings also stated that peak design loading is:

> Computed as the maximum design loading times a peaking factor of 1.5 for carbonaceous load and 1.3 for nitrogenous load. This loading represents the peak day load to the biological system.

Therefore, we know both the daily hydraulic and biological peak loading factors. However, we do not know the MMADF capacity because the utility has not chosen to permit the plant that way. All we know in regards to long-term capacity is what the utility has chosen, i.e., AADF. Because the utility has stated that AADF is appropriate in the permitting phase, we believe it is also appropriate to use for determining used and useful. As stated by Staff witness Addison, just because a utility exceeds its capacity in any one month, does not mean that it is out of compliance or will exceed its capacity for the year. It is necessary to look at the whole year to determine what percent of capacity is being used. When the plant is designed and permitted based on AADF, it is not possible to determine what percentage of its capacity is being used by looking at only one month.

Finally, the utility argues that we must use MMADF in the numerator because the utility must be able to treat flows in the maximum month. All parties agree that peaks must be accommodated. However, the issue is not whether peaks should be treated, but how much of utility investment is, on average for the test year, used and useful. Utility witness Cummings testified that the plant capacity is rated at 1.25 mgd and is designed to accommodate peaks. He further testified that the capacity rating of 1.25 mgd would be the same regardless of whether AADF, 3MADF or the MMADF is used. In addition, OPC witness Biddy stated that peak capacities of the plant and those facilities within the plant that handle the peak flows are included in the plant design. Those dollars needed to construct the necessary plant capacity to handle the peak flows are in the cost of the plant and, therefore, are in rate base. We find that if allowance for peaks is included at a utilization level equal to the plant's rated capacity, then it must be true at every other level of utilization. That is, the peaks are accounted for in plant design at all levels of utilization up to its rated capacity, regardless of the time frame for measurement. Therefore, we find the utility's argument to be without merit.

Matching is an important rate-setting concept, and we find that matching flow measures in the numerator and denominator in accordance with the DEP permitted capacity is appropriate. The

impact of using MMADF to establish used and useful plant is to ignore the dampening effect of least-month utilization. In so doing, it requires current customers to pay for investment in peak capacity, that on average for the test year, is not representative of current usage. Effectively, this approach causes current customers to pay more, to the advantage of future customers and the utility. We find that this result is inappropriate and inconsistent with long-standing rate making principals which view the utility's expenses, revenues and investment over a 12-month test period.

For the forgoing reasons, we find that the record supports the matching (use of same units over the same time) of the flows in the numerator with the same flows used in the plant's permitted capacity (the denominator). In this case, the utility's design engineer requested AADF and this was what was authorized by DEP. Further, where the plant is permitted based on AADF, you cannot determine what percentage of the plant is used and useful by looking at only one month. You must look at the whole year. This is the only way to obtain a valid measure of what percentage of the utility's plant is used and useful in the public service. The resultant flow and design capacity as applied in the used and useful equation yields a 79 percent used and useful percentage for this utility.

III. CORRECTION AND REMOVAL OF USED AND USEFUL ADJUSTMENTS TO REUSE FACILITIES

The utility argues that we must apply the law as it exists at the time we make our determination, and that no used and useful adjustment may be made to the prudently incurred costs for reuse facilities. By Order No. PSC-96-1133-FOF-SU, we found that the capacity of the wastewater treatment plant was 1.5 mgd, and that AADF should be used in the numerator of the used and useful equation. Based upon these findings (and an ultimate used and useful percentage of approximately 66%), we made used and useful adjustments to improvements required by DEP and to all wastewater facilities as a whole, including reuse facilities.

The utility contested all of the above findings. The Court, in its January 12, 1998 opinion, Florida Cities Water Co. v. FPSC, 705 So. 2d 620 (Fla. 1st DCA 1998), found that all capital expenditures a utility makes in order to comply with governmental regulations, while prudent, need not be included in rate base; i.e., we could make used and useful adjustments to the capital

expenditures required by DEP. The Court further noted, in footnote 4 of the Opinion, that:

> Neither party has advocated on appeal for a discrete "used and useful" calculation for the reuse facility or contended that the reuse facility should be considered separately from the rest of the system. We do not, therefore, reach any question arising under Section 367.0817(3), Florida Statutes (1995).

Although the Court made the above-noted statement in footnote 4, the utility in both its initial appellate brief and in its reply appellate brief argued that Section 367.0817(3), Florida Statutes, required all prudent costs of a reuse project to be recovered in rates.

Upon remand, by Order No. PSC-98-0509-PCO-SU, issued April 14, 1998, we reopened the record to specifically determine whether AADF or MMADF should be used in the numerator of the used and useful equation. Subsequent to that order, on June 10, 1998, the First District issued its opinion in the appeal of Order No. PSC-96-1320-FOF in Docket No. 950495-WS. Southern States Utils., Inc. v. FPSC, 714 So. 2d 1046 (Fla. 1st DCA 1998) (hereinafter Southern States) In that opinion, the Court overturned our decision to make used and useful adjustments to reuse facilities.

With the reopening of the record in this case, prehearing statements were filed on November 12, 1998, and a prehearing conference was held on November 18, 1998. At the prehearing conference, the issue of whether to use AADF or MMADF in the numerator was included in three separate issues, in addition to two issues regarding additional rate case expense. Four fall-out issues were also identified. No issue concerning used-and-useful adjustments to reuse facilities was identified by any of the parties or staff. The hearing was held on December 8 and 9, 1998. The utility now argues that based on the holding of the Court in Southern States, it is improper to make a used and useful adjustment to reuse facilities, and that if we do determine that used and useful is less than 100 percent, then the revenue requirement must reflect all reuse facilities at 100 percent.

As stated above, in our original Final Order, we made a used and useful adjustment to reuse (as a part of the whole system), and the Court, in the initial appeal, did not specifically find that to

be improper. However, it did not approve the adjustment either. The Court merely stated that: "We do not . . . reach any questions arising under Section 367.0817(3), Florida Statutes (1995)." The Court, however, had not yet decided Southern States.

Although the utility raised the issue on appeal, neither the utility, the OPC, nor staff raised the issue at the prehearing conference following the remand and reopening of the record. Even though none of the parties or staff raised the issue, we find that we are bound by the Southern States decision, and must set rates on a going forward basis without making any used and useful adjustment to reuse facilities.

Although the final order was issued over two years ago, we are still faced with the prospect of setting the appropriate final rates on remand. In Southern States, the First District has clearly stated that it is improper to make used and useful adjustments to reuse facilities. We must recognize that Section 367.0817(3), Florida Statutes, has now been interpreted by the Courts and apply the law as it now exists consistent with this interpretation. See In re Forfeiture of Following Described Property, 1985 Mercedes, 596 So. 2d 1261 (Fla. 1st DCA 1992), in which the Court held that a court must apply the law in effect at the time of the decision. The Court in the Mercedes case also cited Cantor v. Davis, 489 So. 2d 18 (Fla. 1986); Florida Patient's Compensation Fund v. Von Stetina, 474 So. 2d 783 (Fla. 1985); Hendeles v. Sanford Auto Auction, Inc., 364 So. 2d 467 (Fla. 1978); Florida East Coast Railway v. Rouse, 194 So. 2d 260 (Fla. 1966); and Junco v. State, 510 So. 2d 909 (Fla. 3d DCA 1987).

In this case, the utility has separated the costs associated purely with reuse, and those figures are available without the need or requirement for additional evidence. However, by Order No. PSC-96-1133-FOF-SU, despite the facilities being designated as reuse, and absent any determination that the costs were imprudently incurred, through our used and useful adjustments, we set rates such that a portion of these costs were not recovered in the utility's rates. We find that we must correct this error, and set rates in this remand proceeding making no used and useful adjustment to those facilities classified as reuse.

Because the parties, prior to the holding in Southern States, did not specifically know that used and useful adjustments could not be made to reuse facilities, there is some question whether they had a fair opportunity to address whether the facilities were

actually reuse and whether the costs incurred were prudent. Therefore, while we find that we should correct the error, we further find that any correction should be made as proposed agency action. Based on reuse facilities being considered 100 percent used and useful, the revenue requirement is increased by $8,106.

IV. APPELLATE NON-LEGAL RATE CASE EXPENSE

The utility is seeking to recover $15,834 in appellate non-legal rate case expense. The appellate non-legal rate case expenses were incurred primarily for the costs of maintaining duplicate billing registers, pursuant to Order No. PSC-96-0038-FOF-SU, issued January 10, 1996, in this docket. In our original Final Order, we authorized $18,358 of rate case expense for Avatar Utilities Services Inc. (AUSI); $6,144 of that cost related to maintaining a duplicate billing register for six months.

The utility's requested additional appellate non-legal rate case expense for the services provided by AUSI appear to be prudent and reasonable. The previous cost approved covered a smaller time frame whereas the requested cost covers a three-year period. Further, the cost on a per month basis is consistent with the cost we previously approved. Therefore, we approve $15,834 for appellate non-legal rate case expense.

V. RATE CASE EXPENSE ON REMAND

At the hearing, utility witness Coel filed updated information showing the additional rate case expense requested due to the appeal and remand process since the issuance of Order No. PSC-96-1133-FOF-SU. The utility has stated that it has incurred $244,979.20 in rate case expense, not including legal appellate rate case expense for which it has been reimbursed by this Commission. Of this $244,979.20, we previously approved as prudently incurred, $90,863.03, pursuant to Order No. PSC-96-1133-FOF-SU. The utility is seeking to recover an additional $154,116 in rate case expense as a result of the appeal and remand process. The $154,116 is a summation of $138,283 for the remand and $15,834 for appellate non-legal rate case expense.

The utility provided back-up documentation in support of the legal fees expense for the remand proceeding. The documentation shows detailed records for legal work performed by K. Gatlin, K. Cowdery, and W. Schiefelbein, Esquires. In review of the

documentation, it shows that the attorneys performed separate tasks during the rate case.

Based on our review of the supporting documentation, we find that the utility's requested additional rate case expense for the appeal and remand is prudent and reasonable. Therefore, the appropriate provision for rate case expense since the remand by the First District is $138,283. The remand rate case expense along with the appellate non-legal rate case expense of $15,834, and the rate case expense of $90,863, previously approved by the original Final Order, results in total rate case expense of $244,979, which equates to an annual expense of $61,246. This increases the previously approved rate case expense by $38,530.

VI. REVENUE REQUIREMENT

The revenue requirement is a fall-out number driven by the resolution of the contested issues. The utility is requesting approval of final rates that are designed to generate annual revenues of $2,519,554. Those revenues exceed the revenues approved by our original Final Order by $516,207 or 25.77 percent. Based upon our decisions above, we approve rates that are designed to generate a revenue requirement of $2,229,293. This is an increase of $225,947 or 11.28 percent. Further, this revenue requirement includes the adjustment for the 1.25 mgd plant determination and it reflects the recognition of the reuse facilities as 100 percent used and useful.

VII. RATES AND RATE STRUCTURE

Based on its positions, findings of fact, and conclusions of law on the contested issues, the utility has requested permanent rates designed to produce revenues of $2,519,554. However, we find it appropriate to design rates to recover annual operating revenues of $2,185,292, which excludes miscellaneous revenues, guaranteed revenues and reuse revenues. We have calculated the rates using the same methodologies (i.e., allocation of revenue requirement, portion of revenues to be recovered through service rates and 20 percent differential between the residential and general service wastewater gallonage charges) as in our original Final Order.

The utility shall file revised tariff sheets and a proposed customer notice for our staff's approval pursuant to Rule 25-22.0407(10), Florida Administrative Code. The approved rates shall be effective for service rendered on or after the stamped approval

date on the tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code, provided the customers have received notice. The rates may not be implemented until proper notice has been received by the customers. The utility shall provide proof of the date notice was given within ten days after date of the notice.

A comparison of the utility's rates prior to filing, the implemented PAA rates, the requested final rates following the appeal and remand, and our final rates is shown on Schedule No. 4.

VIII. STATUTORY FOUR-YEAR RATE REDUCTION

In the section below, we are requiring the utility to refund a portion of the revenue collected from the PAA rates less the rate case expense approved by our original Final Order, and the rate case expense that we have allowed for the appeal and remand process. The PAA rates included a provision for rate case expense of $30,240. We shall allow the utility to retain an additional $31,006 of revenues to represent the collection of the approved rate case expense since the implementation of the PAA rates. The total annual rate case expense for this proceeding is $61,246. The PAA rates were effective December 13, 1995. Thus, the effective date of the PAA rates establishes the start of the four-year recovery period for the rate-case expense of $61,246.

Section 367.0816, Florida Statutes, requires that the rates be reduced immediately following the expiration of the four-year period by the amount of rate case expense previously authorized in the rates. The reduction will reflect the removal of revenues associated with the amortization of rate case expense and the gross-up for regulatory assessment fees which is $64,132. The removal of rate case expense will reduce rates as shown on Schedule No. 5.

The utility shall file revised tariff sheets no later than one month prior to the actual date of the refund rate reduction. The utility shall also file a proposed customer notice setting forth the lower rates and reason for the reduction.

If the utility files this reduction in conjunction with a price-index or pass-through rate adjustment, separate data shall be filed for the price-index and/or pass-through increase or decrease, and for the reduction in the rates due to the removal of the amortized rate case expense.

IX. REFUND OF REVENUES

By PAA Order No. PSC-95-1360-FOF-SU, issued November 2, 1995, we proposed to set final rates. Although this Order was protested, the utility, pursuant to Section 367.081(8), Florida Statutes, implemented the PAA rates effective December 13, 1995, subject to refund. We have found that the final revenue requirement is lower than the revenue requirement established by PAA Order No. PSC-95-1360-FOF-WS. Therefore, a refund is appropriate.

The PAA rates implemented by the utility included an annual provision for rate case expense of $30,240, which included a provision to amortize prior rate case expense charges from Docket No. 910756-SU. The amortization period for the prior rate case expense expired in June of 1996. By Order No. PSC-96-1133-FOF-SU, we approved a final rate case expense of $90,863, amortized over four years, for an annual provision of $20,716. That Order also included a stipulation that instead of reducing rates on July 1, 1996, to reflect the complete amortization of rate case expense from the prior rate case, the customers would receive a credit on their bill until the final rates were approved and implemented in this docket. However, because of the appeal, the final rates were not implemented. As a result, the utility has continued to collect the PAA rates and has recovered approximately three years of the rate case expense authorized in the PAA rates. Also, pursuant to the original Final Order, the utility has issued credit on customers' bills to offset the amortized rate case expense in Docket No. 910756-SU.

The annual provision for rate case expense of $61,246 exceeds the annual provision for rate case expense of $30,240 approved in the PAA rates. As a result, the utility is entitled to recover an additional $31,006 of rate case expense. In order to provide the utility recovery of this amount, the calculated refund shall be reduced by this difference. The effect of reducing the refund by the difference in rate case expense is that it allows the utility to retain a portion of the revenue collected through the PAA rates to represent the additional rate case expense being in rates since the implementation of the PAA rates. Thus, the utility will have recovered the $61,246 of rate case expense ($30,240 + $31,006) as of December 13, 1999. In addition, since the utility has issued credit to customers on their bills to offset the amortized rate case expense for Docket No. 910756-SU, as required by the

stipulation in Order No. PSC-96-1133-FOF-SU, the PAA revenues in the refund calculation shall be reduced by the amount of the credit. We have, therefore, calculated the refund by taking the difference between the revenue requirement, with rate case expense, and the PAA revenue requirement, with rate case expense, excluding the $21,001 credit for rate case expense which expired from Docket No. 910756-SU. We have also removed any miscellaneous revenues, guaranteed revenues, and reuse revenues.

Therefore, the utility shall be required to refund 10.92 percent of the revenues collected, from January 1, 1996 to December 31, 1996, through the implementation of rates established pursuant to Order No. PSC-95-1360-FOF-SU, issued November 2, 1995. The calculation for this period takes into account that the utility started issuing credits in July of 1996. From January 1, 1997, to the effective date of the final rates, Florida Cities shall refund 10.50 percent of the revenues collected through the implementation of rates established in the above-mentioned order.

These refunds shall be made with interest as required by Rule 25-30.360(4), Florida Administrative Code. The utility shall be required to submit proper refund reports pursuant to Rule 25-30.360(7), Florida Administrative Code. The utility shall treat any unclaimed refunds as contributions-in-aid-of-construction (CIAC) pursuant to Rule 25-30.360(8), Florida Administrative Code.

X. UTILITY'S MOTION TO MAKE RATES PERMANENT

By PAA Order No. PSC-95-1360-FOF-SU, issued November 2, 1995, we proposed to set rates so as to increase revenues by $377,772 (for total annual revenues of $2,489,487). This Order was protested, and, on December 1, 1995, the utility filed its Notice of Intent to Implement Rates (the PAA rates) pursuant to Section 367.081(8), Florida Statutes, with an appropriate corporate undertaking in the amount of $261,595. By Order No. PSC-96-0038-FOF-SU, issued January 10, 1996, we acknowledged the implementation of PAA rates on an interim basis subject to refund and the sufficiency of the corporate undertaking.

After a formal hearing, we issued our original Final Order, wherein we found that the revenue requirement was only $2,003,347. The amount of security was modified and increased by Order No. PSC-96-1390-FOF-SU, issued November 20, 1996, as a result of the utility's appeal and request for stay of the post-hearing decision. In determining the amount subject to refund, by Order No. PSC-96-

1390-FOF-WS, we took the difference between the revenue requirement, $2,489,487, found in the PAA Order, and subtracted the revenue requirement of $2,003,347 from the original Final Order to determine that 19.88 percent of annual revenues collected should be held subject to refund. The utility posted a corporate undertaking in the amount of $940,755, pursuant to that Order.

As a result of the utility's Motion for Stay Pending Judicial Review, filed April 10, 1998, and its Amended Motion for Stay, filed April 14, 1998, additional security was required. By Order No. PSC-98-0762-PCO-SU, issued June 6, 1998, we implemented a system whereby the utility would automatically increase its corporate undertaking every six months to cover the amount subject to refund that was accruing. As of November 12, 1998, the utility had submitted a corporate undertaking in the amount of $1,056,683.46. This amount was calculated to last through May 12, 1999. However, the corporate undertaking has been calculated based on the difference in revenues from the PAA Order and the revenues from the original Final Order being subject to refund.

On January 26, 1999, Florida Cities filed its Motion to Make Rates Permanent. On February 5, 1999, the OPC filed its response to that motion.

In its motion, the utility specifically requests the Commission to:

a. Make permanent the allowed revenue and the rates approved by the Commission at its agenda conference for the consideration of this Docket now scheduled for March 2, 1999 [agenda was canceled and this item was placed on the March 16, 1999 agenda]; and
b. Allow FCWC to continue to collect on an interim basis, subject to refund, the revenue not allowed by the Commission at its agenda conference now scheduled for March 2, 1999.

In its response, the OPC states in pertinent part:

2. Collection of this revenue subject to refund provides the Commission with jurisdiction over its eventual disposition; without this proviso, the Commission could be subject to a claim of retroactive ratemaking;

3. This case is still pending; Commission jurisdiction over regulated utilities such as FCWC is plenary and should not be lessened by Commission in the absence of showing that such action is necessary to avoid prejudice to a party;
4. FCWC alleges no prejudice in the situation which now prevails.

The request to make permanent the allowed revenue and the rates approved at the agenda conference appears to be a case of first impression for this industry. We are not aware of any other water or wastewater utility having ever requested that the allowed revenue be made permanent prior to the time for filing an appeal has run. In the case at hand, there appears to be only three issues remaining that would affect the revenue requirement, i.e., the appellate non-legal rate case expense, the additional rate case expense for reopening the record, and the difference in the revenue requirement that would result from using either AADF or MMADF in the numerator of the used and useful equation.

Because staff, OPC, and the customers have all proposed that AADF be used in the numerator, the utility appears to believe that a minimum annual revenue requirement will be determined by our use of AADF. We believe that the utility is correct, and cannot envision any scenario wherein the used and useful percentage would be less. The denominator is set at 1.25 mgd, and the minimum numerator would appear to be the AADF figure. Therefore, prior to the inclusion of any rate case expense items, we believe that the minimum annual revenue figure would be calculated by using the AADF figure.

With the denominator set at 1.25 mgd, the utility argues that: "This change alone allows additional uncontroverted revenue above that allowed by the Final Order in the amount of $174,661 on an annual basis." Although the amount actually subject to refund has been reduced, intervenors could still contest the amount of any additional rate case expense in an appeal. Also, a party could possibly appeal the use of the AADF figure. However, because this possibility is so remote, we find it appropriate to use the uncontroverted 1.25 mgd figure in the denominator and the minimal AADF figure in the numerator to calculate a minimum revenue requirement of $2,188,948. Taking the revenue requirement of $2,489,487 found in the PAA Order, and subtracting the minimum revenue figure of $2,188,948, $300,539 of annual revenues, and $25,044.92 of monthly revenues are subject to refund. Therefore,

12.072 percent of revenues shall be continued to be collected subject to refund.

Pursuant to Sections 367.081 and 367.121, Florida Statutes, we must set rates which are fair, just, reasonable, compensatory, and not unfairly discriminatory. The utility argues that it is unreasonable to keep the full amount subject to refund, when, in reality, only a portion of it is still subject to any appellate process. There appears to be very little prejudice, if any, in keeping the difference from the PAA rates and the revenue from our original Final Order subject to refund. However, holding the higher amount subject to refund could affect the utility's ability to support other corporate undertakings for its other utility systems. Moreover, its financial statements would still have to show those revenues being subject to refund.

In consideration of the foregoing, we find it is fair, just and reasonable to require that only the revenues collected above this minimum revenue requirement should continue to be collected subject to refund. Therefore, the amount of revenues being collected subject to refund shall be reduced as set forth above, and the amount of required security shall be correspondingly reduced. Therefore, the motion to make rates permanent shall be granted in part and denied in part, as set forth above.

The utility has also requested that it be allowed to continue collecting the PAA rates. Rule 25-22.061(2), Florida Administrative Code, states:

> (1)(a) When the order being appealed involves the refund of moneys to customers or a decrease in rates charged to customers, the Commission shall, upon motion filed by the utility or company affected, grant a stay pending judicial proceedings. The stay shall be conditioned upon the posting of good and sufficient bond, or the posting of a corporation undertaking, and such other conditions as the Commission finds appropriate.

In this case, the utility anticipated that we would continue to use AADF in the numerator, and, consequently, order a reduction in rates and a refund. The utility states that it will appeal this decision and be entitled to a stay. It has merely requested in advance that a stay be granted and that it be allowed to continue

charging the PAA rates. This is a reasonable request, and, as stated above, the current security is sufficient through June 15, 1999.

In the event the utility appeals the decisions in this Order, the utility shall be allowed to continue charging, subject to refund, the PAA rates that it now has in effect. Further, with the decision of the First District and the issuance of Order No. PSC-98-0509-PCO-WS, the revenues associated with the plant capacity being 1.25 mgd, as opposed to 1.5 mgd, are no longer in dispute, and shall not be a part of the revenues held subject to refund. Therefore, in the event of an appeal, the utility's current corporate undertaking in the amount of $1,267,590.20 is sufficient security to protect revenues subject to refund through June 15, 1999. Also, as was done in Order No. PSC-98-0762-PCO-SU, the utility, in the event of an appeal, shall be required, without additional action by this Commission, to automatically increase its corporate undertaking starting on June 15, 1999, and every six months thereafter, so as to protect the amount subject to refund for the next six months as shown on Schedule No. 6. Further, pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility shall continue to provide a report by the twentieth of each month indicating the monthly and total revenue collected subject to refund. Finally, the corporate undertaking shall state that it will remain in effect during the pendency of any appeal as stated in the utility's motions and will be released or terminated upon subsequent order of the Commission addressing the potential refund.

XI. UTILITY'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Our rulings on the utility's proposed Findings of Fact and Conclusions of Law are found in Attachment A.

XII. DOCKET CLOSURE

Upon expiration of the protest period for the correction and removal of used and useful adjustments to reuse facilities, and the appeals period for the remainder of the order, if a timely protest is not received from a substantially affected person and an appeal is not filed, this docket shall remain open pending our staff's verification that the refunds have been completed. Upon verification that the refunds have been made, and there are no unclaimed refunds, our staff shall close this docket.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the application of Florida Cities Water Company, North Ft. Myers Division, for increased wastewater rates is granted to the extent set forth in the body of this Order. It is further

ORDERED that Florida Cities Water Company's used and useful plant for the North Ft. Myers wastewater treatment plant shall be calculated as set forth in the body of this Order, which yields a 79 percent used and useful percentage for this plant. It is further

ORDERED that the rates of Florida Cities Water Company, North Ft. Myers Division, shall be corrected such that no used and useful adjustment shall be made to those facilities classified as reuse. It is further

ORDERED that the provisions of this Order concerning the correction and removal of used and useful adjustments to reuse facilities are issued as proposed agency action and shall become final unless an appropriate petition in the form provided by Rule 25-22.029, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that each of the findings made in the body of this Order is hereby approved in every respect. It is further

ORDERED that all matters contained in the schedules and Attachment A attached hereto are by reference incorporated herein. It is further

ORDERED that the rates approved herein shall be effective for service rendered on or after the stamped approval date on the revised tariff sheets, pursuant to Rule 25-30.475, Florida Administrative Code, provided the customers have received notice. It is further

ORDERED that Florida Cities Water Company, North Ft. Myers Division shall provide proof that the customers have received notice within ten days of the date of notice. It is further

ORDERED that prior to its implementation of the rates approved herein, Florida Cities Water Company, North Ft. Myers Division

shall submit and have approved a proposed customer notice to its customers of the decreased rates and reasons therefore. The notice will be approved upon staff's verification that it is consistent with our decision herein. It is further

ORDERED that prior to its implementation of the rates approved herein, Florida Cities Water Company, North Ft. Myers Division shall submit and have approved revised tariff pages. The revised tariff pages will be approved upon staff's verification that the pages are consistent with our decision herein and that the proposed customer notice is adequate. It is further

ORDERED that Florida Cities Water Company, North Ft. Myers Division, shall refund with interest, calculated pursuant to Rule 25-30.360(4), Florida Administrative Code, the wastewater revenues collected subject to refund as set forth in the body of this Order. It is further

ORDERED that Florida Cities Water Company, North Ft. Myers Division, shall make the refund to customers of record as of the date of this Order pursuant to Rule 25-30.360(3), Florida Administrative Code. Florida Cities Water Company, North Ft. Myers Division, shall submit the proper refund reports pursuant to Rule 25-30.360(7), Florida Administrative Code. It is further

ORDERED that Florida Cities Water Company, North Ft. Myers Division, shall treat any unclaimed refunds as contributions-in-aid-of-construction pursuant to Rule 25-30.360(8), Florida Administrative Code. It is further

ORDERED that the rates shall be reduced at the end of the four-year rate case expense amortization period, consistent with our decision herein. Florida Cities Water Company, North Ft. Myers Division, shall file revised tariff sheets no later than one month prior to the actual date of the reduction and shall file a proposed customer notice. It is further

ORDERED that the Motion of Florida Cities Water Company, North Ft. Myers Division, to make rates permanent is granted in part and denied in part, as set forth in the body of this Order. It is further

ORDERED that in the event Florida Cities Water Company, North Ft. Myers Division, appeals the decisions in this Order, the utility shall be allowed to continue charging, subject to refund,

the proposed agency action rates that it now has in effect. It is further

ORDERED that in the event of an appeal, the amount of annual revenues subject to refund is $300,539. It is further

ORDERED that the corporate undertaking of Florida Cities Water Company, North Ft. Myers Division, in the amount of $1,267,590.20 is sufficient security to protect revenues subject to refund through June 15, 1999. It is further

ORDERED, in the event of an appeal, Florida Cities Water Company, North Ft. Myers Division, shall be required, without additional action by this Commission, to automatically increase its corporate undertaking starting on June 15, 1999, and every six months thereafter, so as to protect the amount subject to refund for the next six months as shown on Schedule No. 6. It is further

ORDERED that pursuant to Rule 25-30.360(6), Florida Administrative Code, Florida Cities Water Company, North Ft. Myers Division, shall continue to provide a report by the twentieth of each month indicating the monthly and total revenue collected subject to refund. It is further

ORDERED that the corporate undertaking shall state that it will remain in effect during the pendency of any appeal and will be released or terminated upon subsequent order of the Commission addressing the potential refund. It is further

ORDERED that the utility's Proposed Findings of Fact and Conclusions of Law are disposed of as set forth in Attachment A. It is further

ORDERED that this docket shall remain open pending our staff's verification that Florida Cities Water Company, North Ft. Myers Division, has completed the required refunds as set forth in this Order. Upon verification by staff that the refunds have been made, and there are no unclaimed refunds, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 8th day of April, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

RRJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

As identified in the body of this order, our action concerning the correction and removal of used and useful adjustments to reuse facilities is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on April 29, 1999. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this order shall become effective on the date subsequent to the above date.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If the relevant portion of this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

Any party adversely affected by the Commission's final action in this matter may request: (1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or (2) 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 by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

FLORIDA CITIES WATER CO.-NORTH FT. MYERS DIVISION
SCHEDULE OF WASTEWATER RATE BASE
TEST YEAR ENDED 12/31/95

SCHEDULE NO. 1-A

DOCKET NO. 950387-SU

COMPONENT	TEST YEAR PER ORDER NO PSC-96-1133-FOF-SU	COMMISSION ADJUSTMENTS	COMMISSION ADJUSTED TEST YEAR
UTILITY PLANT IN SERVICE	$13,120,329	$0	$13,120,329
LAND	5,000	0	5,000
PROPERTY HELD FOR FUTURE USE	(2,425,823)	962898.53	(1,462,924)
CONSTRUCTION WORK IN PROGRESS	0	0	0
ACCUMULATED DEPRECIATION	(3,092,676)	0	(3,092,676)
CIAC	(3,453,343)	(43,821)	(3,497,164)
AMORTIZATION OF CIAC	1,347,639	2,823	1,350,462
UNFUNDED FASB 106 OBLIGATION	(81,855)	0	(81,855)
OTHER: ALLOC. OF GENERAL OFFICE	27,799	0	27,799
WORKING CAPITAL ALLOWANCE	78,845	0	78,845
RATE BASE	$5,525,915	$921,900	$6,447,815

FLORIDA CITIES WATER CO N. FT MYERS (WASTEWATER)
ADJUSTMENTS TO RATE BASE
TEST YEAR ENDED 12/31/95

SCHEDULE NO. 1-B
DOCKET NO. 950387-SU

EXPLANATION

PROPERTY HELD FOR FUTURE USE

a) Used and Useful Adjustment After Remand-Treatment Plant	$912,587
b)To Remove Used & Useful Adjustment for Reuse Facilities	50,312
	$962,899

CIAC

To Adjust for imputation of CIAC on Margin Reserve	$(43,821)

ACCUMULATED AMORTIZATION

To reflect adjustment to impute CIAC on Margin Reserve	$2,823

FLORIDA CITIES WATER CO.-NORTH FT. MYERS
CAPITAL STRUCTURE
TEST YEAR ENDED

SCHEDULE NO. 2
DOCKET NO.

DESCRIPTION	TOTAL CAPITAL	SPECIFIC ADJUSTME (EXPLAIN)	PRO RATA ADJUSTME	CAPITAL RECONCILED TO RATE BASE	RATIO	COST RATE	WEIGHTED COST
PER UTILITY							
1 LONG TERM DEBT	$ 36,660,000	0	$ (32,600,47	$ 4,059,521	48.30%	9.53%	4.60%
2 SHORT-TERM DEBT	0	0	0	0	0.00%	0.00%	0.00%
3 PREFERRED STOCK	9,000,000	0	(8,003,391)	996,609	11.86%	9.00%	1.07%
4 COMMON EQUITY	20,782,53	0	(18,481,19	2,301,341	27.38%	11.34%	3.11%
5 CUSTOMER DEPOSITS	1,013,037	0	(900,859)	112,178	1.33%	6.00%	0.08%
6 DEFERRED ITC'S-ZERO	0	0	0	0	0.00%	0.00%	0.00%
7 DEFERRED ITC'S-WTD	1,678,281	0	(1,492,438)	185,843	2.21%	9.96%	0.22%
8 DEFERRED INCOME	6,762,006	0	(6,013,220)	748,786	8.91%	0.00%	0.00%
9 TOTAL CAPITAL	$ 75,895,863	$ 0	$ (67,491,58	$ 8,404,278	100.00%		9.08%
PER COMMISSION							
10 LONG TERM DEBT	$ 34,820,000	$ 0	$ (31,868,05	$ 2,951,948	45.78%	8.30%	3.80%
11 SHORT-TERM DEBT	0	0	0	0	0.00%	0.00%	0.00%
12 PREFERRED STOCK	9,000,000	0	(8,237,004)	762,996	11.83%	9.00%	1.07%
13 COMMON EQUITY	22,782,53	0	(20,851,09	1,931,443	29.96%	11.88%	3.56%
14 CUSTOMER DEPOSITS	1,013,037	0	(927,154)	85,883	1.33%	6.00%	0.08%
15 DEFERRED ITC'S-ZERO	0	0	0	0	0.00%	0.00%	0.00%
15 DEFERRED ITC'S-WTD	1,678,281	0	(1,536,001)	142,280	2.21%	9.62%	0.21%
16 DEFERRED INCOME	6,762,006	0	(6,188,741)	573,265	8.89%	0.00%	0.00%
17 TOTAL CAPITAL	$ 76,055,863	$ 0	$ (69,608,04	$ 6,447,815	100.00%		8.72%

	RANGE OF	LOW	HIGH
	RETURN ON EQUITY	10.88%	12.88%
	OVERALL RATE OF	8.42%	9.02%

FLORIDA CITIES WATER CO.-NORTH FT. MYERS DIVISION
STATEMENT OF WASTEWATER
TEST YEAR ENDED 12/31/95

SCHEDULE NO. 3-A
DOCKET NO. 950387-SU

DESCRIPTION	TEST YEAR PER ORDER NO PSC-96-1133-FOF-SU	COMMISSION ADJ	COMMISSION ADJUSTED TEST YEAR	REVENUE INCREASE	REVENUE REQ
OPERATING REVENUES	$2,003,347	$0	$2,003,347	$225,946	$2,229,293
OPERATING EXPENSES				11.28%	
OPERATION AND MAINTENANCE	944,199	38,530	982,729		982,729
DEPRECIATION	279,337	58,182	337,519		337,519
AMORTIZATION	949	0	949		949
TAXES OTHER THAN INCOME	191,202	10,015	201,217	10,168	211,385
INCOME TAXES	106,035	(52,497)	53,538	81,197	134,735
TOTAL OPERATING EXPENSES	$1,521,721	$54,230	$1,575,952	$91,365	$1,667,317
OPERATING INCOME	$481,626	$(54,230)	$427,395	$134,581	$561,976
RATE BASE	$5,525,915			$6,447,815	$6,447,815
RATE OF RETURN	8.72%		6.63%		8.72%

FLORIDA CITIES WATER CO.-NORTH FT. MYERS DIVISION
ADJUSTMENTS TO OPERATING STATEMENTS
TEST YEAR ENDED 12/31/95

SCHEDULE NO. 3-B
DOCKET NO. 950387-SU

EXPLANATION	WASTEWATER ADJUSTMENT
A OPERATION & MAINTENANCE EXPENSES	
a) Adjustment to reflect provision for non-legal appellate rate case expense	$3,959
b) Adjustment to reflect provision for rate case expense since remand from courts	34,571
DEPRECIATION EXPENSE	
To reflect adjustment to impute additional CIAC on margin reserve	($2,823)
To reflect used and useful adjustment	61,005
TAXES OTHER THAN INCOME TAXES	
To reflect used and useful adjustment to property taxes	$10,015
INCOME TAXES	
Income taxes associated with adjustments	($52,497)
OPERATING REVENUES	
Adjustment to reflect revenue requirement	$225,946
TAXES OTHER THAN INCOME TAXES	
Regulatory assessment taxes on additional revenues	$10,168
INCOME TAXES	
Income taxes related to income amount	$81,197

RATE SCHEDULE NO. 4

1633

Wastewater
Monthly Rates

	Tariffed Rates Prior to Filing	Implemented PAA Rates	Utility Requested Final Rates	Comm. Approved Final Rates
Residential				
Base Facility Charge (meter size)				
All Meter Sizes	$24.37	$28.56	$29.51	$26.29
Gallonage Charge, per 1,000 gallons (Maximum 6,000 gallons)	$ 4.62	$ 5.15	$ 5.32	$ 4.49
General Services and all other classes				
Base Facility Charge (meter size)				
5/8" x 3/4"	$24.37	$28.56	$29.51	$26.29
1"	$60.94	$71.41	$73.76	$65.73
1 1/2"	$121.87	$142.80	$147.53	$131.47
2"	$194.99	$228.52	$236.04	$210.35
3"	$389.98	$457.03	$472.09	$420.70
4"	$609.35	$714.11	$737.63	$657.34
6"	$1,218.69	$1,428.23	$1,475.27	$1,314.68
Gallonage Charge, per 1,000 gallons (No Maximum)	$5.55	$6.18	$6.38	$5.38
Typical Monthly Bill Comparisons				
Residential Usage (gallons)				
3000	$38.23	$44.01	$45.47	$39.76
5000	$47.47	$54.31	$56.11	$48.74
10000	$52.09	$59.46	$61.43	$53.23

RATE SCHEDULE NO. 5
Schedule of Rate Decrease After Expiration of
Amortization Period for Rate Case Expense

Wastewater
Monthly Rates

	Commission Approved Rates	Rate Decrease
Residential		
Base Facility Charge (meter size) All Meter Sizes	$26.29	$0.77
Gallonage Charge, per 1,000 gallons (Maximum 6,000 gallons)	$ 4.49	$0.13
General Service and all other classes		
Base Facility Charge (meter size):		
5/8" x 3/4"	$26.29	$0.77
1"	$65.73	$1.93
1 1/2"	$131.47	$3.86
2"	$210.35	$6.17
3"	$420.70	$12.35
4"	$657.34	$19.29
6"	$1,314.68	$38.58
Gallonage Charge, per 1,000 gallons (Maximum 6,000 gallons)	$5.38	$0.16

FLORIDA CITIES WATER CO.-NORTH FT. MYERS DIVISION		SCHEDULE NO. 6	
CALCULATION OF SECURED REVENUES		DOCKET NO. 950387-SU	
TEST YEAR ENDED 12/31/95			
	THREE MTH APPEAL Time	NINE MTH APPEAL Time	F
Revenue Requirement - Per Order No. PSC 95-1360-FOF-SU(PAA)	$2,489,487	$2,489,487	
Minimum Revenue Req. Based on Court of Appeal Decision Using AADF & 1.25 MGD/capacity & Removal of Appellate Non-legal Rate Case Expense & Rate Case Expense Since the Remand	$2,188,948	$2,188,948	
Revenue Difference:	$300,539	$300,539	
Monthly revenue increase	$25,045	$25,045	
Revenues subject to refund	$300,539	$300,539	
Divide by number of months	12	12	
Average monthly revenues	$25,045	$25,045	
No. of months until refund:	42	48	
Estimated date that refund is completed	June 15, 1999	Dec 15, 1999	
	$1,051,886	$1,202,156	
Interest rate:	5.59%	5.59%	
Interest rate for the period that revs are held subject to refund:	19.58%	22.37%	
	??	??	
Amount to be secured:	**ERR**	**ERR**	

ATTACHMENT A

PROPOSED FINDINGS OF FACT

ISSUE 1

1. All parties agree that the Commission should not ignore average daily flow in the peak month in determining used and useful plant to be included in rate base. Prehearing Order, Order No. PSC-98-1577-PHO-SU (Prehearing Order), p. 8; Direct Testimony M. Acosta, pp. 5-7, T. 876-878; K. Dismukes, T. 1036; R. Crouch, T. 1190; T. Biddy, T. 1290.

RULING: Accept.

2. Mr. Harley Young, P.E., a DEP Section Manager, in the Ft. Myers office of the South Florida Division, supervising, among other things, the permitting of domestic wastewater systems, testified with regard to DEP permitting and with regard to the Waterway Estates AWTP permitting in particular. Florida Cities was required to provide, and did so provide, reasonable assurances that the peak and maximum flows to be received by the AWTP will be treated to meet the DEP water based effluent limitation requirements. Direct Testimony H. Young, pp. 2-4, T. 1001-1003. Mr. Crouch and Mr. Biddy gave consistent testimony. T. 1192-1193, 1199, 1292.

RULING: Accept.

3. A determination of used and useful must be concerned with the maximum flows the treatment plant may experience in order to allow for such an event. This is the only way to ensure that safe, adequate service is continuously provided. Direct Testimony M. Acosta, p. 8. T. 879.

RULING: Accept first sentence, reject second sentence as argumentative and conclusory.

4. When customer flows on a monthly basis exceed AADF, sufficient plant must be in place and available to receive and treat those flows above AADF. If MMADF is not considered in the used and useful calculation, it would create a situation in which the utility would be required to have plant available to treat the peak flows yet the plant investment required to treat those peak flows would not be recognized for ratemaking purposes. Rebuttal Testimony M. Acosta, p. 2, 12; T. 1301, 1311.

RULING: Accept first sentence. Reject second sentence as argumentative and unsupported by the record.

5. Section 367.081(2)(a), Fla. Stat.(1997), requires that the Commission set just and reasonable rates. In doing so the PSC is required to consider "the investment of the utility in land acquired or facilities constructed in the public interest," as well as "operating expenses incurred in the operation of all property used and useful in the public service; and a fair return on the investment of

the utility in property used and useful in the public service."

RULING: Reject because it does not constitute a finding of fact.

6. In expanding the AWTP, Florida Cities was required to and did invest in plant necessary to treat the maximum and peak flows in constructing the AWTP. T. 978, 1190.

RULING: Accept.

ISSUE 2

1. All parties agree that the change in the wording of the DEP permit application so that the permit and application now indicate the basis for design capacity does not correspond to a real change in operating capacity. Prehearing Order, p. 8; Direct Testimony of M. Acosta, pp. 4-5, T. 875-876; T. 921-922; T. Cummings, T. 950-951, 979; H. Young, T. 1008, 1019; K. Dismukes, T. 1036; T. Biddy, T. 1291.

RULING: Accept.

ISSUE 3

1. In determining the used and useful calculation for the Waterway Estates WWTP, MMADF should be used in the numerator to represent the actual flows going to the WWTP. Use of AADF in the numerator completely misses the seasonal population fluctuations, and does not recognize sufficient capacity to accommodate the maximum month flows, and is not consistent with DEP Rule 62-600, Fla. Admin. Code. Direct Testimony M. Acosta, pp. 8, 11-12, T. 879, 882-883.

RULING: Reject as unsupported by the record, and argumentative.

2. The use of AADF in the numerator of the WWTP used and useful calculation vastly understates the used and usefulness of the AWTP, decreasing it from 100% to 80%. Direct Testimony M. Acosta, p. 10, T. 881; Rebuttal Testimony M. Acosta, pp. 8-9, T. 1307-1308.

RULING: Reject as argumentative and unsupported by the record.

3. A used and useful calculation using AADF in the numerator and denominator does not recognize, for ratemaking purposes, that additional plant necessary to treat maximum flows. T. 898-899, 901. If MMADF is not considered and used in the numerator of the used and useful calculation, it would create a situation in which the utility would be required to have plant available to treat the peak flows yet the plant investment required to treat those peak flows would not be recognized for ratemaking purposes. Rebuttal Testimony M. Acosta, p. 2, 12; T. 1301, 1308.

RULING: Reject as unsupported by the record, and argumentative.

4. There is no competent substantial evidence to support Mr. Crouch's testimony that MMADF must be ignored in determining used and useful because the time frame associated with the design capacity of the AWTP was AADF. Mr. Crouch argues that the mathematical principle of "dimensional consistency" is violated if the basis of design associated with the plant design capacity (denominator) and average daily flow, that is, the total volume of wastewater flowing into a plant (numerator) do not match. Mr. Crouch incorrectly applies dimensional consistency by referring to AADF and MMADF as "units," which they are not. His argument is absolutely wrong.

RULING: Reject as argumentative and unsupported by the record.

5. The principle of dimensional consistency is properly observed in dividing MMADF by AADF in calculating used and useful percentage. Dimensional consistency requires "units" to match. The units which are used in measuring flows are "millions of gallons per day" or "mgd." The

terms "AADF," "MMADF," and "3MADF," are not units, but are the time periods during which the flows, measured in units of mgd, are measured. M. Acosta, T. 910-912; T. Cummings, T. 971-972. This finding is supported by the physics text relied upon by Mr. Crouch (Exhibit 41, tab 16), by the definitions contained in the DEP rules governing permitting of wastewater treatment plants (Exhibit 41, tab 19), and by the only competent engineering testimony of record. Rebuttal Testimony M. Acosta, pp.6, T. 1305; M. Acosta, T. 910-912; T. Cummings, T. 971-972.

RULING: Reject as argumentative and unsupported by the record.

6. If Mr. Crouch's interpretation of dimensional consistency were correct, and it is mathematically unethical not to match the time frames (which he incorrectly labels "units") in the numerator and denominator of the used and useful equation, then the DEP's capacity analysis rule would violate the principle of dimensional consistency, and all those who use that formula would likewise be labeled as "unethical." DEP Capacity Analysis Report Rule 62-600.405, F.A.C. (Exhibit 34), determines what percentage of a WWTP's facilities are being used by dividing the most recent consecutive three months average daily flows (3MADF) in the numerator by the permitted plant capacity (denominator). In dividing by the permitted plant capacity, there is no consideration made as to the time frame associated with the plant's design capacity. In other words, there is absolutely no consideration of "matching" of time frames in the numerator or denominator. Furthermore, if time frames were units, which they are not, it would be mathematically impossible to determine percentages of other events occurring within a specific time period, which it is not. For instance, calculating the percentage of annual rainfall occurring in June requires dividing one month's rainfall into the 12-month annual average rainfall. Under Mr. Crouch's argument, this calculation is mathematically impossible.

RULING: Reject as unsupported by the record, argumentative, conclusory and for sentences one and two, a legal conclusion as to the provisions of DEP's rules.

7. Mr. Crouch's understanding of dimensional consistency is wrong. Both the DEP capacity analysis rule and use of MMADF in the numerator and AADF in the denominator of the used and useful calculation are proper mathematical equations where units (mgd) are dimensionally consistent. Apparently, Mr. Crouch's current understanding of "dimensional consistency" occurred subsequent to the First District Court's entry of its opinion on January 12, 1998, in the Florida Cities' case (705 So. 2d 620). On November 19, 1996, he made a presentation to the re-use coordinating committee indicating the Commission policy was to use ADFMM in the numerator when determining used and useful (Ex. 41, tab 5). He confirmed this fact in testimony in Docket No. 960258-WS on December 10, 1996 (Ex. 41, tab 12 and 14). Then, on December 9, 1997, after the Florida Cities' case had been argued but before the District Court had rendered its opinion, Mr. Crouch, in direct testimony before DOAH, testified that the ADFMM was used in the numerator. Only later, under cross-examination by an attorney from the firm who had represented FCWC in this case, did Mr. Crouch admit that the Commission had started using other than ADFMM (Ex. 41, tab 14).

RULING: Reject first three sentences as either argumentative, conclusory, or unsupported by the record. Accept remainder of paragraph.

8. The parties agree that the permitted capacity of a plant is the capacity of that plant, no matter what the basis of design associated with the capacity. The permitted and actual capacity of the Waterway Estates AWTP are one and the same: 1.25 mgd. Rebuttal Testimony of M. Acosta, p. 2, 9; T. 1301, 1308. Witness Harley Young, P.E., testified as follows:

Q. If a plant is permitted based on maximum month average daily flow, would it be permitted at a greater capacity than if it was permitted based on average annual daily flow?

A. No. The capacity is the capacity. The basis of design simply tells you that it's designed based on a peak seasonal flow.

Direct Testimony H. Young, pp. 4, 5; T. Cummings, T. 951; H. Young, T. 1008-1009; T. Biddy, 1291-1292. In other words, the time frame associated with the design capacity of a plant does not result in any "hidden" or extra capacity over and above the AWTP's 1.25 mgd capacity. Thus, the AADF time frame associated with the 1.25 mgd permitted capacity of the AWTP does not have any bearing whatsoever on the volume of wastewater flows which should be used in the numerator of the used and useful calculation, and certainly does not dictate a "matching" of time frames in the numerator and denominator.

RULING: Accept first three sentences with caveat that permitted capacity of plant is 1.25 mgd based on AADF. Remainder of paragraph rejected as argumentative or unsupported by the record.

9. Mr. Crouch testified that the surge tank is the equipment necessary to "handle peak flows," and the investment in the surge tank "would be considered in the used and useful equation." T. 1185, 1191. However, the undisputed testimony is that a surge tank "equalizes" flows occurring for period of <u>hours</u> only. The fact that the Waterway Estates AWTP has a surge tank (flow equalization tank) does not give any valid reason for ignoring MMADF in the numerator of the used and useful calculation. A surge tank does not increase capacity above permitted capacity. All plants, no matter what the time frame associated with their design bases, may have, but are not necessarily required to have, a surge tank. Use of a surge tank is an economical manner in which to allow other components of a plant to be sized smaller. Rebuttal Testimony M. Acosta, pp. 10-11. T. 912-914; T. Cummings, T. 967.

RULING: Accept first two sentences. Reject third sentence as being argumentative. Accept remainder of the paragraph.

10. No benefit of any sort would accrue to Florida Cities if the PSC were to "match" the AADF time frame associated with the AWTP's design (denominator) with an AADF time frame for measuring the total volume of wastewater flowing into the AWTP (numerator). The staffing requirements of DEP Rule 62-699.310-311, F.A.C., are not

in any manner dependent upon average daily flow ("ADF") time periods or design capacity time frames. Rebuttal Testimony M. Acosta, p. 11-13; T. 1310-1312; T. 908-909.

RULING: Reject first sentence as argumentative, conclusory, irrelevant, and unsupported by the record. Reject second sentence as being a legal conclusion.

11. Neither the margin reserve calculation nor AFPI allow any recognition into rate base of facilities required to accommodate maximum flows experienced in connection with current customers. Direct Testimony M. Acosta, p. 9, T. 880.

RULING: Accept.

12. Ms. Dismukes is not an engineer, and did not purport to offer testimony for the purpose of addressing the engineering aspects of this case. She intended to address the policy and regulatory aspects of "the annual average daily flow versus peak month flow issues." Direct Testimony K. Dismukes, p. 1; T. 1027. Although Ms. Dismukes advocated "matching" similar time frames in the numerator and denominator in this case ("apples to apples" at T. 1031), she gave no policy or regulatory reasons for doing so, but relied mainly upon the testimonies of Mr. Biddy and Mr. Crouch to support such "matching". For instance, Ms. Dismukes could not answer on cross examination whether the investment to treat peak flow is not used and useful, deferring to Mr. Biddy. T. 1041.

RULING: Accept first two sentences. Reject third sentence as argumentative and unsupported by the record. Accept last sentence.

ISSUE 4

1. Florida Cities has incurred $244,979.20 in rate case expense, not including appellate rate case expense for which it has been reimbursed by the Florida Public Service Commission. Direct Testimony L. Coel, pp. 1-4; T. 983-986; Exhibit 36 (LC-1, LC-1a, LC-1b); T. 991.

RULING: Accept.

2. Of this $244,979.20, the PSC has previously approved as prudently incurred, $90,863.03, pursuant to Final Order No. PSC-96-1133-FOF-SU. Direct Testimony L. Coel, p. 1, T. 983; Exhibit 36 (LC-1, LC-1a, LC-1b); T. 992.

RULING: Accept.

3. Since the time of the issuance of the First District Court of Appeal's decision remanding the case for further proceedings, Florida Cities has incurred a total actual and estimated rate case expense amount of $154,116.16. This amount of rate case expense is fully supported by back-up documentation in Exhibit 36 (LC-1, LC-1a, LC-1b). Direct Testimony L. Coel, pp. 2; T. 984.

RULING: Accept.

4. The back-up documentation to the legal fees expense for the remand proceeding shows detailed records for legal work performed by K. Gatlin, K. Cowdery, and W. Schiefelbein. The documents show these attorneys performing separate tasks during the rate case. Exhibit 36; T. 995-996. There was no testimony which attempted to dispute the reasonableness of the attorneys fees and no evidence of duplication of effort. There is no evidence that paralegals should have been used instead of attorneys for any of the attorney's work performed.

RULING: Accept first sentence. Reject second sentence as unsupported by the record. Accept remainder of paragraph.

ISSUE 5

1. Since January, 1996, during pendency of the appeal, rate case expenses identified on Exhibit 36 (LC-1b) as $15,833.60 were incurred primarily for the costs of maintaining duplicate billing registers, pursuant to PSC Order No. PSC-96-0038-FOF-SU, issued Jan. 10, 1996.

RULING: Accept.

2. The duplicate billing register is the only record of each customer's bill calculated at the previously authorized, non-interim, rate structure. The register is used to determine revenues generated using the prior rates which are included in the FCWC North Ft. Myers Division's monthly reports to the PSC required by Order No. PSC-96-0038-FOF-SU. The reports are required to show the amount of revenue billed each month and inception-to-date using interim rates, prior rates, and the difference. Direct Testimony L. Coel, p. 3; T. 990-994.

RULING: Reject the first sentence as unsupported by the record. Accept the remainder of the paragraph.

3. The PSC has previously allowed Florida Cities to recover duplicate billing register costs as rate case expense. Direct Testimony L. Coel, pp. 3-4; T. 985-986.

RULING: Accept.

4. Approximately $1000 of the total amount is for Florida Cities' in-house rate department time. These expenses are fully supported by undisputed evidence. Exhibit 36 (LC-1, LC-1a, LC-1b); Direct Testimony L. Coel, pp. 2-3, T. 984-985.

RULING: Accept.

ISSUE 6

1. The revenue requirement in the PAA Order No. PSC-95-1360-FOF-SU, is $2,489,487 based on the test year ending December 31, 1995. The appropriate revenue requirement in this proceeding must adjust the PAA revenue requirement by $20,854 annually due to the rate reduction credit, discussed in the procedural background section of this brief, and by $50,921 annually due to the additional rate case expense, as discussed in Issues 4 and 5 of this brief. See Attachment "D" hereto.

RULING: Accept first sentence and first half of second sentence. Reject second half of second sentence as unsupported by the record and conclusory.

2. FCWC has consistently maintained that its investment is 100% used and useful thereby resulting in the revenue requirement of $2,519,554 without the necessity of considering the application of Sec. 367.0817, Fla. Stat. However, Florida Cities appealed the issue of the PSC's failure to include the entire cost of its effluent reuse project in rate base as a violation of the requirements of Sec. 367.0817, Fla. Stat., on its appeal from Order No. PSC-96-1133-FOF-SU. Amended Brief of Appellant, Florida Cities Water Company, pp. 20-21, 45. The Court did not reach this issue on appeal.

RULING: Accept.

3. The choice of effluent reuse site was found to be a prudent decision. Order No. PSC-96-1133-FOF-SU, p. 39. None of the effluent reuse project facilities were found to be unreasonably or imprudently built.

RULING: Accept.

ISSUE 7

1. The PAA rates which are currently in effect are based upon a finding of the Waterway Estates AWTP facilities, including reuse, being 100% used and useful. The PAA rates are based upon the rate case MFR revenue requirement as adjusted by Staff. Other than the issues appealed to the First District Court of Appeal, Florida Cities did not contest the Staff adjustments to the revenue requirement.

RULING: Accept.

2. Since the entry of the PAA Order, Florida Cities has prudently incurred an additional $154,116.16 of rate case expense (not including appellate rate case expenses reimbursed by the PSC pursuant to Court and DOAH Orders). Issues 4 and 5 herein.

RULING: Accept.

3. The rate reduction credit which has been effective since June 30, 1996, has resulted in an annual revenue

reduction of $20,854, which must be properly accounted for in the final rates.

RULING: Accept.

ISSUE 8

1. Based on the additional rate case expense of $154,116.16, revenue should be reduced at the end of four years by $38,529.04. See Findings of Fact in Issues 4 and 5, above; Sec. 367.0816, Florida Statutes.

RULING: Reject as unsupported by the record.

ISSUE 9

1. Based upon the findings of fact and conclusions of law in Issues 1-8 above, the final rates will be greater than the PAA rates currently in effect.

RULING: Reject as unsupported by the record.

CONCLUSIONS OF LAW

ISSUE 1

1. Sec. 367.081(2), Fla. Stat. (1997), requires the PSC in ratemaking to consider the investment of the utility in land acquired or facilities constructed in the public interest which includes plant investment necessary to treat average daily flow in the peak month, that is, MMADF. For this reason, the Commission may not ignore average daily flow in the peak or maximum month in determining used and useful plant. Failure to use the MMADF in the numerator ignores average daily flow in the peak month.

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

ISSUE 2

2. The fact that since 1991 the Department of Environmental Protection has been using different language on its permit application and permits does not justify "matching" Florida Cities' Waterway Estates WWTP AADF design basis (denominator) with use of AADF flows (numerator), because the undisputed evidence in this case is that the change in wording did not correspond to any change in operating capacity. See So. States Util. v. Fla. Pub. Serv. Com'n, 714 So. 2d 1046, 1054-56 (Fla. 1st DCA 1998).

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

ISSUE 3

1. The proposed "matching" of AADF in the numerator with the design basis of Florida Cities' 1.25 AWTP AADF, ignores average daily flow in the peak month (MMADF) in calculating used and useful plant to be included in rate base, and therefore would violate Sec. 367.081(2), Fla. Stat. (1997).

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

2. The "matching" principle argued by witnesses Crouch, Biddy, and Dismukes is unsupported by any competent substantial evidence, and is unsupported by any scientific principle.

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

3. The "matching" principle argued by witnesses Crouch, Biddy, and Dismukes is inconsistent with and contrary to the rules of the DEP concerning the design and permitting of wastewater treatment plants, and concerning staffing requirements.

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

4. If the PSC is going to use a formula for calculating the used and useful percentage for Florida Cities' AWTP, or for any other wastewater treatment plant, it must consider and allow into rate base the investment in plant needed to provide service to the public. This must include the investment for plant required to treat all wastewater flows coming to the plant, including maximum or peak month flows. Therefore, the PSC must use MMADF in the numerator of the equation calculating the AWTP's used and useful percentage in this case.

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

ISSUE 4

1. A public utility is entitled to recover in rates those expenses reasonably necessary to provide service to its customers. Such operating expenses include prudently-incurred rate case expense. West Ohio Gas Company v. Public Utility Commission of Ohio, 294 U.S. 63 (1935); Driscoll v. Edison Light and Power Company, 307 U.S. 104 (1939).

RULING: Accept.

2. The undisputed evidence is that Florida Cities' rate case expense was reasonable and prudently incurred. Additional rate case expense in the amount of $154,116.16 should therefore be allowed.

RULING: Accept.

ISSUE 5

1. For the same reasons set forth in Issue 4 above, the $15,833.60 of costs for maintaining duplicate billing registers and for Florida Cities' in-house rate costs (which are included in the $154,116.16 discussed in Issue 4, above) should be allowed.

RULING: Accept.

ISSUE 6

1. Based upon the findings of fact and conclusions of law in Issues 1 - 5 above, the appropriate revenue requirement in this docket, based upon a finding of 100% used and useful, is $2,519,554 based on the test year ending December 31, 1995.

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

2. In addition, the PSC must apply the law as it exists at the time it makes its determination. See Hillhaven v. Dept. of Health & Rehab. Serv., 625 So. 2d 1299, 1302 (Fla. 1993), rev. denied 634 So. 2d 623 (Fla. 1994); In re Forfeiture of 1985 Mercedes, 596 So. 2d 1261 (Fla. 1st DCA 1992).

RULING: Accept.

3. In the Final Order, the effluent reuse project investment was inappropriately reduced using a used and useful formula, rather than allowing all investment as prudently constructed. The reuse facilities' used and useful determination should be determined separately from the

rest of the facilities, pursuant to the Court's interpretation of Sec. 367.0817, Fla. Stat., in So. States Util. v. Fla. Pub. Serv. Com'n., 714 So. 2d 1046, 1058 (Fla. 1st DCA 1998).

RULING: Accept.

4. The reuse facilities and disposal site must be considered 100% used and useful pursuant to Sec. 367.0817, Fla. Stat., because they were prudently constructed in the public interest.

RULING: Accept.

5. However, because all investment in plant, including the reuse facilities, should be considered 100% used and useful pursuant to the PSC's used and useful formula calculation, application of the Court's interpretation of Sec. 367.0817, Fla. Stat., in So. States Util. v. Florida Public Service Com'n., supra., to the facts of this case, does not affect the final used and useful percentage of 100%.

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

ISSUE 7

1. The appropriate wastewater rates in this case are those as shown in Attachment "E" hereto, which are the PAA rates currently in effect, adjusted for the rate case expense amortization credit, also currently in effect, and as adjusted by allowance of the additional rate case expense incurred subsequent to the PAA order.

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

ISSUE 8

1. The appropriate amount by which rates should be reduced four years after the established effective date to reflect the removal of the amortized rate case expense as

required by Sec. 367.0816, Florida Statutes, is $38,529.04.

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

ISSUE 9

1. Since the final rates will be greater than the rates currently in effect, no refund will be required.

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.