

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Water and wastewater industry annual reestablishment of authorized range of return on common equity for water and wastewater utilities pursuant to Section 367.081(4)(f), F.S.

DOCKET NO. 020006-WS
ORDER NO. PSC-02-1651-PHO-WS
ISSUED: November 26, 2002

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on November 18, 2002, in Tallahassee, Florida, before Commissioner J. Terry Deason, as Prehearing Officer.

APPEARANCES:

MARSHA E. RULE, ESQUIRE, and KENNETH A. HOFFMAN, ESQUIRE, Rutledge, Ecenia, Purnell & Hoffman, P. A., P. O. Box 551, Tallahassee, Florida 32302
On behalf of Florida Water Services Corporation (Florida Water).

ADRIENNE E. VINING, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission (Staff).

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

By Proposed Agency Action Order No. PSC-02-0898-PAA-WS, issued on July 5, 2002, the Commission proposed to establish the authorized range of returns on common equity as required by Section

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367.081(4)(f), Florida Statutes, for the year 2002; additionally, the Commission proposed to apply the leverage formula to all water and wastewater utilities that currently have an authorized return on equity. Both Florida Water and the Office of Public Counsel (OPC) filed timely protests of the Order. Florida Water protested the application of the leverage formula to all water and wastewater utilities that currently have an authorized return on equity, while OPC protested the leverage formula methodology. On August 26, 2002, OPC withdrew its protest, and the leverage formula methodology became final with the issuance of Consummating Order No. PSC-02-1252-CO-WS on September 11, 2002. In order to address the remaining protest of Florida Water an administrative hearing for this docket has been scheduled for December 6, 2002, pursuant to Section 120.57(1), Florida Statutes.

As a result of discussions held prior to and at the November 18, 2002, Prehearing Conference, it was agreed that the testimony and exhibits filed to date could serve as the evidence for the proceeding, with all cross-examination waived by both Florida Water and Staff. Accordingly, the hearing, which had been scheduled for December 6, 2002, has been cancelled.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

No confidential information will be presented in this proceeding.

IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any,

statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

As discussed in the Case Background and Stipulations sections of this Order, the record in this case shall include the prefiled testimony and exhibits filed by Florida Water and Staff. The parties have further agreed to waive cross-examination of the witnesses.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Frank Seidman	Florida Water	1, 2, 3, 4
Marshall W. Willis	Staff	3, 4

VII. BASIC POSITIONS

FLORIDA WATER: Pursuant to Order PSC-02-0898-PAA-WS (the "PAA Order"), issued July 5, 2002, the Commission has established the authorized range of returns on common equity for water and wastewater utilities. However, in doing so, the Commission proposes to take the unprecedented step of mandating the application of the leverage formula range of return on common equity to all water and wastewater utilities that currently have an authorized return on equity. Florida Water challenges the proposed mandated application of the leverage formula return on common equity to all water and wastewater utilities that currently have an authorized return on equity.

The Commission's proposed mandated re-establishment of the range of returns for common equity under the leverage graph formula for water and wastewater utilities that already have a Commission-approved

return on common equity violates Section 367.081(2)(a), Florida Statutes, and Section 367.081(4)(f), Florida Statutes. Florida Water also maintains that the proposed mandated re-establishment of the range of returns on common equity as set forth in the PAA Order is inconsistent with a number of statutory and historically utilized ratemaking practices, would adversely affect utility planning and budgeting, would increase rate case expense, and would create additional uncertainty and risk that would adversely effect a utility's ability to provide quality service at the lowest possible cost.

STAFF:

Using the current leverage formula to reestablish the authorized return on equity (ROE) for all water and wastewater utilities that currently have an authorized ROE is administratively efficient and results in the utilities' ROE being more in line with current market conditions. The Commission does have the statutory authority to apply the current leverage formula methodology to all water and wastewater utilities with an authorized ROE.

VIII. ISSUES AND POSITIONS

ISSUE 1: Does the Commission have legal authority under Section 367.081(4)(f), Florida Statutes, to reestablish a utility's rate of return on common equity by the leverage graph formula where the utility already has a rate of return on common equity established by the Commission?

POSITIONS

FLORIDA WATER: No.

STAFF: Yes.

ISSUE 2: Does the Commission have legal authority under Section 367.081(2)(a), Florida Statutes, to reestablish the range of returns on common equity for water and wastewater utilities that have previously-established rates of return on common equity?

POSITIONS

Florida Water: No.

STAFF: Yes.

ISSUE 3: Whether the Commission's proposed re-establishment of the range of returns on common equity for water and wastewater utilities that have previously-established rates of return on common equity:

(a) violates or is inconsistent with Commission rules and/or policies for establishing rates and/or analyzing whether a utility is under-earning or over-earning; or

(b) is arbitrary, capricious or speculative?

POSITIONS

FLORIDA WATER: (a) Yes.
(b) Yes.

STAFF: (a) No.
(b) No.

ISSUE 4: Should the Commission use the current leverage formula to reestablish the authorized ROE for all water and wastewater utilities that currently have an authorized ROE?

POSITIONS

FLORIDA WATER: No.

STAFF: Yes.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
	<u>Direct</u>		
Marshall W. Willis	Staff	MWW-1	List of Commission Orders Where Return on Equity was Adjusted Outside of Rate Base

X. PROPOSED STIPULATIONS

The parties have agreed to stipulate to the following:

1. The record in this case shall include the prefiled testimony and exhibits filed by Florida Water and Staff.
2. Cross-examination of the witnesses is waived.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. RULINGS

All parties have agreed that the record in this case shall include the prefiled testimony and exhibits filed by Florida Water and Staff, and that cross-examination of the witnesses is waived. Accordingly, there is no need for the hearing currently scheduled


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to be held on December 6, 2002, pursuant to Section 120.57(1), Florida Statutes. Therefore, the hearing currently scheduled for December 6, 2002, in this proceeding is hereby cancelled. All other provisions of Order Nos. PSC-02-1104-PCO-WS and PSC-02-1286-PCO-WS, issued August 12, 2002, and September 20, 2002, respectively, are hereby affirmed.

It is therefore,

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner J. Terry Deason as Prehearing Officer, this 26th day of November, 2002.



J. TERRY DEASON
Commissioner and Prehearing Officer

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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.

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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.