

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Annual reestablishment of price increase or decrease index of major categories of operating costs incurred by water and wastewater utilities pursuant to Section 367.081(4)(a), F.S.

DOCKET NO. 030005-WS
ORDER NO. PSC-03-0327-FOF-WS
ISSUED: March 7, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

ORDER WITHDRAWING AFFIRMATION AND CONSUMMATING PROPOSED AGENCY ACTION ORDER NO. PSC-03-0149-PAA-WS

BY THE COMMISSION:

By Proposed Agency Action Order No. PSC-03-0149-PAA-WS (PAA order), issued January 28, 2003, we established a price index increase or decrease for major categories of operating costs incurred by water and wastewater utilities pursuant to Section 367.081(4)(a), Florida Statutes, and Rule 25-30.420, Florida Administrative Code. On February 11, 2003, Florida Waterworks Association, Inc. (FWA) timely filed a petition for formal administrative hearing on the PAA order, along with the direct testimony of David Porter, P.E. In the PAA order, we had voted to include an affirmation with the price index application regarding information concerning the utility's active complaints, corrective orders, or outstanding citations with the Department of Environmental Protection, County Health Departments, or the Public Service Commission. The FWA objected to the affirmation being added to the price index application through an order, rather than through rulemaking. The FWA asserted that the affirmation is vague and contains the undefined terms "active complaint," "corrective order," and "outstanding citation." In addition, the FWA protested

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the requirement in the PAA order that prefiled testimony must be included with the petition. The FWA asserted that this requirement is an attempt to deny due process by further shortening an already abbreviated protest period and that it provides no opportunity for investigation or discovery. Notwithstanding this objection, the FWA prefiled testimony along with its petition. This matter was set for an expedited administrative hearing on March 7, 2003. We have jurisdiction pursuant to Section 367.081(4), Florida Statutes.

Rule 25-30.420(4), Florida Administrative Code, specifies that:

Upon finding of good cause, the Commission may require that a rate increase pursuant to section 367.081(4)(a), Florida Statutes, be implemented under a bond or corporate undertaking in the same manner as interim rates. For purposes of this subsection "good cause" shall include:

- (a) Inadequate service by the utility;
- (b) Inadequate record-keeping by the utility such that the Commission is unable to determine whether the utility is entitled to implement the rate increase or decrease under the rule.

Historically, for every index filed with us, one of our engineers is assigned to determine whether the utility's service should be considered adequate. In order to do this, we contact the different regulatory agencies with oversight of the applying utility to find out if the utility has any active complaints, corrective orders, or outstanding citations with these agencies. The majority of the index applications either have no active complaints, corrective orders, or outstanding citations, or those that do are not considered by the Commission to rise to the level of inadequate service. We were unable to find an instance over the last ten years where we recommended that a utility that filed an index application be required to implement the increase under a bond or corporate undertaking.

Currently, we spend an inordinate amount of time addressing the issue of adequate service of utilities filing for indexes. The affirmation was designed to allow us to focus our efforts on investigating those utilities that do have active complaints, corrective orders, or outstanding citations, and make a determination of service. We used a similar affirmation to process the index application of Florida Water Services Company (FWSC), which included 79 water and 35 wastewater systems. It would have been difficult for us to investigate each of those systems individually and complete the index application before the end of the statutory time frame expired. This new process proved to be effective and provided administrative efficiency in processing FWSC's voluminous application.

We do not believe that the attached affirmation will cause an unnecessary burden on utilities filing for an index. Each utility should be aware of and have documentation for any active complaints, corrective orders, or outstanding citations and should be able to provide those to us.

The FWA protested the method by which we added the affirmation to the price index application. According to the FWA, the affirmation meets the definition of a rule, and, as such, we should be required to go through the rulemaking process before imposing this requirement on all water and wastewater utilities seeking a price index increase. We agree that the rulemaking process would be appropriate. In response to our discussion at the March 4, 2003 Agenda Conference, counsel for the FWA indicated that the FWA would withdraw its protest, and would file its withdrawal in the docket file. The FWA filed its withdrawal on March 4, 2003, and the withdrawal of its protest of the PAA Order is accordingly acknowledged. We also acknowledge that the FWA has indicated that it is amenable to working with us in the rulemaking process.

Based on the above, we withdraw the provision in Proposed Agency Action Order No. PSC-03-0149-PAA-WS that added an affirmation to the price index application regarding a utility's active complaints, corrective orders, or outstanding citations with the Department of Environmental Protection, County Health Departments, or the Public Service Commission. Since the only petition for formal proceedings that was filed pursuant to Rule 25-22.029, Florida Administrative Code, has been withdrawn, the

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remaining provisions of Proposed Agency Action Order No. PSC-03-0149-PAA-WS have become final and effective. Accordingly, the hearing scheduled for March 7, 2003, is cancelled and this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the withdrawal of Florida Waterworks Association, Inc.'s petition for formal administrative hearing is hereby acknowledged. It is further

ORDERED that the provision of Proposed Agency Action Order No. PSC-03-0149-PAA-WS adding an affirmation to the price index application regarding the utility's active complaints, corrective orders, or outstanding citations with the Department of Environmental Protection, County Health Departments, or the Public Service Commission shall be withdrawn from Proposed Agency Action Order No. PSC-03-0149-PAA-WS. It is further

ORDERED that the remaining provisions of Proposed Agency Action Order No. PSC-03-0149-PAA-WS have become final and effective. It is further

ORDERED that rulemaking shall be initiated to include an affirmation to the price index application. It is further

ORDERED that the hearing scheduled for March 7, 2003, is cancelled. It is further

ORDERED that this docket shall be closed.

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By ORDER of the Florida Public Service Commission this 7th day
of March, 2003.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

JAR

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.

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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 the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services 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.

AFFIRMATION

I, _____, hereby affirm that

(Utility Name)

[] does not have any active complaints, corrective orders, or outstanding citations, with the Department of Environmental Protection (DEP) and/or the County Health Departments and/or the Public Service Commission.

[] does have the attached active complaint(s), corrective order(s), or outstanding citation(s), with the Department of Environmental Protection (DEP) and/or the County Health Department(s) and/or the Public Service Commission. The attachment(s) includes the specific system(s) involved with DEP permit number and the nature of the active complaint, corrective order, or outstanding citation.

I, the undersigned/officer of the above-named utility, have read the foregoing and declare that, to the best of my knowledge and belief, the information contained in this affirmation is true and correct.

This affirmation is intended such that the Florida Public Service Commission can make a determination of quality of service pursuant to Section 367.081(4)(a), Florida Statutes, and Rule 25-30.420(4)(a), Florida Administrative Code.

Further, I am aware that pursuant to Section 837.06, F.S., whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree.

Signature: _____
Title: _____
Telephone Number: _____
Fax Number: _____

Sworn to and subscribed before me this _____ day
of _____, 20__.

My Commission expires:

(SEAL)

Notary Public
State of Florida