BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of East Central Florida Services, Inc., for an original certificate in Brevard, Orange and Osceola Counties	)	DOCKET NO. 910114-WU ORDER NO. PSC-92-0104-FOF-WU ISSUED: 3/27/92

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY

Pursuant to notice, an administrative hearing was held on October 2 and 3, 1991, before the above-listed Commissioners in Tallahassee, Florida. Appearances were as follows:

F. MARSHALL DETERDING, Esquire, and JOHN L. WHARTON, Esquire, Rose, Sundstrom & Bentley, 2548 Blairstone Pines Drive, Tallahassee, FL 32301
On behalf of East Central Florida Services, Inc.

EDWARD DE LA PARTE, JR., Esquire, and BARBARA B. LEVIN, Esquire, de la Parte & Gilbert, P.A., 705 E. Kennedy Blvd., Tampa, FL 33602
On behalf of the City of Cocoa

PATRICK HEALY, Esquire, Potter, McClelland, Marks & Healy, P.A., P.O. Box 2523, Melbourne, FL 32902-2523
On behalf of South Brevard Water Authority

SUZANNE BROWNLESS, Esquire, and ROBERT DOWNEY, Esquire, Oertel, Hoffman, Fernandez & Cole, P.O. Box 6507, Tallahassee, FL 32314-6507
On behalf of Osceola County

MATTHEW FEIL, Esquire, and LILA JABER, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0863
On behalf of the Commission Staff

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

FINAL ORDER GRANTING CERTIFICATE NO.537-W
TO EAST CENTRAL FLORIDA SERVICES, INC.,
AND ESTABLISHING INITIAL RATES AND CHARGES

BY THE COMMISSION:

BACKGROUND

On February 6, 1991, East Central Florida Services, Inc., (ECFS) filed an application for an original water certificate in Brevard, Orange, and Osceola Counties. In its application, ECFS proposed providing residential, agricultural, and bulk raw water service. On March 8, 1991, Orange County filed an objection to ECFS's notice of the above-referenced application. On March 15, 1991, Brevard County filed an objection to ECFS's notice of application. Three days later, on March 18, 1991, South Brevard Water Authority (SBWA) filed its objection to the notice, and the next day, March 19, 1991, both the City of Cocoa (Cocoa) and Osceola County filed their respective objections.

On September 26, 1991, Brevard County submitted a Notice of Conditional Withdrawal of its objection. The condition for Brevard County's withdrawal was the Commission's acceptance of a restrictive amendment which ECFS made to its application. By the Prehearing Order entered in this case, Order No. 25149, issued October 1, 1991, the Prehearing Officer granted ECFS's motion to restrictively amend and accepted Brevard County's withdrawal.

Just prior to the October 2 and 3, 1991, hearing in this matter, Orange County submitted a Notice of Voluntary Dismissal With Prejudice. At the onset of the hearing, we accepted Orange County's withdrawal.

FINDINGS OF FACT, LAW, AND POLICY

Having heard the evidence presented at the hearing and having reviewed the recommendation of our staff and the briefs and proposed findings of the parties, we now enter our findings and conclusions.

STIPULATION

As is stated in the Prehearing Order, Order No. 25149, issued October 1, 1991, the parties stipulated as to the following: that the present recipients of potable water service, farm employees who live on the property in ECFS proposed territory, have their salaries offset for rent and utilities as part of a compensation package. Upon consideration, we find that the stipulation is reasonable, and we hereby accept it.

ECFS'S MOTION TO DISMISS COCOA

At the hearing, ECFS offered to amend certain aspects of its application if the Commission granted ECFS's oral motion to dismiss Cocoa as a party. By its offered amendment, ECFS would make two changes to its application. It would remove reference to the proposed well sites which Cocoa took issue with, and it would remove that portion of its proposed territory which overlapped with Cocoa's service area. ECFS's oral motion to dismiss Cocoa was based on the grounds that Cocoa did not have a substantially affected interest in the proceeding. At the time of ECFS's offer and motion, Cocoa had not completed its presentation of evidence. We therefore elected to take the motion under advisement and to continue taking testimony. When Cocoa completed its presentation of evidence, ECFS renewed its offer and motion.

After considerable discussion on the merits of the motion, we proceeded with the presentation of testimony without either expressly ruling on the motion or taking it under advisement. Both Cocoa and ECFS argue the motion in their briefs. In consideration of these circumstances, we think it is appropriate to make our ruling on this matter clear for the record. ECFS's motion is denied, as both the timing and the nature of the motion are procedurally suspect.

Although we believe that a party's standing may be questioned at any time, we must emphasize the purpose and importance of our elaborate prehearing procedures. These procedures are carefully designed to allow the Commission and the parties to focus on the merits of the case without distraction from the extemporaneous. In this case, ECFS had the opportunity from the day Cocoa lodged its objection to question Cocoa's standing, but it chose to do so on the day of the hearing. Raised then for the first time, the

standing question caused a great deal of distraction, some or all of which could have been avoided if ECFS had only announced its position earlier. We find ECFS's actions in this respect troubling.

Furthermore, we find the nature of ECFS's motion questionable. ECFS stated that our granting its motion was some sort of condition precedent to its making good on the offer to amend the application as described. We think that it would have been more appropriate for ECFS to make good on its offer to amend prior to making the motion. ECFS evidently considered the amendment necessary to its motion. Without ECFS's making the amendment, however, our consideration of the motion is merely academic.

Because we base our ruling on the above-stated grounds, we shall not address any of the other arguments raised by Cocoa or ECFS.

OSCEOLA'S MOTION FOR SANCTIONS

On the eve of the hearing, Cocoa filed a motion to dismiss Osceola County as a party or, alternatively, to limit Osceola's right to participate in the hearing. Cocoa argued, essentially, that Osceola did not have an interest adverse to certification and, therefore, did not meet the legal prerequisite that a party have a substantially affected interest. Osceola filed a response, and we considered Cocoa's motion at the hearing.

Osceola argued that Cocoa had deliberately misstated the law in its motion so as to make it appear that the test for standing was the presence of an "adversely affected interest," rather than just a substantially affected interest. We denied Cocoa's motion, commenting that an adverse affect was not required. Thereafter, Osceola made a motion for sanctions under Section 120.57(1)(b)5, Florida Statutes, claiming that Cocoa's motion was interposed for an improper purpose.

In its brief, Osceola argues again that "Cocoa fabricated legal requirements for standing." Cocoa's purpose in filing the motion, Osceola suggests, can best be determined by its actions. "Both the timing and content of Cocoa's motion were such that there can be no reasonable argument that Cocoa properly doubted Osceola's standing," Osceola asserts. Therefore, Osceola asks to be awarded

$1,923.00 for fees and costs associated with its responding to Cocoa's motion.

In its brief, Cocoa points out one case worthy of discussion, Mercedes Lighting and Electrical Supply v. Department of General Services, 560 So.2d 272 (Fla. 1st DCA 1990). There, the hearing officer recommended an award of attorney's fees against an unsuccessful bidder who challenged DGS' acceptance of another bid. Because he thought that the bid protest "presented no justiciable question for resolution and was without basis in fact or in law," the hearing officer found that the protest was frivolous and recommended the sanction. Mercedes at 275. DGS' adopted the hearing officer's recommended order.

The appellate court reversed DGS's final order. In its discussion on the issue of Section 120.57(1)(b)5 sanctions, the court stated, "[C]ourts should not delve into an attorney's or parties subjective intent or into a good faith-bad faith analysis." Id. at 278. "Instead, if a reasonably clear legal justification can be shown for the filing of the paper in question, improper purposes cannot be found and sanctions are inappropriate." Id.

In the instant case then, the appropriate inquiry is whether there was a reasonably clear legal justification for Cocoa's motion to dismiss Osceola. In applying this test, we shall, as Osceola suggests, consider both the timing and content of Cocoa's motion.

As for the motion's timing, we note that Cocoa was within its rights to file the motion to dismiss, or any written motion for that matter, prior to the hearing. Cocoa would have been within its rights to make an oral motion to dismiss during the hearing, as ECFS did. Therefore, without exploring the subjective intent of Cocoa's attorneys, we do not think that an improper purpose can be inferred from the timing of the motion.

As for the motion's content, Osceola would have us stress Cocoa's apparent fabrication of the appropriate legal standard. We do not agree that this should be the focus of the analysis. The pertinent question is whether there was a reasonably clear legal justification for Cocoa's motion, which was based on the assertion that affected parties have to be adversely affected parties. Although in denying the motion we did not find Cocoa's argument persuasive, the motion was arguably justifiable. Confusion on the question of standing is as common amongst lawyers as the erroneous

belief that the hearsay exception for party admissions includes only admissions against the declarant's interests.

In consideration of the foregoing, we hereby deny Osceola's motion.

MOTION TO STRIKE PORTIONS OF COCOA'S BRIEF

On November 21, 1991, ECFS filed a Motion to Strike portions of Cocoa's brief. On December 2, 1991, Cocoa filed a response in opposition to ECFS's motion. In its motion, ECFS states that Cocoa's brief makes improper references to an exhibit which was not admitted into evidence and raises two new issues. ECFS asks that we strike the pertinent portions of Cocoa's brief.

The exhibit which ECFS argues Cocoa makes improper reference to is Exhibit No. 7, a memorandum written by Mr. John King. At hearing, we ruled that the information contained in this memorandum was irrelevant, and we denied Cocoa's request to admit it into evidence. We marked the memorandum as Exhibit No. 7 for identification and allowed Cocoa to make a proffer of same to preserve the record.

In its response, Cocoa argues that it properly qualified its reference to this proffered evidence in its brief. Cocoa states that it referred to Exhibit No. 7 only in its Statement of the Case, in the section of the Argument dealing with Cocoa's standing, and the section of the Argument wherein it renewed its request to have the exhibit admitted.

We are aware that it is not uncommon for parties to refer to matters outside of the evidentiary record in their post-hearing briefs. Needless to say, when a party does this, we do not rely on the matters so referenced. However, when, as in this instance, there can be no dispute whatsoever that the matter relied on is not evidence in the record, we think striking portions of a party's brief is appropriate so as to make it absolutely clear that we have not depended on such matter. Therefore, we hereby strike those portions of Cocoa's brief which purport reliance on Exhibit No. 7.

The first of the two new issues which ECFS argues Cocoa raised for the first time in its brief is "Whether ECFS is exempt from Commission jurisdiction because it is not a utility as that term is

defined in Chapter 367, Florida Statutes?" The second is "Whether ECFS's water systems in Orange County are exempt from Commission regulation pursuant to Section 367.022(2), Florida Statutes, because they are operated, managed and/or controlled by Orange County?"

Cocoa designated these issues as new issues in its Post-hearing Statement of Issues and Positions in accordance with Rule 25-22.056(3)(a), Florida Administrative Code. However, because these issues were not raised prior to or during the hearing, ECFS had no opportunity to explore, through cross-examination or any other means, the evidentiary basis for these issues. Moreover, ECFS does not now have the opportunity to respond to the arguments made by Cocoa in its brief regarding these issues.

We believe that ECFS would be prejudiced if we considered these two new issues. Therefore, we find it appropriate to strike the pertinent portions of Cocoa's brief, specifically, the last two paragraphs on page 16, pages 26-28, and the top of page 29 of Cocoa's brief, and all references in Cocoa's brief to Exhibit 7.

NEW ISSUES RAISED BY SBWA

In its brief, SBWA identified, in accordance with Rule 25-22.056, Florida Administrative Code, a new issue for us to consider: burden of proof. SBWA claims that ECFS witness Hartman's testimony is only hearsay, and is not in itself sufficient to support factual findings. SBWA also argues that Mr. Hartman does not have personal knowledge of any of the matters upon which he testified.

Since we overruled the parties hearsay and competency objections at the hearing, and since we address burden of proof in our discussion of the substantive issues in later sections of this Order, we do not think it necessary to consider burden of proof separately.

COCOA'S MOTIONS IN BRIEF

In its brief, Cocoa purports to renew two motions it made at the hearing: its motion to dismiss Osceola, which Cocoa says it renews if the Commission finds that standing is still a viable

issue, and its motion to admit into evidence Exhibit No. 7, an exhibit identified and proffered at the hearing but not admitted into evidence.

Since neither the motions themselves nor the arguments made in their support conform with our rules for the filing of motions or for raising new issues, we shall not consider Cocoa's motions.

PROPOSED FINDINGS OF FACT

Pursuant to Section 120.57(1)(b)4, Florida Statutes, and Rule 25-22.056(2), Florida Administrative Code, Cocoa filed proposed findings of fact. According to Rule 25-22.056(2), Florida Administrative Code, proposed findings of fact must be presented separately from other post-hearing filings and each proposed finding must be separately stated and numbered. Cocoa's filing, which contains 531 proposed findings of fact, complies with this Rule.

According to Section 120.59(2), Florida Statutes, "If, in accordance with agency rules, a party submitted proposed findings of fact or filed any written application or other request in connection with the proceeding, the order shall include a ruling upon each proposed finding and a brief statement of the grounds for denying the application or request." Rule 25-22.059, Florida Administrative Code, echoes the direction of Section 120.59(2), Florida Statutes. We note that even though Rule 25-22.056(2), Florida Administrative Code, indicates that "the presiding officer" will rule on each proposed finding, we have followed Commission practice by ruling on the proposed findings as a panel.

Proposed findings nos. 1-3, 5-11, 17, 20-22, 24-27, 29-31, 33-35, 40-42, 65, 74-80, 81, 84, 92-93, 104-117, 120-132, 134-136, 151-159, 163-167, 171-180, 184-185, 188-196, 201, 205, 211, 215-230, 237, 246-247, 271, 279-283, 286-289, 302, 304, 309, 314-315, 318, 323, 327, 329-331, 335, 337, 381, 382-385, 392-394, 443, 449, 487-489, 493-496, 504, 524, 526-531 are accepted.

Proposed findings nos. 12, 13, 15-16, 18, 23, 28, 32, 36-39, 43-64, 66-73, 82-83, 85-91, 94-103, 118-119, 133, 137-140, 142-150, 161-162, 168-170, 181-183, 186-187, 197-200, 202-203, 206-208, 210, 213, 233-236, 238-243, 245, 248-262, 264-270, 272-278, 284-285, 290-299, 303, 305-307, 311, 316-317, 319-321, 324-325, 334, 336,

349-364, 366-380, 386-391, 395-396, 398-431, 433-442, 444-445, 446, 450-451, 455-478, 480-485, 490-492, 497-503, 505-511, 514-515, 517-523, 525 are rejected as being subordinate, cumulative, immaterial, or unnecessary.

The following proposed findings are rejected for the reasons shown below.

4. Rejected as unsupported in record. The record only reflects that ECFS is a subsidiary of Magnolia.

14. Rejected as unsupported in record. There is no evidence establishing that Farm Management and Deseret are one and the same.

19. Rejected as unsupported in record. The record refers to lease agreement, not agreement to supply water.

141. Rejected as being an improper legal conclusion.

160. Rejected as unsupported in record and reaches a legal conclusion.

204. Rejected as unsupported in record. None of the witnesses said what is in the finding, and Mr. Hartman made various indications that there would not be absolute exclusivity regarding who would receive service.

209. Rejected as unsupported in record. Mr. Hartman made no statement of absolute exclusivity, only of what was presently contemplated.

212. Rejected as unsupported in record. Mr. Hartman only mentioned alternative sources as a possible scenario.

214. Rejected as improper legal conclusion.

231. Rejected as not supported by record.

232. Rejected as improper legal conclusion.

244. Rejected as unsupported in record.

263. Rejected as unsupported in record. This proposed finding of fact is part of a statement made by the witness taken out of context. The witness' statement was that ECFS's current wells do not meet standards for public water supply wells and that ECFS did not have the necessary facilities to supply potable water to SBWA.

300. Rejected as unsupported in the record. Mr. Hartman indicated that the facilities themselves, not the area receiving service, was of the size indicated.

301. Rejected as not supported in record. The only thing that is clear from the record is that the potable water service is not provided throughout the entire territory.

308. Rejected as unsupported in record. Witness Hartman's response to the question was, in effect, "I don't know."

310. Rejected as unsupported in record.

312. Rejected as unsupported in record. Witness Hartman only stated that hiring more people was a possibility.

313. Rejected as unsupported in record. Although the statement was made by witness Mayer, greater operating expenses does not necessarily prove lack of experience.

322. Rejected as unsupported in record. Further, the record reveals that ECFS will not build the proposed wells if Cocoa does not become a customer or if Cocoa gets final approval of permits.

326. Rejected as unsupported in record.

328. Rejected as unsupported in record. Application only states that utility will obtain funding and financial support of affiliated parties to ensure safe provision of water.

332. Rejected as unsupported in record. Witness Baker's testimony was that ECFS would not necessarily depend on Magnolia.

333. Rejected as unsupported in record. Record reveals that Magnolia is capitalized by Deseret and derives income from consulting with the ranch and some other church entities.

338. Rejected as unsupported in record. Record reveals that there is no reason to believe the Church would not fund in the future.

339-340. Rejected as unsupported in record. The record establishes that there is no reason to believe the Church would not fund ECFS in the future as it has in the past.

341-348. Rejected as unsupported in record.

365. Rejected as unsupported in record. Mr. Hartman made no statements regarding Cocoa's current capacity in the cited portions of the record.

397. Rejected as unsupported in record. Mr. Hartman stated that SBWA could "theoretically" provide service.

432. Rejected as unsupported in record.

447-448. Rejected as reaching a legal conclusion.

452. Rejected as unsupported in record. There is need for service in the territory by virtue of the potable and agricultural water services already being provided.

453. Rejected as unsupported in record. There is ample evidence in the record to show technical ability.

454. Rejected as unsupported in record. There is ample evidence in the record to show financial ability.

479. Rejected as unsupported in record.

486. Rejected as unsupported in record.

512. Rejected as unsupported in record. Mr. Hartman admitted that the bulk rate may not be appropriate if Cocoa did not want to purchase bulk water.

513. Rejected as unsupported in record. There was no testimony that a reasonable rate could not be developed without ECFS's knowing who the customer would be.

516. Rejected as unsupported in record. Mr. Hartman made no statement to the effect that the bulk rate was unreasonable.

Because of the quantity and quality of Cocoa's proposed findings, we think it is appropriate for us to comment on Cocoa's filing.

Clearly, parties to a formal administrative proceeding have the right to submit proposed findings of fact, and the agency to which they are submitted has the obligation to rule on each one. The courts, however, have interpreted the law so as to limit the agency's obligation. Agencies are not required to rule on those proposed findings which are "subordinate, cumulative, immaterial, or unnecessary." E.g., Forrester v. Career Service Commission, 361 So.2d 220 (Fla. 1st DCA 1978). "Those proposed findings which fall in such a category may be rejected by a simple statement that they are immaterial or irrelevant." Forrester at 221. In addition, "the failure to explicitly address a proposed finding would require reversal of the agency action only when such failure has the effect of impairing the fairness of the proceeding or the correctness of the action." Health Care Management, Inc., v. Department of Health And Rehabilitative Services, 479 So.2d 193, 195 (Fla. 1st DCA 1985) (citations omitted); see also Schomer v. Department of Professional Regulation, Board of Optometry, 417 So.2d 1089 (Fla. 3rd DCA 1982).

In light of the limitation on an agency's obligation, we believe that common sense should guide parties and their attorneys away from proposing subordinate, cumulative, immaterial, or unnecessary findings.

On this subject, a few examples of Cocoa's proposed findings (with record cites omitted) should be illustrative. Proposed Finding No. 133: "ECFS's agricultural water service will not supply water to persons." Proposed Findings Nos. 260-262: "ECFS will provide its agricultural water service customer nonpotable irrigation water," "ECFS will not treat the water provided to its bulk raw water service customers," "The water ECFS will provide its potable water service customers will be treated." These examples typify only some of the problems with Cocoa's filing. Suffice it to say that Cocoa's proposed findings were replete with needless repetition, recitations of the obvious, and pointless attention to the minutest detail. Moreover, the number and character of Cocoa's proposed findings are especially alarming when one considers the

limited nature of the disputed factual issues. The bulk of the controversy in this case was over legal issues.

A considerable percentage of Cocoa's proposed findings fall into the category that need not be ruled on. Some proposed findings were irrelevant or immaterial because our approach to an issue differed significantly from Cocoa's. Nonetheless, each and every one of the subordinate, cumulative, immaterial, or unnecessary proposed findings had to be reviewed and analyzed--a cumbersome task which required considerable time.

We cannot stress enough that parties make their proposed findings helpful to the trier of fact. When a party submits proposed findings in the number and of the type submitted here, they divert this Commission's time and attention away from a careful analysis of the substance of the case. Proposed findings should bring the facts of a case into focus, not obfuscate the view with clutter.

The court in Mercedes, supra, suggested that under Section 120.57(1)(b)5, Florida Statutes, a hearing officer could, on his own motion, strike any paper filed for an improper purpose as a sanction. "Indeed, the orderly conduct of proceedings would appear to dictate the striking of a pleading or, at the very least, an order for its withdrawal or amendment on pain of additional sanctions for unwarranted refusal, at the earliest stage at which a violation of the statute can be determined." Mercedes at 279.

We think that this Commission has the same authority as a hearing officer under the above-referenced section. However, we do not consider it expedient at this time to delve into the question of whether Cocoa, as the Mercedes court describes, had a clear legal justification for filing proposed findings in the manner it did. That consideration notwithstanding, we put Cocoa and all attorneys and parties who appear before this Commission on notice that proposed findings of fact, as well as all filings made with this agency, must be within reason.

FILING AND NOTICING REQUIREMENTS

SBWA and Cocoa question whether ECFS met all of this Commission's filing and noticing requirements for an application for an original water certificate. We find Cocoa's and SBWA's

arguments regarding ECFS's failure to meet our noticing and filing requirements to be without merit.

For instance, Cocoa complains that ECFS failed to provide it with notice of the application even though, as Cocoa claims, ECFS should have done so under our rules. Cocoa makes this argument despite having been represented by counsel at all Commission proceedings in this case. We think that, therefore, whether or not Cocoa received notice is, at this point, moot.

Besides, ECFS presented proof that it provided notice by publication in accordance with Rule 25-30.030(7), Florida Administrative Code. Specifically, ECFS's application contains an affidavit that notice by publication was given in the Orlando Sentinel, and the testimony of ECFS's witness Mr. Hartman establishes the dates of publication. The sufficiency of notice by publication, such as that performed by ECFS, was accepted by the Court in Osceola Service Company v. Bevis, 289 So.2d 712 (Fla. 1974), where the court held that notice is effected by the publication of notice.

TECHNICAL ABILITY

ECFS is currently providing potable water service to 98.1 equivalent residential connections (ERCs) and is currently providing agricultural water service from 191 sources. No technical or service problems regarding those services were identified. A party related to ECFS owns the land which is the proposed certificated territory and the water service facilities which ECFS will use to provide utility service. The related party presently employs the technical and operational personnel needed to provide the services required. Those same personnel will be retained by ECFS.

Providing raw water service is not appreciably different from providing agricultural water service. The technical requirements for operating raw water facilities are very similar to any other system of water withdrawal and pumping, such as those for the existing and operational irrigation water supply system in this case. ECFS believes that it would be prudent to defer capital investment and the retention of any additional technical and operational personnel until such time as the utility has a prospective raw water customer.

We recognize that some testimony in the record indicates that ECFS lacks experience in providing certain types of water service. It has even been suggested that since ECFS is not currently providing raw water service, it does not possess the technical ability to do so.

We do not think that the record contains any persuasive evidence which would lead to the conclusion that ECFS does not possess sufficient technical ability to operate and provide service to its customers. Because we grant one certificate for the provision of all classes of water service, we evaluate a prospective utility's technical ability as a whole, not in piecemeal by class of service. The argument that ECFS lacks the technical ability to provide raw water because it does not presently provide that service is unpersuasive. Furthermore, we agree that the technical requirements for providing raw water service are not significantly different from those for providing a similar service, like agricultural water. Given ECFS's technical ability in providing its current services, it should be able to gear up in the future and provide raw water service if needed.

In support of its argument that ECFS has not demonstrated the requisite technical ability, Cocoa cites our decision in Order No. 22847, issued April 23, 1990, Docket No. 89049-WU, In re: Objection to Notice of Conrock Utility Company of Intent to Apply for Water Certificate in Hernando County (hereinafter cited to as Conrock). Cocoa argues that under the Conrock standard, ECFS must demonstrate by the greater weight of the evidence that its officers and employees have the knowledge and skill needed to provide utility service and that the proposed service will satisfy the minimum level of service required for all utilities. According to Cocoa, the minimum service standard means that required under Section 367.111(2), Florida Statutes.

In Conrock, the City of Brooksville, Hernando County, and Rolling Acres Enterprises objected to the notice of intent to request a water certificate made by Conrock Utility Company (Conrock). The Division of Administrative Hearings (DOAH) hearing officer found that Conrock did not present any evidence that it presently employed or would retain persons of adequate training and experience to operate Conrock's proposed water system. The hearing officer concluded, "Conrock did establish, however, that should a certificate be granted, it is financially and otherwise capable of retaining a permanent, trained operator for the water system."

Order No. 22847. This deficiency alone, the hearing officer added, would not be sufficient for denying Conrock's proposal.

We agreed with the hearing officer's recommendation that Conrock not be granted a certificate, but we rejected the hearing officer's finding that Conrock had demonstrated adequate financial ability. Since the hearing officer's finding of technical ability was dependant on the finding of financial ability, we also rejected his finding of technical ability.

We think that Conrock may be distinguished from the present case on the facts. In Conrock, the utility had not hired any trained personnel prior to filing the application and there was no affirmative indication that they would after certification. In this case, however, ECFS established that it will employ the same trained operational personnel which are currently employed by a related party to provide water service to the customers. Specifically, ECFS established that it will employ a State of Florida certified operator to operate and maintain facilities to the standards required by federal, state and local governments.

In consideration of the foregoing, we find that ECFS has adequate technical ability to provide water service.

FINANCIAL ABILITY

ECFS is a subsidiary of Magnolia Management Corporation (Magnolia). ECFS's application states that since it is not yet an operating utility, it has no balance sheet or profit and loss statement. The application contains, instead, a balance sheet and operating statement for Magnolia. ECFS's witnesses stated that Magnolia will provide financial funding and support as needed for the provision of safe, efficient, and sufficient water service to ECFS's customers. The financial statements of Magnolia show that Magnolia has approximately $2 million in assets with no substantive outstanding debt.

The capital investment for the current facilities which ECFS will operate has already been made. Those facilities are already operational. In addition, as for the planned bulk raw water facilities, ECFS proposes that most of the required capital investment be made by customers through contributions.

Cocoa, relying again on Conrock, argues that a utility can only prove financial ability in one of two ways, by demonstrating that the utility itself has enough economic strength to support a finding or by demonstrating that it can rely on the financial resources of other entities. If a utility chooses the latter method of proof, Cocoa argues that the utility must provide evidence of the other entities' commitment by presenting financial agreements entered into by the utility and the other entities or by presenting testimony from those entities which supports their commitment.

On the question of financial ability, the Conrock hearing officer made the following findings. Conrock had no assets and therefore no financial statements. The Conrock corporation's shares were owned by the family of its president and by a related closely-held corporation. The latter corporation's shares were 90% owned by a family trust, the corpus of which was listed as an asset on the financial statements of the parents of Conrock's president. Conrock's president had not committed any personal funds to the project. The cost of the first phase of Conrock's proposed system could be provided in cash by the family trust and the closely-held corporation. Conrock's president testified that funds from his family members and the trust were available to accomplish the project. The hearing officer also found that Conrock's president had an income interest in the family trust.

Based on the above, the hearing officer concluded that although "Conrock did not formally demonstrate its financial ability by presentation of financial statements which demonstrate it has ample financial resources, . . . the testimony of its president demonstrates that those financial resources are readily available . . . ." Order No. 22847. The hearing officer apparently thought that although Conrock did not comply with Commission rules by demonstrating it had its own financial resources, that deficiency alone would not justify the denial of the application.

We accepted the hearing officer's finding that Conrock did not prove it had independent financial ability to operate a water utility. However, we thought that the evidence relied on by the hearing officer in concluding that Conrock could rely on funds from other entities was insufficient. In support of this view, we stated that Conrock did not, as required by our rule, provide copies of any financial agreements committing funds to the utility;

that the hearing officer's conclusion that funds were readily available from other sources was contradictory to the finding that Conrock's president had not committed any personal funds to the project; and that the hearing officer erroneously concluded that Conrock's president had an income interest in the family trust. In sum, Conrock relied on potential funders to establish financial ability.

We think that Conrock is different from the instant case in several respects. As stated above, ECFS's application states that since ECFS is not yet an operating utility, it has no balance sheet or profit and loss statement. The application contains the financial statements of ECFS's parent, Magnolia. Copies of financial agreements between the utility and source entities are not required under our present rules.

We are not persuaded by Cocoa's assertion that financing cannot be assured because there is no written agreement between Magnolia and ECFS. Mr. Hartman testified that ECFS's parent organizations would provide funding. Also, Mr. Fred Baker, a member of board of directors of both ECFS and Magnolia, testified that the utility's parent company would provide funding whenever funds were needed. Mr. Baker also stated that funds would be provided by the Corporation of the President of the Church of Jesus Christ of Latter-Day Saints (COP), another affiliated entity. He indicated that ECFS would not necessarily have to depend on Magnolia for funding since the Church had already provided substantial funding, and there was no reason to believe they would not fund more in the future.

Cocoa and SBWA argue on this issue, and elsewhere, that ECFS witness Hartman's testimony is hearsay and may be used to supplement other evidence, but is not in itself sufficient to support a finding. They also claim that Mr. Hartman had no personal knowledge of any of the matters upon which he testified. We think both of these arguments are without merit. Regardless of whether Mr. Hartman's testimony regarding financial ability is hearsay, the testimony of Mr. Baker supplements that of Mr. Hartman. Mr. Baker certainly had personal knowledge of the relationship between ECFS and Magnolia because he is a member of both boards. Furthermore, we reaffirm the ruling we made at the hearing that, as a consultant to and agent of ECFS, Mr. Hartman was qualified to testify on behalf of ECFS.

It appears from the record that the utility and its parent are fully capable of providing the needed capital and operating funds to ensure a viable utility operation for the present time and into the future. As discussed above, we find the protestor's arguments to the contrary unpersuasive. We note that since most of the entities involved in ECFS's proposal are related, it seems to us that everyone involved has an interest in keeping ECFS financially healthy. Finally, we emphasize that the capital investment for the current water facilities has already been made and most of the capital investment for the proposed bulk water facilities will be made by customers.

In consideration of the foregoing, we find that ECFS has the financial ability to provide water service to the proposed certificated territory.

NEED FOR SERVICE

Residential and agricultural water services are already being provided in the proposed certificated territory. ECFS proposes to begin charging for those services. However, ECFS does not currently have a raw water customer, and there does not appear to be an immediate, quantifiable need for the proposed raw water service.

Cocoa and SBWA argue that since there is no need for the proposed bulk raw water service, we should deny ECFS's request for a certificate. We do not agree. As stated earlier, we grant one certificate for the provision of all classes of water service. We evaluate the need for service as a whole; there is no requirement that each class of proposed water service be in immediate demand. The only requirement is that water service is needed.

Indeed, it is common for this Commission to grant an original water certificate and approve rates for services for which there is no present, quantifiable need, but which may be in demand at a future time. Numerous utilities have approved tariffs with general service rates and/or multi-residential rates even though the utility's current customer base is residential only. Some have approved tariffs with residential rates even though the utility serves only general service customers. The granting of a certificate to provide water service in a territory does not imply that the certificate is issued for any specific class of service.

A utility may request a certificate and be granted rates for one or more classes of service, or it may request approval of a new class of service when a need for such becomes known.

Cocoa also argues that because existing facilities in the proposed certificated territory provide adequate service to current residential and agricultural users, there is no need for water service in the certificated territory. Cocoa cites Conrock in support of this proposition.

In Conrock, the hearing officer found that the people living in the predominantly rural proposed certificated territory either had individual wells or already received service from one of two governmental entities. In addition, these governmental entities served all or part of small subdivisions which were completely or partially within Conrock's proposed territory. There was no evidence in the record that development was planned for a 900 acre tract which was owned by one entity. There was also no evidence of a schedule for development in the one area where the land owner apparently discussed service with Conrock. The hearing officer concluded, and the Commission concurred, that need was not established.

The material error which Cocoa makes in its interpretation of Conrock on this issue is that in this case, unlike in Conrock, the existing facilities will be the certificated utility's facilities. Conrock does not support Cocoa's argument, and we therefore consider it unpersuasive.

We are concerned with the size of the proposed certificated territory in this case, some 300,000 acres, and the configuration of the facilities within that territory. Clearly, the need for service is not pervasive throughout the territory. This concern, however, is not cause to deny certification. We do not think it is in the public interest at this time to carve up a vast territory, which is all owned by one entity, so as to certificate only scattered portions thereof. Instead, we forewarn ECFS that pursuant to Section 367.111(1), Florida Statutes, we may delete any part of a utility's certificated territory, whether or not there has been a demand for service, within five years of authorizing that service.

Therefore, in consideration of the foregoing, we find that there is a need for water service in the proposed certificated territory.

COMPETITION WITH OR DUPLICATION OF FACILITIES

ECFS witness Mr. Hartman testified that there would be no duplication or competition as to the ECFS's residential or agricultural systems. Both of those services are currently being provided to customers in the proposed territory. ECFS does not at this time have a customer for or facilities for raw water service.

SBWA witness Mr. Massarelli testified that SBWA was not in competition with ECFS since SBWA does not own any facilities in the area. Cocoa witness Mr. Stephenson testified that Cocoa has no facilities in either the southern or northern areas where ECFS's proposed territory overlaps Cocoa's service area. Mr. Stephenson also stated that Cocoa was opposed to the location of the proposed well sites of ECFS, rather than to the issuance of a certificate per se. He further indicated that if ECFS deleted the proposed raw water well sites from its application, Cocoa would feel better about the issuance of a certificate to ECFS.

Under Section 367.045(5)(a), Florida Statutes, the Commission cannot issue a certificate for a proposed system "which will be in competition with, or a duplication of, any other system . . . unless it first determines that such other system . . . is inadequate to meet . . . need[] . . . or . . . is unable, refuses, or neglects to provide . . . service."

As the cornerstone of its analysis on this issue, Cocoa relies, again, on this Commission's decision in the Conrock case. In Conrock, the hearing officer made several findings of fact on the issue of duplication, all of which we adopted in our final order. The hearing officer found that the people living in the predominantly rural proposed certificated territory either had individual wells or already received service from one of two governmental entities. In addition, these governmental entities served all or part of small subdivisions which were completely or partially within Conrock's proposed territory.

In his conclusions of law on the subject, which also were adopted by the Commission, the hearing officer stated that a

certificate could not be granted for those areas currently served by the governmental entities. Conrock had failed to show that the government systems were inadequate to meet current need for service or that future need could not be met by currently existing facilities or reasonably anticipated extensions thereof.

Cocoa does not argue the correctness of our decision in Conrock, but we think Cocoa's reliance on the case is misplaced. Cocoa argues that a certificate should not be granted because once the plans for expansion to its present facilities are implemented, Cocoa's water facilities will be in competition with ECFS's proposed bulk raw water system, and ECFS failed to demonstrate that Cocoa is unable or unwilling to provide bulk raw water service. Thus, on the basis of the statute and Conrock, Cocoa argues that the Commission cannot grant ECFS a certificate.

The fundamental error with Cocoa's argument is a misinterpretation of the first part of Section 367.045(5)(a). The Commission cannot grant a certificate if a proposed system will compete with or duplicate another, unless other criteria are met. In this case, some of the evidence in the record indicates that Cocoa plans on and has taken steps toward withdrawing water from the same general area in which ECFS presently proposes to locate raw water withdrawal facilities.

However, we cannot determine whether a proposed system will be in competition with or a duplication of another system when such other system does not exist. We do not believe Section 367.045(5)(a), Florida Statutes, requires this Commission to hypothesize which of two proposed system might be in place first and, thus, which would compete with or duplicate the other. Engaging in such speculation would be of little use.

Cocoa makes an argument similar to the one above with regard to ECFS's provision of residential service and the two areas where Cocoa's service area overlaps ECFS's proposed territory. Cocoa argues that ECFS's certification represents potential competition with Cocoa for any residential customers in those areas. Neither Cocoa nor ECFS have facilities in those areas, so we reject this argument on the same basis that we rejected Cocoa's argument on the competition or duplication of raw water facilities.

In its brief, SBWA seems to make the same argument made by Cocoa, but with regard to ECFS's overlap with SBWA's service area.

SBWA acknowledges, however, that ECFS's current facilities are not in competition with or a duplication of any existing facilities. It also acknowledges that the special act by which the Legislature granted SBWA its territory did not grant SBWA exclusive authority to provide service therein. Nonetheless, SBWA asserts, the Commission's approving the overlap of service territories "would frustrate the [SBWA's] efforts to develop a single coordinated program of water supply, transmission and distribution as directed by the Legislature." SBWA therefore concludes that it is in the public interest for the Commission to preserve SBWA's service area.

We do not find SBWA's argument persuasive. SBWA offers no cogent legal or policy grounds for excluding the overlapping area from ECFS's proposed territory. Just because SBWA was statutorily created does not mean that the preservation of its territory is any more in the public interest than granting ECFS the same territory, even though ECFS was not similarly created. Furthermore, we think that it is appropriate to reference the Fifth District Court of Appeal's decision in City of Mount Dora v. JJ's Mobile Homes, Inc., 579 So.2d 524 (Fla. 5th DCA 1991). In that case, the court indicated that even though a utility has a prior legal right to provide service to a particular territory, if that utility cannot presently serve the area, another utility, which does have the present ability to do so, may.

In consideration of the foregoing, we find that there is no competition or duplication of systems or facilities.

COMPREHENSIVE PLANS

Section 367.045(4), Florida Statutes, provides that notwithstanding the ability to object on other grounds, a county or municipality has standing to object on the ground that the issuance of a certificate of authorization violates established local comprehensive plans developed pursuant to Chapter 163. Section 367.045(5), Florida Statutes, states,

> (b) When granting or amending a certificate of authorization, the commission need not consider whether the issuance or amendment of the certificate of authorization is inconsistent with the local comprehensive plan of a county or municipality unless a timely objection to the notice required by this section

> has been made by an appropriate motion or application. If such an objection has been timely made, the commission shall consider, but is not bound by, the local comprehensive plan of the county or municipality.

ECFS witness Mr. Hartman stated that he reviewed the various comprehensive plans involved and found no apparent conflict with any of them. ECFS witness Mr. Landers testified that he found no clear conflict with any of the comprehensive plans involved.

Cocoa's witness Mr. Stephenson testified that ECFS's application is inconsistent with Cocoa's comprehensive plan because the plan states that Cocoa will provide water within its service area. The plan does not indicate that someone else may provide water service within Cocoa's service area. We do not agree with Mr. Stephenson's conclusion on this point. If Cocoa's comprehensive plan does not address the possibility of anyone else providing service in Cocoa's service area, the appropriate conclusion is that the plan is silent on the issue, not that ECFS's application is presumptively inconsistent with the plan.

Mr. Stephenson also testified that the water sub-element of Cocoa's comprehensive plan does not mention the provision of bulk raw water. ECFS witness Mr. Landers agreed that the water sub-element did not provide for such purchase. However, Mr. Landers concluded that the lack of specific authorization for Cocoa to purchase would not bar ECFS from providing bulk raw water service. We agree with Mr. Landers. Cocoa's plan is silent on the issue of purchasing bulk water service. Such silence does not lead to an inevitable conclusion that ECFS's certification is inconsistent with Cocoa's comprehensive plan.

Pursuant to our statutory obligation, we have considered Cocoa's comprehensive plan. We find that the record contains no persuasive evidence that ECFS's certification is inconsistent with that plan. In addition, we note that, according to Section 367.045(5)(b), we would not be bound to reject ECFS's application even if we found ECFS's certification inconsistent with Cocoa's plan.

As stated earlier, Brevard County withdrew from this proceeding and is, therefore, not an objecting governmental entity under Section 367.045(5)(b). However, some evidence regarding Brevard County's comprehensive plan was presented by Cocoa and

SBWA. As discussed in greater detail below, our obligation to consider local comprehensive plans extends only to the plans of governmental entities who object to certification. Therefore, we shall not consider the evidence presented regarding Brevard County's plan. As for any other pertinent governmental entities, we are not now in a position to consider their comprehensive plans--even if we were obligated to--since there is no evidence on the record regarding such plans. Orange County, like Brevard County, withdrew from this proceeding. Although participating in the case as a party, Osceola County did not present any evidence regarding its plan. The East Central Florida Regional Planning Council did not participate in this proceeding at all.

Cocoa and SBWA claim that they have the right to assert that the proposed certificate would violate Brevard County's comprehensive plan. They argue, essentially, that once a party's standing is established, it may raise and present evidence on any issue.

We do not agree. Section 367.045(5)(b), Florida Statutes, states that if a county or municipality makes a timely objection, "the commission shall consider, but is not bound by, the local comprehensive plan of the county or municipality." Clearly, this section imposes an obligation to consider only the local comprehensive plans of governmental entities who object to certification. We do not think the Legislature intended that we consider a plan when the entity who enacted that plan, the entity who knows for certain how the plan is to be interpreted and implemented, the entity who would suffer injury if certification was inconsistent with its plan does not even object to certification. We, therefore, conclude that only the entity which enacted a comprehensive plan has standing to assert inconsistency with that plan.

Cocoa and SBWA also argue that ECFS has the burden of proving that certification is not inconsistent with the pertinent local comprehensive plans. Again, we do not agree. We are required by Section 367.045(5)(b) to consider a comprehensive plan only if an objection is filed. Absent an objection, the applicant need not prove that certification is consistent with a governmental entity's plan. If an objection is filed, the objecting governmental entity must raise the issue of certification's inconsistency with its plan. Therefore, we think that under this statutory arrangement, the entity which raises the issue has the burden of proof on the

issue. As noted above, we have considered the evidence Cocoa presented on its comprehensive plan and found no inconsistency with ECFS's certification.

Cocoa and SBWA argue that since the certification of ECFS will frustrate local governments' efforts to implement their respective comprehensive plans, certification is inconsistent with Chapter 163, Florida Statutes. Although we do not agree that ECFS's certification frustrates the implementation of any comprehensive plans, we think it appropriate to comment on the role of Chapter 163 in Commission certification proceedings. We recognize the importance of Chapter 163 and the legislative goal of statewide growth management. We also recognize the importance of our obligation to consider certain comprehensive plans developed pursuant to Chapter 163 in deciding whether or not to grant a certificate. However, the Legislature gave this Commission exclusive authority to certificate utilities.

Section 367.011, Florida Statutes, states that this Commission has exclusive jurisdiction over each utility with respect to its authority, service, and rates. Section 367.011(4), Florida Statutes, states that Chapter 367 supersedes all other laws on the same subject and that subsequent inconsistent laws shall supersede Chapter 367, Florida Statutes, only to the extent they do so by express reference. Chapter 163 does not make express reference to Chapter 367. Section 163.3211, Florida Statutes, specifically states, "Nothing in this act is intended to withdraw or diminish any legal powers or responsibilities of state agencies or change any requirement of existing law that local regulations comply with state standards or rules."

In consideration of the above, we do not think that ECFS's certification is inconsistent with Chapter 163.

COMMISSION JURISDICTION OVER NONPOTABLE WATER

We believe that this Commission has jurisdiction over ECFS's provision of nonpotable water. The most compelling reason for us to hold that we have jurisdiction can be found in the language of Chapter 367, Florida Statutes.

Section 367.021(12), Florida Statutes, defines "utility" as "a water or wastewater utility and, except as provided in s. 367.022,

includes every person, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide, water or wastewater service to the public for compensation." Noticeably, the statute does not differentiate between potable and nonpotable water. This is a highly significant omission for several reasons, the first of which concerns the plain meaning rule of statutory interpretation.

Basically, the plain meaning rule requires that when interpreting undefined terms, the body interpreting the terms must give them their plain and ordinary meaning. See, e.g., City of Tampa v. Thatcher Glass Corporation, 445 So.2d 578 (Fla. 1984). Application of that rule in this case would clearly dictate that "water" be given the meaning of both potable and nonpotable water. Generally, only if ambiguity persists or if ambiguity arises as a result of giving the suspect language its plain meaning, does the interpreter resort to the other rules of statutory interpretation as an aid. We believe that no ambiguity exists after the application of the plain meaning rule to the term "water."

The above notwithstanding, we think that the principle of inclusio unius est exclusio alterius (the inclusion of one thing is the exclusion of the other) gives further support to our interpretation. According to this rule of statutory interpretation, the express mention of one thing requires the exclusion of a similar thing. The inclusio unius rule has application here because of the Legislature's segregating wastewater into two categories for jurisdictional purposes. In Section 367.021(13), Florida Statutes, the term "wastewater" is defined. However, in subsection (8), "industrial wastewater" is defined as something other than subsection (13) wastewater, and pursuant to Section 367.022(9), wastewater treatment plants "operating exclusively for disposing of industrial wastewater" are exempt. Had the Legislature intended to exclude nonpotable water from the Commission's jurisdiction, it could have easily created an exclusion or exemption similar to what it created for industrial wastewater. The inclusio unius rule supports the inference that the Legislature's failure to make a distinction between potable and nonpotable water was intentional.

Another doctrine of statutory interpretation which can be used to determine the Legislature's intended meaning for the suspect language is noscitur a sociis (it is known from its associates).

Under this doctrine, the meaning of a particular term is ascertained by reference to other provisions in the statute associated with the suspect term. Thus, the suspect term is given a meaning consistent with the purpose and content of the entire statute.

For example, in Section 367.021(6) "effluent reuse" is defined as "wastewater after the treatment process, generally for reuse as irrigation water or for in-plant use." (Emphasis added.) (There are no other references to effluent reuse in Chapter 367.) This language supports the proposition that nonpotable water is "water" as contemplated in the definition of "utility." Indeed, we have in the past approved utility tariffs for the sale of effluent reuse for irrigation. E.g., Orders Nos. 22094, issued October 26, 1989 (South Seas Utilities), and 23437, issued September 5, 1990 (Del Tura North).

Section 367.111(2) addresses quality of water. It provides as follows.

> Each utility shall provide to each person reasonably entitled thereto such safe, efficient, and sufficient service as is prescribed by the Florida Safe Drinking Water Act and the Florida Air and Water Pollution Control Act, or rules adopted pursuant thereto, or, if applicable, chapter 17-22, Florida Administrative Code; but such service shall not be less safe, less efficient, or less sufficient than is consistent with the approved engineering design of the system and the reasonable and proper operation of the utility in the public interest. If the commission finds that a utility has failed to provide its customers with water that meets the standards promulgated by the Department of Environmental Regulation, the commission may reduce the utility's return on equity until such time as the standards are met.

We think that there is nothing in the above-quoted subsection which would indicate that "water" means potable water only. The indications are just the opposite. The service a utility is required to provide is qualified such that the standards mentioned later may not be applicable in all instances. Two of the standards referenced, the Florida Safe Drinking Water Act and chapter 17-22, Florida Administrative Code, pertain only to water for human

consumption. However, the phrases "to each person reasonably entitled thereto" and "if applicable, chapter 17-22, Florida Administrative Code" make it clear that water provided to a customer need not be potable water. (The Florida Air and Water Pollution Control Act addresses, among other things, water pollution from wastewater treatment facilities.) The second sentence of the quoted subsection gives this Commission the authority to penalize a utility for providing water which does not meet DER standards. Notably, it does not say potable water standards.

We believe that our interpretation comports with the broad regulatory scheme of Chapter 367. Under Chapter 367, this Commission certificates not just utilities, but their territories as well. We see no conflict between certification of territories under Chapter 367 and, as contemplated here by ECFS, a utility's provision of bulk service to a customer. Rather, we think the statute affirmatively supports there being no distinction for so-called "wholesale" sales of water. Section 367.123 gives us the authority, under certain circumstances, to require one regulated utility to provide service for resale to another, i.e., wholesale sales. According to section 367.145(5)(a), we must discount the regulatory assessment fees paid by a wholesale buyer of water to account for the seller's paying regulatory assessment fees on the same water. In prior decisions, we have approved bulk, or wholesale, rates for water service. E.g., Order No. 25295, issued November 4, 1991 (GDU-Charlotte County). With wholesale sales clearly authorized under the statute, uncertainty over the location of a bulk raw water customer (being where the raw water is treated or where it is consumed after it is treated) in determining an obligation to serve is not relevant to the analysis.

In sum, by applying the doctrine of noscitur a sociis to the question of jurisdiction, we believe that Chapter 367, as a whole, supports our interpretation, rather than disparaging it or dictating the contrary.

We also believe that public policy supports the Commission's regulation of the provision of nonpotable water. ECFS and Osceola County raised this point in their briefs, reminding the Commission of its role in the case of Southern Gulf Utilities v. Mayo, 299 So.2d 156 (Fla. 1st DCA 1974). In that case a water utility regulated by the Commission, Southern Gulf, initiated an action in circuit court against the Commission, the City of Ormond Beach, and

others because of the high raw water rate it was being charged by the City. The Commission argued that the circuit court should have jurisdiction over the City's activities, especially in light of the fact that the City's rates were higher than those of any other seller in the state. Id. at 157. The DCA held that the circuit court had no jurisdiction to fill the regulatory void left by the Legislature's decision not to give the Commission regulatory authority over the City. Id.

If we held that we did not have jurisdiction over the sale of raw water, we may find ourselves in the same position we were in with the Southern Gulf case, that of forcing residential customers to bear the burden of a raw water seller's exorbitant rate. What public policy supports does not necessarily involve monopoly power. But given the state's growing water shortages, it would seem public policy would best be served if this Commission, and not the market, set rates for raw water.

In consideration of the foregoing, we hold that we have jurisdiction over the provision of nonpotable water service. It should be made clear that by so ruling, we are claiming jurisdiction to approve tariffs for the provision of nonpotable water service. We are not granting a separate certificate for the provision of such classes of service.

SMALL SYSTEM EXEMPTION

Cocoa raised the issue of whether ECFS's potable water service was exempt from our regulation as a small system pursuant to under Section 367.022(6), Florida Statutes. The statutory provision Cocoa references, Section 367.022, begins, "The following are not subject to regulation by the commission as a utility nor are they subject to the provisions of this chapter, except as expressly provided." The list thereafter includes subsection (6), "Systems with the capacity or proposed capacity to serve 100 or fewer persons."

By rule, we have further delineated the qualifications for a small system exemption. Rule 25-30.055, Florida Administrative Code, states,

> A water or wastewater system is exempt under Section 367.022(6), Florida Statutes, if its current or proposed

> water or wastewater treatment facilities and distribution or collection system have and will have a capacity, excluding fire flow capacity, of no greater than 10,000 gallons per day or if the entire system is designed to serve no greater than 40 equivalent residential connections (ERCs).

Cocoa argues that ECFS is exempt because not even the largest of its potable water service wells serves as many as 40 ERCs. "[N]o single potable water system will have the capacity . . . to serve more than . . . 14 [ERCs]," Cocoa asserts in its brief. The foundation of Cocoa's argument is that since ECFS's potable water installations are not somehow interconnected, each individual installation is itself a "system" as contemplated by the statute and our rule.

Section 367.021(11), Florida Statutes, defines "system" as "facilities and land used or useful in providing service and, upon a finding by the commission, may include a combination of functionally related facilities and land." Recently, we had cause to interpret this term when its meaning in Section 367.171(7), Florida Statutes, was called into question. See Order No. 24335, issued April 8, 1991, Docket No. 910078-WS, In re: Petition for Declaratory Statement Relating to Jurisdiction of the Florida Public Service Commission over Jacksonville Suburban Utilities Corporation in Duval, Nassau, and St. Johns Counties (hereinafter cited as Jacksonville Suburban).

Section 367.171(7) provides that we have exclusive jurisdiction "over all utility systems whose service transverses county boundaries, whether the counties are jurisdictional or nonjurisdictional." (Emphasis supplied.) The salient question in Jacksonville Suburban was the definition of "system." Since the utility's facilities were managed from one central office, officers and personnel were the same for each facility, and the staffing and budgeting was done on a system-wide basis, we declared that the Jacksonville Suburban facilities in question were a "system" and, therefore, pursuant to Section 367.171(7), we had jurisdiction.

Our interpretation of the term "system" in Jacksonville Suburban has application in this case. We find that the factors which we considered in Jacksonville Suburban are present here. Additionally, we find it significant that the territory ECFS proposes to serve is contiguous and owned by a single entity.

Accordingly, we conclude that the "system" to be considered for the small system exemption is, by definition, all of ECFS's potable water facilities.

The only testimony in the record on the subject of the capacity of ECFS's potable water facilities came from ECFS witness Mr. Hartman. He testified that ECFS's potable water facilities currently provide service to the equivalent of 98.1 ERCs, an amount well over the 40 ERCs limit established in Rule 25-30.055, Florida Administrative Code, for a small system exemption.

In consideration of the above, we find that ECFS's potable water system is not exempt pursuant Section 367.022(6), Florida Statutes.

AFFILIATED AGRICULTURAL WATER CUSTOMER

Cocoa and SBWA argue in their briefs that ECFS does not meet the definition of a utility. ECFS will not supply water to the public as a class, Cocoa and SBWA claim, but rather will provide service to only a single customer, an affiliated entity, Farm Management, Inc., in the case of agricultural service, and employees and tenants of the Mormon Church, in the case of residential service. We shall not consider the latter argument because we granted ECFS's motion to strike Cocoa's making same, and since the issue as framed in the Prehearing Order only pertained to agricultural service.

Cocoa cites a number of cases in support of its view that ECFS's provision of agricultural water service is not utility service. Many of the decisions cited, however, come from states other than Florida or are more than twenty years old, or both, and most were rendered in a context other than the interpretation of Chapter 367, Florida Statutes. For instance, Cocoa cites two Florida cases, Higgs v. City of Fort Pierce, 118 So.2d 585 (Fla. 2d DCA 1960), and Village of Virginia Gardens v. City of Miami Springs, 171 So.2d 199 (Fla. 3rd DCA 1965). The former involved the interpretation of a city charter on a referendum question, and the latter involved a complaint of one city against the other for being charged an unreasonable rate for water service.

We find more persuasive guidance from the Florida Supreme Court's decision in PW Ventures, Inc., v. Nichols, 533 So.2d 281

(Fla. 1988). Notably, neither Cocoa nor SBWA cite to or attempt to distinguish PW Ventures from the instant case.

In PW Ventures, the court reviewed and upheld a declaratory statement issued by the Commission wherein the Commission ruled it had jurisdiction over PW Venture's proposed sale of electricity to one customer. PW Ventures proposed to construct, own, and operate a cogeneration facility on land owned and controlled by Pratt & Whitney (Pratt) and proposed to sell the facility's output to Pratt under a long-term take-or-pay contract. The issue, as framed by the court, was "whether the sale of electricity to a single customer makes the provider a public utility." Id. at 282. The court agreed with the Commission's interpretation that "to the public" meant to any member of the public. Id. at 283.

Although the definition of utility contained in Section 366.02(1), Florida Statutes, and interpreted by the court in PW Ventures is not identical to the definition of utility in Section 367.021(12), Florida Statutes, it is similar enough for use to think that PW Ventures is highly persuasive, if not controlling. On the basis of PW Ventures, we think that ECFS's provision of agricultural service initially to a single affiliated entity is jurisdictional. Furthermore, we note, and ECFS acknowledges, that although agricultural service will initially be provided to only one customer, ECFS must provide said service to all customers in the service territory reasonably entitled to service.

GRANTING OF CERTIFICATE NO. 537-W TO ECFS

ECFS intends to provide water service to the public for compensation. As stated above, we find that ECFS has the financial and technical ability to provide water service, there is a need for water service, ECFS's facilities will not be in competition with or a duplication of other facilities, and certification is not inconsistent with any pertinent comprehensive plans. ECFS complied with all statutory and rule requirements for certification. As proof that it had ownership of or long-term access to the land on which its facilities are located, ECFS provided as part of its application a copy of a 99-year lease entered between ECFS and an affiliated organization, the COP.

In consideration of the foregoing, we find that it is in the public interest to grant ECFS a certificate authorizing the

provision of water service. Although Osceola suggests that we issue ECFS a separate certificate for each county in which it operates, we shall issue ECFS a single certificate. It is common practice that we issue a single certificate to a utility which operates a system spanning several counties. In addition, we do not think that any useful regulatory purpose would be served by issuing separate certificates. Therefore, ECFS is hereby granted Certificate No. 537-W. For administrative purposes only, we give the following names to ECFS's facilities: the ECFS Potable Water System, the ECFS Irrigation Water System, and the ECFS Raw Water System.

Attached hereto and marked "Attachment A" is the legal description of ECFS's certificated territory. We note that the attached legal description is a revised version which was furnished by ECFS subsequent to the hearing. None of the parties has opposed the revision, and, in fact, the revision came at Cocoa's request after it discovered errors in the original.

SERVICE RATES, RETURN ON EQUITY, AND CHARGES

As part of its application, ECFS filed sample tariffs, which contained all the rates, charges, classification, rules, and regulations it intends to utilize in providing water services, and it filed a cost study and certain projected financial information supporting the rates and charges requested. Our discussion of the proposed rates, return on equity, and charges follows.

Rates and Return on Equity

ECFS's witnesses testified in support of the rate information filed. Cocoa witness Mr. Mayer criticized ECFS's calculations and concluded that ECFS's proposed rates were higher than what Cocoa would charge for the same service. In its post-hearing statement, Cocoa took the positions that a bulk raw water rate and service availability charge should not be established without a customer and that ECFS failed to demonstrate the appropriateness of the other requested rates and charges. However, Cocoa did not argue these issues at all in its brief. In its post-hearing statement, Osceola County took the positions that the rates and charges requested were appropriate. In its brief, SBWA states that in consideration of the lack of a bulk raw water customer, it will

concede that the rates and charges in the application are appropriate.

Pursuant to Section 367.081(2)(b), Florida Statutes, when we establish a utility's initial rates, we project the financial and operational data necessary to calculate rates to a point in time when the utility is expected to be operating at a reasonable level of capacity. The information and calculations produced by ECFS comport with this practice. We believe that the projections and calculations supporting the rates are reasonable. We do not think that the testimony presented by Cocoa on the question of rates and charges is persuasive. Indeed, the accounting recommendations of Mr. Mayer were, to a significant degree, not aligned with this Commission's practices or policies for calculating rates.

We have calculated rate base, operating expense, cost of capital, rates and charges for each type of service as discussed below. The adjustments which we have made were either necessitated by the various amendments to ECFS's application or were based upon information filed by ECFS pursuant to our Order Granting Motion to Supplement the Record, Order No. 25374, issued November 21, 1991.

Our calculation of rate base for each type of service is shown in Schedule No. 1, which is attached hereto and by reference incorporated herein. We have made no significant adjustments to what ECFS projected these rate bases to be in its filing. Although we use the figures in Schedule No. 1 to establish ECFS's initial rates, we are not establishing rate base.

Our calculation of operating income for each type of service is shown in Schedule No. 2, which is attached hereto and by reference incorporated herein. We have made minor adjustments to ECFS's projected expenses for taxes other than income taxes, i.e., the regulatory assessment fee, and to income taxes.

Our calculation of the appropriate cost of capital for each type of service is shown in Schedule No. 3, which is attached hereto and by reference incorporated herein. We have adjusted ECFS's projected cost of capital figures so that the rate of return on equity is that which would be allowed under the current leverage formula contained in Order No. 24246, issued March 3, 1991. As specified in Order No. 24246 for an assumed capital structure of 40% common equity and 60% long term debt, ECFS's authorized return on common equity is 13.11%, with a range of reasonableness of 1%

above and below that figure. The overall rate of return, as shown in Schedule No. 3, is 11.24%.

ECFS did not request an Allowance for Funds Used During Construction (AFUDC) rate because it does not expect to construct additional plant until a raw water customer is identified. However, it is Commission practice to establish an AFUDC rate whenever we establish an authorized rate of return. Therefore, we hereby authorize an AFUDC rate of 11.24%, which is the overall rate of return authorized above.

We modified the design of ECFS's proposed potable water rate slightly, decreasing the base facility charge and increasing the gallonage charge, so as to encourage conservation. We made further adjustments to the proposed potable water rate, as necessitated by the reduction in the number of ERCs served after various amendments to ECFS's application. We similarly adjusted the agricultural water service rates because ECFS deleted, by amendment, approximately 3,000 acres from its proposed territory.

In consideration of the foregoing, we hereby approve the rates set forth below, which we find are fair, just, and reasonable. ECFS shall file tariff sheets consistent with the rates approved herein.

Potable Water Service

Monthly

Residential and General Service Rates

Base Facility Charge	As Filed	Commission Approved
Meter Size		
5/8" x 3/4" or ERC	$ 14.47	$ 13.50
1"	36.18	33.75
1-1/2"	72.35	67.50
2"	115.76	108.00
3"	231.52	216.00
4"	361.75	337.50
6"	723.50	675.00
Gallonage charge per 1,000 G.	$ 1.34	$ 1.50

Agricultural Water Service

Monthly

Flowing Well Rates

Well Size	As Filed	Commission Approved
2"	$13.12	$ 13.25
2-1/2"	19.50	20.29
3"	23.04	24.96
4"	30.37	31.90
5"	37.25	39.00
6"	56.88	58.25

Agricultural Water Service

Monthly

Pumped Well Rates

Well Size	As Filed	Commission Approved
Well Size		
6"	$42.63	$ 43.67
8"	48.11	49.21
10"	53.52	54.67
12"	58.81	60.33
13"	64.08	65.58

Other Facility Rates

Windmills	$50.75	$ 52.72
Livestock Wells	60.90	51.40
Surface Water	48.86	49.42
Citrus Wells	33.92	49.42

Raw Water Service

Monthly

	As Filed	Commission Approved
Base Facility Charge	$2,137.25	$2,137.25
Gallonage charge per 1,000 G.	$ 0.1715	$ 0.1712

Miscellaneous Service Charges

The miscellaneous service charges proposed by ECFS are as follows:

Miscellaneous Service Charges

Initial Connection Fee	$ 15
Normal Reconnection Fee	$ 15
Violation Reconnection Fee	$ 15
Premises Visit (In Lieu of disconnection)	$ 10

The proposed miscellaneous service charges are consistent with what we have approved in the past. No evidence was presented by any of the parties which leads to the conclusion that these charges are not appropriate. Therefore, we hereby approve ECFS's proposed miscellaneous service charges. ECFS shall file tariff sheets consistent with our approval. Since ECFS did not request approval for charging customer deposits, we shall not require that any be implemented at this time.

Service Availability Charges

In its application, ECFS proposed separate service availability charges for each of the services it intends to provide. The sample tariffs ECFS filed reflect the following service availability charge for potable water service.

Potable Water System Capacity Charges

Per Equivalent Residential Connection	$1,100

Imputing the proposed charge for existing and anticipated connections as of December 31, 1992, we calculate that the charge would result in a net contributions-in-aid-of-construction (CIAC) to net plant-in-service ratio of approximately 80% by the end of 1992. This 80% ratio of net CIAC to net plant-in-service slightly exceeds the service availability design guidelines set forth in Rule 25-30.580(1), Florida Administrative Code. However, we do not think that the amount of the excess in this case dictates our rejecting the proposed charge. We, therefore, find that ECFS's proposed potable water service availability charge is appropriate.

The sample tariffs ECFS filed reflect the following service availability charges for agricultural (irrigation) water service.

Irrigation Water System Capacity Charges

Well Size	Charge
Flowing Wells	
4"	$ 2,250
6"	5,500
8"	7,500
Pumped Wells	
4"	$ 9,000
6"	11,400
8"	14,625
10"	18,750
12"	22,800

The above service availability charges were structured so ECFS would collect 75% of the projected construction costs per well facility from the customer. We imputed no CIAC for the existing irrigation facilities since such facilities are more than half depreciated. The proposed charges should, therefore, result in a

net CIAC to net plant ratio within the guidelines of Rule 25-30.580(1), Florida Administrative Code. Accordingly, we find that the proposed charges are appropriate.

The sample tariffs ECFS filed reflect the following service availability charge for bulk raw water service.

Raw Water System Capacity Charges

Per equivalent residential connection (350 GPD/ERC) $75.

We project that the above charge will result in ECFS's collecting approximately 75% of the cost of constructing raw water facilities from the customer; therefore, the net CIAC to net plant ratio will fall within the guidelines of Rule 25-30.580(1), Florida Administrative Code. Accordingly, we find that the proposed charges are appropriate.

In consideration of the above, we hereby approve ECFS's proposed service availability charges as requested. ECFS shall submit tariff sheets consistent with our approval.

EFFECT OF CERTIFICATE ON ACCESS TO WATER RESOURCES

Cocoa raised the issue of whether a water certificate issued by this Commission would authorize the certificated utility to prohibit or impede the use of water resources in the certificated area by other persons. To some of the parties, this appeared to be a matter of overriding concern. Cocoa, for instance, argued at length during the hearing and in its brief that there was a very real possibility that certification would be deleterious to those seeking access to the certificated area's water resources and also that such a possibility supported its having standing in this proceeding. Since we do not think that the issue warrants in-depth analysis, we have limited our discussion to the following.

Under Section 373.023(1), Florida Statutes, all water in the state is subject to regulation as set forth in Chapter 373. Exclusive authority over the permitting of consumptive uses of water is, as set forth in Chapter 373, vested in the water management districts of the state and DER, depending on the location of the water. The Public Service Commission has

"exclusive jurisdiction over each [water] utility with respect to its authority, service, and rates." Section 367.011, Florida Statutes. Nowhere in Chapter 367 is this Commission given any authority over the consumptive use of water. Since we have no jurisdiction over the consumptive use of water, we have no authority, or reason, to determine the significance of one of our certificates on the permitting of uses of water in a certificated territory.

OBLIGATION TO PROVIDE SERVICE

Osceola raised two issues regarding ECFS's obligation to provide bulk raw water service. As incorporated in the Prehearing Order, these issues were as follows: "Under what circumstances, if any, does the issuance of a certificate to ECFS and the establishment of a bulk raw water rate by the Florida Public Service Commission impose upon ECFS an obligation to provide bulk water service to persons or entities requesting such service for use outside of the proposed service territory of ECFS?" and "What effect, if any, does the location of a proposed bulk service customer's line have on the obligation of the utility to provide bulk raw water service to persons located outside of the proposed water service territory?"

Osceola briefed these issues jointly. Most, if not all, of the arguments raised by the parties on these issues apply equally to both, and our rulings on both issues are the same. Therefore, even though the issues are somewhat different, we shall also address them jointly.

It is clear from the record that Cocoa owns transmission lines capable of transporting bulk water which traverse the proposed territory. However, there is no evidence in the record which would indicate that Cocoa is a potential raw water customer. All that can be gleaned from the record regarding a potential raw water customer is Mr. Hartman's assertion that a Mr. Kempfer who owns property adjacent to the proposed certificated territory has discussed the matter, apparently, with ECFS management.

The two parties most concerned with these issues, ECFS and Osceola, emphasize that requiring a utility to serve bulk raw water customers located outside of the certificated territory would impose an unrealistic, limitless, and unreasonable burden on the

utility. However, when ECFS's witness, Mr. Hartman, was asked what practical problems ECFS would encounter if it had to serve anyone who established a point of delivery in the service area, he did not indicate any.

In its brief, ECFS also took exception to Cocoa's argument that there should be an obligation to serve outside the territory if certification impeded the access of outside parties to the water resources in the territory. Basically repeating the argument it made relative to the previous section of this Order, ECFS urged this Commission not to speculate on the effect certification might have on consumptive use permitting.

For its part, Osceola argued at length in its brief that ECFS could not be obligated to provide service to a customer who establishes a point of delivery within ECFS's certificated territory when the customer's consumption of the service is outside the territory. In support of this view, Osceola relied exclusively on the Florida Supreme Court's decision in Lee County Electric Cooperative v. Marks, 501 So.2d 585 (Fla. 1987) (hereinafter cited as LCEC v. Marks).

In LCEC v. Marks, the court overturned our decision to dismiss a petition filed by Lee County Electric Cooperative (LCEC) wherein LCEC sought resolution of a territorial dispute it had with Florida Power & Light (FPL). In its petition, LCEC alleged that FPL had violated the territorial agreement the two had entered into which provided that neither would offer to serve a customer outside their respective service areas without the permission of the other. FMM, an industrial customer within the territory of LCEC, constructed a transmission line--apparently with FPL's advice and assistance-- to a point just inside of FPL's territory and then sought service from FPL.

In overturning this Commission's dismissal of the petition, the court enunciated two reasons. First, the court thought that the LCEC's petition, taken as true, successfully alleged a violation of the territorial agreement. Id. at 587. Second, the court thought that the decision did violence to our legal duty to police the orderly development of electric facilities and to avoid their uneconomic duplication. Id. On the latter point, the court noted, "[W]e cannot find that the transparent devise of constructing a line into another utility's service area may suffice to avoid the effect of a territorial agreement." Id.

Despite raising these issues and arguing them extensively, Osceola did not offer or solicit any evidence pertaining to these issues. Neither did any of the other parties. Thus, we are left with no facts to which we could apply the law.

Even if we chose to do so, we do not believe that we could issue a declaratory statement resolving these issues. There is no controversy or question concerning the applicability of any statute, rule, or order as it applies or may apply to a certain situation. See Rule 25-22.021, Florida Administrative Code. Indeed, it would seem that the first issue as phrased, "Under what circumstances . . . ," asks the Commission to supply the necessary fact situation. Needless to say, we are not obligated to or in a position to do this. Without facts, we cannot confirm Osceola's interpretation of LCEC v. Marks. Nor can we distinguish LCEC v. Marks because it was resolved on the basis of the sufficiency of the initial pleading or because it was strictly a question of interpreting a territorial agreement which FPL knowingly circumvented or for any other reason.

In the instant case, we do not know who or where the bulk customer is. We do not know the nature or posture of a controversy, and there are no facts in the record identifying a dispute over the obligation to provide service. Although we recognize the importance of these issues, we cannot apply the law to an unknown set of circumstances. Simply put, these two issues are not ripe for decision.

We can offer the parties only the following limited guidance. Section 367.111(1), Florida Statutes, states that a utility shall provide service to the area described in its certificate. In the past we have interpreted this to mean that the utility has to provide service to customers in the certificated territory. A certificated utility has no obligation to serve a customer outside its certificated territory. As provided for in Chapter 367, no certificated utility can serve a customer outside its territory without this Commission's prior approval.

Because we have not rendered a decision on these issues, ECFS's tariffs should not, in statements of availability, applicability, or elsewhere, create the impression that we have. Therefore, tariff sheets containing the rates and charges for bulk raw water service shall not be approved unless all statements in said tariffs regarding availability, applicability, and the like

indicate that the rates or charges pertain to the provision of service to bulk raw water customers, but make no reference to customer location.

Based upon the foregoing, it is

ORDERED by the Florida Public Service Commission that the application of East Central Florida Services, Inc., for an original water certificate is hereby granted. It is further

ORDERED that Certificate No. 537-W shall be issued to East Central Florida Services, Inc., 5850 T.G. Lee Boulevard, Suite 250, Orlando, Florida, 32822. It is further

ORDERED that all matters contained in the body of this Order and in the Schedules and Attachment appended hereto are, by reference, incorporated herein. It is further

ORDERED that all of the findings of fact and conclusions of law contained herein are approved in every respect. It is further

ORDERED that East Central Florida Services, Inc.'s initial rates and charges shall be those set forth in the body of this Order. It is further

ORDERED that a return on equity of 11.24% is established for East Central Florida Services, Inc., for use in future proceedings and in the calculation of AFUDC rates. It is further

ORDERED that East Central Florida Services, Inc., shall submit tariff sheets consistent with our decision herein. It is further

ORDERED that the rates and charges set forth herein shall not become effective until tariff sheets are filed and approved. The tariff sheets will be approved upon our Staff's verification that said tariff sheets are consistent with our decision herein. It is further

ORDERED that East Central Florida Services, Inc.'s service territory shall be that set forth in Attachment A, appended hereto. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 27th day of MARCH, 1992.

STEVE TRIBBLE, Director,
Division of Records and Reporting

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

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 sewer 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.

SCHEDULE NO. 1

EAST CENTRAL FLORIDA SERVICES, INC.
Schedule of Water Rate Bases

Description	Potable	Agri-cultural	Raw
Utility Plant in Service	$ 158,000	$ 502,300	$1,540,300
Land	- 0 -	- 0 -	- 0 -
Accumulated Depreciation	(32,859)	(310,471)	(61,679)
Contributions-in-aid-of-Construction	(107,800)	- 0 -	(1,071,429)
Amortization of CIAC	5,412	- 0 -	42,857
Working Capital	3,031	7,181	26,388
Rate Base	$ 25,784	$ 199,010	$ 476,437

SCHEDULE NO. 2

EAST CENTRAL FLORIDA SERVICES, INC.
Schedule of Water Operations

Description	Potable	Agri-cultural	Raw
Operating Revenues	$ 34,614	$118,602	$338,171
Operating and Maintenance	$ 24,244	$ 57,446	$211,100
Depreciation (Net)	2,520	19,487	18,822
Taxes Other Than Income	4,418	15,170	44,828
Income taxes	534	4,122	9,869
Total Operating Expense	$ 31,716	$ 96,225	$284,619
Net Operating Income	$ 2,898	$ 22,377	$ 53,552
Rate Base	$ 25,784	$199,010	$476,437
Rate of Return	11.24%	11.24%	11.24%

SCHEDULE NO. 3

EAST CENTRAL FLORIDA SERVICES, INC.
Schedule of Capital Structure

Potable Water

Description	Capital	Weight	Cost Rate	Weighted Cost
Common Equity	$ 10,314	40%	13.11%	5.24%
Long Term Debt	15,470	60%	10.00%	6.00%
Totals	$ 25,784	100%		11.24%

Agricultural Water

Description	Capital	Weight	Cost Rate	Weighted Cost
Common Equity	$ 79,604	40%	13.11%	5.24%
Long Term Debt	119,406	60%	10.00%	6.00%
Totals	$199,010	100%		11.24%

Raw Water

Description	Capital	Weight	Cost Rate	Weighted Cost
Common Equity	$190,575	40%	13.11%	5.24%
Long Term Debt	285,862	60%	10.00%	6.00%
Totals	$476,437	100%		11.24%

NORTHERN PARCEL

Beginning at the point of intersection of the West line of the East half of Section 32, Township 22 South, Range 33 East and the South right of way line of State Road 50; Thence East 1,320± feet; Thence South 1,320± feet; Thence East 1,320± feet; Thence South 2,640± feet to the Northwest corner of Section 4, Township 23 South, Range 33 East; Thence East 3,960± Thence South 5,280± feet to the north line Section 9; Thence East 3,960± feet to the north quarter corner of Section 10; Thence South 1,320± feet; Thence East 1,320± feet; Thence North 1,320± feet; Thence East 1,320± feet to the Northeast corner of Section 10; Thence South 3,960± feet; Thence West 1,320± feet; Thence South 1,320± feet; thence East 11,880± feet to the Northeast corner of Section 13; Thence South 21,120± feet to the Southeast corner of Section 36, Township 23 South, Range 33 East, Thence, said point also being the northwest corner of Section 6, Township 24 South, Range 34 East, Thence East along the North line of said Section 6 5,280± feet to the Northeast corner of Section 6, Thence South 2,640± feet, thence West 5,280± feet, thence South 1,320± feet, thence East 700± feet, to the Westerly right of way line of State Road 520, thence Southeasterly along said South right of way line 1,570± feet to the North line of Section 7, Thence East 14,500± feet to the Northeast corner of Section 9; Thence South 26,400± feet to the Northwest corner of Section 3, Township 25 South, Range 34 East; Thence East 13,200± feet to the North quarter corner of Section 1; Thence Southeasterly across Section 1 to a point 1,320± feet South of the Northeast corner of Section 12; Thence South 3,960± feet to the Northeast corner of Section 13; Thence East 2,640± feet to the East line of Section 18, Township 25 South, Range 35 East; Thence East 1,980± feet to the Northwest corner of the Northeast 1/4 of the Northeast 1/4 of the Northwest 1/4 of Section 17, Thence South 660± feet, Thence East 660± feet, Thence South 660 feet, Thence East 2,640± feet to the East line of Section 17; Thence South 3,960± feet to the Northeast corner of Section 20; Thence East 2,640± feet to the North quarter corner of Section 21; Thence South 5,280± feet to the North quarter corner of Section 28; Thence Southwesterly through Sections 28, 29 and 32 of Township 25

South, Range 31 East; Thence North 2,640± feet to the West quarter corner of Section 36; Thence East 5,280± feet to the West quarter corner of Section 31, Township 25 South, Range 32 East; Thence North 5,280± feet to the West quarter corner of Section 30; Thence West 5,280± feet to the West quarter corner of Section 25, Township 25 South, Range 31 East; Thence North 2,640± feet to the Southwest corner of Section 24; Thence West 3,960± feet to the Southeast corner of the Southwest 1/4 of the Southwest 1/4 of Section 23; Thence South 2,640± feet to the Southeast corner of the Southwest 1/4 of the Northwest 1/4 of Section 26; Thence West 3,960± feet to the Southwest corner of the Northeast 1/4 of Section 27; Thence North 2,640± feet to the North quarter corner of Section 27; Thence East 2,640± feet to the Southwest corner of Section 23; Thence North 21,120± feet to the Northwest corner of Section 2; Thence East 31,680± feet to the Southwest corner of Section 35; Township 24 South, Range 32 East; Thence North 18,155± feet to a point 2,315± feet North of the Southwest corner of Section 14; Thence East 5,280± feet; Thence North 1,645± feet; Thence West 5,280± feet; Thence North 1,320± feet to the Southwest corner of Section 11; Thence North 15,840± feet to the Northwest corner of Section 35, Township 23 South, Range 32 East; Thence East 10,560± feet to the Southwest corner of Section 30, Township 23 South, Range 33 East; Thence North 26,400± feet to the Northwest corner of Section 6; Thence East 7,920± feet to the South quarter corner of Section 32, Township 22, South Range 33 East; Thence North 3,600± feet to the Point of Beginning.

All lands included within the previously described boundary line less and except the following described parcel:

> Begin at the Northwest Corner of Section 22, Township 26 South, Range 34 East; Thence South 1,320± feet; Thence East 3,960± feet; Thence North 2,640± feet to the Northeast corner of the Southwest 1/4 of the Southeast 1/4 of Section 15; Thence West 1,320± feet; Thence South 1,320± feet to the North quarter corner of Section 22; Thence West 2,640± feet to the Point of Beginning. All lands lying within Section 15 and 22.

Less and except the following two described parcels in Section 14, Township 24 South, Range 32 East.

Commence at the Northwest corner of Section 14; Thence South 574± feet to the Point of Beginning; Thence South 209± feet; Thence East 309± feet; Thence North 209± feet; Thence West 309± feet to the Point of Beginning.

Commence at the Southwest corner of Section 14; Thence North 315± feet to the Point of Beginning; Thence North 209± feet; Thence East 259± feet; Thence South 209± feet; Thence West 259± feet to the Point of Beginning.

Less and except the following three described parcels in Section 2, Township 24 South, Range 32 East:

Commence at the Northwest corner of Section 2; Thence South 81± feet to the Point of Beginning; thence East 309± feet; Thence South 209± feet; Thence West 309± feet; Thence North 209± feet to the Point of Beginning.

Commence at the West quarter corner of Section 2; Thence North 690± feet to the Point of Beginning; Thence North 209± feet; Thence East 309± feet; Thence South 209± feet; Thence West 309± feet to the Point of Beginning.

Commence at the Southwest corner of Section 2; Thence North 1,638± feet to the Point of Beginning; Thence North 209± feet; Thence East 309± feet; Thence South 209± feet; Thence West 309± feet to the Point of Beginning.

Less and except the following described parcels in Section 35, Township 23 South, Range 32 East:

Begin at a point 863 feet more or less North of the Southwest corner of the Northwest quarter of Section 35; Thence North 209 feet more or less; Thence East 309 feet more or less; thence South 209 feet more or less; Thence West 309 feet more or less to the Point of Beginning.

Less and except the following described parcel in Section 20, Township 24 South, Range 34 East:

Begin at the Northwest corner of Section 20; Thence East 1,390± feet to the West right-of-way line of State Road 520; Thence Southeasterly along said West right-of-way line 1,990± feet; Thence South 3,070± feet; Thence West 1,390± feet; Thence North 1,320± feet; Thence West 700± feet to the Easterly right-of-way line of Taylor Creek Road; Thence Northwesterly along said Easterly right-of-way line 1,440± feet; Thence West 460± feet to the West line of Section 20; Thence North along said West section line 1,440± feet to the point of beginning.

Less and except the following described parcel in Section 7, Township 24 South, Range 34 East:

Commence at the Northeast corner of Section 7; Thence South 1,510± feet; Thence West 1,260± feet to the Point of Beginning; Thence West 2,100± feet to the Easterly right-of-way line of State Road 520; Thence Southeasterly along said Easterly right-of-way line 1,580± feet; Thence East 1,420± feet; Thence North 1,440± feet to the Point of Beginning.

Less and except that portion of the East 1/2 of Section 21, Township 24 South, Range 34 East, owned by Florida Power & Light Company containing 110 acres more or less.

SOUTHERN PARCEL

Commence at the Northeast corner of Section 2, Township 29 South, Range 35 East; Thence West 2,610± feet to the Point of Beginning; Thence Southeasterly 10,600± feet to the South line of Section 11; Thence East 620± feet along the South line of Section 11 to a point 1,060± feet West of the East line of Section 11; Thence South 6,490± feet to a point 1,210± feet South of the North line of Section 23; Thence Southwest on an angle South 48° West 5,870± feet to the Southwest corner of Section 23; Thence South along the East line of Sections 27 and 34, Township 29 South, Range 35 East 10,760± feet; Thence East along the North line of Section 2, Township 30 South, Range 35 East 5,480± feet to the Northeast corner of Section 2; Thence South 5,310± feet to the Southeast corner of Section 2; Thence West along the South lines of Sections 2, 3, 4, 5 and 6 26,410± feet; Thence North along the West line of Section 6 5,310± feet to the Southeast corner of Section 36, Township 29 South, Range 34 East; Thence West 15,970± feet along the South lines of Sections 36, 35 and 34 to the Southwest corner of Section 34; Thence South along the East line of Section 4, Township

30 South, Range 34 East 5,190± feet to the Southeast corner of Section 4; Thence West along the South lines of Sections 4, 5 and 6 and the South lines of Sections 1 and 2 of Township 30 South, Range 33 East to the Eastern right-of-way line of U.S. 441 in Section 2; Thence Northerly along said Eastern right-of-way line through Section 2 5,350± feet and 2,640± feet along said right-of-way line in Section 35, Township 29 South, Range 33 East; Thence East 3,340± feet to the West line of Section 36; Thence North 2,640± feet along said West line to the Southeast corner of Section 26; Thence West along the South line of Section 26 3,370± feet to the Eastern right-of-way line of U.S. 441; Thence North along said Eastern right-of-way line through Sections 26, 23, 14, 15, 10, 3 and 4 to the North line of Section 4, 440± feet West of the Northeast corner of said section; Thence East along the North lines of Sections 4, 3, 2 and 1 and the North lines of Sections 6, 5, 4, 3, 2 and 1 in Township 29 South, Range 34 East and the North lines of Sections 6, 5, 4, 3 and 2 of Township 29 South, Range 35 East for a total distance of 72,500± feet to the Point of Beginning.

All lands included within the previously described boundary line less and except the following five (5) described parcels:

Parcel 1

Begin at the West quarter corner of Section 5, Township 29 South, Range 34 East; Thence South 1,320± Thence East 2,640± feet; Thence North 2,640± feet; Thence East 1,320± feet; Thence South 1,320± feet; Thence West 3,960± feet to the Point of Beginning. All lands lying within Section 5.

Parcel 2

Begin at the Northeast corner of the Northeast 1/4 of the Southwest 1/4 of Section 9, Township 29 South, Range 34 East; Thence South 1,320± feet; Thence West 1,320± feet; Thence North 1,320± feet; Thence East 1,320± feet to the Point of Beginning. All lands lying within Section 9.

Parcel 3

Begin at the Northeast corner of Section 13, Township 29 South, Range 33 East; Thence South 1,320± feet; Thence West 1,760± feet; Thence North 1,320± feet; Thence East 1,760± feet to the Point of Beginning. All lands lying within Section 13.

Parcel 4

Begin at the Northwest corner of Section 13. Township 29 South, Range 33 East; Thence East 1,760± feet; Thence South 2,640± feet; Thence West 1,760± feet; Thence North 2,640± feet to the Point of Beginning. All lands lying within Section 13.

Parcel 5

Begin at the Northwest corner of the Southeast 1/4 of the Southwest 1/4 of Section 13, Township 29 South, Range 33 East; Thence East 2,640± feet; Thence South 1,320± feet; Thence West 2,640±; Thence North 1,320± feet to the Point of Beginning. All lands lying within Section 13.

Notes concerning this description are as follows:

1. All distances indicated are not measured but are accurate for the purposes of this water service area description.

2. All "calls" within this description reference the most previously referenced Section, Township or Range within this description.

South, Range 35 East, a distance of 13,200± feet to the Southwest corner of Section 32, Thence continue Southwesterly through Section 6, Township 26 South, Range 35 East, 3,500± feet to a point on the East line of Section 1, Township 26 South, Range 34 East; Thence continue Southwesterly through Section 1 and Section 12, Township 26 South, Range 34 East 7,400± feet to a point 1,800± feet North of and 1,400± feet East of the Southwest corner of Section 12, Township 26 South, Range 34 East; Thence run South 7,100± feet to the South line of Section 13, Thence East 3,500± feet to the Southeast corner of said Section 13; Thence continue East along the North line of Section 19, Township 25 South, Range 35 East 270± feet; thence S. 40° E. 4100± Feet to a point on the East line of said Section 19, said point being 1670± feet North of the Southeast corner of said Section 19, thence S. 20° E. 1320±; Thence S. 30° W. 860± feet to a point on the West line of Section 29, Township 25 South, Range 35 East; Thence S. 8° W. 1000± feet; Thence S. 24° E. along a line through Sections 29 and 32 of Township 25 South, Range 35 East, to a point on the South line of said Section 32; thence S. 75° East through Sections 5 and 4 of Township 27 South, Range 35 East, to a point 1950± feet South of and 380± feet West of the Northeast corner of said Section 4; thence South 1790± feet; thence S. 66° E. 3350± feet; thence N. 86° E. 3000± feet to a point on the East line of Section 3, Township 27 South, Range 35 East; thence continue N. 86° E. 1310± feet, thence S. 68° E. through Sections 2, 11 and 12 of Township 27 South, Range 35 East, 8560± feet to a point approximately 300 feet North of and approximately 1,000 feet East of the Southwest corner of the Northeast 1/4 of Section 12, Thence South 21,000± feet through Sections 12, 13, 24, 25 and 36 of Township 27 Section, Range 35 East to a point on the North right of way line of U.S. Highway 192; Thence West 23,093± feet along the North right of way line of U.S. Highway 192; Thence, North 6°16'34" East, 5,245.60 feet to the South line of the north half of Section 29; Thence, North 89°46'34" East, 1,425 feet along said South line of the North half of Section 29; Thence, North 00°23'46" East, 7,920.36 feet along the East lines of Sections 20 and 29 to the Northeast corner of Section 20; Thence, North 89°46'34" West, 10,560.00 feet along the North lines of Sections 19 and 20 to the Northwest corner of Section 19; Thence, South 00°23'46" West, 5,280.00 feet along the West line of Section 19, to the Southeast corner of Section 24, Township 27 South, Range 35 East; Thence West 10,560± feet to the Northeast corner of Section 27; Thence South 5,280± feet to the Southeast corner of Section 27; Thence Northwesterly along the Northerly right of way line of U.S. Highway 192 to the Southwest corner of Section 12, Township 27 South, Range 32 East; Thence North 42,240± feet to the Northwest corner of Section 1, Township 26 South, Range 32 East; Thence West 31,680± feet to the Southwest corner of Section 36, Township 25 South, Range 31 East;