STATE OF FLORIDA

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ORIGINAL FILE COPY

April 17, 1992

Mr. Steve Tribble, Director
Division of Records and Reporting
Florida Public Service Commission
101 E. Gaines Street
Tallahassee, FL 32399-0863

RE: Docket No. 911082-WS

Dear Mr. Tribble:

Enclosed please find the original and (15) copies of Comments by the Office of Public Counsel, for filing in the above-referenced docket.

Please indicate receipt of same by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

H. F. Mann, II
Associate Public Counsel

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Revisions to Rules 25-22 and 25-30, F.A.C.

DOCKET NO. 911082-WS
Filed: April 17, 1992

COMMENTS BY THE OFFICE OF PUBLIC COUNSEL

Pursuant to the Public Service Commission Staff's request at workshops held in the above docket, the Office of Public Counsel submits the following comments on staff's proposed water and wastewater rule revisions.

RULE 25-22.0407 NOTICE AND INFORMATION ON GENERAL RATE INCREASE REQUESTS

The Office of Public Counsel salutes Staff's concern that the application and rule requirements be simplified and less costly. The adoption of boiler plate notice forms and synopsis forms as a requisite part of any application would help achieve these objectives. Notice and synopsis forms could be tailored to fit the type of application submitted. Public Counsel cannot, however, accede to any abbreviation of the Citizens' due process rights to notice, which ensure the Citizens adequate time to present their concerns to the Commission. To that end, Public Counsel proposes that the rule be amended to make the Commission application and notice approval process a one-step process:

(2) Upon filing a petition for a general rate increase, the utility shall mail a copy of the petition , the customer

notice [Commission form no.], the synopsis [Commission form no.], and the minimum filing requirements . . . . .

This would permit the approval or disapproval, with suggested changes to all three at the same time and avoid the delay by the separate one-at-a-time approvals now proposed. The boiler plate notices and synopsis forms should make this part perfunctory in any event.

(3) (a) Within 15 days after being notified by the Commission that is has met the MFRs, the utility shall place a copy of the MFRs, notice, and synopsis at its official headquarters and at its business office in each service area included in its rate application. Upon customer request, the utility shall place a copy of the MFRs, notice, and synopsis in a utility business office in a service area not included in its rate application. The copies of the MFRs, notice, and synopsis shall be available for public inspection during the utility's regular business hours.

(b) In addition to the locations listed above, the Commission may require that copies of the MFRs, notice, or synopsis be placed at other specified locations. Customers should receive notice within 30 days not 60 days.

(5) The utility shall provide written notice of its application to all customers affected by the application no later than 30 days after being notified that it has met the MFRs, notice and synopsis requirements of this rule.

The synopsis and notice will have been approved at the same time as the MFRs, so no additional time will be needed for these steps. The Citizens require this time in order to adequately prepare their case for presentation before the Commission, which is working under a statutory deadline of 8 months. Shortening Citizens' time to 6 of those months curtails their opportunity to engage in adequate discovery, preparation of expert testimony and their case.

Each notice form should be written and adopted in its entirety by rule. The following is a proposed revision of 25-22.0407.

RULE 25-22.0407 NOTICE AND PUBLIC INFORMATION ON GENERAL RATE INCREASE REQUESTS FOR WATER AND WASTEWATER UTILITIES.

. . .

(2) Upon filing a petition for a rate increase, the utility shall mail a copy of the petition and the minimum filing requirements (MFRs), notice, and synopsis to the chief executive officer of each municipality and county affected by the rate application.

(3) (a) Within 15 days after being notified by the Commission that it has met the MFRs, the utility shall place a copy of the MFRs, notice, and synopsis at its official headquarters and at its business office in each service area included in its rate application. Copies of the synopsis and notice shall be distributed to the main county library within or most convenient to each service area included in the rate application. Upon customer request, the utility shall place a copy of the MFRs, notice, and

synopsis shall be available for public inspection during the utility's regular business hours.

(b) In addition to the locations listed above, the Commission may require that copies of the MFRs, notice, and synopsis be placed at other specified locations.

(4) The synopsis shall be approved by the Commission staff and notice of approval shall be included with notice of a utility's official filing date. The synopsis shall include:

1. A summary of the section of the MFRs showing a comparison of the present and proposed rates for major services;
2. A statement of the anticipated major issues involved in the rate case;
3. A description of the ratemaking process and the proposed time schedule established for the rate case, which shall be updated to reflect changes made by the Commission; and
4. The locations at which complete MFRs are available

(b) [no changes]

(5) The utility shall provided written notice of its rate increase application to all customers affected by the application no later than 30 days after being notified that it has met the MFRs, the synopsis and notice requirements. The notice shall be on a form provided for in rule _____, submitted with the MFRs, and approved by Commission staff.

. . .

Reducing the size and placement of the newspaper notice from the present display ad requirement to the footnote-size type buried in the legal notice section renders the notice ineffectual at best and invisible at worst. The customers' due process rights to adequate notice cannot be denied and not under the rubric of savings. Hence, Public Counsel proposes keeping the present size requirement. Public Counsel would agree to one publication as long as individual notices are sent to present customers and notice is sent to the local governments and displayed at the local library. A standard press release, which can be on a form provided by the Staff, sent to the local papers would be a cost-effective substitute for the second and third newspaper publication. Suggested wording follows:

(7) At least 14 days prior to the evidentiary hearing, the utility shall have published in a newspaper of general circulation in the area in which the evidentiary hearing is to be held, a display advertisement noticing the date, time location and purpose of the hearing.

Additionally, regarding 25-22.0407(2) : The Office of Public Counsel believes that the Commission should consider assuming the responsibility of copying governmental agencies with Petition and MFRs of utility. This may instill more efficiency into the process.

RULE 25-22.0407(3)(a):

This is a good proposal. Customers not in the applicable service area for rate case still have a vested interest in utility rate

increases elsewhere and may have concern that no cross subsidization takes place.

RULE 25-22.0407(4)(b):

The Office of Public Counsel agrees that the synopsis should be distributed early on in the proceeding, as it is useful to the customers, even if there are to be changes made to the synopsis prior to the hearing.

RULE 25-30.037 APPLICATION FOR AUTHORITY TO TRANSFER

The Office of Public Counsel has concerns with the establishment of net book value pursuant to 25-30.0371 - which includes the "condition of assets in determining whether an asset should be removed." This makes it difficult to calculate net book value.

RULE 25-30.037(m):

The Office of Public Counsel agrees with rule requiring stated reasons why a positive acquisition adjustment should be included, or a negative acquisition adjustment should not be included. The rule should go further, however, to require that the buyer must demonstrate that "extraordinary circumstances", the Commission's present standard and the requirement that is enunciated in 25-30.0371, exist before a positive aquisition adjustment will be, or a negative acquisition adjustment will not be, included.

RULE 25-30.037(o):

The proposed rule takes the first step in impressing upon the companies the need by the Commission for the books and records of the seller in order to establish net book value at transfer. However, subsections (o) and (p) allow a very large loophole for the companies to simply make a statement that the company tried and failed. The rule should be more forceful in requiring the buyer to obtain these records.

RULE 25-30.037(q):

The Office of Public Counsel agrees with this requirement for the buyer to articulate the condition of the system and improvements needed, if any, to bring the system up to acceptable standards.

RULE 25-30.0371 RATE BASE ESTABLISHED AT TIME OF TRANSFER

25-30.0371(2) appears to contradict 25-30.0371(3). It should be:

(2) Before the Commission will consider the inclusion of a positive acquisition adjustment in the calculation of rate base, a utility must demonstrate that extraordinary circumstances exist; otherwise, the rate base shall be unaffected by the transfer.

(3) Before the Commission will consider the exclusion of a negative acquisition adjustment, it is the utility's burden to demonstrate the presence of extraordinary circumstances and to prove that the negative acquisition adjustment should not be

imposed and that the buyer instead be given the seller's rate base.

RULE 25-30.0371(4): Public Counsel has grave concerns about the multitude of factors and their relevance to be considered in calculating Accusation Adjustments.

RULE 25-30.0371(5): Public Counsel applauds staff's attempt to obtain the seller' records and income tax returns. To achieve that goal, however, Public Counsel believes that the rule should be tightened up and the loopholes closed or records will continue to be unavailable. To that end, Public Counsel suggest that (5) state that the Commission shall set rate base at zero.

RULE 25.30.038 EXPEDITED APPLICATION FOR ACQUISITION OF EXISTING SMALL SYSTEM.

The Office of Public Counsel opposes the proposed rule in its entirety. The combination of expedited application and limited proceeding concerns Public Counsel because of the perfunctory manner of setting rates, with little or no input by customers, except for the right to challenge the use of an expedited application and limited hearing instead of the normal application and Proposed Agency Action process.

This rule would allow the Commission to set temporary (12 months) rates for the purchased utility by simply using the buyer's rates, if the buyer has a utility regulated by the Commission in the same county. Otherwise, the rates would be set by the average statewide rate, which is determined by Staff "regularly" but at

least once a year. At the end of a year, the Commission must set permanent rates.

The utility's customers would have to live with temporary rates that are potentially discriminatory, arbitrary and capricious because the rates are set without regard to the actual operation of their own utility. If temporary rates are to be default rates, then the rates currently in effect, or the statewide average, whichever is lower, should be the default rates. Only upon the buyer's proof by competent substantial evidence that the buyer is entitled to an increase in rates, should the temporary rates be increased. And then only after customers have had an opportunity to fully exercise their due process rights.

The expedited hearing has no prerequisite showing of emergency or other legal basis for abbreviating the transfer certificate process, which, in its current rule form, affords customers their full due process rights of adequate notice, preparation time, and opportunity to be heard and cross-examine the opposing party. No rule can curtail those rights without extraordinary justification. The proposed rule should be eliminated.

Additionally, it is questionable whether the Commission has authority for this rule. None is cited with the rule.

RULE 25-30.090 ABANDONMENTS

Public Counsel agrees with staff's efforts here to clarify and codify the requirements of a utility leading up to and during abandonment of the system. It is imperative that the customers are

not left to suffer through these actions by the company. Public Counsel takes no exception at this time to any part of the proposed rule.

RULE 25-30.135 TARIFFS. RULES AND MISCELLANEOUS REQUIREMENTS.

Public Counsel agrees with the inclusion of staff's proposed additions to this rule. This provides for useful information to be available for customer inspection.

RULE 25-30.430 TEST YEAR APPROVAL

Staff has proposed that this rule be modified and that rule 25-30.430 Test Year Notification, be offered as an alternative. Public Counsel believes that the current rule 25-30.430, as it is presently worded, should remain as the appropriate rule regulating test year applications.

It is important that subparagraphs (3), (3)(a), and (3)(b), remain intact and not be eliminated from this rule, as staff has proposed. Unless the Commission intends to also delay the date for filing intervenor testimony when the utility delays its filing of prefiled direct testimony, the right of the Citizens to prepare testimony for hearing is unfairly curtailed.

Additionally, Public Counsel believes that the proposed subparagraph (3) should be eliminated. This addition appears to improperly delegate Commission authority to staff.

RULE 25-30.430 TEST YEAR MODIFICATION (ALTERNATIVE RULE)

This proposed rule reduces the test year approval process to a utility notification process. If adopted, this rule would

abrogate the Commission's authority to approve a utility's test year. Under this rule, the utility would determine its own test year and simply tell the Commission what it is. The due process notice and hearing rights afforded by the present rule are also dropped. Without a definite Commission approval, dated and signed, there would be no preliminary agency action. This may be challenged as an invalid delegation of authority by the Commission to utilities to determine their own test year, a step which is central to a determination of rates.

RULE 25-30.432 USED AND USEFUL IN RATE CASE PROCEEDINGS

The Office of Public Counsel has grave concerns and many questions about this proposed new rule. For example, chapter 367, Florida Statutes requires the Commission to provide a fair return on the investment of the utility in property used and useful in the public service. Without proof of investment, no consideration should be given to whether a margin reserve is used and useful, particularly when the utility's current customers will be required to pay a return to the utility for this property that is to be used for the benefit of future customers.

RULE 35-30.432(b), FIRE FLOW,

Is a good attempt to provide inclusion of fire flow into the used and useful calculation.

RULE 35-30.432(C), unaccounted for water, is also good to the extent that it pinpoints the Commission's practice of normally allowing up to a maximum 10% of the utility's unaccounted for water

to be included in used and useful. However, the attempt to define "unaccounted for water" appears to allow the utility the opportunity to artificially work its way down to a 10% level. This would allow an inordinate amount of truly unaccounted for water to be included in the used and useful calculation.

RULE 25-30.432 (d) EXCESSIVE INFILTRATION/INFLOW

The Office of Public Counsel agrees that excessive I&I should be eliminated from used and useful facilities on which the customers are required to pay a return.

Until the Office of Public Counsel has the opportunity to review this proposed rule with an engineer, we cannot offer specific alternatives to the subsections and formulae proposed by staff.

RULE 25-30.436 GENERAL INFORMATION AND INSTRUCTIONS REQUIRED OF CLASS A AND B WATER AND WASTEWATER UTILITIES IN AN APPLICATION FOR RATE INCREASE.

The Office of Public Counsel is greatly concerned by the proposal to eliminate the requirement of 25-30.430(3)(a) and (b) regarding the utility's filing of direct testimony with its MFRs and to eliminate another minimum thirty days from the Citizens' already abbreviated time allowed for preparation of its case. The utility has full control of its filing date for a rate increase. There is no reason whatsoever that the company cannot have its direct testimony prepared for filing when it files its MFRs. Unless the Commission automatically pushed the time frames back for

the Citizens' testimony concurrently with this proposed extension of time given the utility, the due process rights of the customers are once again diminished.

Public Counsel also has concerns about section 25-30.436(4)(g), concerning the use of Rules 25-30.432 and 25-30.433, both of which have been commented on above. We do agree with staff that 25-30.436(4)(i) should specify a 99-year lease as an example of a provision for continued use of the land. Certainly nothing less than a 99-year lease would be appropriate if the utility does not own the land being used to serve the customers.

25.30.433 RATE CASE PROCEEDINGS.

(2) Public Counsel is opposed to the arbitrary use of the 1/8th O&M formula method instead of the balance sheet approach to working capital. The formula method always produces a positive amount of working capital even though the true working capital needs of a company may actually be a negative amount, as the balance sheet approach more accurately demonstrates.

In cases where the Commission deems the formula method of working capital more feasible for a particular company, under no circumstances should deferred debits be considered as a separate line item in rate base. If this were allowed, then deferred credits and current liabilities should be analyzed and included as separate line items in rate base to offset the deferred debits.

(3) Perhaps every company should be allowed to gross-up CIAC for taxes. If the taxes never actually get paid, then consider the residual as additional CIAC in rate base or as cost free capital in the capital structure. This could also be accomplished when property is donated by a developer by requiring the developer to pay the gross-up on the donated property. The developer will recover the donated property and gross-up through lot sales.

Gross-up of CIAC prevents customers who were being served by the utility before the 1986 tax law change from paying taxes on plant that will serve future customers.

(6) Public Counsel disagrees entirely with the inclusion of a margin reserve in the calculation of plant used and useful to current customers. A margin reserve requires current customers to pay a return on plant that will serve future customers. However, as unfair as a margin reserve is to current customers, to recognize CIAC on the margin reserve to the extent that only prepaid CIAC exits on the utility's books is simply incredulous. The ratepayers for years have lost ground, and millions of dollars, to the issue of margin reserve. It's simply unfair to all ratepayers, current and future, not to recognize and match CIAC to be collected for plant included in the margin reserve. CIAC should be recognized for margin reserve whether it is through imputation or matching with prepaid CIAC on the utility's books. Ignoring CIAC in the margin reserve unless it is prepaid will allow the utilities to

earn a return on investment made by the ratepayers. The inclusion of contributed assets is contrary to Chapter 367.081 (2), which states, "...the Commission shall not allow the inclusion of contributions in aid of construction in the rate base of any utility during a rate proceeding; and accumulated depreciation on such contributions in aid of construction shall not be used to reduce the rate base, nor shall depreciation on such contributed assets be considered a cost of providing service." The industry may argue that they are not reimbursed for carrying charges for the property that will be contributed in the future. However, if AFPI were used in place of the margin reserve, this problem would be solved.

(7) Public Counsel is in agreement with this paragraph. Income tax expense should not be allowed for Sub-S corporations. Since individual stockholders pay tax on the earnings of a Sub-S corporation, an accurate and fair tax rate can not be established since it is not a known and quantifiable cost. The individual stockholders may owe little or no federal income tax and, in Florida, they would owe no state income tax. The Internal Revenue Code does not impose taxes on Sub-S corporations and Public Counsel's position is that neither should the Florida Public Service Commission.

25.30.570 IMPUTATION OF CONTRIBUTIONS IN AID OF CONSTRUCTION

Since this rule is proposed to be repealed in its entirety, how will CIAC be recognized when no books or records exist?

Respectfully submitted,

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