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Division of Appeals  
FL Public Service Commission

November 6, 1992

Mr. Steve Tribble, Director  
Division of Records & Reporting  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, FL 32399-0850

Hand-Deliver

RE: DOCKET NO. 920840-OT  
Adoption of Rule 25-22.0021, Amendment of  
Rules 25-22.056 and 25-22.058, and Repeal  
of Rule 25-22.057, F.A.C.

Dear Mr. Tribble:

We represent the Florida Waterworks Association regarding the above docket.

We strongly oppose the provisions of proposed Rule 25-22.0021(2). As drafted, the proposed rule would bar participation at agenda by any person (other than non-witness Staff members and the Commission) during consideration of a recommendation "in a proceeding where a hearing has been held...."

Please understand that we do not oppose codification of the longstanding Commission policy to bar participation in deliberations on a matter which has been specifically litigated at the formal hearing. The vast majority of post-hearing recommendations fall in that category. We can readily appreciate the Commission's disinclination to allow unnecessarily repetitive opportunities for parties to advocate their positions on issues on which there has already been ample notice and opportunity to be heard at hearing.

However, after hearing, the Commission fairly frequently considers matters which have not been so litigated.

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Examples might include:

1. In a rate case, increases are approved, but the Commission finds that service needs improvement and directs the utility to file a plan of upgrading service, and the Commission later evaluates (within that docket) the adequacy of the plan, and whether further corrective measures are needed;
2. In a rate case, increases are approved, but the Commission requires assurances as to whether sufficient capacity will be on line to accommodate anticipated customer growth, and directs the utility to file an analysis, and the Commission later evaluates the utility's report and determines its sufficiency and appropriate conclusions;
3. After the Commission orders a refund of interim rates, without specifying the methodology of its calculation, differences arise between Staff and the utility as to the appropriate method, and the Commission considers a resolution of the controversy.

To bar utility participation at agenda in these and similar scenarios is, I believe, contrary to the provisions of Chapter 120, Florida Statutes, which provides for an opportunity to be heard where a party's substantial interests are to be determined.

We therefore suggest that the proposed rule be amended to include the following provision:

Notwithstanding the foregoing, where a party's substantial interests are to be determined in a proceeding where a hearing has already been held, by Commission action on an issue or other matter which was unexpectedly raised for the first time at hearing, or raised after completion of the hearing, the Commission shall allow the party to address the Commission concerning that issue or matter when taken up for discussion at the agenda conference.

I would welcome the opportunity to further discuss this matter with Staff prior to adoption of the rule.

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Thank you very much.

Sincerely ,

*Wayne L. Schiefelbein*  
Wayne L. Schiefelbein

WLS/dc

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