FLORIDA PUBLIC SERVICE COMMISSION

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M E M O R A N D U M

FEBRUARY 22, 1993

TO : **DIRECTOR, DIVISION OF RECORDS AND REPORTING**

FROM : **DIVISION OF APPEALS (MOORE)**
DIVISION OF WATER AND WASTEWATER (HILL)
DIVISION OF LEGAL SERVICES (FEIL)
DIVISION OF RESEARCH AND REGULATORY REVIEW (MAHONEY, HOPPE)

RE : **DOCKET NO. 911082-WS - PROPOSED REVISIONS TO RULES 25-22.0406, 25-30.020, 25-30.025, 25-30.030, 25-30.032, 25-30.033, 25-30.034, 25-30.035, 25-30.036, 25-30.037, 25-30.060, 25-30.110, 25-30.111, 25-30.135, 25-30.255, 25-30.320, 25-30.335, 25-30.360, 25-30.430, 25-30.436, 25-30.437, 25-30.443, 25-30.455, 25-30.515, 25-30.565; NEW RULES 25-22.0407, 25-22.0408, 25-30.0371, 25-30.038, 25-30.039, 25-30.090, 25-30.117, 25-30.432 to 25-30.435, 25-30.4385, 25-30.4415, 25-30.456, 25-30.460, 25-30.465, 25-30.470, AND 25-30.475; AND REPEAL OF RULE 25-30.441, F.A.C., PERTAINING TO WATER AND WASTEWATER REGULATION**

AGENDA: **SPECIAL COMMISSION CONFERENCE, MARCH 5, 1993 - CONTROVERSIAL - PARTIES MAY PARTICIPATE**

RULE STATUS: **PROPOSAL SHOULD NOT BE DEFERRED - HEARING DATES RESERVED ARE MAY 24 - 26, 1993**

FILE NAME: **I:\PSC\APP\WP\911082#2.RCM**

CASE BACKGROUND

At the first special agenda conference on these rules on January 14, 1993, staff was directed to make several changes to the recommended rules and to provide responses to a number of inquiries about the rules at this second agenda conference. Additions to the recommendation and the rules are shaded. Except for the case background statement, this recommendation is in all other respects a duplicate of the earlier version.

The recommended rules are Attachment 1. The Economic Impact Statement is Attachment 2.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission propose new rules prescribing the notice requirements that are applicable only to water and wastewater rate requests and revise Rule 25-22.0406, which governs all industries, to make it applicable only to the notice required in electric, gas and telephone cases?

RECOMMENDATION: Yes, the Commission should propose revised Rule 25-22.0406 and new Rules 25-22.0407 and 25-22.0408. If no comments are filed or hearing requested, the rules should be filed for adoption without hearing.

STAFF ANALYSIS: Rules 25-22.0406 and 25-22.0407 - Notice and Public Information for General Rate Increase Requests - Staff recommends that the Commission adopt a separate water and wastewater noticing rule primarily for practical reasons. Most of the Commission's rate cases are filed by water and wastewater utilities. The Division of Water and Wastewater and the Division of Legal Services' Water and Wastewater Bureau handle rate case notice questions on almost a daily basis. Often, the problems that arise can be directly attributed to differences between water and wastewater rate cases and rate cases in the other industries. For instance, frequently there is no "service hearing" in a water and wastewater rate case. Due to perceived ambiguity in the meaning of the term "service hearing" in the context of a water and wastewater rate case, it is not unusual for a dispute to arise as to whether Rule 25-22.0406(6), Florida Administrative Code, requires the utility to publish notice of the evidentiary hearing held after the protest of a proposed agency action order.

In addition, the Commission's current rule regarding public access to a utility's minimum filing requirements (MFRs) gives rise to confusion in many water and wastewater rate cases. Current Rule 25-22.0406(3)(a), Florida Administrative Code, requires that the MFRs be kept at the utility's headquarters and at its business offices in cities where service hearings were held in the last case and where service hearings are to be held in the current case. Aside from the minor difficulty parties may again have with the term "service hearing," staff notes that it is not unusual for a water or wastewater utility not to have a business office in its service area.

Finally, another problem endemic to water and wastewater rate cases concerns noticing for a change in service availability charges. It is not unusual for the Commission to adjust a

utility's service availability charges in a rate case even though the utility has not requested such a change. Questions about the fairness of the Commission's doing this may arise because, under the current rules, the utility is only required to provide notice to persons potentially affected by a change in service availability charges if the utility proposes the change.

Staff's proposed Rule 25-22.0407 resolves these problem areas. Under proposed section (7), it is clear that the utility must publish notice of any hearing held in or near a utility service area that is included in the rate request. Under proposed section (3), if the utility does not have a business office in a service area, it must place a copy of the petition and MFRs at the main county library, local community center, or other facility that is convenient to the service area and that is willing to provide public access to the information. Under proposed subsection (5)(a), the utility is required to provide the customer notice--which must mention the possibility of the Commission's initiating an adjustment to service availability--to persons potentially affected by a change in service availability.

In addition to answering many of the questions which often arise because of the unique nature of water and wastewater cases, staff's proposed rule simplifies and clarifies the noticing requirements. For instance, staff proposes to change the timing of several noticing requirements. Under the current rule, the utility must "begin" its initial customer noticing within 30 days after the case time schedule is mailed to the utility. Proposed subsection (5)(a) makes it clear that the utility must provide the initial customer notice no later than 50 days after the official date of filing. Thus, the onus is on the utility to find out when the official date of filing is and when the deadline is to have notice completed, not just started.

Current Rule 25-22.0406(3)(a) requires that the utility place a copy of the MFRs at public access areas within 15 days "after being notified that . . . the [MFRs] have been met . . .." Staff's proposed Rule 25-22.0407(3) requires that copies be placed in the public access areas within 30 days of the official date of filing. Also, current Rule 25-22.0406(4)(a), Florida Administrative Code, requires that the utility "distribute" the rate case synopsis "15 days after the time schedule for the case has been mailed to the utility . . .." Staff's proposed subsection (4)(a) of the new rule makes clear that the utility must place the synopsis at the designated locations within 30 days of the official date of filing.

Staff proposes no significant changes regarding who the

utility is required to notice. As noted above, staff proposes requiring that the initial customer notice be sent to persons potentially affected by a change in the service availability policy or charges. Under proposed subsection (4)(a), the utility will be required to send the rate case synopsis to the main county library only if the utility was required to place a copy of the MFRs and petition there.

Proposed subsections (8)(a) and (8)(b) clarify that noticing for a hearing after the protest of a proposed agency action order would be, basically, no different than what it would have been if the case went directly to hearing. Section (9) virtually mirrors current Rule 25-22.0406(8) regarding notice of staff assisted rate cases, with the exception that proposed section (9) provides for alternative locations for access to the staff reports similar to the alternatives in proposed section (3) for MFRs.

In addition to giving input at some of the workshops staff conducted, several parties filed written comments to staff's proposed noticing rule. Some of the comments were incorporated into the final draft and some were rejected. The Florida Waterworks Association's April 29, 1992, written comments pertained largely to previous drafts of the rule. For example, the Association suggested that staff not require the utility to send a copy of the MFRs to local governmental authorities. Staff agrees with this and has proposed eliminating the requirement. Southern States Utilities, Inc. (SSU), filed written comments on April 27, 1992. SSU suggested that a utility be required only to inform local governmental authorities that a copy of the MFRs are available upon request. Staff has also incorporated this SSU suggestion.

SSU also suggested that the initial customer notice be combined with the notice of the Commission's authorization of any interim rates. Although staff understands SSU's desire to eliminate sending a separate notice for interim rates, staff does not think it advisable that customers be informed, on the same piece of paper, that the utility has filed for a rate case and has already been granted interim rates, especially when, under SSU's proposal, the combined notice would not be received by the customers until the case is more than two months into the process.

At the hearing in SSU's current rate case, Docket No. 920199-WS, one of SSU's witnesses, in response to a question from a Commissioner, testified that there was at least one notice the utility sent out in its rate case that may not have been necessary. The notice which the SSU witness referred to would be

required under proposed subsection (6)(b), which dictates that the customers be sent a separate notice for the "technical" hearing, even when the customers received notice of and an opportunity to testify at a service hearing. Although staff has left subsection (6)(b) in the proposed rule, the Commission may want to consider the necessity of a separate notice for the "technical" hearing in cases where one or more service hearings are held. It may be more practical to require that any service hearing notices contain noticing information, if known, for the "technical" hearing.

In its April 17, 1992, written comments, Public Counsel (OPC) generally advocated that customers and governmental authorities be provided notice about the rate case as soon as possible after the utility files the case. In proposing that notice be complete within 50 days of the official date of filing, staff chose the middle ground between OPC's and the companies' suggestions.

OPC made several specific proposals that staff has rejected. For instance, OPC suggested that a copy of the customer notice be kept with the MFRs and the synopsis. Staff rejected this idea because the synopsis contains much of the information contained in the notice and because the notice is sent directly to the customers. OPC expressed some interest in reducing the number of steps required in a utility's fulfilling its notice obligations. At one of the workshops, the parties discussed the possibility of having notice forms made part of the MFRs, and OPC considers this a good idea. However, staff eventually rejected it for several reasons, including the presence of too many variables involved in each case to come up with a form.

OPC vehemently opposed proposed section (7)'s reducing the required newspaper notice from a display advertisement to a legal notice. Staff thought that reducing the size of the notice would be a way for the utility to save money, especially when the customers will already be receiving direct notice of any hearings. The cost of a display advertisement is generally 40 to 45 percent higher than the cost of the same size legal notice placed in the classified section of a newspaper. (EIS, Attachment 2, page 5)

At the January 14, 1992, Special Agenda, the Commissioners discussed OPC's opposition to staff's proposal in subsection (7) to require the utility to publish legal notice, rather than a display advertisement, in a newspaper of general circulation prior to a hearing. Since the Commissioners disagreed with staff's proposal to reduce the size of the published notice,

staff has changed the wording of proposed subsection (7) to require a display advertisement.

In addition, at the special agenda, the Commissioners directed staff to inquire whether the other regulated industries have experienced problems with utility noticing in rate cases and whether the other industries had a practice of filing proof that notice was properly undertaken. The attorneys in the Electric and Gas and Telecommunications Bureaus of the Legal Division did not report experiencing any rate case noticing problems, other than the potential noticing problem which could arise when a utility does not request a rate increase, but the Commission, after an earnings review, decides that one is warranted. In such a case, the utility is not required to provide an initial customer notice because the utility did not request a rate increase. Staff believes that this problem, and variations thereof, are endemic to the other industries where modified minimum filing requirements (MMFRs) are submitted.

The general lack of noticing problems in the other industries may be attributable to a variety of factors. At the special agenda, OPC suggested publicity surrounding rate cases in the other industries as a possible explanation. Whatever the reason for the disparity, staff believes that customer interest in water and wastewater rate cases is generally greater than in rate cases for the other industries, so it stands to reason that customer awareness of noticing is also greater. The attorneys from the Electric and Gas and Telecommunications Bureaus also reported that, although they are not required to, utilities in their industries usually file with the Division of Records and Reporting an affidavit of a utility officer and a copy of a notice as proof that it completed customer noticing and the affidavit of the publishing newspaper(s) as proof that it completed publication noticing.

Staff believes that a separate water and wastewater utility rate case noticing rule is necessary for the reasons stated in its recommendation for the first special agenda. The Commission did not express disagreement with that proposition. However, the Commission may wish to require that water and wastewater utilities file proof of customer and publication noticing. In staff's experience, water and wastewater utilities usually file the same documentation that utilities in the other industries file as proof of proper noticing, so requiring that proof be filed would have no real impact on the utilities.

Rule 25-22.0408 - (Proposed) Notice for Applications for New or Revised Service Availability Charges or Policies and Notice of Requests for Allowance for Funds Prudently Invested (AFPI) Charges - The purpose of this proposed rule is to streamline noticing requirements for service availability policy and charge applications, to clarify that the rule applies to filings for both new and revised service availability policy and charges, to clarify that the rule applies when the utility makes a request in conjunction with a rate case, and to make clear that it applies to AFPI filings as well.

The only written comments received regarding this proposed rule came from SSU. SSU suggested that a utility be given 30 days from filing to initiate notice. Staff rejected this idea. The current rule contemplates notice being given prior to or contemporaneous with filing. Staff believes notice should be given contemporaneous with filing since service availability and AFPI cases are generally handled more quickly than rate requests; thus, the persons affected have a better opportunity to review their situations.

ISSUE 2: Should the Commission propose the revision of Rules 25-30.020, 25-30.025, 25-30.030, 25-30.032, 25-30.033, 25-30.034, 25-30.035, 25-30.036, 25-30.037, 25-30.060, 25-30.111, 25-30.135, 25-30.320, 25-30.335, 25-30.360, 25-30.430, 25-30.436, 25-30.437, 25-30.443, 25-30.455, 25-30.515, 25-30.565; new Rules 25-30.0371, 25-30.038, 25-30.039, 25-30.090, 25-30.117, 25-30.432 to 25-30.435, 25-30.4385, 25-30.4415, 25-30.456, 25-30.460, 25-30.465, 25-30.470, and 25-30.475; and repeal of Rule 25-30.441, F.A.C., pertaining to Water and Wastewater regulation?

RECOMMENDATION: Yes.

STAFF ANALYSIS: The Commission has for many years attempted to streamline the regulatory process for the water and wastewater industry. We believe the recommended rules go a long way towards achieving this. The attached rules contain many changes and new ideas, however, the broad areas of certification, rate case proceedings, and special assistance deserve special mention.

In the area of certification, we are recommending rule changes that add applicability statements to eliminate confusion about which type of filing is appropriate in amendments to certificates, transfers, and name changes. In addition, we are recommending rule changes relating to issues considered in the transfer of ownership of an existing utility, such as establishing rate base at the time of transfer, codifying Commission policy regarding acquisition adjustments, and implementing a mechanism for larger utilities to acquire small systems and implement compensatory rates at the time of acquisition. Two new rules are recommended that codify existing Commission practice with respect to applications for acknowledgment of a name change and abandonments. Each of the existing certification rules has been reviewed and recommendations made to add--as a required submittal--certain information that is now being obtained by follow-up requests from staff.

For rate case proceedings, we are recommending changes to existing rules and adoption of new rules that codify the methods that will be used by the Commission in rate proceedings for many rate case issues. Our goal is to eliminate these areas of controversy as issues and thereby reduce rate case expense. In brief, we are recommending codification of Commission practice for determining quality of service, method of averaging, applicability of used and useful, taxes, ownership of land and amortization of non-recurring expenses.

We are also recommending changes to Commission practice through adoption of rules for working capital, imputation of contributions-in-aid-of-construction (CIAC) on the margin reserve and used and useful determinations.

Finally, we have included a recommended new rule and an alternative rule that utilizes a "total company" concept for regulatory purposes. The "total company" concept, simply stated, is that any company with multiple systems is required to file information on all systems when requesting rate relief. If the company is not underearning as a total company, it does not need to file for rate relief. This concept is also used in over-earnings, working capital, construction work in progress (CWIP), and all other issues. We believe major cost savings will result from this change alone.

The most recent Southern States rate case was handled in a manner similar to what we are recommending and, as far as cost is concerned, it was a resounding success. Regardless of the outcome of the docket, rate case expense was a record low of $24,000 per system which, when compared to rate case expense for PPW, Inc. (a similar but much smaller case at $154,000 so far), is a major savings. Our agency alone saved over $50,000 in processing the case.

In the alternative, we are recommending a rule that requires companies with multiple systems to file annually for the Commission to determine the appropriate level of joint and common costs, the appropriate allocation factors, and the resulting allocations to each system. We believe this alternative will also result in major cost savings.

In the area of special assistance, we recommend rule changes that exclude large, multi-system companies from qualifying for a staff assisted rate case (SARC) and that codify current Commission practice regarding delineation of responsibilities of both the utility and the Commission staff in the event of a protested SARC. A new rule utilizing non-rate base regulation for the Class C utilities is also recommended. This new rule reflects a rate setting alternative which is between a price index and a SARC. The recommended procedure compares operating revenues to expenses for rate setting purposes, includes a shorter time frame than a SARC, and caps the allowed revenue increase at 50 percent of test year revenues.

In summary, we believe the recommended rules will reduce regulatory burden, streamline the process resulting in cost savings, and should be proposed for adoption.

DISCUSSION OF RECOMMENDED RULES

25-30.020 Fees Required to be Paid by Water and Wastewater Utilities - This is a complete revamp of the structure of the filing fees required for water and wastewater applications. In 1989, section 367.145, Florida Statutes, was amended to authorize the Commission to establish fees by rule and to increase the maximum filing fee to $4,500 for any application. The fees currently required by Rule 25-30.020 are based only on the capacity of the system, regardless of the type of application, and provide for a maximum fee of $2,250. The fees contained in staff's recommended rule are based on the capacity of the system as well as the complexity of the type of application and reflect a maximum fee of $4,500. The recommended rule also clearly provides that separate fees are to be paid for water and wastewater service. This provision is not contained in the current rule, although it is our practice to collect separate fees for water and wastewater service. Finally, the rule specifies that for applications for multiple systems, capacity is determined by summing the capacities of all systems included in the application. A definition of equivalent residential connection has been added for the purpose of this rule.

The following schedule illustrates the recommended amount of the fee by type of application and size of company measured by equivalent residential connections (ERCs).

SCHEDULE OF PROPOSED FILING FEES

	0-100 ERCS	101-200 ERCS	201-500 ERCS	501-2000 ERCS	2001-4000 ERCS	>4000 ERCS
ORIGINAL	$750	$750	$750	$1,500	$2,250	$3,000
AMENDMENT	$100	$200	$500	$1,000	$1,750	$2,250
TRANSFER	$750	$750	$750	$1,500	$2,250	$3,000
GRANDFATHER	$100	$200	$500	$1,000	$1,750	$2,250
FILE & SUSPEND	$1,000	$1,000	$1,000	$2,000	$3,500	$4,500
SARC	$200	$500	$1,000	$1,000	$1,000	$1,000
LIMITED PROCEEDING	$100	$200	$500	$1,000	$1,750	$2,250
SERVICE AVAIL.	$100	$200	$500	$1,000	$1,750	$2,250
NAME CHANGE	0	0	0	0	0	0
AFPI	0	0	0	0	0	0

25-30.025 Official Date of Filing - The recommended change codifies current Commission practice that a utility has met the minimum filing requirements of any filing when the MFRs are accepted as complete by the Director of the Division of Water and Wastewater.

25-30.030 Notice of Application - The revisions change the noticing requirements for original certificates, amendments, and transfers. We recommend replacing the required noticing of surrounding utilities within a 4-mile radius with noticing of privately-owned water and wastewater utilities located within the same county and of certain other governmental bodies and agencies. The Commission will provide a list of the applicable utilities and governmental bodies. We are also recommending that notice be sent by regular mail instead of certified, and that the required number of newspaper notices be reduced from three notices to one. We believe these changes will provide

significant cost savings to both the Commission and the industry.

25-30.032 Applications - The recommended changes to this rule clarify that an application must be filed for a name change, reduce the number of copies of applications to be filed from 15 to 12, and clarify the applicability of the rule. Reducing the number of copies should result in cost savings.

Staff has verified with the Division of Records and Reporting that 12 copies of the application are needed for distribution. Staff has also examined the possibility of applying the diskette filing rule, Rule 25-22.028, to this filing. We have concluded that it should not apply. Data from applications filed pursuant to this rule are not put into "Lotus-type" spreadsheets and we believe that it would be time consuming as well as costly to do so. We have not, therefore, modified the recommended rule.

25-30.033 Application for Original Certificate of Authorization and Initial Rates and Charges - These rule revisions require a utility to provide additional explanation of utility funding, require the use of the uniform system of accounts (USOA) when providing cost projections, and establish three new criteria for certificate applications. They are the use of the base facility charge (BFC) rate structure for metered service, a return on common equity established using the current leverage formula unless another method is adequately supported by the applicant, and requiring an allowance for funds used during construction (AFUDC) rate to be established at the time of initial certification. We believe these recommended changes further the goals of the Commission by attempting to assure a viable utility from the outset and establishing as close to compensatory rates as is practicably possible.

25-30.034 Application for Certificate of Authorization for Existing Utility Currently Charging for Service - We are recommending the addition of two new criteria requiring information on existing customers (number served by class and by meter size) and, in cases where the applicant is requesting territory not served at the time of application, statements showing the need for service and whether the provision of service is consistent with the local comprehensive plan. We believe these revisions are consistent with Commission practice and its goal of coordinating efforts with other entities having jurisdiction over this industry.

25-30.035 Application for Grandfather Certificate - Our recommended revisions to this rule merely require information to

be filed regarding current customers to allow us to better analyze the utility and its future operations.

25-30.036 Application for Amendment to Certificate of Authorization to Extend or Delete Service - Our recommended revisions to this rule include an automatic extension of territory provided certain criteria are met, an applicability statement to clarify when an amendment application is required, deletion of the requirement that the applicant attempt to identify potential servers of the territory, and the addition of the statutory requirement that the applicant provide the number of the Commission order setting the utility's rates and an affidavit that the utility has tariffs and an annual report on file with the Commission.

At the January 14th Special Agenda, staff was directed to verify that the customers in areas to be annexed receive notice. Staff has verified that applicants under Rule 25-30.036 are required to provide notice as specified in Rule 25-30.030. Specifically, Rule 25-30.030 requires notice to a multitude of agencies, companies and individuals; section (6) requires notice to the customers being annexed. The recommended rule has not been modified.

25-30.037 Application for Authority to Transfer - We are recommending revisions to this rule that clarify its applicability, require certain information or statements from the buyer, and clarify the utility's obligation to pay the regulatory assessment fees. We believe these revisions are consistent with current Commission practice and help further the Commission's goal of creating viable business entities that will provide safe, sufficient service at reasonable prices. The changes require the buyer to provide books and records in sufficient detail to establish rate base and if unavailable, a statement detailing the steps taken to obtain the records. The same requirement is included for tax returns going back to the establishment of the utility or the last Commission order establishing rate base. The rule also requires a statement of the condition of the plant and cost information if repairs or upgrades are needed. Finally, we are requiring a copy of the contract if the system is sold to a governmental entity and a list of utility assets not transferred.

Mr. Shreve, OPC, suggested at the January 14th Special Agenda that this rule be amended to require a seller to authorize a buyer to obtain the seller's tax returns. We believe this change unnecessary and a possible deterrent to a sale that could be in the public interest. Moreover, it is no more burdensome

for a seller to obtain and provide a buyer with the seller's tax returns directly than it is for the seller to execute the forms necessary to consent to their disclosure by the Internal Revenue Service.

The recommended rule already requires the buyer to obtain the utility's books and records and the seller's federal tax returns in sufficient detail to establish rate base, or to provide a detailed statement of the steps taken to obtain them. If the information is not available and the Commission believes the steps taken by the buyer were less than reasonable, it has the latitude to use an original cost study with imputation to set rate base, set rate base at zero or establish rate base as something in between, if it is supported. It also gives the buyer leverage in negotiating the lowest possible purchase price if the records are not available, since the buyer will be at risk in not knowing at what level rate base will be established.

Although the Commission may have the authority to require a seller to authorize the buyer to obtain the buyer's tax returns, staff believes this would provide no additional protection to the ratepayer, could lessen the leverage the buyer has in negotiations, and could be a deterrent to a sale when one is most needed. That is, in a marginal system where the seller has no desire to be in the business anymore and does not want their personal tax returns obtained, the seller may find it easier to abandon the system or continue owning it but doing nothing. We believe the recommended rule protects the ratepayers, increases the buyer's leverage, and encourages a sale. The recommended rule has not been modified.

25-30.0371 Rate Base Established at Time of Transfer - and 25-30.038 Expedited Application for Acquisition of Existing Small System - We recommend the adoption of two new rules that relate to establishing rate base at the time of transfer and determining the amount of any acquisition adjustment, and implementing compensatory rates for a purchasing utility at the time of transfer. In these two rules we have attempted to codify current Commission policy on the calculation of acquisition adjustment resulting from transfers and provide a new mechanism encouraging the acquisition of small systems by larger utilities.

Over the years, the Commission has stated its desire to encourage the purchase of small systems by large utilities. In forming its policy, the Commission has recognized the difficulty in operating a small water and wastewater utility as a financially sound business. Most of the problems associated with small utilities can be traced to their size. Small utilities typically

are unable to attract the capital necessary to provide adequate service, particularly in the face of increasingly stringent and costly environmental requirements. If they are able to attract capital, the cost is high due to the associated risk of the investment. The operating costs of small utilities are high on a per customer basis because such utilities lack economies of scale that are available to other utilities that are able to spread costs over a larger customer base. In addition, small utilities usually suffer from an inadequate or inexperienced technical and professional staff because the customer base is not large enough to support the salaries.

The Legislature expressed its concern with the proliferation of small water and wastewater utilities in the "Sunset" legislation in 1989. Section 367.045(5), Florida Statutes, provides, in part, that the Commission may deny an application for a certificate if the public can be adequately served by extending or modifying a current system. That section of the statute goes on to say that the Commission may not grant a certificate, or an amendment of certificate, that will be in competition with, or duplication of, any other system unless it first determines that such other system is unable to provide adequate service.

Historically, the Commission has addressed the problem of small systems in several ways. One is to discourage the establishment of small systems (particularly those that will be owned by persons not intending to remain long in the business) by implementing stricter initial certificate requirements and closer scrutiny of such applications. Another way to address the problem is to eliminate small systems by encouraging larger utilities to acquire the existing small systems, particularly if these systems are poorly run operations in need of major improvements.

For this reason, the Commission currently allows the purchasing utility to earn a return on the acquired system's net book value, regardless of the purchase price. This policy provides an incentive to the purchasing utility while also providing certain benefits to the customers of the acquired system, such as an improved quality of service, more professional and experienced utility personnel, elimination of a general disinterest in the utility operations (in the case of developer-owned systems), and more stable rates in the long run due to a reduced cost of debt, economies of scale and more efficient operations.

Rule 25-30.0371 is a new rule that codifies the above Commission policy regarding acquisition adjustments.

Specifically, in the absence of extraordinary circumstances, the purchase of a utility at a premium or discount will not affect the rate base calculation.

The rule also defines the term rate base for purposes of transfer cases and includes a provision that the Commission will consider the condition of the utility's assets in determining rate base. This is not specifically current Commission practice. We believe, however, that the condition of the plant at the time of transfer should be taken into account in establishing the rate base (net book value) of the utility assets. If a utility system is in immediate need of major repair or replacement, the value of the system should be reduced to reflect that fact. The rule codifies current Commission practice by further providing that if the buyer does not have original cost documentation in order to establish rate base at the time of transfer, the Commission may set rate base based upon competent substantial evidence reconstructing the original cost and CIAC.

Systems being purchased are often in need of some repair and the rates for service are unrealistically low or nonexistent. Under our current rules, a purchasing utility has to first file an application for approval of the acquisition. This usually takes six to eight months to process. In addition, in most cases, if the purchasing utility wants to increase the rates (or establish rates if none have been charged by the prior owner), a rate case or limited proceeding must be filed which takes another eight months to process. Therefore, the purchasing utility must incur the administrative and legal expense of the acquisition case and subsequent rate case, as well as absorb up to 16 months of losses before compensatory rates can be implemented.

New Rule 25-30.038 is designed to reduce some of this regulatory lag and the resulting expense to the purchasing utility. The rule is available to utilities as an alternative to Rule 25-30.037. It is applicable to any Class A or B utility requesting approval to acquire an existing small system and implement compensatory rates. For purposes of this rule, a small system is defined as one whose total gross annual operating revenue is $150,000 or less for water or wastewater service. Under this recommended new rule, the purchasing utility would apply for approval of a transfer and a limited proceeding to implement or increase rates. The rates that could be implemented would be restricted to either: (1) those approved by the Commission for the buyer in the county in which the system is located, as long as such rates have been set by the Commission in a rate proceeding; or (2) the approximate statewide average rates, which will be approved by the Commission at least annually

in a procedure similar to that used to establish the annual price index for use by water and wastewater utilities.

Rule 25-30.038 provides that within 90 days, the Commission will either deny the acquisition of the small system or grant the acquisition and allow the purchasing utility to implement reasonable rates on a temporary basis, subject to refund for a period of one year. In addition, the buyer must keep separate records for the acquired system and file certain schedules contained in the annual report form at the end of one year of operation. At that time, the Commission will set permanent rates and may establish rate base for the acquired system, based upon the information supplied by the buyer.

Numerous comments were received regarding this recommended new rule at the workshops held throughout the state. Many participants were of the opinion that the intent of the rule may be good, but the rule does not make much progress towards resolving the real problem of approving compensatory rates and encouraging the purchase of small systems. In addition, several small companies asked why we had limited this option to Class A and B utilities and did not allow the larger, well-run Class C's to be included. While this rule may not go far enough in resolving existing problems, we are of the opinion that it is an excellent starting point. After we have had some experience with this effort we may modify or extend the option. Until then, we recommend the rule be proposed as written.

With respect to Rule 25-30.0371, the possibility was mentioned at the January 14th Special Agenda that the Commission may want to have more than one policy regarding acquisition adjustment. That is, perhaps the Commission should develop one policy that encourages the acquisition of small companies by larger, more viable companies and develop yet another policy that provides for a sharing of any difference between the purchase price and rate base. We believe these ideas have merit and should be fully explored at the hearing. The recommended rule has not been changed at this time. A five-year history of the acquisition adjustments granted by the Commission is being compiled by staff and will be provided at the hearing.

With regard to Rule 25-30.038, a party at the special agenda asked whether or not section (4) of Rule 25-30.0371 should apply to Rule 25-30.038. Upon investigation, staff has verified that section (4) already applies to Rule 25-30.038. Section (11) of Rule 25-30.038 clearly states that the Commission may establish rate base pursuant to Rule 25-30.0371.

OPC suggested that the Commission require an affidavit by the buyer on the condition of the plant. Staff does not believe the Commission has the statutory authority necessary to require such an affidavit, nor does it believe an affidavit is needed. A statement from the buyer is required by the rule and making false statements to the Commission is already a violation of law.

Commissioners also raised the question why we could not pursue implementing reasonable rates at the time of transfer on a case-by-case basis or as an experiment. We do not believe this is possible because we are not using rate base regulation as the basis for the "reasonable" rates. The statute clearly states that the Commission may by rule use other than rate base regulation for Class C utilities.

Many ideas were raised at the agenda that have merit and should be explored at a hearing. Pending a hearing, staff has not modified either Rule 25-30.0371 or Rule 25-30.038.

25-30.039 Application for Name Change - This is a recommended new rule which is intended to clarify the distinction between a name change and a transfer of ownership and to codify the filing requirements. It applies where there is a change of name only, not where there is a change in the ownership or control of the utility or its assets. The filing requirements include information regarding the reason for the name change, verification that there is no change in ownership, a notice to the customers of the name change, and a new tariff reflecting the utility's new name. The Commission acknowledges name changes rather than approving them.

25-30.060 Application for Exemption from Regulation or Non-jurisdictional Finding - The recommended addition to the rule requires a statement that the applicant for a reseller exemption is aware of the requirements of the rules and statutes relating to examination and testing of meters. The recommended deletion removes the requirement that to obtain a landlord/tenant exemption the lease must state there is no separate charge for water or wastewater service. We have discovered in processing landlord/tenant exemptions that often leases are silent as to what is included in the rental amount. Rather, leases tend to disclose the extra charges the tenant will be responsible for. This rule already requires a signed statement from the applicant that water or wastewater charges are not specifically contained in the rental charges. We believe these changes will simplify the process and recommend their adoption.

25-30.090 Abandonments - This is a recommended new rule that specifies information that must be included in the notice required by statute when a utility intends to abandon. This information includes the reason for the abandonment, the date of the abandonment, and the utility's status with the Department of Environmental Regulation (DER). The rule also contains requirements that the appointed receiver request from the Commission the utility's current tariff and annual report, directs the receiver to file a revised tariff reflecting its name, and codifies that the receiver is subject to Chapter 367, Florida Statutes, and Chapter 25-30, Florida Administrative Code. It also provides for an exemption, upon request, for a governmental authority acting as a receiver. This rule and the related statute are intended to help prevent service interruptions to utility customers. We believe the recommended rule also encourages governmental authorities to become receivers by clearly stating that upon request, they will be found exempt from Commission regulation.

At the special agenda, the question of what type of application would be filed if a system that was exempt was subsequently purchased by a party and became jurisdictional. Industry representatives were concerned that the Commission might require an application for a true original certificate. These are very burdensome applications with many filing requirements. At the same time, the Commission expressed concern that we might need all of the information required in an original certificate and wanted to be sure we received the information we needed. Staff does not believe there is a problem.

We have had one occasion that we are aware of where an exempt system became jurisdictional. In that case, we required an application to be filed under Rule 25-30.034, Existing System Charging for Service. We believe this rule is appropriately applied to this type of filing because it requires minimal information from the applicant yet it provides the Commission with the information needed to process the case.

In any event, the Commission may open an investigation (and has previously done so) and re-establish rates on its own motion at any time. Should there be any question about the appropriateness of the rate, rate base, etc., staff would recommend an investigation on the Commission's own motion. We have not modified the recommended rule.

25-30.110 Records and Reports; Annual Reports - Revisions to this rule have been deleted at the Commission's direction.

25-30.111 Exemption for Resale of Utility Service, Annual Report - The recommended changes to this rule clarify that an exemption as a reseller is not automatic but must be approved by the Commission.

25-30.117 Accounting for Pension Costs - This recommended new rule requires utilities that have established, defined benefit plans to account for those costs pursuant to Statement of Financial Accounting Standards No. 87. The goal of this rule is to require accounting for pension plans which is consistent throughout the water and wastewater industry.

25-30.135 Tariffs, Rules and Miscellaneous Requirements - We recommend revisions to this rule to clarify what information must be available for customer inspection and to specify the locations where this information is to be available. The rule requires utilities to maintain, at their main in-state business office, current copies of Rule Chapters 25-9, 25-22 and 25-30, Chapter 367, Florida Statutes, and a current copy of the utility's tariffs and maps.

Many comments were received at the workshop regarding the increase in required information resulting from this rule. Also, many participants were concerned about where and how current copies would be obtained. We agree that we are recommending an increase in information maintained by the utility. However, we believe much of the language contained in the rules is duplicated in every tariff. Our goal here is to strip duplicative language from the tariffs and reference the appropriate rules. We believe that it will be easier for utilities to maintain a simplified tariff and the current copies of rules and statutes. In addition, this should be simpler for the customers to understand.

The industry voiced strong opposition to the recommended requirement that system and territory maps be maintained at their main in-state business offices and expressed concern about where and how they would obtain current copies of Rule Chapters 25-9, 25-22, and 25-30, as required by this rule. Staff agreed at the special agenda to eliminate the requirement to maintain maps and to add a provision that the Commission will provide current copies of the rules and Chapter 367, Florida Statutes. This change has been made.

25-30.255 Measurement of Service for Water Utilities - We recommend adding the requirement that individual water meters be placed for each separate occupancy unit of certain new establishments for which construction is commenced after January 1, 1994. This requirement is supported by the Water Management

Districts (WMDs) and DER. The Commission is also recommending legislation that requires the same thing as this rule.

Many utilities expressed concern at workshops about the tax implications resulting from this requirement and any inconsistencies that may arise if only Commission regulated utilities meet this requirement. While we agree that the recommended changes will have tax impacts, we believe the conservation benefits outweigh these impacts and that the changes should be approved.

The Commission decided at the special agenda not to include the mandatory individual metering requirement in the rules to be proposed. The remaining changes to the rule were to change "sewer" to "wastewater" and that can be accomplished outside of this docket. Therefore, the rule has been removed from this recommendation.

25-30.320 Refusal or Discontinuance of Service - The recommended revisions to this rule add a provision that prohibits a utility from discontinuing service if the infraction has been remedied by the customer prior to the arrival of the utility to disconnect service. The goal of this new language is to prevent improper, premature disconnection of service by the utility.

25-30.335 Customer Billing - Our recommended revisions remove language that is obsolete and clarify the standard information that is required on customer bills to make it consistent with the other industries. We recommend adding section (9) to clearly require the billing of the base facility charge to utility customers, regardless of whether there is any usage (unless the utility has an approved vacation rate.) This codifies Commission policy that the base facility charge is the minimum bill a customer is required to pay.

25-30.360 Refunds - The revisions to this rule codify Commission policy. The recommended rule specifies that a motion for reconsideration temporarily stays a refund and that any unclaimed refunds are treated as cash contributions-in-aid-of-construction (CIAC) to the utility.

At the special agenda, the Commissioners directed staff to inquire whether the electric, gas, or telecommunications industries have experienced problems regarding the timing of a refund when a motion for reconsideration to the order requiring the refund has been filed. Apparently, the only interim rates refund ordered in any recent rate cases was in the Gulf Power case, but the Commission altered its decision on reconsideration,

and the refund was obviated. No other refunds have been ordered, consequently, no problems have been experienced.

Staff believes an automatic stay of a refund is necessary in the event reconsideration is sought. Interim refunds in water and wastewater rate cases are relatively frequent. In staff's experience, it is difficult to process a motion for reconsideration in less than 90 days (the period over which refunds have to be completed) and leave enough time for the utility to make the proper calculations and coordinate the refund into a regular billing cycle. Staff's proposed rule would not cost the customers since interest on amounts collected subject to refund begins to accrue upon the collection of interim rates and would continue to accrue while reconsideration was pending. Further, staff notes that under the proposed rule, any motion for reconsideration, not just one filed by a utility, will temporarily stay the refund.

25-30.430 Test Year Approval - We recommend two changes to this rule. First, section (3) of the rule relating to prefiled direct testimony is being deleted from this rule and added to Rule 25-30.436(2). We are also recommending the addition of language that allows the Director of the Division of Water and Wastewater to grant extensions for filing MFRs if the extension will not cause the approved test year to be non-representative. We believe these changes will save time and steps and therefore money.

The Commission directed staff to include the requirement that prefiled testimony be filed with the MFRs. We have made this change to Rule 25-30.436.

Chairman Deason asked why the water and wastewater industry should have a test year approval procedure rather than a test year notification procedure like the other industries. The primary reason is that many utilities in this industry lack the sophistication and expertise to select an appropriate test year in all cases. In fact, it was a history of inappropriate test year selection that led to the existing test year approval rule to begin with. The current rule was adopted in 1975 and it has eliminated problems in this industry. It was six years later before a rule was adopted for the communications industry and none was adopted for the electric and gas industries until approximately six months ago, when a test year notification rule for those industries was adopted. Staff believes the test year approval process should be retained for the water and wastewater industry.

25-30.430 Test Year Notification (Alternative) - We have provided an alternative Rule 25-30.430 that changes the current test year "approval" process to one requiring only a 90-day notification prior to filing MFRs. This version of the rule completely replaces the request and approval sections with a single section specifying notification requirements.

25-30.432 Used and Useful in Rate Case Proceedings - We recommend the adoption of a new rule relating to engineering issues in rate cases. Our intent in recommending this rule is that, in lieu of presenting testimony on the issues, the utilities and the Commission will use the "default" methods and allowances contained in these rules, thereby eliminating issues and reducing rate case expense.

Overall, we believe the adoption of this rule will significantly reduce rate case expense. Used and useful, margin reserve, unaccounted for water, infiltration and fire flow represent a huge portion of rate case expense. If we can adopt a fair, just and reasonable method for calculating allowances for these issues, we believe we will experience significant savings.

Some provisions of this recommended rule codify Commission policy or practice while other provisions establish Commission policy where none has previously been established. Finally, some of these provisions represent changes in current Commission practice or policy. We have tried to specifically identify these areas in this recommendation.

As previously stated, the FWWA has been greatly involved in the development of these rules through participation at the many workshops and submission of written comments, suggestions and proposals. This is particularly true for this rule. In addition to providing draft formulas and modified formulas, the FWWA has prepared a manual for use with this rule. The user's manual provides an excellent explanation of the history and intent of the allowances and formulas, the logic behind the concepts designed into the rule and the "how to" of applying the formulas to a specific utility. A copy of the manual was included with the recommendation for the January 14th Special Agenda.

Sections (1) - (4)

Sections (1) - (4) of the recommended rule state the Commission's current practice. The rule states that the Commission shall allow recovery of prudently incurred investments and shall consider DER's design requirements when determining used and useful. Section (4) codifies the Commission's current

practice to allow as used and useful, at a minimum, the level of investment that would have been required had the utility designed and constructed the system to serve only existing customers. We believe these statements are all consistent with Commission practice.

Sections (5) and (6)

Section (5) begins by defining demand per equivalent residential connection (ERC) as the actual historic demand or the design demand used for permitting, whichever is greater. We believe this to be a new policy statement. The demand per ERC used for permitting is established by DER. DER will use this figure until historical data provided by the utility justifies a change. In our opinion, the recommended rule correctly reflects the demands placed upon the system.

Default Allowances and Formulas

Sections (5) and (6) of this rule contain default allowances and formulas for margin reserve, fire flow, unaccounted for water, infiltration and inflow, and used and useful. As would be expected, these are all highly controversial areas that contain some recommended changes in Commission policy and practice.

Margin Reserve:

For margin reserve we are recommending several changes in Commission practice. We recommend a change from the use of trended customer growth in calculating a margin to the use of a flat 20 percent of capacity for source and treatment facilities. Recognizing that a margin is allowed for many reasons (such as customer growth, changing customer demand characteristics, and DER requirements) and not just the utility's obligation to serve, we believe that the flat 20 percent is a simple, less expensive approach and better reflects the real world requirements placed upon utilities by other governmental agencies.

Further, we recommend that prudently constructed off-site transmission mains and off-site wastewater collection mains be considered 100 percent used and useful and that no margin apply. This is also a recommended change in Commission practice in that it separates the system into transmission and distribution segments and applies a margin/used and useful for both. We believe the transmission mains are built to match the treatment plant design and should not vary by the addition of one more customer or distribution system. To downsize the transmission mains at the time of construction to match a single distribution

system, then dig them up and replace them as demand grows would be grossly inefficient and uneconomic (if DER would even allow such a mismatch). Therefore, we recommend the issue be eliminated and this portion of plant be 100 percent used and useful with no margin reserve.

Finally, we recommend that the margin reserve for on-site distribution mains, sewers and laterals be a flat 20 percent unless the distribution system will reach build-out within 36 months. If build-out is to be reached within 36 months, we recommend the distribution systems be considered 100 percent used and useful.

Fire Flow:

For fire flow, we recommend codification of current Commission policy and modification of certain Commission practices. Specifically, the new rule states that fire flow shall be considered in used and useful calculations when requested by the utility. This is current Commission practice. Further, the rule provides for the inclusion of fire flow even if the utility hasn't sufficient capacity, and allows the Commission to withhold the associated revenues until capacity has been increased. The rule also establishes fire flow requirements and minimum allowances. These latter two provisions are modifications to current Commission practice. Currently, the Commission hears testimony on these issues and makes a decision on a case-by-case basis. We believe the recommended rule is a fair public policy and can eliminate this as an issue in rate proceedings and reduce rate case expense.

Unaccounted for Water:

For unaccounted for water, we are recommending the adoption of a new policy statement, codification of current Commission practice and the adoption of a modified practice. Briefly, paragraph (5)(c)1. states a new policy relating to conservation. Paragraphs (5)(c)2. and 3. codify the Commission's definition of unaccounted for water. Paragraph (5)(c)4. of the recommended rule establishes a maximum of 12.5 percent unaccounted for water to be allowed without further justification.

Unaccounted for water is an issue in nearly every case involving a water company. The Commission has long had a practice of allowing 10 percent unaccounted for water and has allowed higher levels when justified by the utility. The recommended rule reflects what we believe to be a fair practice of allowing the Commission's standard 10 percent plus an

additional two to three percent which is the American Water Works Association's Standard. This provides for a maximum allowance of 12.5 percent. The FWWA provided comments on this section of the rule offering alternative language. (Attachment 4) The Division of Water and Wastewater agrees with the FWWA's proposed revisions and recommend their inclusion in the rule.

Infiltration and Inflow:

We recommend codification of Commission policy and modification of Commission practice for infiltration and inflow. The Commission currently recognizes both infiltration and inflow but gives an allowance only for infiltration. The recommended rule identifies and defines both infiltration and inflow. It also provides for an allowance for both. The allowances are ten percent for inflow and the design allowance for infiltration as specified in Water Environment Federation Manual of Practice No. 9.

In addition, we have included a subsection (5)(e) that provides for the recovery of the expense of a cost/benefit analysis performed at the direction of the Commission. The rule also establishes the amortization period of the expense at three years.

Used and Useful:

For used and useful, we recommend the adoption of specific default allowances and formulas to determine used and useful for various components of a system. We recommend expanding the used and useful determination to include nine categories for water systems and seven categories for wastewater systems versus the current practice of using two categories. We have also developed separate formulas for small, medium and large water companies.

Since we are recommending the adoption of specific formulas to calculate used and useful as opposed to the general guideline formula currently used, we have had to include many specifics that have historically been handled on a case-by-case basis. The attached User's Manual and examples provide a more detailed discussion of each formula and component.

Specifically, we are recommending the adoption of default formulas for small, medium and large water systems. There are formulas and allowances provided for nine separate plant categories. They are source of supply, treatment, finished water storage, pumping, other water facilities, water transmission, water distribution non-developer related, water distribution

developer related and water distribution developer related with mixed developments. For wastewater it was not necessary to differentiate by size, therefore, our recommended rule includes default formulas for seven separate plant accounts only. These are wastewater collection system and pumping non-developer related, wastewater collection system and pumping developer related, wastewater collection system and pumping developer related with mixed developments, wastewater force mains, wastewater treatment, effluent disposal facilities and other wastewater facilities.

In short, we are recommending that all off-site water transmission and wastewater collection systems be 100 percent used and useful. Also, we recommend that "other water and wastewater facilities" be considered 100 percent used and useful. These are items such as emergency generators and auxiliary engines. In addition, for non-developer related utilities, we are recommending the on-site distribution and collection systems be 100 percent used and useful. For developer related utilities, we recommend the included formula approach using a fill-in concept. That is, a distribution or collection main will be a certain percent used and useful based upon the formula using ERCs available, ERCs connected and fill-in lots. Fill-in lots are defined as the total number of unoccupied residential lots on isolatable sections in which at least 25 percent of the lots are active ERCs.

The FWWA has proposed substitute formulas that simplify the process even further (Attachment 5). After examination of these new formulas, the Division of Water and Wastewater agrees with the FWWA and recommend adopting them.

Section (7) - Definitions

In section (7), we have recommended the adoption of specific definitions of terms for use with the allowances and used and useful calculations included in the rule. One definition that deserves particular attention is that for the "Average 5 Maximum Days Demand" in subsection (7)(a). This definition calls for an average based upon the maximum day demand over the past five years. We believe this more accurately describes the demands placed upon the system. However, current Commission practice is to limit the average to those five highest days in the test year.

25-30.433 Rate Case Proceedings - We recommend the adoption of a new rule that will simplify rate cases and lower rate case expense. This rule sets out how the Commission will address

several of the issues involved in rate cases. By codifying the treatment to be accorded these issues as discussed below, they will no longer be issues to be decided through a hearing.

Section (1) - Quality of Service

The recommended rule specifies how quality of service will be determined by the Commission. It requires the use of three major components: quality of product, operational condition of facilities, and customer satisfaction. The rule also establishes the criteria that will be used by the Commission for each of the three components.

Section (2) - Working Capital

We have provided four different options for calculating working capital. Option 1 codifies current Commission policy and is the option that we recommend. It provides that working capital shall be based on the formula of one-eighth of operation and maintenance expenses, with no provision for deferred debits to be included in the rate base. This option is also supported by Southern States Utilities, Inc.

Option 2 requires Class A and B utilities to use the balance sheet method and Class C utilities to use the formula method. Option 3 requires multiple system utilities with combined annual revenues of $750,000 or more to use the balance sheet method, with all other utilities using the formula method. Option 4 gives the utility the choice of method to use. It provides that the utility may calculate working capital needs by whichever method, either balance sheet or formula, which best reflects the utilities' those needs. This option is supported by the Florida Waterworks Association.

Section (3) - Debit Deferred Taxes

Section (3) of this rule addresses deferred debits created due to income taxes associated with used and useful contributions-in-aid-of-construction (CIAC). We believe this deferred debit to be material to most utilities having to pay the tax. Therefore, we recommend that the portion of the deferred debits associated with used and useful CIAC be netted against all deferred credits. If the resulting difference is a credit, then the amount will be included in the capital structure at zero cost. If the resulting difference is a deferred debit, it will be included in the rate base.

The Florida Waterworks Association believes that all

deferred debits should be included in the rate base and all deferred credits should be included in the capital structure. They believe that a mismatch occurs when only used and useful deferred debits are netted against all deferred credits, and the resulting balance is a deferred debit included in the rate base. This is because the capital structure is typically larger than the rate base and when the pro-rata reduction to make them equal is made, the deferred debits are further reduced by non-used adjustments. This is a classic case of tracing funds, which the Commission has historically not done and is no different than other adjustments to rate base that get further reduced by the pro rata reduction. The Commission makes used and useful adjustments to both plant and CIAC, then reduces the capital structure to match. As the Commission does not trace the funds in the capital structure for these adjustments, we do not see any rationale for tracing the funds in this one instance.

Southern States maintains that the regulatory treatment should be consistent, that offsets and netting of deferred taxes should be applied to either the capital structure or the rate base, but not both.

We believe that our recommended approach is consistent with Commission policy on rate base and capital structure. We do not believe that the concerns of the utilities are material and to make adjustments as they propose would require the Commission to trace funds in the capital structure.

Section (4)

Section (4) codifies the Commission's current policy regarding the averaging method to be used in rate cases. The rule requires use of the simple beginning and end of year average. The Commission has previously decided that the additional detail provided by a 13-month average does not justify the expense for this industry.

Section (5)

Section (5) codifies current Commission practice by requiring used and useful percentages to be applied to the appropriate depreciation expense accounts.

Section (6) - CIAC

Two options are offered governing the specific treatment of CIAC when a margin reserve is included. We recommend Option 1, which states that CIAC will <u>not</u> be imputed on the margin reserve

calculation. This is a recommended change in Commission practice.

The margin reserve is included for many reasons including customer growth, changes in customer demand characteristics and DER requirements. A utility must maintain a portion of plant as a reserve. It has long been held by the Commission that CIAC should be imputed when a reserve is allowed because when a customer connects to the system, the customer pays the service availability fees and the utility has no investment. Even if this were true in the past, it certainly is not true now. First, when that next customer connects to the system and pays service availability charges, the utility must have additional capacity to serve the next customer. This continues throughout the life of the utility. The utility must always maintain investment in plant to serve the next customer. Moreover, DER is and has been requiring expansion of plant before a utility reaches 100 percent of its capacity. We believe that the correct policy is to recognize that investment, and not to offset the margin by imputation of CIAC.

Option 2 basically codifies current Commission practice. It specifies that CIAC will be imputed on the margin and establishes specific parameters for imputation.

Sections (7) - (11)

The remaining sections of Rule 25-30.433 codify current Commission practice for many issues. Briefly, the rule provides that income taxes are not allowed for companies that do not pay them, it establishes an amortization period for non-recurring expenses of five years and an amortization period for forced abandonments, it requires a utility to own the land upon which the treatment plant is located or possess the right of continued use, and it adopts use of the leverage formula for determining a utility's return on equity.

25-30.434 Application for Allowance for Funds Prudently Invested (AFPI) Charges - We recommend adoption of this new rule to codify the filing requirements for an application for AFPI. The rule defines AFPI and requires applicants to provide the minimum information that is needed by staff to analyze the utility's requested rates. Section (4) specifies a beginning date for accruing the AFPI charge and Section (5) provides a presumption that it is prudent for a utility to have an investment in future use plant for no longer than five years beyond the test year.

25-30.435 Application for a Rate Increase by an Applicant that Owns Multiple Systems (Alternative Rules) - This new rule sets out the filing requirements for rate increases for companies that own multiple systems. It requires the applicant to file the required information on all jurisdictional systems regardless of whether the applicant is seeking an increase for all systems. It also requires that any rate increase or decrease be based on the total earnings of all the applicant's systems.

The goal of this rule is to require water and wastewater utilities to file one application that covers all of their systems. Staff believes this will reduce rate case expense on a system basis and will result in major cost savings to both the industry and the Commission. We also believe that it will have the effect of reducing the number of times that a utility files a rate case while increasing our ability to review a large company for potential overearnings.

Comments were made at several of the workshops that this proposal would do nothing but drive rate case expense up and subject the utility and the Commission to criticism. We do not agree. While we do not yet have rate case expense data for the current Southern States Utilities (SSU) case, the previous SSU case involving multiple systems was the least expensive case the industry has had in years.

Finally, we have provided an alternative rule for utilities with multiple systems. In short, the alternative requires utilities with multiple systems that intend to file rate cases within 12 months to file information that allows the Commission to determine the appropriate level of joint and common costs, the appropriate allocation factors, and the allocations to each system. Our belief is that while a utility would still file for rate relief by system, the issues relating to all joint and common costs would have been decided and would not be a part of the individual filings.

25-30.436 General Information and Instructions Required of Class A and B Water and Wastewater Utilities in an Application for Rate Case - The changes to this rule were designed to reduce rate case expense. The changes require the following:

1. Prefiling direct testimony within 30 days of meeting the minimum filing requirements unless the PAA option is chosen;
2. The setting of a return on equity even if there is no equity in the capital structure;
3. Information on all allocations of costs;

4. Information on land ownership; and
5. Information on final rate case costs.

At the special agenda, Commissioners stated their desire to have direct testimony filed with the utilities' MFRs and asked staff to research what the requirements are in the electric and communications industries. Prefiled direct testimony is due with the petition in the other industries. We see no reason for the requirement to be different for the water and wastewater industry and have revised the recommended rule to reflect this change.

25-30.437 Financial, Rate and Engineering Information Required of Class A and B Water and Wastewater Utilities in an Application for Rate Increase - The changes to this existing rule clarify the requirements and codify the use of the base facility and usage charge rate structure. The modifications should result in cost savings as utilities will know what information must be filed when requesting uniform rates and designing proposed rates.

25-30.4385 Additional Rate Information Required in Application for Rate Increase - This new rule requires the utility to file tariff sheets in rate case proceedings.

25-30.441 Engineering Information Required in Application for Rate Increase by Utilities Seeking to Recover the Cost of Investment for Plant Construction Required by Governmental Authority - We recommend repeal of this rule and replacement of its provisions with a new rule, Rule 25-30.4415. The existing rule is confusing and requires information the Commission does not need.

25-30.4415 Additional Information Required in Application for Rate Increase by Utilities Seeking to Recover the Cost of Investment in the Public Interest - This new rule replaces Rule 25-30.441. It lists the information and documents that must be provided to the Commission and permits utilities to support the cost of their investment with an estimate of a professional engineer or a person knowledgeable in design and construction of plant.

25-30.443 Minimum Filing Requirements for Class C Water and Wastewater Utilities - Adoption of the recommended changes to this existing rule should result in cost savings to the Commission and the industry. The proposed changes require the following:

1. The use of the base facility and usage rate structure;

2. Information on final rate case costs;
3. Separate calculations for interim rates; and
4. The information needed when requesting uniform rates.

25-30.455 Staff Assistance in Rate Cases - We recommend three revisions to this rule: 1) to exclude large multi-system companies from filing for staff assisted rate cases (SARCs) for their smaller, single systems when it happens to be to the utility's advantage for that system standing alone; 2) to include a reference to section 367.0814(4), Florida Statutes, which conditions a SARC on the company not protesting the proposed agency action order as long as a revenue increase is approved; and 3) to codify current Commission practice regarding allowance of prudent rate case expense for SARCs and delineate the responsibilities of both the utility and the Commission staff in the event of a protested SARC. We believe that clarification of responsibilities will reduce the Commission's costs by keeping protested SARC's on schedule, improving the quality of post-protest filings, and making clear to Class C utilities that staff cannot perform as a utility advocate during the hearing process.

There was a lengthy discussion at the special agenda about the role of staff in a Staff Assisted Rate Case (SARC), the rights and role of the utility and the authority of the Commission. Mr. Shreve, OPC, asked that the rule require the staff to testify in support of their recommendation if the proposed agency action (PAA) was protested. He further suggested that the utility be required to provide testimony in support of the information used by the staff in preparing their recommendation. Mr. Shreve also suggested the rule require arbitration between the parties with a Commissioner sitting as the arbitrator. The Commission directed staff to look into these suggestions.

The rule as recommended provides for most of what Mr. Shreve suggested. It does not require arbitration. It does require the utility to adopt the PAA order, at a minimum. It also requires the utility to sponsor a witness to support all source documentation provided to and used by staff in preparing their recommendation, audit, etc. It further requires the utility to present factual support for any issue that it takes a position on that is different than the order.

The recommended rule also delineates the role staff is required to take if the PAA order is protested. Specifically, the rule requires the staff to provide testimony explaining and supporting its analysis in the recommendation and requires staff to provide factual testimony supporting any position it wishes to

take that is different from the original recommendation. The rule also requires staff to provide the utility with materials and assistance in preparing its testimony and exhibits.

We believe the only area raised by Mr. Shreve that the recommended rule does not currently address is that of arbitration. We agree that this is an interesting concept that should be considered. We are not convinced that the Commission has the authority to order parties to binding arbitration, however, or that arbitration would be appropriate in this rule.

Substantially affected parties have the right to be heard, and a right to a section 120.57 hearing before the full Commission or a panel assigned by the Chairman. The statute does not provide for an arbitrator. Since the rule provides an option that may be elected by a utility, it is possible the agency could make arbitration a condition of the election, however, amendment of Chapters 120 and 350 would be necessary. More legal research is needed, but in any event, staff does not believe that binding arbitration would be appropriate for SARCs.

SARCs have worked well for nearly ten years. Over this time period very few have gone to hearing. The recommended modifications to this rule are a direct result of the Commission's recent experience in going to hearing with SARCs. We believe we should allow time for these changes to work and monitor their success before we make a change as radical as requiring binding arbitration.

There is already a reluctance in the industry to use staff assistance in rate relief. We believe this is evidenced by the increase in number of eligible Class C utilities that are filing for file and suspend rate cases. We believe that adding a binding arbitration requirement would severely reduce the effectiveness of this program. The concept may, however, do well in the alternative rate setting program we have recommended in new Rule 25-30.456.

25-30.456 Staff Assistance in Alternative Rate Setting - We recommend the adoption of this new rule relating to alternative regulation for Class C utilities. We have developed a rate setting alternative that is something between an index and a full SARC. The Legislature created the opportunity for this type of regulation in 1989 by enacting section 367.0814(7), Florida Statutes, authorizing the Commission to establish standards and procedures by rule for alternative rate setting for small utilities.

This rule tracks the existing and recommended rules for staff assisted rate cases regarding qualifications, eligibility and the determination thereof, and procedures in the event of a protest of the initial PAA decision in the case. The points of departure from the SARC rules include the statement that operating revenues will be compared to expenses for the purposes of establishing rates rather than the current rate base method. In addition, in an attempt to make this method faster and less costly to the Commission and the utility, and less likely to be protested, other conditions have been established. The rule states that the Commission will vote on a PAA recommendation within 90 days of the official filing date. This provision is included to provide the utility with assurance that the process will result in a faster turnaround than the existing staff assisted rate case process which can take up to 150 days to get to a Commission vote.

To make the process more acceptable to customers and therefore decrease the likelihood of a protest, a maximum level of increase of 50 percent of test year operating revenue has been included. Another condition states that in the event of a protest the maximum will be removed and the utility will be given the option of having rates set on rate base, thus increasing the likelihood of greater increases. It is hoped that this condition will decrease the possibility of a hearing, which can be very expensive for all parties.

Very few comments were received regarding this new recommended rule at the workshops held throughout the state. We hope that by providing the utility with another tool with which to keep rates closer to compensatory levels, we will be able to mitigate "rate shock", lower rate case expense, and reduce the Commission time invested. We also believe that a byproduct will be less costly regulation, particularly since an audit will not be required and the timeframe will be shorter.

25-30.460 Application for Miscellaneous Service Charges - We recommend the adoption of this new rule to codify existing Commission practice. The new rule applies to all utilities and prescribes the use and availability of miscellaneous service charges for service.

25-30.465 Private Fire Protection Rates - We recommend the adoption of this new rule to codify the existing Commission practice of charging one-third the base facility charge for private fire protection. This new rule should provide cost savings by eliminating a rate case issue.

The Florida Fire Sprinkler Association, Inc., filed comments and alternative language to this rule. They have requested that no charge apply for fire protection service. While we agree that fire protection is a good thing, we cannot support its provision at no cost.

At the special agenda, Mr. Buddy Dewar of the Florida Fire Sprinkler Association asked the Commission to modify the recommended rule to exclude from specific charges sprinkler systems for private fire protection. Mr. Dewar explained how correctly installed and working sprinkler systems extinguish fires more quickly and with less overall water than pump trucks and hydrants. The Commissioners expressed a desire to learn more about these systems and the possible long term savings to customers. Staff was directed to make this an issue in the upcoming hearings and to provide as much information as possible. The recommended rule has been left unchanged pending the hearing.

25-30.470 Calculation of Rate Reduction After Rate Case Expense is Amortized - The adoption of this new rule will implement the statutory mandate of 367.0816, Florida Statutes (1991), requiring amortization of rate case expense over a period of four years, followed by a reduction in rates.

25-30.475 Effective Date of Approved Tariffs - This new rule section which specifies the effective dates for tariffs filed for recurring and nonrecurring rates and charges. The rule codifies current Commission policy.

25-30.515 Definitions - The changes to this rule supplement the existing definition of Guaranteed Revenue Charge and add a definition of Plant Capacity Charge.

25-30.565 Application for Approval of New or Revised Service Availability Policy or Charges - This rule has been revised to reduce the number of application copies required to be filed from 15 to 12, to substitute, by reference, the notice provisions of recommended new Rule 25-22.0408 for the existing section prescribing notice requirements, and to delete unnecessary language about the legal burden required to justify the request.

ISSUE 3: Should the rules be filed with the Secretary of State and the docket be closed if no comments or requests for hearing are filed?

RECOMMENDATION: Yes.

STAFF ANALYSIS: If no comments or requests for hearing are timely filed, the rules as proposed may be filed for adoption with the Secretary of State and the docket may be closed.

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