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March 1, 1996

960258-WS

Blanca S. Bayo, Director
Division of Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

HAND DELIVERY

Re: Petition of the FLORIDA WATERWORKS ASSOCIATION to Adopt Rules
on Margin Reserve and Imputation of Contributions-in-aid-of-
Construction on the Margin Reserve Calculation

Dear Ms. Bayo:

Please open a docket for consideration of the Petition of the
FLORIDA WATERWORKS ASSOCIATION to Adopt Rules on Margin Reserve and
Imputation of Contributions-in-aid-of-Construction on the Margin
Reserve Calculation.

Enclosed for filing are an original and 15 copies of the
Petition.

Please acknowledge receipt of the foregoing by stamping the
enclosed extra copy of this letter and returning same to my
attention. Thank you for your assistance.

Sincerely,



Wayne L. Schiefelbein

WLS/l dv
Enclosures

RECEIVED & FILED



DOCUMENT NUMBER-DATE

02564 MAR-1 96

FPSC-RECORDS/REPORTING

State of Florida

Commissioners:
SUSAN F. CLARK, CHAIRMAN
J. TERRY DEASON
JULIA L. JOHNSON
DIANE K. KIESLING
JOE GARCIA



DIVISION OF RECORDS &
REPORTING
BLANCA S. BAYÓ
DIRECTOR
(904) 413-6770

Public Service Commission

March 1, 1996

Mr. Wayne L. Schiefelbein
Gatlin, Woods & Carlson
The Mahan Station
1709-D Mahan Drive
Tallahassee, Florida 32308

Re: Docket No. 960258-WS

Dear Mr. Scheifelbein:

This will acknowledge receipt of a petition to adopt rules on margin reserve and imputation of contributions-in-aid-of-construction on margin reserve calculation, by FLORIDA WATERWORKS ASSOCIATION, which was filed in this office on March 1, 1996 and assigned the above-referenced docket number. Appropriate staff members will be advised.

A tentative schedule of events in the docket is available upon request. You may contact the Records Section at (904) 413-6770 to request that a copy of the case schedule be faxed or mailed to you. The schedule of events provides you with an opportunity to anticipate completion stages of work in the docket. These dates are subject to change; therefore, you should call the Records Section to obtain revised schedules. For firm dates of hearings or other activities, please look to the Commission's official notices and orders. You can also obtain information on your docket by accessing the PSC HomePage on the Internet, at <http://www.state.fl.us/psc/psc/html>.

Sincerely,

A handwritten signature in cursive script that reads "Linda C. Williams".

Linda C. Williams
Commission Deputy Clerk

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of the FLORIDA)
WATERWORKS ASSOCIATION to Adopt)
Rules on Margin Reserve and)
Imputation of Contributions-in-aid)
-of-Construction on the Margin)
Reserve Calculation)

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960258-LJ

PETITION TO ADOPT RULES

The Florida Waterworks Association (FWA), pursuant to Section 120.54(5), Florida Statutes, and Rule 25-22.010, Florida Administrative Code, hereby petitions the Florida Public Service Commission (FPSC) to adopt rules on the margin reserve of certain components of water and wastewater plant and the associated imputation of contributions-in-aid-of-construction (CIAC), and, in support hereof, states the following:

1. The name and address of the petitioner is:

Florida Waterworks Association
2548 Blairstone Pines Drive
Tallahassee, Florida 32301

2. The person authorized to receive notices, orders, pleadings and other documents and communications with respect to this petition is:

Wayne L. Schiefelbein
Gatlin, Woods & Carlson
1709-D Mahan Drive
Tallahassee, Florida 32308
(904) 877-7191

Attorneys for Florida Waterworks Association

Standing

3. The FWA is an unincorporated trade association comprised of investor-owned water and/or wastewater utility companies in the State of Florida. The FWA is the Florida chapter of the National Association of Water Companies. The FWA exists to assist its

DOCUMENT NUMBER-DATE

02564 MAR-18

FPSC-RECORDS/REPORTING

members with regulatory, technical and operational matters. A substantial number of the members of the FWA are water and/or wastewater utilities regulated by the FPSC and are subject to FPSC rules, regulations and non-rule policies. As such, the FWA is substantially affected by the non-rule policies of the FPSC regarding margin reserve and the related imputation of CIAC. The FWA therefore has standing to petition the FPSC to adopt formal rules regarding said policies.

Summary of Current Policy

4. The FPSC has historically included reserve capacity as a portion of used and useful plant for water and wastewater utilities, equivalent to the amount of plant investment projected to be needed to accommodate near-term growth. Generally, the FPSC has adhered to an 18-24 month guideline as measuring the "margin reserve" period for plant other than lines, and a 12 month guideline for investment in transmission and collection mains. The guidelines were conceived as the time periods necessary for construction of facilities to serve near-term growth. Recently, the FPSC has accepted proposals for a margin reserve of 36 months for plant other than lines, using the same rationale.

5. The FPSC has also routinely offset the amount of actual investment included in a water and wastewater utility's margin reserve by imputing uncollected amounts of CIAC that might be collected during the margin reserve period. The policy has been rationalized that without such imputation, current customers would improperly subsidize service to future customers. The FPSC's

discretion to impute CIAC on the margin reserve has been upheld. Rolling Oaks Utilities, Inc. vs. Florida Public Service Commission, 533 So. 2d 770 (1st DCA, 1988) That discretion is based on the District Court's premise that the margin reserve is capacity "not currently in use." (at 773). The FWA believes that it can demonstrate that FPSC margin reserve should be considered currently in use and therefore given full weight in rate-making, without imputation of CIAC.

6. The policy of imputing CIAC severely diminishes (and can entirely eliminate) recognition of water and wastewater plant investment associated with the margin reserve period. Without the opportunity to recover the costs associated with their investment in margin reserve capacity, utilities are under pressure to keep investment in margin reserve capacity at a minimum. This may mean adding the smallest increment of plant capacity that will satisfy regulatory requirements and disregarding economies of scale associated with long-term sizing and timing of plant expansion. The net result, over the longer run, tends to be a higher cost of service and a lesser degree of reliability and quality of service.

Summary of FWA Proposal

7. The FWA submits that the FPSC's policies on margin reserve and the imputation of CIAC are unfairly discriminatory in their application to water and wastewater utilities, and inconsistent with statutory mandates and with the rules of the Florida Department of Environmental Protection (FDEP), and the reasonable and proper operation of the utility in the public

interest.

8. The concept and measure of margin reserve need to be modified so that the amount of plant recognized as used and useful is adequate to encourage a utility to construct plant in economic increments. The margin reserve period for treatment plant, and for disposal facilities other than reuse facilities, should as a general matter be at least five years. (Reclaimed water reuse facilities constructed in accordance with Section 403.064, Florida Statutes, should be considered 100% used and useful. Thus, margin reserve is not a factor.) The practice of imputation of CIAC on the margin reserve should be discontinued.

9. The FWA suggests that this rulemaking focus on water supply, storage and treatment and wastewater treatment and disposal plant, and exclude water and wastewater mains and service lines.

FPSC Responsibility to Consider Used and Useful

10. Pursuant to Chapter 367, Florida Statutes, the FPSC has exclusive jurisdiction over the rates of each water and/or wastewater utility, as therein defined, which provide service in certain counties in the State of Florida. Secs. 367.011(2); 367.021(12); 367.171, Fla. Stat. Such water and wastewater utilities may only charge rates and charges that have been approved by the FPSC. Sec. 367.081(1), Fla. Stat.

11. In setting water and wastewater rates, while the FPSC must "consider" the expenses incurred in the operation of, and a fair return on investment in, property "used and useful in the public service," no statutory definition or other guideline for the

used and useful determination is given. Secs. 367.081(2)(a); 367.081(3), Fla. Stat.

12. A water and/or wastewater utility subject to FPSC jurisdiction is required to provide "safe, efficient and sufficient service,... not... less safe, less efficient, or less sufficient than is consistent with the approved engineering design of the system and the reasonable and proper operation of the utility in the public interest. Sec. 367.111(2), Fla. Stat. This obligation to serve applies to both existing and future customers located within the utility's certificated service area. Sec. 367.111(1), Fla. Stat.

Absence of Existing Rules

13. The FPSC has never adopted any administrative rules regarding its used and useful determinations.

14. The FPSC reviewed its rules governing water and wastewater utilities in Docket No. 911082-WS. After a series of workshops, the FPSC issued a Notice of Rulemaking on March 24, 1993 (Order No. PSC-93-0455-NOR-WS). This Notice contained a comprehensive rule proposal addressing used and useful in rate case proceedings, which included definitions and calculations for determining margin reserve. (Proposed Rule 25-30.432(5)(a); pp. 98-100 of said Order) The Notice also contained a rule proposal that "CIAC shall not be imputed on the margin reserve calculation." (Proposed Rule 25-30.433(5), p. 122 of said Order) At a hearing held in August, 1993, the FPSC decided to "delay" further consideration of the used and useful and imputation issues "with the understanding that this is going to be considered at a later

time" This was done with the expectation of "at least one more meeting or workshop" See Document No. 08844, Hearing Transcript, pp. 7 through 13. Thus, the Orders adopting rules in Docket No. 911082-WS did not address used and useful, margin reserve, or imputation of CIAC. Orders Nos. PSC-93-1663-FOF-WS (November 15, 1993) and PSC-93-1704-FOF-WS (November 29, 1993). The docket was thereupon closed.

15. No further public discussion of resuming this rulemaking was made until the February 6, 1995 Internal Affairs Conference, at which the Division of Water and Wastewater briefed the FPSC on the status of various generic projects. Staff initially recommended that a "B" priority be assigned to the "used and useful project." The FWA and several of its member companies then addressed the FPSC, beseeching the Commissioners to assign top priority to the used and useful project, as "the key issue for the industry." Staff indicated that they were considering a policy requirement that all water and wastewater service lines be contributed by customers, which would render moot any used and useful treatment. Staff therefore recommended that the used and useful rulemaking be limited in scope to treatment and disposal facilities and transmission and collection mains. The Commissioners endorsed this compromise.

16. Four months later, Staff distributed a draft rule which addressed used and useful issues. A three-year margin reserve was proposed. Imputation of CIAC was not mentioned.

17. A Staff workshop was held on July 12-13, 1995. The

central issues raised by the FWA and its member companies were margin reserve and related imputation. FDEP representatives expressed support for a five to ten year margin reserve period. (Document 07202, pp. 31-48; Document 07203, pp. 130-177; Document 07204, pp. 273-291) Subsequently, in accordance with Staff direction for post-workshop comments, the FWA submitted an extensive rule proposal on all aspects of used and useful policy, including margin reserve and imputation.

18. Since the workshop, FDEP and Staff have periodically conferred with each other on these policy concerns. However, to date no docket has been opened and no schedule announced on what remains the key issue for FPSC water and wastewater utility regulation.

Margin Reserve

19. A capacity reserve to assure a utility's ability to provide reliable service and to meet statutory requirements is a necessity long recognized by the FPSC for water utilities, wastewater utilities and electric utilities. Although the purpose of the reserve is similar for these types of utilities, they have different names and are measured in different ways. The investment in capacity reserve for water and wastewater utilities is called a "margin reserve" and has historically been expressed in terms of equivalent annual growth. The investment in capacity reserve for electric utilities is called a "reserve margin" and has historically been expressed as a percentage of annual peak load demand. However, either reserve can be

expressed in terms of percentage of peak load demand or equivalent annual growth. And although the reserves have similar purposes, the FPSC has historically given them different ratemaking treatment.

With regard to electric utilities, the FPSC views the reserve as a current requirement, sets a minimum and allows the reserve to be greater than the minimum if justified by the economics. With regard to water and wastewater utilities, the FPSC views the reserve as capacity held for future customers, sets a maximum, and will not allow it to be greater even if justified by the economics.

20. a) Until recently, the FPSC has consistently adhered to an 18-24 month guideline for measuring a margin reserve period for plant other than lines. In each of these cases the FPSC has justified the time period for measuring margin reserve as only the time period necessary to construct facilities to meet near-term growth. In the last year or so the FPSC has begun to recognize a three year construction period, in some cases, for treatment plant.

b) By focusing on margin reserve as merely capacity held in reserve for future customers in the near-term, the FPSC gives no weight to the economics of the water and wastewater industry and the critical fact that a margin reserve benefits existing customers by ensuring that future customers will not overload existing facilities and impact on the quality and safety of service provided. A utility should have in place sufficient

capacity to prevent deterioration in reliability and quality of service, until the next economic increment can be placed in service. Many factors affect the length of time between capacity increments. The utility must take into consideration, in addition to the time actually needed for construction, the FDEP's planning and permitting process; the permitting and approval processes of local governments and water management districts; design, bidding and bid evaluation; and testing, inspection, certification and startup. Concerns for strict environmental protection at all levels of government has substantially increased the length of time between conception and completion of facility construction. Obtaining a consumptive use permit alone may well take four years. Meeting environmental and conservation concerns in a manner acceptable to permitting agencies often leads to several alternatives being designed and considered before being accepted, a process that can entail many months. During the period from conception to completion, capacity must be available to provide service. And as this time increases, the capacity reserve requirement also increases. These factors are not given their due weight under existing FPSC policy. As a result, the amount of plant in which a utility should economically invest to serve the public is either not being built or when it is built, its cost is not being allowed to be recovered through rates.

21. In June, 1995, in response to the Staff draft rule, the FDEP strongly recommended FPSC recognition of a minimum five-year

reserve capacity when calculating used and useful percentages of water and wastewater treatment facilities. According to the FDEP,

BY SPECIFYING THAT "USED AND USEFUL" INCLUDES NO MORE THAN A THREE-YEAR RESERVE CAPACITY FOR WATER AND WASTEWATER TREATMENT FACILITIES, THE PSC WILL BE ENCOURAGING UTILITIES TO BUILD THESE FACILITIES IN THREE-YEAR STAGES. AND BY ENCOURAGING UTILITIES TO BUILD WATER AND WASTEWATER TREATMENT FACILITIES IN THREE-YEAR STAGES, THE PSC WILL BE ENCOURAGING UTILITIES TO IGNORE ECONOMIES OF SCALE AND LONG-TERM ECONOMIC BENEFITS TO THEIR CUSTOMERS, WHICH IS EXACTLY THE OPPOSITE OF WHAT THE PSC WANTS TO ENCOURAGE....

FURTHERMORE, BY RECOGNIZING ONLY A THREE-YEAR RESERVE CAPACITY, THE PSC WILL BE PUTTING UTILITIES IN AN AWKWARD POSITION. THE DEP'S EXISTING RULE 62-600.405 REQUIRES UTILITIES TO BEGIN PLANNING AND DESIGNING THE EXPANSION OF WASTEWATER TREATMENT FACILITIES WHEN THERE IS FIVE YEARS OR LESS OF RESERVE CAPACITY AT THE FACILITIES. (NOTE THAT WE INTEND TO IMPLEMENT A SIMILAR RULE FOR COMMUNITY DRINKING WATER TREATMENT FACILITIES.) YET, UTILITIES WILL HAVE TO CONSTRUCT WATER AND WASTEWATER TREATMENT FACILITIES IN NO MORE THAN THREE-YEAR STAGES IF THEY WANT TO RECOVER THE FULL COST OF THE FACILITIES. THUS, UTILITIES THAT WANT TO RECOVER THE FULL COST OF THEIR WATER AND WASTEWATER TREATMENT FACILITIES WILL HAVE TO BE CONTINUOUSLY PLANNING AND DESIGNING THE NEXT THREE-YEAR EXPANSION OF THESE FACILITIES EVEN WHILE THEY ARE CONSTRUCTING THE PRESENT THREE-YEAR EXPANSION OF THESE FACILITIES.

WE STRONGLY RECOMMEND THAT THE PSC ALLOW AT LEAST A FIVE-YEAR RESERVE CAPACITY FOR WATER AND WASTEWATER TREATMENT FACILITIES. ALTHOUGH ALLOWING A FIVE-YEAR RESERVE CAPACITY MAY STILL NOT FULLY ENCOURAGE USE OF ECONOMIES OF SCALE, IT WILL MAKE THE PSC'S "USED AND USEFUL" RULE SOMEWHAT CONSISTENT WITH THE DE'S RULE 62-600.405. (UTILITIES THAT WANT TO RECOVER THE FULL COST OF THEIR WASTEWATER TREATMENT FACILITIES WILL HAVE TO

BEGIN PLANNING AND DESIGNING THE NEXT FIVE-YEAR EXPANSION OF THESE FACILITIES ONLY AFTER THEY HAVE COMPLETED CONSTRUCTING THE PRESENT FIVE-YEAR EXPANSION OF THESE FACILITIES.) IF THE PSC TRULY WANTS TO ENCOURAGE UTILITIES TO TAKE ADVANTAGE OF ECONOMIES OF SCALE, THE PSC SHOULD CONSIDER ALLOWING AT LEAST A TEN-YEAR RESERVE CAPACITY FOR WATER AND WASTEWATER TREATMENT FACILITIES. GUIDELINES DEVELOPED UNDER THE U.S. ENVIRONMENTAL PROTECTION AGENCY'S OLD CONSTRUCTION GRANTS PROGRAM FOR WASTEWATER TREATMENT FACILITIES RECOMMENDED CONSTRUCTING WASTEWATER TREATMENT FACILITIES IN NO LESS THAN TEN-YEAR STAGES.

June 29, 1995 Letter to John Williams from FDEP Director of Division of Water Facilities Richard M. Harvey. (Bold type and emphasis in original.)

22. a) The definitions and measure of margin reserve for water and wastewater need to be modified so that the amount of plant authorized to be included as used and useful is adequate to allow a utility to build plant in economic increments, much as it is allowed for electric utilities. In its regulation of electric utilities, the FPSC requires that a minimum 15% reserve margin be maintained. Order No. PSC-94-1256-FOF-EU (October 11, 1994) However, the actual margins maintained by and allowed for electric utilities are often greater as a result of long run economic choices, and often these margins include capacity capable of serving the equivalent of five to 20 years' annual growth. This reflects well-established policy in electric rate cases for including the cost of capacity and land in rate base even if those assets are not used in the near term, if they enhance reliability or contribute to long-term economies. See, for example, Order No. 5278 (November 30, 1971) 2 PUR 3d 398, at

405-406; Order No. 93-0165-FOF-EI (February 22, 1993) at pp. 20, 25-26, 32-35; Order No. 11628 (February 17, 1983) at p. 6; Order No. 13771 (October 12, 1984) at pp. 6-7; Order No. 11307 (November 10, 1982) at p. 12.

b) The FPSC encourages such economic choices by allowing electric (and gas) utilities to recover the cost of service associated with these assets through the rates of existing customers, even though it is acknowledged that to some extent they will be used to serve future customers and possibly not for many years. Since electric utilities do not collect CIAC through service availability charges, as is common with water and wastewater utilities, imputation of CIAC against these assets is not an issue. The Office of Public Counsel itself evaluates electric capacity costs in terms of prudence, without regard to the fact that these costs are recovered through current customers. Yet, in its handling of water and wastewater rate cases, although the FPSC may acknowledge that assets that can provide service for several years may be prudent, and acknowledges that the initial investment in such assets is made by the utility, it discourages such choices by imputing CIAC, before it is even collected, so that it is virtually assured that the utility will not earn a return on the portion of its investment incurred to reduce long-term costs.

c) Long run economic choices for water and wastewater utilities also often result in capacity capable of serving the equivalent of five or more years annual growth. A policy that

recognizes these economies will provide such utilities the opportunity to earn on the full cost of plant that is necessary to provide safe, efficient and sufficient service, in a reasonable time as required by law, and in an economic manner. It will also serve to discourage choices that utilities currently find themselves making; choices wherein, in order to maximize the return on the investments that result from the current policy on margin reserve, have a long-term detrimental impact on utility customers.

Imputation Policy

23. In the early 1980s, the FPSC began offsetting water and wastewater utilities' actual investment represented by margin reserve by imputing uncollected amounts of CIAC that might be collected in a period following a rate case test year equal in length to the margin reserve period. Order after order reflects the Commission's recognition that margin reserve is necessary for a utility to meet its statutory obligations and that it properly is a part of used and useful plant. And order after order denies utilities the ability to earn on their investment in margin reserve by imputing uncollected CIAC as an offset to such investment. The net result of imputing CIAC is to dramatically reduce the amount of margin reserve on which a utility is allowed to earn a return. See, for example, Order No. 93-0423-FOF-WS (March 22, 1993). A margin reserve of \$2.55 million was thereby authorized for eleven operating divisions of Southern States Utilities. Of this amount \$1.57 million was imputed as CIAC.

Thus, an opportunity to earn a return on more than 60% of the utility's actual investment in margin reserve was denied. In other cases, the imputation of CIAC has entirely offset allowed margin reserve. See, for example, Order No. 95-0720-FOF-WS (June 15, 1995) and 95-1360-FOF-SU (November 2, 1995). This imputation policy ultimately serves to subvert the FPSC's margin reserve policy and to confiscate the utilities' investment in plant used and useful in the public service.

24. The imputation policy has been justified by the FPSC on the grounds of "fairness," that, without imputation, future customers may be subsidized by current customers. The policy rests on the assumption that the amount of capacity represented by the margin reserve exists solely to serve future customers, that those future customers are near term, and that those customers, with absolute certainty, will appear, and will appear in the time frame of the margin reserve period. This oversimplified connection between margin reserve and future customers ignores the legitimate purposes of a margin reserve. Margin reserve provides a cushion such that a utility can be prepared to meet the anticipated peak load conditions of its existing customers, with a reasonable degree of reliability, even when unanticipated outages occur. Margin reserve provides a cushion such that a utility can be prepared to meet changing load conditions of its existing customers, over and above the peak loads historically experienced, with a reasonable degree of reliability. Margin reserve includes capacity over and above

that required for existing loads that may exist merely because the economic sizing and timing of plant expansion dictate that result. As a fallout, margin reserve provides capacity adequate to meet ongoing projected growth. This is true for water and wastewater utilities as it is true for electric utilities.

25. The imputation policy assumes that there would be no margin if there were no growth. No such assumption regarding the relationship between reserve capacity and the ability to serve growth is made for electric utilities. Reserve capacity is necessary even without growth, for water and wastewater, and electric utilities. The imputation policy also assumes that CIAC is forthcoming from growth and, therefore, CIAC should be imputed. But if it is logical to assume that CIAC is forthcoming from growth and should be imputed, then it is just as logical to assume that revenues, expenses, additional investment requirements and any other factors associated with growth should also be imputed. But the FPSC doesn't do this because, in fact, neither argument is logical. The basis for ratemaking is the test period with all revenues, expenses, investment and offsets to investment, including CIAC, matching. The imputation policy, based on an illogical mismatching of period investment with out-of-period contributions, denies a utility the ability to earn on its investment in margin reserve. The policy results in a subsidy to current customers by passing on to either the future customer or to the stockholder, the cost of maintaining a reliable level of service. The imputation policy in fact thwarts

margin reserve policy because by offsetting real investment in margin reserve by imputed CIAC, it sends a signal to keep margin reserve at a minimum in order to reduce the risk of an inadequate return, even if reliability is affected. This policy also ignores that during the margin reserve period, the utility is continuing to make further investments by planning and constructing facilities to serve additional new customers who will connect beyond the margin reserve period. By the time the first customer connects to the plant allowed in margin reserve and pays his service availability charges (CIAC), the utility must be able to provide service for yet another future customer. The imputation eliminates the utility's opportunity to ever earn on its investment in margin reserve. The policy should be changed so as to eliminate the imputation of CIAC against the margin reserve calculation.

26. Current FPSC policy provides for an Allowance for Funds Prudently Invested (AFPI). The AFPI charge is described as "a mechanism which allows a utility to earn a fair rate of return on prudently constructed plant held for future use from the future customers to be served by that plant in the form of a charge paid by those customers." Rule 25-30.434(1), Florida Administrative Code. While costs associated with prudently invested "used" plant are recovered through rates to current customers, the costs associated with prudently invested "non-used" plant may be recovered through the AFPI charge from future customers. The AFPI charge does not recover earnings lost on the portion of

margin reserve offset by imputed CIAC. Margin reserve is a component of used and useful plant and no portion of its cost is recovered through an AFPI charge. There is no opportunity to earn on the investment in margin reserve against which CIAC has been imputed, from either current or future customers. Those earnings are lost forever.

Resumption of Rulemaking

27. The FWA proposes that the FPSC adopt the attached proposed rule. The general approach is quite similar to draft rules previously distributed by FPSC Staff and the FWA. However, proposed language in the attached rule proposal defines the Margin Reserve and the Margin Reserve Period in such a way that it is clear the capacity included in the margin reserve is that required for a utility to meet its statutory obligations in an economic manner. In addition, the proposed rule recognizes that margin reserve is a component of used and useful rate base and therefore prohibits the imputation of CIAC against margin reserve.

28. The FWA believes that it is appropriate for the FPSC to formally resume rulemaking proceedings on its used and useful policies, which are a major source of controversy in nearly every water and wastewater rate hearing. To help expedite matters, FWA proposes rulemaking that is limited in scope to margin reserve of water supply, storage and treatment and wastewater treatment and disposal plant, and the imputation of CIAC on such margin reserve.

29. The FWA recognizes that the FPSC currently has a very full schedule due in large part to the fact that it has before it rate applications from water and wastewater utilities in which decisions regarding margin reserve and imputation of CIAC are a part. Since these issues will time and time again be raised in rate proceedings, it would be impractical for the FPSC to defer consideration of a rule on margin reserve and imputation of CIAC until no such cases are pending. It is in the interest of all concerned for the FPSC to grant this Petition and conduct a rulemaking proceeding to consider the issues in a generic setting, so that a rule can be adopted and applied to future cases as soon as possible. Rule adoption will help contain rate case expense in individual rate cases, by limiting the need to address margin reserve and imputation of CIAC issues to special circumstances. Adoption of the rule proposed by the FWA will encourage improved long-term economic planning by utilities, in the public interest.

REQUESTED PROCEDURE

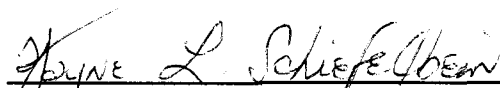
30. a) In light of scheduling constraints at the FPSC, the FWA hereby consents to delaying the FPSC threshold determination of whether to initiate the requested rulemaking beyond the 30 day period prescribed by Section 120.54(5), Florida Statutes, up to and including the April 16, 1996 agenda conference.

b) The FWA requests the opportunity to participate at said agenda conference. FWA participation, unless extended by the FPSC, is expected to not exceed fifteen (15) minutes.

c) In the event that the FPSC votes to initiate rulemaking, the FWA requests that written testimony and exhibits be required to be filed by all parties in July, 1996.

d) The FWA requests that this matter proceed to hearing before the full Commission, by such a date as would result in the adoption of a rule by the end of 1996.

Respectfully submitted,



WAYNE L. SCHIEFELBEIN
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1709-D Mahan Drive
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(904) 877-7191

Attorneys for Florida Waterworks
Association

25-30.431 Margin Reserve

(1) Margin reserve is recognized as a component of used and useful rate base. The Commission shall include an allowance for margin reserve if requested by the utility. CIAC shall not be imputed against the allowance for margin reserve.

(2) The Commission recognizes that for a utility to meet its statutory responsibilities, it must have sufficient capacity and investment to meet the existing and changing demands of present customers and the demands of potential customers within a reasonable time and in an economic manner.

(a) Margin Reserve is defined as the investment needed to meet the changing demands of existing customers and the demands of potential customers in a reasonable time and in an economic manner. (b) Margin Reserve Period is defined as the period during which current capacity is required to be available until the next economic capacity addition can be placed in service without causing a deterioration in the quality of service. In determining the margin reserve period, the Commission shall consider, but not be limited to, the rate of growth in customers and demand, the time needed to meet the guidelines of the Department of Environmental Protection for planning, design and construction of plant expansion, and the available technical and economic options available for sizing increments of plant expansion. Unless otherwise justified, the margin reserve period for water source and treatment facilities and wastewater treatment and effluent disposal facilities is set at five years.

(3) As a part of its rate filing, the utility shall submit historical, reliable data for a minimum of five years, if available, preceding the test year, and for the test year, for the year-end number of customers by class and meter size; the annual sales by class; the annual treated or pumped flows for the system; the water system maximum day, and if available, peak hour flows for each year; and the wastewater system annual average, maximum month average, and three-month average daily flows. The utility's most recent wastewater capacity analysis report, if any, filed with DEP shall also be submitted as part of the rate filing.

(4) For purposes of this rule, Margin Reserve (expressed in units of demand; e.g., GPD (gallons per day)) equals:

$$EG \times MP \times D$$

where:

EG = Equivalent Annual Growth in ERCs

MP = Margin Reserve Period

D = Demand/ERC on the plant component

a. The equivalent growth (EG) in ERCs is measured in terms of the projected annual growth and shall be determined by the utility based on its knowledge of growth in its certificated area. The utility shall take into consideration the growth in ERCs over the last five years, including the test year, and other factors which in the judgement of the utility affect the pattern of growth.

b. As part of its filing, the utility shall provide a calculation of the EG based on (1) a simple average of the annual ERCs for the last five years and (2) a linear regression of annual ERCs for the last five years.

(5) Reclaimed Water Reuse Facilities constructed in accordance with Section 403.064, Florida Statutes, shall be considered 100% used and useful. Margin Reserve shall therefore not be a factor.