

RAR

STATE OF FLORIDA

Commissioners:  
JULIA L. JOHNSON, CHAIRMAN  
J. TERRY DEASON  
SUSAN F. CLARK  
JOE GARCIA  
E. LEON JACOBS, JR.



DIVISION OF LEGAL SERVICES  
NOREEN S. DAVIS  
DIRECTOR  
(850) 413-6199

Public Service Commission

March 5, 1998

Aubrey M. Henley and  
Lowanda L. Henley  
8221 SW 217 Court Road  
Dunnellon, Florida 34431

Re: Docket No. 971621-WS - Application for amendment of Certificates Nos. 355-W and 311-S to include additional territory in Marion County by Rainbow Springs Utilities, L.C.

Dear Ms. Henley:

Pursuant to your request, attached is sample testimony from a customer in another case. Also, I have attached a copy of Rule 25-22.048, Florida Administrative Code, which provides for the prefiling of testimony. By Order No. PSC-98-0192-PCO-WS, issued January 30, 1998, the Prehearing Officer required, pursuant to that rule, intervenors to prefile their written testimony on March 30, 1998.

However, the utility has now filed a Motion For Extension Of Time To File Direct Testimony and a Notice Of Restrictive Amendment To Application for Amendment Of Water and Wastewater Certificates. By the motion for extension of time, the utility now requests that it be given until May 15, 1998 to prefile its testimony, and that the intervenors be given a similar extension (i.e., until June 12, 1998). Therefore, depending on the actions of the Prehearing Officer, the time for filing intervenor testimony could change.

By its Restrictive Amendment, the utility has agreed to delete the territory which includes the areas known as "The Woodlands" and "The Forests," if such deletion will completely obviate the need for a formal hearing. Hopefully, the deletion of "The Woodlands" and "The Forests" from the amendment application will settle the dispute and the parties (utility and intervenors) will decide that no hearing is required.

The only recognized intervenor at this time is the Village of Rainbow Springs Homeowners Association, and they have not had time to respond to these motions of the utility. If you wish to intervene and prefile testimony, you should file a petition requesting intervention pursuant to Rule 25-22.039, Florida Administrative Code (copy attached)

ACK \_\_\_\_\_  
AFA \_\_\_\_\_  
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FPSC-RECORDS/REPORTING

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Aubrey M. Henley and  
Page 2  
March 5, 1998

If you have any questions or if I can be of any further assistance, please contact me at 850-413-6234.

Sincerely,



Ralph R. Jaeger  
Senior Attorney

RRJ/lw

Attachments

cc: Division of Records and Reporting  
Division of Water and Wastewater (Redemann, Starling)  
F. Marshall Deterding, Esquire  
Michael Twomey, Esquire

matter; discovery or other prehearing procedures were not adequate to fully develop the issues; due diligence was exercised to obtain facts touching on the issue; information obtained subsequent to the issuance of the prehearing order was not previously available to enable the party to identify the issue; and introduction of the issue could not be to the prejudice or surprise of any party. Specific reference shall be made to the information received, and how it enabled the party to identify the issue;

3. Unless a matter is not at issue for that party, a party shall diligently endeavor in good faith to take a position on each issue prior to issuance of the prehearing order. When a party is unable to take a position on an issue, he or she shall bring that fact to the attention of the prehearing officer. If the prehearing officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceedings, the party may maintain "no position at this time" prior to hearing and thereafter identify his or her position in a post-hearing statement of issues. In the absence of such a finding by the prehearing officer, the party shall have waived the entire issue.

(c) When an issue and position have been properly identified any party may adopt that issue and position in his or her post-hearing statement.

Specific Authority: 120.53, F.S.

Law Implemented: 120.53, F.S.

History: Transferred from 25-2.68 and Amended 12/21/81, formerly 25-22.38. Amended 9/3/95.

~~25-22.036~~ ~~Intervenors~~ Persons, other than the original parties to a pending proceeding, who have a substantial interest in the proceeding, and who desire to become parties may petition the presiding officer for leave to intervene. Petition for leave to intervene must be filed at least five (5) days before the final hearing, must conform with Commission Rule 25-22.036(7)(a), and must include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding. Intervenors take the case as they find it.

Specific Authority: 120.53, F.S.

Law Implemented: 120.53, F.S.

History: Transferred from 25-2.34 and Amended 12/21/81, formerly 25-22.39.

#### 25-22.040 Notice of Hearings.

Specific Authority: 120.53, F.S.

Law Implemented: 120.53, F.S.

History: New 12/21/81, formerly 25-22.40, Repealed 7/11/96.

#### 25-22.0405 Notice of Public Utility Hearings.

(1) The provisions of this rule shall apply to all public hearings conducted by the Commission, except rulemaking hearings held pursuant to 25-22.010 through .018, F.A.C.

(2) Notice of such public hearings shall be given by the Commission to the clerk of the board of county commissioners of each county affected, the chief executive officer of each municipality in the area affected, all parties of record and all persons who have requested notice of such proceedings.

(3) A summary of the subject matter and notice of hearing shall be published by the Commission in the Florida Administrative Weekly. The summary shall be drawn and notice given as required by the provisions of the statute under which relief

compensation at the rate provided under Section 112.061, F.S. This section shall not limit the fees of expert witnesses.

Specific Authority: 120.53, F.S.

Law Implemented: 120.53, F.S.

History: New 12/21/81, formerly 25-22.46.

25-22.047 Reserved.

25-22.048 Evidence.

(1) Oral evidence shall be taken only on oath or affirmation.

(2) Each party shall have the right: to present evidence relevant to the issues to cross-examine opposing witnesses; to impeach any witness; F.S., regardless of which party first called that witness to testify; and to rebut the evidence presented against it.

(3) Any relevant evidence shall be admitted if it is the sort of evidence which is normally admissible in civil trials in Florida or which reasonably prudent persons are accustomed to relying upon in the conduct of their affairs.

Irrelevant and unduly repetitious evidence may be excluded.

(4)(a) Evidence may be submitted in the form of written testimony. Such testimony shall be typed on standard 8 1/2 inch transcript quality paper, double spaced, with 24 numbered lines, and a sufficient left margin to allow for binding. A presiding officer may require that the testimony shall be provided in reasonable notice of the parties of the date testimony shall be filed. This rule shall not limit the presentation of reports or written analyses, where reasonable.

(b) Upon providing copies of written testimony to all parties of record, a witness may enter that testimony into the record as though read, at which time the witness shall become subject to cross-examination and his or her testimony shall become subject to the evidentiary rules set out in subsection (3) of this rule.

Specific Authority: 120.53, F.S.

Law Implemented: 120.53, F.S.

History: New 12/21/81, formerly 25-22.48.

25-22.049 Recordation. The Commission shall have the responsibility of preserving the testimony at formal proceedings and hearings. Proceedings shall be reported by a certified court reporter or by recording instruments. Any party to a hearing may, at its own expense, provide a certified court reporter if the Commission does not. If the Commission decides not to have the proceedings reported by a court reporter, it shall provide the parties with adequate notice of its decision. The presiding officer may provide a certified court reporter. At hearings during which the services of a court reporter have been retained, any party who wishes a written transcript of the testimony shall order the same at its own expense. If a court reporter records the proceedings, the recordation shall become the official transcript.

Specific Authority: 120.53, F.S.

Law Implemented: 120.53, F.S.

History: New 12/21/81, formerly 25-22.49.

25-22.050 through 25-22.055 Reserved.

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TESTIMONY  
OF  
CHERYL WALLA

Q. What is your name and address?

A. Cheryl Walla, 1750 Dockway Drive, N. Ft. Myers, FL 33903.

Q. What is your interest in this case?

A. I am a water and wastewater customer of this utility.

Q. Have you taken any official action in the docket?

A. Yes. Our group, who I represent, filed a protest to Order No. PSC-95-1360-FOF-SU, the Proposed Agency Action order.

Q. Did you agree with the proposed findings of that order?

A. I did not.

Q. Have you had contact with the staff of the Commission?

A. Yes I have.

Q. With whom have you had contact?

A. Mr. Crouch, Mr. Yaeger, Tom Walden, Ed Fuchs.

Q. What concerns have prompted this testimony?

A. Two general areas: first, we do not believe that the utility or the staff has correctly accounted for the infiltration and inflow (to which I will refer as "infiltration") into the wastewater system. FCWC used the average flow

1 from April 1991 to March 1992, which they were at 99% capacity, as a  
2 basis to increase the existing capacity from 1.0 mgd to 1.25 mgd. The  
3 FDER mandated the increase based on data reported to them, which  
4 unknown to them included excessive infiltration inflating the flows.  
5 Second, I am concerned about the quality of service provided by the  
6 utility.

7 Q. Ms. Walla, may we begin with your testimony regarding infiltration. You  
8 are not trained as a civil engineer, and you have no formal training in  
9 waste disposal or other sanitary engineering. Why do you feel qualified  
10 to provide the Commission testimony on these subjects?

11 A. The concepts which I feel that the staff and the Commission neglected by  
12 their adoption of the PAA order, are neither technical nor complicated by  
13 their nature.

14 Q. Please elaborate.

15 A. In a July 26, 1995 customer meeting attended by the staff of the  
16 Commission, which our group and many of our neighbors attended, Mr.  
17 Crouch responded to a rule of thumb infiltration of 20% used by the  
18 Commission with a yes. On August 3, 1995, I called the engineering  
19 department of the Commission and spoke with Ed Fuchs. Mr. Fuchs  
20 advised that the Commission has strict standards and permitted only 10%

1 infiltration but that the industry allowed up to 20%.

2 Q. What conclusion did you reach as a result?

3 A. The Commission does not use a uniform standard to determine  
4 REASONABLE infiltration. Therefore is unable to properly calculate  
5 whether the permitted capacity needs to be expanded.

6 Q. What other issue did the staff of the Commission refer to in regards to  
7 flows?

8 A. At the customer meeting, Mr. Rendell stated that the Commission factors  
9 the rate based on 80% of the water use returns back to the collection  
10 system.

11 Q. Do you believe that the utility has properly accounted for the infiltration  
12 in this case?

13 A. No, I do not. Furthermore, Phillip R. Edwards, then Director of District  
14 Management for the FDER wrote to the utility of his concerns with the  
15 infiltration problem. Exhibit \_\_\_ (CW1) Also the engineer who did the  
16 FCWC Capacity Analysis Report addressed the infiltration problem at  
17 length. Exhibit \_\_\_ (CW2)

18 Q. Have you discussed these problems with staff of the Commission in  
19 addition to what you have already related?

20 A. Yes. On October 14, 1994 in my telephone conversation with Tom

1 Walden of the Commission staff. Mr. Walden related to me the  
2 calculations which staff uses in evaluating wastewater systems. Mr.  
3 Walden related that infiltration is taken into consideration in the staff's  
4 calculation of used and useful plant. It is apparent by Mr. Walden's  
5 workpapers (CW-3) that infiltration was not used in his used and useful  
6 calculation.

7 Q. Are you familiar with the term "Margin Reserve"?

8 A. Yes I am. I do not agree with Mr. Walden's inclusion of 3.9 years  
9 margin reserve in the used and useful calculation, when standardly 18  
10 months is used.

11 Q. Have you read utility witness Dick's testimony on this issue?

12 A. Yes.

13 Q. Do you agree with it?

14 A. No I do not. Mr. Dick's testimony assumes that all water purchased by  
15 a wastewater customer is returned to the wastewater system. This is an  
16 unreasonable assumption. If Mr. Dick's calculations are utilized with an  
17 assumption that 20% of the water sold does not return to the wastewater  
18 system, Mr. Dick's own numbers show that this system has extreme  
19 infiltration of 45%. It simply does not take engineering expertise to  
20 understand these concepts. In the February 1995 issue of Public works,



1 excerpts from which I have included as Exhibit \_\_\_ (CW-4) to my  
2 testimony, the Miami-Dade water and sewer department clearly regard  
3 40% infiltration as a "major problem". Judging by the PAA order in this  
4 case, the Commission is apparently prepared to accept a much higher level  
5 of infiltration as one for which the customers ought to be charged. I  
6 strenuously disagree.

7 Q. Have you prepared a schedule showing your own calculations?

8 A. Yes I have attached it as Exhibit \_\_\_ (CW-5).

9 Q. Have you seen testimony similar to Mr. Dick's on a previous occasion?

10 A. Yes. Mr. Dick's testimony is essentially identical to that of Mr. Griggs  
11 in Docket No 910756-SU which appears in Commission Order PSC-92-  
12 0594-FOF-SU issued on July 1, 1992, at page 13. I believe the  
13 Commission should not accept Mr. Dick's testimony when he is simply  
14 reiterating the testimony of the FCWC witness in a 4 year old case.

15 Q. What is the effect of the utility's accounting for infiltration as they have?

16 A. If the utility were permitted only the plant and expenses needed to serve  
17 the wastewater generated by their customers with no more than a 10%  
18 infiltration, it would have several direct consequences. First of all, the  
19 new increase in capacity of .250 gpd would not have been needed.  
20 Secondly, the existing means of effluent disposal was adequate: the reuse

1 facilities would never have been needed. In addition, there are many  
2 variable expenses which would be lessened as well. Among these are 1)  
3 purchased sewage treatment 2) sludge removal 3) purchased power and  
4 chemicals.

5 Q. Are you suggesting that the infiltration should be permitted to continue and  
6 that the company should have to treat it as its own expense?

7 A. No. I am suggesting that the utility ought to do something other than  
8 simply increase the capacity to treat infiltration and send the customers the  
9 bill for it. For example, the utility brings no evidence before the  
10 Commission as to what they intend to do to lessen the infiltration to an  
11 acceptable level. They simply offer flawed calculations to suggest that the  
12 infiltration is less than it actually is and then urge the Commission to sign  
13 off on their plan.

14 Q. What should the utility have done?

15 A. In place of their creative accounting regarding infiltration, they should  
16 bring to the Commission a plan which would lessen the infiltration. At  
17 that point both the utility and the Commission could make an informed  
18 judgement as to whether the utility prudently added capacity. It may well  
19 have been cheaper to repair the system, but in the absence of a study  
20 designed to determine the cost of an effective infiltration program, neither

1 the utility or the Commission can address that matter at all.

2 Q. You have concerns regarding service matters?

3 A. Yes I do. At the July 26, 1995 customer meeting, Mr. Crouch said that  
4 they were there to get our input, as to the type of service provided by  
5 FCWC and our opinion as to the rate increase. In the Commission's PAA  
6 order, at pages 3 and 4, the word "several", is used to describe the  
7 amount of customers with certain concerns. The Commission's choice of  
8 "several" is unfortunate because it sadly misrepresents the number of  
9 customers involved. A petition presented to the staff at that hearing  
10 relating 54 customers' problems with the odor emanating from the sewer  
11 treatment plant is not mentioned in the order. The petition is attached to  
12 my testimony as Exhibit \_\_\_ (CW-6). There were numerous other  
13 concerns stated by the customers at that meeting, yet the Commission  
14 order makes no mention of these concerns, offers no explanation of the  
15 conditions which led to the concerns, and resolves the case as if the  
16 concerns were never stated. As a result, many of the customers believe  
17 that the meeting was pretextual in nature, and was simply offered by the  
18 Commission to placate the customers' concerns rather deal with them.  
19 The Commission's neglect of these concerns in the PAA leads to the  
20 conclusion that the Commission either did not believe the customers or

1 simply is not concerned about the quality of service.

2 Q. What is your opinion of the recent customer information insert?

3 A. The most recent example of their new billing procedure brought an insert  
4 which I provide as Exhibit \_\_\_ (CW-7). This insert is false. It represents  
5 to customers that the water and wastewater service costs only \$1.85 per  
6 day. I have no idea as to whether this may be true for FCWC and its  
7 affiliates as an entire company, but it is true neither for me nor my  
8 neighbors here in N. Fort Myers, and the company knows it to be untrue.  
9 Under this analysis an average customer in this system would use only  
10 2597 gallons per month. Since that would theoretically cause only a  
11 444,194 gpd to the treatment plant, this utility apparently has quite a bit  
12 of unused capacity.

13 Q. Do you have an alternative suggestion?

14 A. Yes. The Commission should compute the flows which result in a \$1.85  
15 per day bill to FCWC in the N. Ft. Myers division, and adjust the utility's  
16 used and useful analysis accordingly.

17 Q. On page 4 of Mr. Dick's testimony, he says that he values  
18 communications with the customers, yet in a recent meeting with a group  
19 of customers (the North Fort Myers Water Committee) the utility  
20 represented that 12 of the thirteen persons who protested the PAA had

1            withdrawn. Exhibit \_\_\_ (CW-8). It was apparent , as no one had  
2            withdrawn that FCWC was trying to discredit the merit of our protest.

3            Q.    Have you reviewed the Staff Audit report for this utility and if so, do you  
4            have any concerns with matters discussed there?

5            A.    I have reviewed it and I am concerned. On page 6 of the report the  
6            utility plainly sought to have the customers pay their legal expenses of  
7            \$210,734 in the lawsuit with the U.S. Dept. of Justice as they had  
8            included in this plant expansion docket. Mr. Crouch specifically told the  
9            customers in the July meeting that the Commission was told none of the  
10           legal fees for this docket were included in this docket. FCWC also  
11           claimed this in a fact sheet which was given to the customers at the  
12           meeting. FCWC outwardly misrepresented this fact. Exhibits \_\_\_ (CW-  
13           9) & (CW-10).

14           Q.    Does this conclude your testimony?

15           A.    No. On February 2, 1996, I presented several questions to the utility in  
16           letter form. On February 20, I rewrote my questions as interrogatories  
17           with the format provided by OPC. The utility has utilized the  
18           formalization of my questions as an opportunity to delay their answers.  
19           When I receive my answers, I may wish to file supplemental testimony.  
20           I have attached my original questions and the utility's initial response to

1 my interrogatories as Exhibit \_\_\_ (CW-11).

2 Q. Did you write this testimony?

3 A. I wrote the testimony in the form of handwritten analysis of the case, but  
4 I was advised by members of the Office of Public Counsel that the  
5 Commission would not accept testimony--even that of customers--without  
6 meeting their standards. So the Office of Public Counsel prepared my  
7 testimony in the form which would be accepted by the Commission.

**EXHIBITS**

Exhibit CW-1

23  
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# Florida Department of Environmental Regulation

South District • 2245 Victoria Avenue, Suite 304 • Fort Myers, Florida 33901  
Lester C. Chiles, Governor

Carol M. Ammer, Secretary

November 9, 1992

Mr. Johnnie Overton  
Florida Cities Water Company  
4837 Swift Road, Suite 100  
Sarasota, Florida 34231

RECEIVED

NOV 12 1992

Re: Lee County - 1  
GENERAL OFFICE  
Waterway Estates WWP

Dear Mr. Overton:

As a follow-up to your meeting with the Department Staff on November 6, 1992, the following action items shall be implemented:

1. Florida Cities Water Company will submit a request for "a mixing zone" for Waterway Estates WWP. The request will include current toxicity tests results along with a narrative on justification for a "mixing zone" for Waterway Estates WWP.
2. Florida Cities Water Company shall submit applications for construction/expansion of the Waterway Estates WWP along with an application for renewal of the current operations permit which expires June 1, 1993. These applications will be submitted sixty days prior to June 1, 1993.
3. Final documentation for satisfactory completion of the Capacity Analysis Report shall be submitted to the Department prior to submission of permit applications on April 1, 1993. Included in the documentation submitted, FCWC will address analysis and corrective measures pertaining to infiltration at Waterway Estates WWP.
4. Florida Cities Water Company shall submit the Reuse Feasibility Study prior or during submission of the permit applications for construction/expansion and operation of the Waterway Estates WWP.

Continued . . .



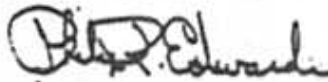
Exhibit CW-1  
pc

Mr. Johnnie Overton  
November 9, 1992  
Page 2

5. The construction permit application for the above referenced facility will include contract agreements for Reuse Sites, provide documentation pertaining to high level disinfection requirements pursuant to 17-610 and appropriate documentation pertaining to wet weather discharge if storage for non-application days is not provided.
6. On site storage at the Reuse Sites will be investigated by Florida Cities Water Company for Waterway Estates WWTW.
7. An Agricultural Use Plan shall be submitted to the Department at the time of Operation Permit renewal (April 1993).
8. Florida Cities Water Company shall submit a report on fluctuations in TSS influent limits and the impact on design criteria for expansion of the Waterway Estates WWTW currently underway.

If you have any questions pertaining to these matters, please contact Jim Grob at (813) 332-6975.

Sincerely,



Philip R. Edwards  
Director of  
District Management

PRE/JVG/klm

cc: Paul H. Bradtmiller  
Julie Karleskint  
Roger Ytterberg

## Exhibit CW-2

Attachment three (3) shows monthly ADF for the last ten years. Attachment four (4) shows the three-month ADF for the last ten years. Attachment five (5) shows the running annual average daily flow since 1981.

Attachment six (6) shows the actual and projected annual ADF from 1982 to 2001. These projected flows reflect an average customer growth of 1.3% per year and demand increase of 3.5% per year each from the last three years. These two figures were averaged (2.4%) and used to project the increase in wastewater flows for the next ten years. An ADF of 1.09 MGD is projected by the year 2001.

Attachments seven (7) and eight (8) show wastewater flows along with water demand for the last ten years. Since 1985, the wastewater curve increasingly approaches the relatively level demand curve. This occurred with only a small increase in wastewater customers. This is an indication of increasing Inflow and Infiltration (I&I) since 1985. Additionally, rainy season peaks of 200,000 to 300,000 gpd above ADF began appearing in 1987 and each year subsequently.

Flows through the wastewater facility have exceeded permitted hydraulic capacity on certain occasions. However, permitted effluent limitations and disinfection requirements have consistently been met.

The I & I problem in the collection system is being addressed. In 1991 one individual section of the collection system was TV/Video inspected. Leaks and cracks were sealed and sections of pipe were replaced where necessary. A smoke testing program will begin in early 1992. Based on the results of the smoke testing, further TV/Video inspection will be done and systems repaired where problems are found to exist.

The program to reduce I&I is just beginning. Its potential is not yet clear. However, if a 25% reduction can be achieved, this would add 50,000 to 75,000 gpd of capacity to the plant.

Based on a wastewater flow rate increase of 2.4% per year and a current dry weather flow of 860,000 gpd, a plant expansion would be needed by 1998.

A plant addition that will provide nitrogen and phosphorus removal is currently under construction. The new capacity of the plant will be 1.0 MGD. This reduction in capacity does not move the expansion date of 1998. The facility is capable of being expanded to 1.5 MGD.