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RECORDS AND REPORTING
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OF COUNSEL
THOMAS F. WOODS

July 7, 1998

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

HAND DELIVERY

RE: Docket No. 971663-WS
Petition of Florida Cities Water Company for limited
proceeding to recover environmental litigation costs for North
and South Ft. Myers Division in Lee County and Barefoot Bay
Divisions in Brevard County.

Dear Ms. Bayo:

Enclosed for filing in the above docket are an original and
fifteen (15) copies of Florida Cities Water Company's Prehearing
Statement.

We are today furnishing Ms. Gervasi a 3½" diskette containing
this Prehearing Statement as a Corel WordPerfect 8 document.

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

- ACK
- AFA 1
- APP
- CAF
- CMU
- CTR
- EAG
- LEG 1
- LIN 5
- OPC
- RCH
- SEC 1
- WAS Willis
- OTH

Thank you.

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[Signature]
FPSC-BUREAU OF RECORDS

Very truly yours,

[Signature]
B. Kenneth Gatlin

cc: Harold McLean, Esq. (Via U.S. Mail)
Rosanne Gervasi, Esq. (Via Hand Delivery)

DOCUMENT NUMBER-DATE

07147 JUL-7 98

RECORDS AND REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of FLORIDA)
CITIES WATER COMPANY, seeking) Docket No. 971663-WS
recovery of environmental)
litigation costs in a Limited)
Proceeding for its NORTH and)
SOUTH FT. MYERS DIVISION in)
Lee County and BAREFOOT BAY)
DIVISION in Brevard County,)
Florida)

FLORIDA CITIES WATER COMPANY'S
PREHEARING STATEMENTS

Florida Cities Water Company (FCWC), by and through its undersigned counsel, files this, its prehearing statement, and states:

a) WITNESSES

1. Direct

Name and Subject Matter

Gerald S. Allen, President,

FCWC, will testify as to (1) the purpose of FCWC's application in this docket; (2) describe the legal action brought against FCWC by the United States causing the legal expenses which FCWC is seeking to recover in this docket; (3) provide an overview of the history of the events and circumstances leading to this litigation; (4) describe efforts made by FCWC to settle the matter before the litigation started; and (5) discuss the final outcome of the litigation.

Gary H. Baise, Attorney, will describe (1) his assessment of the alleged violations of the Clean Water Act ("CWA") pertaining to FCWC Waterway Estate Wastewater Treatment Plant prior to the United States filing a complaint, as amended, against FCWC on October 1, 1993 (Original Complaint); (2) the legal issues, legal proceedings, and settlement discussions after the filing of the complaint by the United States Department of Justice ("DOJ") on behalf of United States; and (3) the outcome of the litigation.

L. Gray Geddie, Jr., Attorney, will provide his expert opinion as to the reasonableness of the litigation costs incurred by FCWC in defending the enforcement

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action brought by the Department of Justice, for the Environmental Protection Agency.

Michael Acosta, Vice President, Engineering & Operations, FCWC, will explain significant events, especially permitting, and progress pertaining to meeting the requirements set forth in the United States Environmental Protection Agency (EPA) Administrative Orders and the Florida Department of Environmental Protection (FDEP), formerly known as the Florida Department of Environmental Regulation, and Consent Orders for the upgrade of Waterway Estates Advanced Wastewater Treatment Plant in Lee County.

Michael E. Murphy, Vice President & Chief Financial Officer, FCWC, will testify as to certain of the legal expenses incurred by FCWC related to the charges brought by the U.S. Environmental Protection Agency (EPA) and the litigation filed by the U.S. Department of Justice against FCWC, the method of recovery of those legal expenses that FCWC proposes, the rate case expenses associated with this proceeding and the surcharges FCWC proposes to collect from its customers.

John D. McClellan, Consultant. Mr. McClellan's testimony addresses (1) the Company's requested recovery of a portion of approximately \$3.8 million of litigation expenses incurred in defending against the charges by the United States Environmental Protection Agency (EPA) claiming that provisions of the Clean Water Act had been violated; (2) the propriety of such recovery under regulatory principles; (3) whether the recovery of the litigation expense is appropriate by a per customer surcharge; (4) the financial prudence of the Company's pursuit of a defense against the EPA charges; and (5) the propriety of recovery of certain rate case expenses that are now being incurred in seeking recovery of the litigation expenses.

Dr. Abdul B. Ahmadi, Program Administrator of Water Facilities, Florida Department of Environmental Protection. Dr. Ahmadi's testimony addresses the history of permits pertaining to the Florida Cities Water Company's Waterway Estates wastewater treatment plant.

2. Rebuttal

FCWC presently intends to call Messrs. Allen, Baise, Acosta, McClellan and Murphy as rebuttal witnesses in response to positions taken by the Commission Staff and the Office of Public Counsel witnesses. FCWC reserves the right to call any additional rebuttal witnesses that may be necessary if additional testimony is offered by any witness including the witnesses appearing at the customer hearings.

b) EXHIBITS

1. Direct

- _____ (GSA-1) Professional Resume: Gerald S. Allen
- _____ (GSA-2) Complaint: United States v. Florida Cities Water Company (FCWC), U.S. District Court, Middle District of Florida, Case No. 93-281-CIV-FTM-21, 10/1/93.
- _____ (GSA-3) FCWC's Answer to Complaint: United States v. FCWC, U.S. District Court, Middle District of Florida, Case No. 93-281-CIV-FTM-21, 11/22/93.
- _____ (GSA-4) Letter: Daniel S. Jacobs, Trial Attorney, U.S. Dept. of Justice (USDOJ), to Lee A. DeHihns, Esq., Alston & Bird, Counsel for FCWC, offering to settle litigation for \$5,000,000, 12/9/92.
- _____ (GSA-5) Memorandum: Gerald S. Allen to Files memorializing summary of meeting between FCWC and USDOJ/U.S. Environmental Protection Agency (USEPA), 12/11/92.
- _____ (GSA-6) Letter: Lee A. DeHihns, Esq., Alston & Bird, FCWC counsel, to Robert B. Gordon, Avatar Utilities Inc. outlining settlement issues, 12/18/92.
- _____ (GSA-7) Amended Complaint: United

States v. FCWC & Avatar Holdings
Inc., U.S. District Court, Case No.
93-2810-CIV-FTM-21, 3/30/95.

(GSA-8) Letter: FCWC (French) to
Florida Department of Environmental
Regulation (DeGrove) transmitting
study report pertaining to discharges
to Sweetwater Ck., 6/19/89.

(GSA-9) Agreement: Professional
Engineering Services, FCWC & Dyer,
Riddle, Mills & Precourt, Inc. for
providing services in connection with
the design of a new wastewater
treatment plant (WWTP) at
Carrollwood, 4/11/89.

(GSA-10) Administrative Order: USEPA
No. 90-100(wKS) pertaining to WWTP at
Carrollwood, 9/27/90.

(GSA-11) Consent Agreement and Order
Assessing Administrative Penalties:
USEPA Docket No. 90-542, pertaining
to WWTP at Carrollwood, 4/19/91.

(GSA-12) Agreement: Hillsborough
County/FCWC providing for the
connection of the Carrollwood
wastewater system to the County
system and wastewater treatment
services, 6/5/91.

(GSA-13) Orders: Florida Public
Service Commission (Docket No.
951258-WS), Nos.:

(GSA-13A) PSC-96-1147-FOF-WS issued
9/12/96;

(GSA-13B) PSC-97-0223-FOF-WS issued
2/25/97;

(GSA-13C) PSC-97-0516-FOF-WS issued
5/5/97.

(GSA-14) Consent Order: FDEP and

FCWC, OGC Case No. 87-0153,
pertaining to Barefoot Bay WWTP,
10/13/88.

(GSA-15) Letter: FDEP (Garfein) to
FCWC (Overton) pertaining to the
National Pollution Discharge
Elimination System (NPDES) permit for
Barefoot Bay, 6/6/95.

(GSA-16) Permit: Florida Domestic
Wastewater Facility Permit for
Barefoot Bay WWTP (Facility I.D. No.
FL0042293), 9/5/97.

(GSA-17) Letter: USEPA (Childress) to
FCWC (French) acknowledging receipt
of NPDES renewal application for
Barefoot Bay WWTP, 3/23/90.

(GSA-18) Letter: FCWC (French) to
USEPA transmitting application for
renewal of NPDES Permit for Barefoot
Bay WWTP, 6/8/90.

(GSA-19) Administrative Order: USEPA
No. 90-106 pertaining to Barefoot Bay
WWTP, 9/26/90.

(GSA-20) Memorandum: Gerald S. Allen
to Files memorializing show cause
hearing with USEPA pertaining to
Barefoot Bay, 8/14/91.

(GSA-21) Letter: FCWC (Bradtmitter) to
USEPA (Herwig) pertaining to
Barefoot Bay WWTP, 8/23/91.

(GSA-22) Permit: USEPA NPDES Permit
No. FL004293 for Barefoot WWTP,
9/16/91.

(GSA-23) Letter, Administrative
Complaint & Consent Agreement & Order
Assessing Administrative Penalties:
USEPA (Cunningham) to FCWC
(Bradtmitter) pertaining to Barefoot
Bay WWTP, Docket No. CWA-IV-91-538,

9/25/91.

_____ (GSA-24) Judgement & Memorandum
Order: U.S. District Court, Middle
District of Florida, Case No. 93-281-
CIV-FTM-21, 8/20/96.

_____ (GHB-1) Player's List.

_____ (GHB-2) TIME LINE, *U.S. v. Florida
Cities Water Company.*

_____ (GHB-3) Resume of Gary H. Baise

_____ (GHB-4) List of Gary H. Baise's
reported cases.

_____ (GHB-5) Court's Standard
Interrogatories.

_____ (GHB-6) United States' Answer to
Court's Standard Interrogatories.

_____ (GHB-7) Defendant Florida Cities
Water Company's Answers to Court's
Standard Interrogatories.

_____ (GHB-8) Motion for Extension of Time
in Which to File Motion to Strike
Affirmative Defenses.

_____ (GHB-9) United States' Motion to
Strike Affirmative Defenses.

_____ (GHB-10) Memorandum in Support of
United States' Motion to Strike
Affirmative Defenses.

_____ (GHB-11) United States' First Request
for Production of Documents.

_____ (GHB-12) Deposition digest of Julie
Karleskint Deposition.

_____ (GHB-13) Defendant's Motion for
Protective Order.

_____ (GHB-14) Order re: Florida Cities

Water Company's Motion for Protective Order (dated April 18, 1994).

(GHB-15) Letter to Mr. Jacobs from Mr. Scroggin (dated April 19, 1994).

(GHB-16) Letter to Mr. Scroggin from Mr. Jacobs (dated April 20, 1994).

(GHB-17) Memorandum in Support of United States' Motion for an Order Allowing Ex-Parte Contacts with Former Employees.

(GHB-18) Memorandum in Opposition to Plaintiff's Motion for an Order Allowing Ex-Parte Contacts with Former Employees.

(GHB-19) Motion and Memorandum for Permission to File Reply Memorandum in Support of United States' Motion for an Order Allowing Ex-Parte Contacts with Former Employees.

(GHB-20) Order re: Defendant's Emergency Motion for Temporary Protective Order (dated Feb. 13, 1995).

(GHB-21) Order re: Plaintiff's Motion for an order allowing ex-parte contacts (dated March 16, 1995).

(GHB-22) Deposition digest of John Marlar deposition.

(GHB-23) Deposition digest of Peter McGary deposition.

(GHB-24) Defendant's Motion to Disqualify Counsel

(GHB-25) Transcript of February 15, 1995 hearing before U.S. District Judge Swartz.

(GHB-26) Order re: Motion to Allow

Ex-Parte Contacts and Motion to Disqualify Counsel.

(GHB-27) United States' Second Request for Production of Documents.

(GHB-28) Deposition digest of Connie Kagey deposition.

(GHB-29) Deposition digest of Bruce Barrett deposition.

(GHB-30) Defendant Florida Cities Water Company's Motion for Partial Summary Judgment and Request for Oral Argument.

(GHB-31) Deposition digest of Paul Bradtmiller deposition.

(GHB-32) Deposition digest of Johnnie Overton deposition.

(GHB-33) Deposition digest of Jack Tompkins deposition.

(GHB-34) Letter to Mr. Basie from Mr. Jacobs (dated Jan. 30, 1995)

(GHB-35) United States' Reply to Defendant's Emergency Motion for a Temporary Protective Order and Defendant's Request for Oral Argument in Connection with Defendant's Motion to Disqualify Counsel.

(GHB-36) *United States v. Weitzenhoff*, 35 F.3d 1275 (9th Cir. 1994).

(GHB-37) United States' First Set of Interrogatories to Defendant Florida Cities Water Company.

(GHB-38) Defendant's Second Request for Production of Documents to Plaintiff United States of America.

- _____ (GHB-39) Defendant's Offer of Judgment.
- _____ (GHB-40) Defendant's Notice of Intention to Oppose Constructive Motion by United States for Leave to File Amended Complaint.
- _____ (GHB-41) Defendant's Memorandum in Partial Opposition to Plaintiff's Motion for Leave to Amend Complaint.
- _____ (GHB-42) Order re: United States' Revised Amended Complaint (dated April 26, 1995).
- _____ (GHB-43) Revised Amended Complaint.
- _____ (GHB-44) Defendant Florida Cities Water Company's Motion to Strike.
- _____ (GHB-45) United States' Motion for Reconsideration of Court's Order on Amendment of Complaint.
- _____ (GHB-46) Defendant Florida Cities Water Company's Answer to Revised Amended Complaint.
- _____ (GHB-47) United States' Opposition to Defendant Florida Cities Water Company's Motion to Strike.
- _____ (GHB-48) United States' Third Request for Production of Documents.
- _____ (GHB-49) Defendant's Motion for Partial Summary Judgment.
- _____ (GHB-50) United States' Opposition to Defendant Florida Cities Water Company's Motion for Partial Summary Judgment.
- _____ (GHB-51) Order Denying FCWC's Motion for Partial Summary Judgment.
- _____ (GHB-52) United States' Motion for

Partial Summary Judgment (exhibits omitted).

_____ (GHB-53) United States' Second Set of Interrogatories and First Request for Admissions.

_____ (GHB-54) Research Memos.

_____ (GHB-55) FCWC Motion for Partial Summary Judgment and Request for Oral Argument.

_____ (GHB-56) Deposition Summaries.

_____ (GHB-57) Deposition Summaries.

_____ (GHB-58) FCWC's Fourth Request for Production of Documents and Third Request for Interrogatories.

_____ (GHB-59) United States' Fifth Request for Production of Documents.

_____ (GHB-60) FCWC's Notice of Dispositive Authority.

_____ (GHB-61) Order re: Summary Judgment Motions.

_____ (GHB-62) FCWC Exhibit List and Stipulations.

_____ (GHB-63) DOJ Exhibits.

_____ (GHB-64) Joint Pretrial Statements.

_____ (GHB-65) United States' Motion for an Order Permitting Discovery of Defendant's Late-Named Witnesses.

_____ (GHB-66) FCWC Memorandum in Opposition to Plaintiff's Motion for an Order Admitting Discovery of Defendant's Late-Named Witnesses and for Expedited Consideration.

_____ (GHB-67) Order re: Discovery of Late-

Named Witnesses.

- _____ (GHB-68) United States' Motion for Expedited Reconsideration of the Court's Ruling on Res Judicata and in Reply to Avatar Holdings' Motion for Clarification of the Court's Order.
- _____ (GHB-69) Order re: Motion for Reconsideration on Res Judicata and Motion for Clarification.
- _____ (GHB-70) FCWC Proposed Findings of Fact and Conclusions of Law.
- _____ (GHB-71) FCWC's Pretrial Brief.
- _____ (GHB-72) Defendant's Joint Motion in Limine to Exclude the Testimony and Report of Eileen Zimmer
- _____ (GHB-73) United States' Motion in Limine.
- _____ (GHB-74) Defendant's Joint Motion in Limine to Exclude the Testimony and Report of Eileen Zimmer.
- _____ (GHB-75) Berz Settlement Proposal.
- _____ (GHB-76) Trail Transcript.
- _____ (GHB-77) United States' Offer of Proof in Lieu of the Testimony of Witnesses who Plead the Fifth Amendment.
- _____ (GHB-78) Defendants' Joint Memorandum of Law Addressing the Invocation of the Fifth Amendment.
- _____ (GHB-79) FCWC's Witness List.
- _____ (GHB-80) Plant Effluent Quality Report (Black & Veatch).
- _____ (GHB-81) FCWC Motion to Strike the Deposition Testimony of Jack Williams

Tompkins.

_____ (GHB-82) Parties' Proposals for Post-Trial Submissions.

_____ (GHB-83) Order Regarding Fifth Amendment and Request Court Draw Inferences from Refusal to Testify.

_____ (GHB-84) United States' Post-Trial Memorandum.

_____ (GHB-85) United States' Post-Trial Proposed Findings of Fact and Conclusions of Law.

_____ (GHB-86) FCWC Post-Trial Brief.

_____ (GHB-87) FCWC Proposed Findings of Fact and Conclusions of Law.

_____ (GHB-88) United States' Motion for Reconsideration on Adverse Inferences and Extension of Page Limits.

_____ (GHB-89) FCWC Memorandum in Opposition to Motion for Reconsideration.

_____ (GHB-90) Order Granting in Part and Denying in Part Motion for Reconsideration.

_____ (GHB-91) United States' Citation of Additional Authority.

_____ (GHB-92) Defendants' Joint Response to Plaintiff's Citation of Additional Authority.

_____ (GHB-93) Order Directing Parties to File Memorandums on Borough of Ridgeway.

_____ (GHB-94) United States' Reply Memorandum in Support of Reinstatement of Res Judicata.

- _____ (GHB-95) Defendants' Joint Response to Memorandum Seeking Reinstatement of Res Judicata.
- _____ (GHB-96) Order Reaffirming Res Judicata Effects.
- _____ (GHB-97) Opinion.
- _____ (GHB-98) FCWC Verified Motion for Attorney Fees.
- _____ (GHB-99) FCWC Motion for Bill of Costs.
- _____ (GHB-100) United States' Memorandum in Opposition to Attorney Fees.
- _____ (GHB-101) Order Denying Attorney Fees.
- _____ (GHB-102) United States' Notice of Appeal.
- _____ (GHB-103) FCWC Notice of Cross Appeal.
- _____ (GHB-104) Order Granting Motion to Dismiss with Prejudice.
- _____ (GHB-105) Pleadings Table.
- _____ (GHB-106) Depositions Table.
- _____ (GHB-107) Correspondence re: Fees.
- _____ (GHB-108) Billing Chart.
- _____ (GHB-109) Cover Letter to Bills.
- _____ (GHB-110) Letter to Avatar on Fees.
- _____ (LGG-1) FCWC Legal Fees and Services Paid to Law Firms.
- _____ (MA-1) NPDES Permit Renewal Application and Letter, 5/9/86.

- _____ (MA-2) Letter: EPA (Patrick) to FCWC (Reeves) tentative conclusion that NPDES permit should be denied, 7/22/86.
- _____ (MA-3) Permit: FDEP operating permit for WWE WWTP expiring 8/2/88, 8/2/83.
- _____ (MA-4) Letter: FDEP (Richardson) to EPA (Hyatt) regarding existence of wasteload allocation for WWE WWTP, 5/7/86.
- _____ (MA-5) Memorandum: Lehman to Reeves regarding meeting of 8/2/86 with FDEP after tentative denial by EPA of NPDES permit renewal, 8/10/86.
- _____ (MA-6) Letter: EPA (Barrett) to FCWC (Reeves) notification of denial of NPDES permit renewal.
- _____ (MA-7) NPDES Certification worksheet: FDEP to EPA.
- _____ (MA-8) Letter: EPA (Marlar) to FCWC (Reeves) transmitting Section 309 Order, 5/11/87.
- _____ (MA-9) Permit: NPDES Permit No. FL0030325 for Waterway Estates, 9/29/89.
- _____ (MM-1) Professional Resume: Michael Murphy.
- _____ (MM-2) Legal Expenses Schedule.
- _____ (MM-3) Rate Case Expense Schedule.
- _____ (MM-4) Rate Schedule.
- _____ (ABA-1) Deposition transcript.
- _____ (ABA-2) Trial testimony transcript.

c) BASIC POSITION

FCWC properly and prudently defended the legal action brought by United States Department of Justice, on behalf of the Environmental Protection Agency, and reasonably and prudently incurred litigation expenses. The amount of the litigation expenses sought to be recovered in this proceeding is reasonable. The proper method for recovery of these expenses is by a surcharge, as proposed by FCWC. The expenses incurred by FCWC, in presenting this case to the Commission, are fair and reasonable and should be recovered by FCWC as a part of the surcharge as proposed by FCWC.

d), e) and f) ISSUES AND POSITIONS

The following is a statement of each question of fact, law or policy that appears, at this time, that the issues in this proceeding:

1. Did FCWC act prudently and reasonably in defending the legal action brought by the United States Department of Justice on behalf of the Environmental Protection Agency? (Fact, law and policy)

FCWC: Yes. (Allen, Baise, Acosta, Murphy and McClellan)

2. Is the amount of litigation expenses incurred by FCWC in defending the complaint of DOJ fair and reasonable? (Fact, law and policy)

FCWC: Yes. (Geddie)

3. Does the potential recovery of litigations by FCWC provide a disincentive to comply with the Clean Water Act?

FCWC: No. (Allen, Baise)

4. Was it relevant in the litigation for the Court to know that FCWC might recover its litigation expenses through rates? (Law)

FCWC: No. (Baise)

5. May the EPA and DEP make specific requirements of plant additions and improvements of a wastewater utility? (Law)

FCWC: Yes. (Baise & Acosta)

6. Did the proceeding which resulted in the DOJ litigation involve all of FCWC's wastewater systems? (Fact)

FCWC: Yes. (Allen, Baise and Murphy)

7. Did Gerald Allen's deposition conceal FCWC's intent to seek recovery of litigation expenses?

FCWC: No. (Allen)

8. Does the proposed recovery by FCWC of the litigation expenses constitute retroactive ratemaking?

FCWC: No. (McClellan)

9. Is an accounting order a condition precedent to the recovery of the litigation expenses as proposed by FCWC?

FCWC: No. (McClellan)

10. If the Commission issues an order that provides for the recovery of litigation costs, will FCWC be able to currently record those costs incurred in prior years?

FCWC: Yes. (McClellan)

11. Is the relative degree to which FCWC or its rate payers may have benefitted an issue in determining propriety of recovery of the litigation expenses?

FCWC: No. (McClellan)

12. Is it necessary for the Commission to judge the quality and motive of DOJ in this litigation?

FCWC: No. This has been determined by the Court in its order. (Allen, McClellan and Baise)

13. Would FCWC's bankruptcy have an effect with service to rate payers?

FCWC: Yes. (Murphy and McClellan)

14. Should a return be allowed FCWC to measure and recover the impact of the delayed recovery of the litigation costs?

FCWC: Yes. (McClellan)

15. Does Exhibit MM-2 include any litigation expenses incurred for representation of FCWC employees?

FCWC: No. (Murphy)

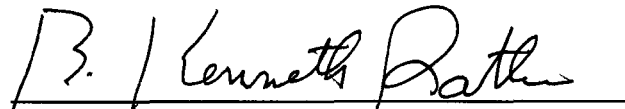
At this time, there has been no stipulation as to any of the issues between parties.

There are no pending motions or other matters pending before the Commission at this time.

There is no requirement set forth in Procedural Order No. PSC-98-0277-PCO-WS, with which FCWC cannot comply.

Dated this 7th day of July, 1998.

Respectfully submitted,


B. KENNETH GATLIN
Fla. Bar #0027966
Gatlin, Schiefelbein & Cowdery
3301 Thomasville Road, Suite 300
Tallahassee, Florida 32312
(850) 385-9996

Attorneys for
FLORIDA CITIES WATER COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to Rosanne Gervasi, Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850 and by U.S. Mail to Harold McLean, Esq., Office of Public Counsel, c/o The Florida Legislature, 111 W. Madison Street, Room 812, Tallahassee, FL 32399-1400, on this 7th day of July, 1998.


B. KENNETH GATLIN