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RECORDS AND
REPORTING

October 5, 1998

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

VIA HAND DELIVERY

Re: Docket No. 950387-SU (Remand)
Application of Florida Cities Water Company - North Ft. Myers
Division - for increased wastewater rates in Lee County.

Dear Ms. Bayo:

Enclosed, for filing in the above docket, are an original and fifteen (15) copies of Florida Cities Water Company's First Request For Production Of Documents To The Staff Of Florida Public Service Commission.

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,

Kathryn G.W. Cowdery
Kathryn G.W. Cowdery

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FORT LAUDERDALE ■ MIAMI ■ NAPLES ■ ST. PETERSBURG ■ SARASOTA ■ TALLAHASSEE ■ TAMPA ■ WEST PALM BEACH ■ REPORTING

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a rate) DOCKET NO. 950387-SU
increase for North Ft. Myers)
Division in Lee County by)
Florida Cities Water Company -) Filed: October 5, 1998
Lee County Division.)

FLORIDA CITIES WATER COMPANY'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO THE
STAFF OF FLORIDA PUBLIC SERVICE COMMISSION

Florida Cities Water Company hereby requests that the Staff of the Florida Public Service Commission (Staff) produced the following documents for copying and inspection, pursuant to Fla.R.Civ.P. 1.340, and Fla. Admin. Code R. 6Q-2.019 and 28-106.206, at the office of B. Kenneth Gatlin, Esquire, Ruden, McClosky, Smith, Schuster & Russell, P.A., at 215 S. Monroe Street, Suite 815, Tallahassee, Florida 32301, within thirty (30) days of the service of this request.

I. DEFINITIONS

1. "Document" means any document in your custody, possession or control, including, but not limited to, any printed, written, recorded, E-Mail, taped, electronic, graphic, or other tangible matter from whatever source, however produced or reproduced, whether sent or received or neither, including the original, all amendments and addenda and any non-identical copy (whether different from the original because of notes made on or attached to such copy or otherwise) of any and all writings, correspondence, letters, notations, papers, memoranda, contracts, recordings, or other memorials of any type of personal telephone conversations, meetings or conferences, receipts, statements, accounts, books of account, diaries, calendars, desk pads, appointment books, ledgers, registers, worksheets, journals, cost sheets, summaries, digests,

canceled or uncanceled checks or drafts, vouchers, charge slips, invoices, purchase orders, accountant's reports, financial statements, and any material underlying supporting or used in the preparation of any documents.

2. "Person(s)" means any natural person or any legal entity, including but not limited to, a corporation, partnership and unincorporated association, and any officer, director, employee, agent or other person acting or purporting to act on its behalf.

3. "And" and "or" shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of each request all documents that might otherwise be construed to be outside its scope.

II. INSTRUCTIONS

1. Any document as to which a claim of privilege is or will be asserted should be identified by author, signatory, description, date, addresses (if any), general subject matter, present location and present custodian, and a complete statement of the ground for any claim of privilege should be set forth.

2. If it is maintained that any document which is requested has been destroyed, set forth the contents of the document, the date of such destruction, and the name of the person who authorized or directed such destruction.

3. If any of the documents cannot be produced in full, produce to the extent possible, specifying the reasons for the inability to produce the remainder.

4. This request is a continuing one. If after producing documents, you become aware of any further documents which were in existence at the time of this request and which are responsive to this request, you are required to produce such additional documents.

5. Indicate the author of each document.

DOCUMENTS AND OTHER THINGS TO BE PRODUCED

1. All documents relating to any analysis of the Opinion of the First District Court of Appeal in the case of Florida Cities Water Company v. State of Florida, Florida Public Service Commission, Case No. 96-3812.

2. All documents relating to any analysis of the Opinion filed June 10, 1998, in the case of Southern States Utilities v. Florida Public Service Commission et al., Case No. 96-4227.

3. All documents purporting to show that the Commission's past policy has been to match the numerator and denominator in used and useful calculations. Including but not limited to, the documents to which Mr. Hill was referring at the Commission's internal affairs conference on February 3, 1998 as set forth on page 6 of the transcript of that conference, lines 3-13 and 21-24. Page 6 is attached for your convenience.

4. All documents that indicate when the Commission Staff realized the FDEP changed its policy as to the way FDEP did permitted capacity. Ms. Helton referred to this change on p. 9 (copy attached) of the February 3, 1998 conference, lines 10-23.

5. All documents referenced by Mr. Hill at the February 3, 1998 conference including the 15 or 20 cases Mr. Hill referenced on p. 13, lines 18-25 through p. 14, lines 1 and 2 (copy attached) of the agenda transcript.

6. All documents referenced by Commissioner Clark and Mr. Talbot on p. 16 of the transcript of the February 3, 1998 conference, lines 9 - 15.

7. All of the documents referred to by Mr. Hill at page 16, lines 16 through 23, when he said at the February 3, 1998 conference as follows:

MR HILL: Yes, my boss asked me what went wrong, what happened, why are we in this particular situation. And so we put together an explanation, obviously, made some schedules. one of them includes the past 15 or 20 wastewater cases and whether there was

matching or mismatching. And then the rest is information that we had from those other cases, Palm Coast rate cases.

A copy of page 16 is attached.

8. Any and all documents relative to a proposed rule for the determination of used and useful.

DATED this 5th day of October, 1998.



KATHRYN G.W. COWDERY
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Certificate of Service

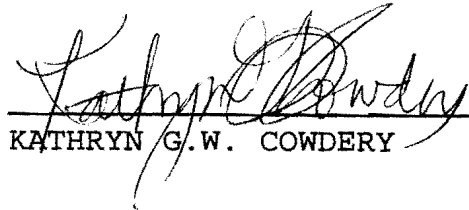
I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S. Mail, unless otherwise noted, this 5th day of October, 1998 to:

Cheryl Walla
1750 Dockway Drive
North Fort Myers, FL 33903

Jerilyn Victor
1740 Dockway Drive
North Fort Myers, FL 33903

Harold McLean, Associate
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Tallahassee, FL 32399-1400

Ralph Jaeger, Esquire
(Hand Delivery)
Division of Legal Services
Florida Public Service
Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850


KATHRYN G.W. COWDERY

1 permitted capacity, and the permitted capacity was
2 based on average annual flow.

3 MR. HILL: It's my understanding, as I tried to
4 explain to my bosses, that our practice has been to
5 try to match, and --

6 COMMISSIONER CLARK: What's permitted.

7 MR. HILL: Right. -- with what we've used in our
8 calculations for used and useful. And sometimes the
9 matching is -- sometimes we've had to go a collection
10 system, sometimes we have used the monthly, sometimes
11 the annual. And so the attempt on the part of our ADM
12 staff (phonetic) has been to match the numerator and
13 the denominator.

14 COMMISSIONER CLARK: Wait a minute. What do you
15 mean, "match the numerator and the denominator?"
16 What's the "numerator," and what's the "denominator?"

17 MR. HILL: The denominator would be the plant
18 capacity, and the numerator would be the demand of the
19 customer, the flow going through the plant.

20 COMMISSIONER CLARK: I see.

21 MR. HILL: And so if one is stated as a monthly
22 average, then we would use a monthly average. If one
23 is stated as an annual average, then we would use an
24 annual average.

25 COMMISSIONER CLARK: So we haven't changed our

1 plant is used, you should use the same criteria. And
2 if the plant is permitted using maximum monthly flow,
3 then it's appropriate to use maximum monthly flow to
4 determine used and useful. But where it's permitted
5 using average annual flow, then you use that. And it
6 seems to me, at least in the Florida Water, -- SSU,
7 that is, in fact, what happened.

8 COMMISSIONER JACOBS: Now, there was a change,
9 as I understand, that did occur.

10 MS. HELTON: Yes, there was a change. And as I
11 understand it, in about 1992, DEP changed the way they
12 did their permitted capacity. They gave the utility
13 the option of doing maximum average daily flow, a
14 three-month average daily flow, and annual average
15 daily flow. And the utility, as I understand it, is
16 able to choose which demand they want placed on the
17 permit.

18 And depending on which demand they want on the
19 permit makes a difference as far as what capacity they
20 are rated at at DEP and how quickly they come to that
21 capacity. And it also makes a difference for us as
22 far as how -- what the used and useful determination
23 is.

24 And the problem is we did know about that change.
25 And there should have been something in the record to

1 annual average --

2 CHAIRMAN JOHNSON: Max.

3 MS. HELTON: -- max month capacity had been used
4 to determine used and useful.

5 COMMISSIONER CLARK: Yes, but they also -- was
6 that used on their permit? Without that other piece
7 you don't know if we have changed our policy.

8 MS. HELTON: Can I read the line of questioning
9 that the order relies on there? To me it's a little
10 bit of a stretch.

11 CHAIRMAN JOHNSON: Before you do that,
12 though --

13 COMMISSIONER CLARK: You mean their order or our
14 order?

15 MS. HELTON: Our order.

16 CHAIRMAN JOHNSON: Before you do that, was there
17 a policy of a mismatch or --

18 MR. HILL: No, we didn't have a policy of
19 mismatch. And to my knowledge, we haven't had. We
20 have had, to the extent the permit was silent, we
21 would use the max month. If the permit had something
22 on it, we would be consistent with the permit. And as
23 I went back and looked at the -- I don't know how many
24 years we went back, 15 or 20 cases, I didn't see an
25 apparent mismatch in the schedule that I gave Dr. Bane

1 and Mr. Talbott when they were asking me for an
2 explanation of what was happening.

3 CHAIRMAN JOHNSON: Thank you. You wanted to read
4 something?

5 MS. HELTON: Yes. The line of questioning that
6 this finding is -- or this statement is based on is
7 Mr. Twomey is asking Mr. Hartman, who is, I believe, a
8 paid expert Florida Water witness.

9 Mr. Twomey: "And I would like to ask you --
10 first, in this case, Mr. Hartman, help me be clear in
11 understanding. In terms of calculating used and
12 useful, it's my understanding that SSU has calculated
13 the wastewater treatment plant used and useful
14 percentage by taking the ratio of the average daily
15 use of the high use month to the plant's permitted
16 capacity. Is that generally correct?"

17 And the answer is: "For wastewater treatment
18 plant, I believe most of the calculations, or all the
19 calculations are based upon the maximum monthly
20 utilization, yes."

21 COMMISSIONER JACOBS: Whose witness was that,
22 now? That's ours?

23 MS. HELTON: No, that's Mr. Hartman, who is a
24 Florida Water witness.

25 COMMISSIONER JACOBS: So --

1 calculations." There is no record cite there.

2 COMMISSIONER CLARK: Well, they were looking for
3 a record cite as to the change in the policy, is that
4 right?

5 MR. SMITH: They were looking for an explanation.
6 You've got to understand this is a strict
7 interpretation of the APA. And that's what is out
8 there now and they're going to apply.

9 COMMISSIONER CLARK: Yes. Let me ask, is that
10 what that file -- that folder is, is all the old cases
11 on it?

12 MR. TALBOTT: This here?

13 COMMISSIONER CLARK: Yes, what is that?

14 MR. TALBOTT: Well, this is the information about
15 the case.

16 MR. HILL: Yes, my boss asked me what went wrong,
17 what happened, why are we in this particular
18 situation. And so we put together an explanation,
19 obviously, made some schedules. One of them includes
20 the past 15 or 20 wastewater cases and whether there
21 was matching or mismatching. And then the rest is
22 information that we had from those other cases, Palm
23 Coast rate cases.

24 COMMISSIONER CLARK: I'm sorry. What was the
25 first thing you said, whether there was matching or