



ORIGINAL

October 3, 1998

by Federal Express

Ms. Blanca Bayo  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Docket No. 980561-WS; Proposed Amendment of Rules 25-30.420, Establishment of Price Index, Adjustment of Rates; Requirement of Bond; Filings After Adjustment; Notice to Customers; and 25-30.425, Pass Through Rate Adjustment.

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket, please find an original and fifteen copies of Notice of a Filing Direct Testimony along with the direct testimony of Brian P. Armstrong. 12145-98  
12146-98

Please acknowledge filing of these items by date stamping the enclosed extra copy of this letter and returning it in the postage paid envelope provided.

If you have any questions, please contact me at (407) 880-0058, ext. 260.

Sincerely yours,

*Matthew J. Feil*

RECEIVED & FILED  
*10/3*  
FPSC-BUREAU OF RECORDS

Matthew J. Feil  
Staff Attorney

Enclosures

- ACK 1
- AFA \_\_\_\_\_
- APP None
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG \_\_\_\_\_
- LIN 5
- OPC \_\_\_\_\_
- RCH 1
- SEC 1
- WAS 3
- OTH \_\_\_\_\_

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MAILROOM

Florida Water Services Corporation / P.O. Box 609520 / Orlando, Florida 32860-9520 / Phone 407/880-0058

Water For Florida's Future

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DIRECT TESTIMONY OF BRIAN P. ARMSTRONG  
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
ON BEHALF OF  
FLORIDA WATER SERVICES CORPORATION  
DOCKET NO. 980561-WS

DOCUMENT NUMBER DATE  
12146 OCT 30 2008  
FPSC-RECORDS/REPORTING

- 1 Q. WHAT IS YOUR NAME AND BUSINESS ADDRESS?
- 2 A. My name is Brian P. Armstrong and my business  
3 address is 1000 Color Place, Apopka, Florida 32703.
- 4 Q. WHAT IS YOUR POSITION WITH FLORIDA WATER SERVICES  
5 CORPORATION?
- 6 A. My position is Vice President - Legal and General  
7 Counsel for Florida Water Services Corporation  
8 ("Florida Water").
- 9 Q. WHAT IS YOUR EDUCATIONAL BACKGROUND AND WORK  
10 EXPERIENCE?
- 11 A. I am a graduate of Georgetown University Law Center  
12 where I received a Juris Doctor degree in 1984. I  
13 received a Bachelor of Arts degree from St. John's  
14 University in 1981. Prior to holding my current  
15 position with Florida Water, I was employed by  
16 Cullen & Dykman in New York from 1984 to 1991 as an  
17 attorney concentrating in matters for utility  
18 clients.
- 19 Q. WHAT ARE YOUR PRESENT DUTIES AS VICE PRESIDENT -  
20 LEGAL AND GENERAL COUNSEL?
- 21 A. I am responsible for all legal matters at Florida  
22 Water.
- 23 Q. WHAT CONCERNS DOES FLORIDA WATER HAVE REGARDING THE  
24 COMMISSION'S PROPOSED RULE CHANGES IN THIS DOCKET?

1       A.   We are concerned with the establishment of an  
2           official date of filing ("ODF") mechanism for index  
3           and pass-through filings because of the  
4           insignificance of some of the alleged deficiencies  
5           found in our full rate case filings in the past.  
6           Although the staff may have formally or informally  
7           employed an ODF mechanism for index and pass-  
8           through filings in the past, Florida Water has not  
9           had an implementation date proposed by us in a  
10          notice delayed because staff believed information  
11          was lacking. We've always responded promptly to  
12          any information or clarification requests.  
13          Accordingly, we hope that staff will abide by those  
14          same practices under any new rule.

15                 Florida Water's principal concern, however,  
16                 is the proposed changes to Rule 25-30.425 which  
17                 will require a utility filing formal notice for a  
18                 pass-through adjustment to also file 3 years of  
19                 historic information regarding the expense being  
20                 passed through. We do not believe that Commission  
21                 has authority to require that this information be  
22                 filed. Staff has announced that the historic  
23                 information would be used to offset a pass-through  
24                 increase against any unimplemented prior years

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decreases to the pass-through expense. The Commission has no statutory authority to undertake such offsetting in a pass-through filing. Nowhere in Section 367.041(4)(b), Florida Statutes, does it say that the Commission may require or even consider prior years' data (other than to verify the increase or decrease filed) or that the Commission may actually offset unfiled prior years' decreases against an increase filed. The authority just is not there in the pass-through statute. The statute does not permit the Commission to somehow maintain a commensurate level of one expense over an arbitrary period of time though numerous other changes may be occurring. Florida Water also maintains that the Commission defeats the purpose of the pass-through statute by its proposed rule changes. The pass-through statute was designed to allow a utility, to make a **simplified filing**, a "notice," to effect a change in rates to account for a change to certain, identified expenses. As long as no over earnings are later generated as a result of a pass-through increase, the Commission's role is supposed to be minimal, even ministerial. The proposed rule alters this intended process and

1 needlessly complicates the filing to the point  
2 where it becomes so administratively burdensome  
3 that it will possibly preclude utilities from  
4 filing pass-throughs and therefore defeat the  
5 intent of the statute.

6 Typically, pass-through expense items go up,  
7 not down. Nonetheless, Florida Water has a number  
8 of practical and theoretical concerns in addition  
9 to the problem already discussed. For instance,  
10 Florida Water questions what the Commission will do  
11 when a utility files for a pass-through increase  
12 when the utility had foregone one or more prior  
13 years' increases. To be consistent with the  
14 proposed offsetting of decreases, the proposed rule  
15 should allow the utility to recover the increases  
16 from prior years which might have been foregone.  
17 Consistent application of the principle of equity  
18 as expressed in the GTE Florida discussion which we  
19 believe supports such a result may be perceived to  
20 run afoul of the 12-month staleness provision  
21 (contained in Section 367.081(4)(b)) which appears  
22 to apply applicable to increases only. However, it  
23 proves two points. First, a staleness provision  
24 applicable on the upside but not the downside is

1 inequitable. Second, there is no reason to believe  
2 from the plain wording of the statute that the  
3 Legislature equipped the Commission for micro-  
4 managing pass-through filings in the way  
5 contemplated in the proposed rule.

6 Along those same lines, Florida Water  
7 questions whether the Commission will begin  
8 offsetting an increase in one expense, for example,  
9 purchased water, against one or more prior years'  
10 decrease(s) in any other pass-through expense, e.g.  
11 ad valorem taxes. The basic concept proposed in  
12 the rule seems to apply with equal force regardless  
13 of what type of pass-through expense is at issue.  
14 But again, none of this is authorized by the  
15 statute.

16 In Order No. PSC-97-0680-FOF-WS, issued June  
17 11, 1997, in Docket No. 961416-WS addressing Pasco  
18 County's sewer rate decrease, the Commission ruled  
19 that it would not impose a pass through decrease on  
20 a utility unless foregoing such would cause over  
21 earnings. What the proposed rule would do runs  
22 afoul of that precedent since the proposed rule  
23 would appear to apply the offsets notwithstanding  
24 the absence of an over earnings determination. If a

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utility files for a pass-through increase which comports with the statute, the Commission's only concern should be with any over-earnings actually generated by the implementation of new rates. The index and pass-through provisions in Chapter 367 are designed as a means for deferring full file-and-suspend rate cases absent over earnings. The Commission should abide by the letter and purpose of the statute and not attempt to make adjustments for prior years' expenses where no over-earnings situation exists.

**Q. HOW DO YOU RESPOND TO THE CONTENTION THAT THE RULE ESTABLISHES FILING REQUIREMENTS AND NOT A PROCEDURE BY WHICH THE COMMISSION WILL IMPOSE PASS-THROUGH EXPENSE OFFSETS?**

A. Even if, on its face, the proposed rule imposes only a filing requirement, the purpose of the proposed rule has been announced -- to impose offsets. I do not believe that it makes a significant difference whether that purpose is directly stated in the rule in so many words. Staff has acknowledged what it intends to do with the information which must be filed under the proposed rule. Staff has also admitted to Florida



1 Water personnel that in the past, it has used the  
2 historical ad valorem tax information required in  
3 the current pass-through rule to impose offsets  
4 without further input from the Commission.  
5 Therefore, there is little reason to believe that  
6 staff will proceed differently with regard to the  
7 historical information now at issue for the other  
8 pass-through expense items.

9 Q. HOW DO YOU RESPOND TO THE ARGUMENT THAT ANY OFFSET  
10 ADJUSTMENTS IMPOSED WOULD BE MINOR TO FLORIDA  
11 WATER?

12 A. Such an argument is speculative and irrelevant.  
13 Moreover, if the Commission lacks the authority to  
14 impose offsets, it should not make a difference how  
15 minor they are or to which utilities they may or  
16 may not make a measurable difference.

17 Q. DO YOU HAVE ANY FURTHER COMMENTS AT THIS TIME?

18 A. No.