

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for	)	DOCKET NO. 950387-SU
Increased Wastewater Rates by	)	ORDER NO.
Florida Cities Water Company -	)	ISSUED:
North Ft. Myers Division in Lee	)	
County.	)	
_____	)	

COMMISSION STAFF'S REQUEST TO STRIKE PORTION OF  
REMAND TESTIMONY OF MICHAEL ACOSTA

The Staff of the Florida Public Service Commission (Staff), by and through its undersigned counsel, hereby request that the Prehearing Officer issue an order striking a portion of the prefiled Remand Testimony of Michael Acosta, and in support thereof, states the following:

1. In Florida Cities Water Company v. State, 705 So. 2d 620 (Fla. 1st DCA), the First District Court of Appeal (Court or First District) reversed the Commission's use of annual average daily flow (AADF) in the numerator of the used and useful equation, but gave the Commission the discretion to reopen the record on this issue.

2. The First District also reversed the Commission's finding that the wastewater treatment plant had a capacity to treat 1.5 million gallons per day (mgd), and specifically found that the capacity of the plant was only 1.25 mgd. Based on these two issues, the Court issued its opinion reversing and remanding the Commission's final order.

3. In compliance with the First District's reversal and remand, the Commission issued Order No. PSC-98-0509-PCO-SU on April 14, 1998. That Order set the capacity of the wastewater treatment plant at 1.25 mgd, reopened the record for the limited purpose of taking additional evidence on what flows should be used in the numerator of the used and useful equation, and granted in part and denied in part the utility's request for consideration of additional rate case expense.

4. Based on the decision to reopen the record, several orders on procedure were issued. Pursuant to these orders, the utility ultimately was required to file and did file prefiled testimony on September 30, 1998. Also, a prehearing conference was scheduled for and held on November 18, 1998. At this prehearing conference, the parties identified the issues to be litigated for the reopening of the record, and Prehearing Order No. PSC-98-1577-PHO-SU, issued

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November 24, 1998, delineated those issues to be heard at hearing.

5. Pursuant to Order No. PSC-98-1577-PHO-SU, the issues are:

- ISSUE 1. Should the Commission ignore average daily flow in the peak month in determining used and useful plant to be included in rate base?
- ISSUE 2. Does a change in the wording of the DEP permit application so that the permit and application now indicate the time frame for design capacity, i.e. annual average daily flow, maximum monthly average daily flow or three month average daily flow correspond to a real change in operating capacity?
- ISSUE 3. Where the DEP permits the wastewater treatment plant based on annual average daily flows, what flows should be used in the numerator of the used and useful equation to calculate used and useful plant?
- ISSUE 4. What is the appropriate provision for rate case expense since the remand by the First District Court of Appeal?
- ISSUE 5. What is the appropriate provision for appellate non-legal rate case expense?
- ISSUE 6. What is the appropriate revenue requirement?
- ISSUE 7. What are the appropriate wastewater rates for Florida Cities Water Company - North Fort Myers Wastewater Division?
- ISSUE 8. What is the appropriate amount by which rates should be reduced four years after the established effective date to reflect the removal of the amortized rate case expense as required by Section 367.0816, Florida Statutes?
- ISSUE 9. Should the utility be required to refund a portion of the revenues implemented pursuant to Order No. PSC-95-1360-FOF-SU, issued November 2, 1995?

6. However, beginning at lines 3-10, page 10, of the Remand

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Testimony of Michael Acosta, Mr. Acosta presents testimony on the proper handling of reuse facilities and their used and useful determinations. Specifically, he states:

First, the reuse facilities used and useful determination should be determined separately from the rest of the facilities, pursuant to the Court's interpretation of 367.0817 in Southern States Utilities v. Florida Public Service Commission, et al., Case No. 96-4227 (June 10, 1998) (Fla. 1st DCA 1998). These facilities as well as the Lochmoor site were found by the Commission to have been prudently incurred (Order No. PSC-96-1133-FOF-SU, pg. 39). They must therefore be considered 100% used and useful in rate base.

7. This portion of Mr. Acosta's testimony neither addresses any of the issues for which the Commission reopened the record, nor does it address any of the issues identified at the prehearing conference. Therefore, it is irrelevant and should be stricken in its entirety.

Wherefore, staff requests that lines 3-10, page 10, of the Remand Testimony of Michael Acosta be stricken in their entirety.

Respectfully submitted,

  
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RALPH R. JAEGER, SENIOR ATTORNEY

FLORIDA PUBLIC SERVICE COMMISSION  
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a rate  
increase for North Ft. Myers  
Division in Lee County by  
Florida Cities Water Company -  
Lee County Division.

DOCKET NO. 950387-SU  
ORDER NO.  
ISSUED:

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that a true and correct copy of the  
COMMISSION STAFF'S REQUEST TO STRIKE PORTION OF REMAND TESTIMONY OF  
MICHAEL ACOSTA has been furnished by U.S. Mail, this 2<sup>nd</sup> day of  
December, 1998, to the following:

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