

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

MEMORANDUM

February 4, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF APPEALS (MOORE) *CTM DS*
DIVISION OF WATER & WASTEWATER (CASEY, SHAFER, IWENJIORA) *CS*
DIVISION OF RESEARCH & REGULATORY REVIEW (HEWITT) *CHT PR*

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.

AGENDA: 2/16/99 - REGULAR AGENDA - RULE ADOPTION - PARTICIPATION LIMITED TO COMMISSIONERS AND STAFF

RULE STATUS: ADOPTION MAY BE DEFERRED

SPECIAL INSTRUCTIONS: S:\PSC\APP\WP\980561PH.RCM

CASE BACKGROUND

By notice published in the Florida Administrative Weekly on June 13, 1998, the Commission proposed revisions to Rules 25-30.420 and 25-30.425, F.A.C., the water and wastewater utility index and pass-through rules. Florida Water Services Corporation ("FWSC") requested a hearing. FWSC, Staff, and the Office of Public Counsel ("OPC") prefiled comments. In addition, a Joint Administrative Procedures Committee Staff Attorney (JAPC) submitted a letter to staff regarding his concerns about certain provisions of Rule 25-30.420, F.A.C. The Commission conducted a rulemaking hearing on December 11, 1998. Posthearing comments were filed by FWSC, Staff, and OPC.

The rules as originally proposed by the Commission are shown in Attachment 1, with the changes recommended by the staff shaded. Recommended additions to the rules are shown as shaded and underlined. Recommended deletions are shown as shaded and stricken through.

DOCUMENT NUMBER-DATE

01373 FEB-38

FPSC-RECORDS/REPORTING

DOCKET NO. 980561-WS
DATE: February 4, 1999

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission adopt Rule 25-30.420 with changes?

RECOMMENDATION: Yes, the Commission should adopt the rule with changes.

STAFF ANALYSIS: Staff recommends several changes to address the concerns of the JAPC. These changes were discussed in Staff's prehearing comments and the participants at the hearing did not take issue with them.

25-30.420 (1): The application for a price index increase should be adopted as a form and incorporated by reference. (Attachment 2.)

25-30.420 (1) (b): This subsection addresses the data the Commission will or may consider in setting the index. The proposed rule provides that the Commission "will" use cost statistics compiled by government agencies, but that it "may" consider other data in establishing the index. To respond to JAPC's comments that the term "may" confers unbridled discretion and that the rule lacks adequate standards governing when the Commission will consider other data, staff recommends changing "may" to "will." The change merely requires the Commission to "consider" (review and weigh) cost data supplied by utility companies or other interested parties, and applicable wage and price guidelines. It does not bind the Commission to utilizing the information in determining the index, but the Commission should have reasons if it chooses not to use that information. Staff also recommends striking the phrase "other relevant available data" because it is too broad to make it required, and is unnecessary.

25-30.420 (3): Staff recommends the following changes (shown as shaded):

~~If t~~he Commission, upon its own motion, ~~may~~ implements an increase or decrease in the rates of a utility based upon the application of the ~~index indices~~ established pursuant to subsection (1) and as authorized by section 367.081(4)(a), F. S. ~~t~~he Commission ~~will may~~ require a utility to file ~~any—of~~ the information required in subsection. (2).

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This change is recommended to address the JAPC's concern about the use of the term "may". The change does not affect the Commission's discretion to implement an increase or decrease in rates upon its own motion because that authority and discretion is conferred by statute. Although it is unnecessary to restate it in the rule, the rule should be reworded rather than deleted because it also gives notice to utilities that certain information must be submitted.

25-30.420(4): This section of the rule provides:

Upon a finding of good cause, the Commission may require that a rate increase pursuant to section 367.081(4)(a), F. S., be implemented under a bond ~~or~~ of corporate undertaking in the same manner as interim rates. For purposes of this subsection, "good cause" shall include:

- (a) Inadequate service by the utility;
- (b) Inadequate record-keeping by the utility such that the Commission is unable to determine whether the utility is entitled to implement the rate increase or decrease under this rule.

The JAPC staff attorney takes issue with the use of the terms "may" and "good cause." Although he recognizes that two examples of "good cause" are included in the rule, he states that they do not supply sufficient criteria to apprise the reader of the factors to be considered by the Commission. Staff disagrees.

In a letter responding to the JAPC comments, Staff asserted that the statute being implemented by this rule provision directs the Commission to adopt precisely this language. Specifically, section 367.081(4)(a), Florida Statutes, provides:

The rules shall provide that, upon a finding of good cause, including inadequate service, the commission **may** order a utility to refrain from implementing a rate increase hereunder unless implemented under a bond or corporate undertaking in the same manner as interim rates may be implemented under s. 367.082.

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Staff also responded that the term "good cause" means if there is a legitimate reason and that the rule currently states two legitimate reasons. Staff further disagreed with the JAPC staff comment that the term is capable of numerous and inconsistent interpretations because that has not been the Commission's experience. Staff believes the rule complies with the statute being implemented and does not recommend any changes.

Rule 25-30.420(5): Staff recommends deleting section (5). This section provides for the Commission to require a Class A or Class B utility to file rate case MFRs pursuant to rule 25-30.436, F.A.C. for the purpose of determining whether the utility has exceeded its last authorized return on equity. As a practical matter, the Commission has never invoked this provision of the rule for the purpose of determining a utility's earnings position. The Commission staff typically requests a staff audit of the utility for that purpose. In addition, the Commission retains broad authority to initiate rate proceedings on its own motion pursuant to sections 367.081(2)(a) or 367.0822, Florida Statutes. Therefore, the reiteration of that authority in this rule is unnecessary.

ISSUE 2: Should the Commission adopt Rule 25-30.425, F.A.C., with changes?

RECOMMENDATION: Yes, the Commission should adopt changes to the proposed rule.

STAFF ANALYSIS: FWSC's primary concern with the pass through rule was the amendment of sections (1)(a) and (2)(a) to require the utility that is passing through another utility's rate changes to furnish evidence of the supplier's rates in effect on January 1 of each of the three preceding years. The new language is similar to the existing rule provision for filing information about ad valorem tax changes. The basis for the additional requirement was to enable staff to determine if the utility had not passed through a prior decrease in rates, such that the current pass through increase would result in rates greater than actual cost.

At the hearing, FWSC agreed that a pass through increase should not enable the utility to collect an amount greater than actual cost. At the same time, FWSC asserted that the Commission should not offset current increases by prior decreases that were

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not passed through as long as the utility does not have more than current cost in its rate. Staff agrees that such a result was not its intent.

Subsequent to the hearing, Staff, FWSC, and OPC conferred and agreed that the following language satisfactorily addresses the respective concerns and should be added to Rule 25-30.425(6):

The amount authorized for pass through rate adjustments shall not exceed the actual cost incurred and shall not exceed the incremental increase or decrease for the 12-month period. Foregone pass through decreases shall not be used to adjust a pass through increase below the actual cost incurred.

The second concern FWSC stated in its comments dealt with the change to section (8) regarding the official filing date of a pass through application. FWSC submitted comments stating its concern that the Commission would be changing its existing procedures for handling index and pass through applications. The changes that were recommended by Staff and proposed by the Commission were intended to improve the clarity of this provision. Staff did not intend a change to existing procedures. Because the meaning of the existing language has not been the subject of dispute, Staff believes the proposed change on page 14, lines 12-17, of the rule is not necessary and can be stricken.

ISSUE 3: Should the rules as adopted be filed with the Secretary of State and the docket be closed?

RECOMMENDATION: Yes.

STAFF ANALYSIS: If there is no challenge to the rules within 21 days after a notice of change is published in the Florida Administrative Weekly, the rules as approved may be filed for adoption with the Secretary of State without further Commission action. The docket may then be closed.

CTM/
Attachments

DOCKET NO. 980561-WS
DATE: February 4, 1999

1
2 25-30.420 Establishment of Price Index, Adjustment of Rates;
3 Requirement of Bond; Filings After Adjustment; Notice to Customers.

4 (1) The Commission shall, on or before March 31 of each year,
5 establish a price increase or decrease index as required by section
6 367.081(4)(a), F. S. The Division of Records and Reporting shall
7 mail each regulated water and wastewater utility a copy of the
8 proposed agency action order establishing the index for the year
9 and a copy of the application. Form PSC/WAW 15 (/), entitled
10 "Index Application", is incorporated into this rule by reference
11 and may also be obtained from the Commission's Division of Water
12 and Wastewater. Applications for the newly established price index
13 will be accepted from April 1 of the year the index is established
14 through March 31 of the following year.

15 (a) The index shall be applied to all operation and
16 maintenance expenses, except for amortization of rate case expense,
17 costs subject to pass-through adjustments pursuant to section
18 367.081(4)(b), F.S., and adjustments or disallowances made in a
19 utility's most recent rate proceeding. In determining major-
20 categories of operating costs to which the index will apply, the
21 Commission may consider whether the cost category is material to
22 the operation of water and wastewater utilities, whether the cost
23 category is applicable to all utilities regardless of size and
24 geographic location, and whether sufficient data is available
25 regarding price increases or decreases.

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~~struck-through~~ type are deletions from existing law.

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2 (b) In establishing the price index ~~indices for major~~
3 ~~categories of operating costs~~, the Commission will may consider
4 cost statistics compiled by government agencies or bodies, cost
5 data supplied by utility companies or other interested parties, and
6 applicable wage and price guidelines, ~~or other relevant available~~
7 data.

8 (2) Any utility seeking to increase or decrease its rates
9 based upon the application of the index ~~indices~~ established
10 pursuant to subsection (1) and as authorized by section
11 367.081(4)(a), F. S., shall file an original and five copies of a
12 notice of intention and the materials listed in (a) through (g)
13 below with the Commission's Division of Water and Wastewater at
14 least 60 days prior to the effective date of the increase or
15 decrease. The adjustment in rates shall take effect on the date
16 specified in the notice of intention unless the Commission finds
17 that the notice of intention or accompanying materials do not
18 comply with the law, or the rules or orders of the Commission. The
19 notice shall be accompanied by:

20 (a) Revised tariff sheets;

21 (b) A computation schedule showing the increase or decrease in
22 annual revenue that will result when the index is applied;

23 (c) The affirmation required by section 367.081(4)(c), F. S.;

24 (d) A copy of the notice to customers required by subsection
25 (6);

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2 (e) The rate of return on equity that the utility is affirming
3 it will not exceed pursuant to section 367.081(4)(c), F. S.;

4 (f) An annualized revenue figure for the test year used in the
5 index calculation reflecting the rate change, along with an
6 explanation of the calculation, if there has been any change in the
7 utility's rates during or subsequent to the test year;

8 (g) The utility's Department of Environmental Protection
9 Public Water System identification number and Wastewater Treatment
10 Plant Operating Permit number.

11 (3) ~~If t~~The Commission, upon its own motion, ~~may~~ implement~~g~~ an
12 increase or decrease in the rates of a utility based upon the
13 application of the index indices established pursuant to subsection
14 (1) and as authorized by section 367.081(4)(a), F. S., ~~t~~The
15 Commission ~~will~~ require a utility to file ~~any of~~ the information
16 required in subsection (2).

17 (4) Upon a finding of good cause, the Commission may require
18 that a rate increase pursuant to section 367.081(4)(a), F. S., be
19 implemented under a bond ~~or of~~ corporate undertaking in the same
20 manner as interim rates. For purposes of this subsection, "good
21 cause" shall include:

22 (a) Inadequate service by the utility;

23 (b) Inadequate record-keeping by the utility such that the
24 Commission is unable to determine whether the utility is entitled
25 to implement the rate increase or decrease under this rule.

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2 ~~(5) After a rate adjustment pursuant to this rule, the~~
3 ~~Commission may require a utility to file with it such information~~
4 ~~required in Rule 25-30.436, F. A. C., that is necessary to~~
5 ~~determine whether the utility has exceeded its last authorized rate~~
6 ~~of return.~~

7 ~~(5)(6)~~ Prior to the time a customer begins consumption at the
8 rates established by application of the index, the utility shall
9 notify each customer of the increase ~~(or decrease)~~ authorized and
10 explain the reasons therefor.

11 ~~(6)(7)~~ No utility shall file a notice of intention implement
12 ~~a rate increase~~ pursuant to this rule unless the utility has on
13 file with the Commission an a-current annual report as required by
14 Rule 25-30.110(3), F. A. C., for the test year specified in the
15 order establishing the index for the year.

16 (7) ~~(6)~~ No utility shall implement a rate increase pursuant to
17 this rule within one year of the official date that it filed a rate
18 proceeding, unless the rate proceeding has been completed or
19 terminated.

20 Specific Authority 350.127(2), 367.081(4)(a), 367.121(1)(c).

21 367.121(1)(f)F.S.

22 Law Implemented 367.081(4), 367.121(1)(c). 367.121(1)(g).F.S.

23 History--New 4-5-81, Amended 9-16-82, Formerly 25-10.185, Amended

24 11-10-86, 6-5-91, _____.

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2 25-30.425 Pass Through Rate Adjustment. The verified notice
3 to the Commission of an adjustment of rates under the provisions of
4 section 367.081(4)(b), F. S., shall be made in the following
5 manner:

6 (1) Prior to an adjustment in rates because of an increase or
7 decrease in purchased utility service, the utility shall file:

8 (a) A certified copy of the order, ordinance or other
9 evidence whereby the rates for utility service are increased or
10 decreased by the governmental agency or by a water or wastewater
11 utility regulated by the Commission, along with evidence of the
12 utility service rates of that governmental agency or water or
13 wastewater utility in effect on January 1 of each of the three
14 preceding years.

15 (b) A statement setting out by month the charges for utility
16 services purchased from the governmental agency or regulated
17 utility for the most recent 12-month period.

18 (c) 1. A statement setting out by month the gallons of water
19 or wastewater treatment purchased from the governmental agency or
20 regulated utility for the most recent 12-month period. If
21 wastewater treatment service is not based on a metered flow, the
22 number of units by which the service is measured shall be stated.

23 2. A statement setting out by month gallons of water and
24 units of wastewater service sold by the utility for the most recent
25 12-month period.

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2 (d) A statement setting out by month the gallons of water or
3 wastewater treatment purchased from any other government entity or
4 utility company.

5 (e) A statement setting out by month the gallons of water
6 pumped or wastewater treated by the utility filing the verified
7 notice.

8 (f) If the total water available for sale is in excess of
9 110% of the water sold, a statement explaining the unaccounted for
10 water.

11 (2) Prior to an adjustment in rates because of an increase or
12 decrease in the charge for electric power the utility shall file
13 with the Commission:

14 (a) A certified copy of the order, ordinance or other
15 evidence which establishes that the rates for electric power have
16 been increased or decreased by the supplier, along with evidence of
17 the electric power rates of the supplier in effect on January 1 of
18 each of the three preceding years.

19 (b) A schedule showing, by month, the charges for electric
20 power and consumption for the most recent 12 month period, the
21 charges that would have resulted had the new electric rates been
22 applied, and the difference between the charges under the old rates
23 and the charges under the new rates.

24 (c) A statement outlining the measures taken by the utility
25 to conserve electricity.

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2 (3) Prior to an adjustment in rates because of an increase or
3 decrease in ad valorem taxes the utility shall file with the
4 Commission:

5 (a) A copy of the ad valorem tax bills which increased or
6 decreased and copies of the previous three years' bills; if copies
7 have been submitted previously, a schedule showing the tax total
8 only is acceptable; and

9 (b) A calculation of the amount of the ad valorem taxes
10 related to that portion of the water or wastewater plant not used
11 and useful in providing utility service.

12 (4) Prior to an adjustment in rates because of an increase or
13 decrease in the costs of water quality or wastewater quality
14 testing required by the Department of Environmental Protection
15 (DEP) Regulation, or because of an increase or decrease in the fees
16 charged by DEP in connection with the National Pollutant Discharge
17 Elimination System Program, the utility company shall file with the
18 Commission:

19 (a) A copy of the invoice for testing;

20 (b) Calculation of the amortized amount.

21 (5) In addition to (1), (2), ~~and~~ (3), ~~and~~ (4) above, the
22 utility shall also file:

23 (a) A schedule of proposed rates which will pass the
24 increased or decreased costs on to the customers in a fair and
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2 nondiscriminatory manner and on the basis of current customers, and
3 a calculation showing how the rates were determined;

4 (b) A statement, by class of customer and meter size, setting
5 out by month the gallons of water and units of wastewater service
6 sold by the utility for the most recent 12 month period. This
7 statement shall not be required in filings for the pass through of
8 increased regulatory assessment fees or ad valorem taxes;

9 (c) The affirmation reflecting the authorized rate of return
10 on equity required by section 367.081(4)(c), F. S.; and

11 (d) A copy of the notice to customers required by subsection
12 (7) of this rule;

13 (e) Revised tariff sheets reflecting the increased rates; and

14 (f) The rate of return on equity that the utility is
15 affirming it will not exceed pursuant to section 367.081(4)(c), F.
16 S.; and

17 (g) The utility's DEP Public Water System identification
18 number and Wastewater Treatment Plant Operating Permit number;

19 (6) The amount authorized for pass through rate adjustments
20 shall not exceed the actual cost incurred and shall not exceed the
21 incremental increase or decrease for the 12-month period.
22 Foregone pass through decreases shall not be used to adjust a pass
23 through increase below the actual cost incurred.

24 ~~(7)(6)~~ In order for the Commission to determine whether a
25 utility which had adjusted its rates pursuant to section

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2 367.081(4)(b), F. S., has thereby exceeded the range of its last
3 authorized rate of return, the Commission may require a utility to
4 file the information required in Rule 25-30.437, F. A. C., for the
5 test year specified.

6 ~~(8)(7)~~ Prior to the time a customer begins consumption at the
7 adjusted rates, the utility shall notify each customer of the
8 increase authorized and explain the reasons for the increase.

9 (9)(8) The utility shall file an original and five copies of
10 the verified notice and supporting documents with the Division of
11 Water and Wastewater. The rates shall become effective 45 days
12 after the official date of filing. ~~The official date of filing is~~
13 ~~the date the utility files a verified notice of adjustment of rates~~
14 ~~and supporting documents that satisfy the minimum filing~~
15 ~~requirements of this rule. The Director of the Division of Water~~
16 ~~and Wastewater determines whether the filing satisfies the minimum~~
17 ~~requirements.~~ The official date of filing for the verified notice
18 to the Commission of adjustment in rates shall be at least 45 days
19 before the new rates are implemented.

20 Specific Authority 350.127(2), 367.121(1)(c), 367.121(1)(f), F.S.
21 Law Implemented 367.081(4), 367.121(1)(c), 367.121(1)(g), F.S.
22 History--New 6-10-75, Amended 4-5-79, 4-5-81, 10-21-82, Formerly
23 25-10.179, Amended 11-10-86, 6-5-91, _____.

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FLORIDA PUBLIC SERVICE COMMISSION
 (year) INDEX APPLICATION
 TEST YEAR ENDED DECEMBER 31, _____

DEP PWS ID NO. _____	<u>WATER</u>	<u>WASTEWATER</u>
DEP WWTP ID NO. _____		
* _____ (year) Operation and Maintenance Expenses	\$	\$
LESS:		
(a) Pass-through Items:		
(1) Purchased Power		
(2) Purchased Water		
(3) Purchased Wastewater Treatment		
** (4) DEP Required Water Testing		
*** (5) DEP Required Wastewater Testing		
(6) NPDES Fees		
(b) Rate Case Expense Included in _____ (year) Expenses		
(c) Adjustments to O & M Expenses from last rate case, if applicable:		
(1) _____		
(2) _____		
Costs to be Indexed	\$	\$
Multiply by change in GDP Implicit Price Deflator Index	_____	_____
Indexed Costs	\$	\$
****Add Pass-Through Items:		
(1) _____		
(2) _____		
Divide Index and Pass-Through Sum by Expansion Factor for Regulatory Assessment Fees	_____	_____
Increase in Revenue	\$	\$
*****Divide by _____ (year) Revenue	_____	_____
Percentage Increase in Rates	_____ %	_____ %
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EXPLANATORY NOTES APPEAR ON THE FOLLOWING PAGE

PAGE 1 NOTES

- * This amount must match _ _ _ _ (year) annual report.
- ** Testing for volatile organic and unregulated contaminants pursuant to DEP Rule 62-550.590, F.A.C., and lead and copper testing pursuant to DEP Rule 62-551.450, F.A.C.
- *** Routine daily, weekly, or monthly testing required by the Department of Environmental Protection (DEP) not currently included in the utility's rates.
- **** This may include an increase in purchased power, purchased water, purchased wastewater treatment, required DEP testing, and ad valorem taxes, providing that those increases have been incurred within the 12 month period prior to the submission of the pass-through application. Pass-through NPDES fees and increases in regulatory assessment fees are eligible as pass-through costs but not subject to the twelve month rule. DEP water and wastewater testing pass-throughs require invoices. See Rule 25-30.425, F.A.C. for more information.
- ***** If rates changed after January 1, _ _ _ _ , the book revenues must be adjusted to show the changes and an explanation of the calculation should be attached to this form. See Appendix 'B' for instructions and a sample format.

ANNUALIZED REVENUE WORKSHEET

Have the rates charged for customer services changed since January 1, _
 _ _ _ ?

() If no, the utility should use actual revenues. This form may be disregarded.

() If yes, the utility must annualize its revenues. Read the remainder of this form.

Annualizing calculates the revenues the utility would have earned based upon _ _ _ _ (year) customer consumption at the most current rates in effect. To complete this calculation, the utility will need consumption data for _ _ _ _ (year) to apply to the existing rate schedule. Below is a sample format which may be used.

CALCULATION OF ANNUALIZED REVENUES*
 Consumption Data for _ _ _ _ (year)

	<u>Number of</u>	<u>Current</u>	<u>Annualized</u>
	<u>Bill/Gal. Sold</u>	<u>X Rates</u>	<u>Revenues</u>
Residential Service:			
Bills: 5/8"x3/4" meters
1" meters
1 1/2" meters
2" meters
Gallons Sold
General Service:			
Bills: 5/8"x3/4" meters
1" meters
1 1/2" meters
2" meters
3" meters
4" meters
6" meters
Gallons Sold
Total Annualized Revenues for _ _ _ _ (year)			\$ _____

* Annualized revenues must be calculated separately if the utility consists of both a water system and a wastewater system. This form is designed specifically for utilities using a base facility charge rate structure. If annualized revenues must be calculated and further assistance is needed, contact the Commission Staff at (850)413-6900.

I, the undersigned owner/officer of the above-named utility, have read the foregoing and declare that, to the best of my knowledge and belief, the information contained in this application is true and correct.

I am aware that pursuant to section 837.06, F.S., whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree.

Utility Official _____ Title _____
(Signature)

_____ Date _____
(Name-Please Print)

Telephone Number _____

Fax Number _____