BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Limited Investigation into Rate Setting Procedures and Alternatives for Water and Sewer Utilities.	DOCKET NO. 880883-WS ORDER NO. 21202 ISSUED: 5-8-89

The following Commissioners participated in the disposition of this matter:

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ORDER ON RATE-SETTING PROCEDURES

BY THE COMMISSION:

BACKGROUND

This proceeding was instituted by this Commission on our own motion to investigate possible alternatives to existing

rate-setting procedures for water and sewer utilities. We held an initial workshop on August 11, 1988, in Tallahassee. The purpose of the workshop was to solicit discussion on our current rate-setting procedures among all interested parties. Several representatives from utilities participated in the workshop as well as representatives from the Office of Public Counsel (OPC). A second workshop was held in Orlando on September 13, 1988, to review the matters identified at the prior workshop and to begin to develop issues to be considered at our formal hearing. A third workshop was held in Tallahassee on October 11, 1988, to discuss and finalize the issues to be addressed in this proceeding. At the third workshop, the final wording of nineteen specific issues was developed and agreed upon.

This proceeding has been unusual from its outset through the hearing in its informal character. The level of informality was purposely maintained to encourage the participation of witnesses who otherwise might not have been able to participate in the traditional formal fashion for various reasons. It did, in fact, permit several witnesses to file testimony on a voluntary basis, and allowed several witnesses who participated to do so without benefit of counsel.

The Prehearing Conference was held on January 4, 1989, and the hearing was held on January 11, 1989, in Tallahassee. Numerous representatives of the water and sewer industry participated in this hearing, including utility owners and consultants and the Florida Waterworks Association, as well as an attorney involved in practice before the Division of Administrative Hearings, and the Office of Public Counsel. Following is a discussion of our findings and decisions regarding each of the issues addressed in this proceeding.

CRITERIA FOR CLASSIFICATION OF WATER AND SEWER UTILITIES FOR RECORD-KEEPING AND STAFF ASSISTANCE PURPOSES

We are concerned that the current criteria we use to determine the record-keeping requirements and the eligibility for staff assistance of water and sewer utilities may need refinement. For this reason, we identified this issue to allow the water and sewer industry representatives to give us their suggestions and comments. Currently, our rules provide for staff assistance for utilities with $100,000 in annual revenues for each system. Also, the record-keeping requirements for Class C utilities are not as stringent as those required for Class A and B utilities.

The witnesses gave conflicting testimony on this issue. Witness Guastella stated the interrelationship of revenues, expenses and rate base could be used as criteria. Under cross-examination, however, he stated that it would be necessary to examine each utility on a case-by-case basis. Witness Nixon believes the current criteria are generally appropriate, but that the number of customers and revenue should be used as criteria for acceptance for a staff assisted rate case. Witness Layne suggested the number of customers and the financial expertise of utility personnel should be considered. Witness Thompson's testimony was adopted by

Witness Dlohy. Mr. Thompson's prefiled direct testimony states that the gross revenue of utilities used for classification should be raised for rate change purposes.

None of the witnesses could specifically quantify the level of customers or other criteria they proposed and none stated a specific problem with the present criteria. Since none of the witnesses proposed specific changes or how to implement such changes, nor communicated any specific problem with the current criteria, we find that our current criteria is still appropriate. Rule 25-30.455, Florida Administrative Code, currently provides for waiver of the criteria for eligibility for staff assistance where the utility can demonstrate the benefit to its customers. We find that the criteria raised in discussion of this issue are appropriate to consider in our future determinations of requests for waiver of current eligibility requirements for staff assistance.

PROCEDURAL VEHICLE FOR CONSIDERATION OF THE IMPACTS OF THE EPA/DER REQUIREMENTS IMPLEMENTING THE SAFE DRINKING WATER ACT AMENDMENTS

The recent enactment of the Safe Drinking Water Act Amendments has resulted in, and will continue to generate, new EPA/DER treatment requirements that will financially impact water and sewer utilities. These new treatment requirements will, inevitably, demand capital improvements and, therefore, increased revenue requirements. Both the water and sewer industry and this Commission are very concerned about how to address these financial impacts. Therefore, a major issue in this proceeding has been: What is the most appropriate vehicle by which to address these impacts? Would a procedure similar to that in the "pass-through" statute, Section 367.081(4), Florida Statutes, be appropriate or is the limited proceeding authority granted by Section 367.0822, Florida Statutes, the more appropriate vehicle?

We addressed these issues at the workshops we held on the "Sunset review" of Chapter 367, Florida Statutes. We have submitted our proposed statutory changes for consideration by the appropriate legislative committees. As part of those proposed statutory changes, we proposed an augmented limited proceeding authority as the most appropriate vehicle to consider the impacts on utilities of the EPA/DER requirements implementing the Safe Drinking Water Act Amendments. The proposed legislation submitted was the same as that presented by Witness Heil at the hearing.

The majority of the witnesses testifying on these issues supported the use of the limited proceeding authority to consider the impacts of the EPA/DER requirements being implemented due to the recently-enacted Safe Drinking Water Act Amendments. Two witnesses testified that they believed both approaches should be available depending on the utility's situation. Only one witness testified that she believed that legislation similar to the "pass through" provision of Section 367.081(4), Florida Statutes, was the most desirable approach to use. That witness clarified that she preferred the "pass through" provision for testing requirements, but she thought

that any capital improvements would be better handled through a limited proceeding.

Accordingly, we believe that the limited proceeding authority, in Section 367.0822, Florida Statutes, is the most appropriate vehicle for this Commission to consider the impacts of the Safe Drinking Water Act Amendments and we have included amendments to that section in our legislative package submitted as a part of the Sunset review process. However, the proposal we submitted referred to capital improvements required by "any governmental agency". We hereby modify that language to include a specific reference to capital improvements to water or wastewater systems in order to implement the Safe Drinking Water Act Amendments.

In accordance with our proposed legislation, this Commission should be authorized to permit the collection of the proposed rates within ninety days after the filing of an application for such increase, provided that the improvements have been placed in service. Such proposed rates should remain in effect until the final date of the order.

BEGINNING AND YEAR-END AVERAGE

All witnesses testified that they would recommend the use of a simple beginning and year end average to calculate the components of the test year in a rate case, instead of the thirteen month average currently used by the Commission for water and sewer utilities. These same witnesses also testified that there would be material cost savings through the use of the simple average. Several testified that the utilities should also be given a choice to use the method that they prefer. Some witnesses admitted on cross-examination that the freedom of choice would probably result in the utility choosing the method that produced the higher rate base.

Upon consideration, we find that a change to the use of the simple average method for calculating the components of the test year would produce savings in rate case expense since it is a less costly calculation for the utilities to perform. We also find that the use of the simple average method compared to the use of the thirteen month average method is not likely to cause a material change in a utility's revenue requirement. Therefore, we direct our staff to initiate rulemaking to implement the simple average method and to include this matter in the existing Docket No. 871140-WS, Amendment of Rules 25-30.430 to 25-30.442, MFRs.

WORKING CAPITAL CALCULATION

Presently, the Commission utilizes a balance sheet approach in calculating working capital. Every witness who testified on this subject supported a formula approach to calculating the working capital allowance. Most also concluded that deferred charges should be a separate rate base component. Witness Guastella testified to the Federal Power Commission method, which is a formula based upon the number of days lag between receipt of revenues and the time in which the expenses are incurred. Mr. Guastella testified that this

formula method has long been considered the best alternative to costly lead lag working capital studies. He further stated that the method was established to develop a reasonable estimate of a utility's working capital needs while, at the same time, avoiding excessive costs of performing studies. Mr. Guastella also believes that deferred charges should be a separate rate base component with such practice being routine when using the formula approach.

Witness Nixon believes this Commission should return to the formula approach for three reasons. First, working capital is seldom material to either rate base or the revenue requirement. Second, the cost of preparing a 13-months' balance required for the balance sheet method is very high. Finally, the balance sheet method does not accurately reflect the working capital requirements for most water and sewer utilities. Mr. Nixon also supports separate rate base treatment for deferred debits.

Witness Layne testified that the 1/8 of Operation and Maintenance (1/8 of O & M) formula approach provides a utility with the funds it needs to meet its operational expenses. She stated that a utility applying for a rate increase may have a very low or negative working capital using the balance sheet approach and thereby may not have adequate funds to meet its current operating expenses. Ms. Layne also stated that a utility needs to recover the time value cost of carrying deferred charges in order to be made whole and therefore deferred charges should be treated as a separate component of rate base.

Ms. Kimbell of Southern States Utilities, Inc., testified to the cost savings in rate case expense and staff audit time obtained by using the formula method. She also stated the formula approach recognizes the working capital needs of a utility to pay for its operating and maintenance costs prior to receiving payment from customers related to those costs. In addition, Ms. Kimball, in adopting Mr. Sweat's testimony, testified in favor of deferred charges being a separate item in rate base.

Mr. Kelly of Palm Coast Utility Corporation also testified in favor of using the formula approach. He testified regarding the history of the balance sheet approach as used by this Commission. He stated that this Commission first used the balance sheet method in Docket No. 800014-TI for the telephone industry. It was later applied to the water and sewer industry. Mr. Kelly testified that a major difference between the water and sewer industry and the telephone industry is the non-used and useful plant. The telephone industry does not have large amounts of non-used and useful plant. He further stated that proper application of the balance sheet method requires distinguishing those non-used components of working capital from those that are used and useful. Mr. Kelly believes this task to be virtually impossible, especially for highly liquid items such as cash. Mr. Kelly also supported deferred charges being treated as a separate rate base component.

Witness O'Brien testified to the cost savings that could

be obtained by using the formula approach instead of the balance sheet approach. He stated that it is possible that between ten and thirteen percent of the time of conducting a rate case could be eliminated. Mr. O'Brien also supported treating deferred charges as a separate rate base component.

We believe that the balance sheet approach to working capital is the most accurate reflection of a utility's investment in working capital. It allows the rate base and capital structure to be reconciled, which insures the appropriate rate of return calculation. As Order No. 10029 states, the balance sheet approach more accurately represents actuals, rather than hypotheticals. It is not, however, cost justified for the water and sewer industry. We are persuaded that some portion of the cost of processing a rate case could be saved by eliminating the balance sheet working capital calculation. We believe that the cost savings in rate case expense by using a formula approach will offset the exactness of the balance sheet approach. It may also allow a working capital allowance for the utility which cannot prove its working capital investment, but still has working capital needs, as testified to by most of the witnesses.

We believe it appropriate to strike a compromise between the established superiority of the balance sheet approach as the most accurate reflection of a utility's working capital, and the witnesses' persuasive arguments for the formula approach and an allowance for deferred debits, as a less expensive, yet fair approximation of a utility's working capital needs. We will, therefore, utilize a 1/8 of O & M formula calculation of working capital, but we will not approve any allowance for deferred debits. If this method is not applicable to a particular utility, it would be required to use the balance sheet method and pay for all related expenses incurred in supplying the information. This compromise will allow for working capital needs in all water and sewer utilities with reduced rate case expense. It will also simplify and improve the rate case process for water and sewer utilities in the same manner as the leverage formula and the depreciation rule have for the cost of equity and depreciation expense, respectively. This Commission has, in the past, recognized the difference between the water and sewer industry and the other larger industries in the areas of cost of equity and depreciation expense.

Therefore, we find that the 1/8th of Operation and Maintenance Expenses formula approach for working capital is appropriate for calculating working capital for water and sewer utilities, but that deferred charges will not be a separate charge or allowed as a portion of working capital. In addition, if the formula approach is not appropriate for a utility, that utility will bear the burden, and the cost of that burden, to prove the balance sheet approach. We hereby direct our staff to initiate rulemaking on this matter and include this issue in the ongoing rulemaking Docket No. 871140-WS, Amendment of Rules 25-30.430 to 25-30.442, MFRs.

PRICE INDEX

The question of whether a limitation should be placed on

a utility's option to file a price index during the pendency of a rate proceeding elicited testimony both pro and con. Mr. Nixon testified against placing such a limitation, stating that inflation continues during a rate case when a historical test year is used and if a utility cannot index its rates, it will never be able to recover the deficiency that accumulates. He did acknowledge, however, that an index rate adjustment during a rate case causes some customer confusion.

Witnesses Cardy and Sweat testified that placing such a limitation would not be unreasonable and would help with customer understanding and acceptance. Mr. Sweat suggested that any limitation during a rate case should extend for no more than eight months.

We believe that placing a limitation on the utility's use of the price index mechanism during the pendancy of a rate case would be appropriate. Utilities can receive interim rates during a rate case if they make a prima facie showing, so any harm caused by inflation during the proceeding is mitigated. Also, our experience has shown that further rate increases during the pendancy of a rate case cause some customer confusion and frustration. We believe that the price index procedure should not be used within the twelve-month period from the official filing date of the rate case. Such a restriction would require a statutory change and we have included such language in our legislative package as part of the Sunset review process.

MFRs

When a utility files an application for a rate increase, it must also submit Minimum Filing Requirements (MFRs) which consist of various schedules. Discovery in the case often takes the form of interrogatories to the utility. The question was raised as to whether the MFRs and interrogatories should be tailored according to the size or type of company.

Several parties are concerned with the proposed revisions to the existing MFRs being addressed in Docket No. 871140-WS, as well as the number of interrogatories served by staff in a rate case. They seek to reduce the proposed MFRs and the number of interrogatories as they are concerned over rate case expense caused by their answering what they view as unnecessary MFRs and interrogatories.

We share the utilities' concern about rate case expense and unnecessary questions. Our staff has already reviewed, for a second time, the proposed MFRs and have made further reductions. These MFRs have been distributed to the industry for further comments. Further, staff has attempted to design interrogatories specifically for the utility in question. We will continue to search for and make further reductions in the future where feasible.

PROPOSED AGENCY ACTION

The existing statute provides that the Commission can

withhold consent to the operation of all or part of a rate request within sixty days of the utility's date of filing. Such consent cannot be withheld for longer than eight months. If consent is withheld for more than eight months, the utility can place its proposed new rates into effect under bond and subject to refund. Section 367.081(6), Florida Statutes. Years ago, the Commission developed a Proposed Agency Action procedure to facilitate the handling of cases. The Commission, after consideration, issues a proposed (PAA) order which is preliminary, but which will become final if not protested by a substantially affected person within a time specified. If protested, the order becomes a nullity and a de novo proceeding ensues. When a rate case is issued as a PAA and is then protested, a good portion of the eight-month period referred to above has elapsed. This places the parties and the Commission under sharp time constraints to complete the de novo proceeding.

As a remedy to this situation, our staff suggested that water and sewer utilities be given the option to choose whether to use the PAA process, with a "five-month clock" for processing of cases. The "eight-month clock" will start if a valid protest is made to the PAA order.

At the hearing, witnesses Sweat, Layne and Nixon testified in favor of this approach. Witnesses O'Brien and Kelly opposed it since it raised the possibility of a rate case taking thirteen months to complete, and thus would cost more. Also, a utility not using this option would be subject to unfair criticism and the possibility of disallowance of rate case expense in their opinion.

Upon consideration, we believe this proposed "PAA option" approach has merit and would give the utility flexibility in choosing the PAA process. We do not agree that utilities not opting for the PAA process would be subject to unfair criticism.

This proposal would require a change in Chapter 367, Florida Statutes. We have included this "PAA option" in our proposed changes to the Chapter as a part of the Sunset review process.

As stated previously, when a PAA is protested, a de novo proceeding, pursuant to Section 120.57, Florida Statutes, is required. The question was raised as to whether we could require protests to a PAA to be issue-specific and then limit the hearing to those issues, in an attempt to reduce rate case expense. Six utilities and individuals participating as parties in this matter agreed that requiring protests to be specific, and then limiting hearings to those issues only, was a good idea. Six other parties simply took no position on the question.

Witness Nixon said that often there are broad-brush intervenor protests made to categories such as the company's rate base, net operating income, cost of capital and rates, with no specific basis set forth. Such protests appear to be made without knowledge or regard to the specific facts in case and are raised to preserve the option to go on a "fishing expedition". Such protests are not in the customers' interest since the customers ultimately pay the costs for such fishing

expeditions. He believes that an intervenor should have a specific objection to an issue instead of merely objecting to the fact that a rate increase has been granted. He believes that the staff's work on the PAA produces enough public information to allow an intervenor to formulate a specific protest.

Witness Layne testified that the current objection process is vague and ambiguous and allows a "guilty until proven innocent" atmosphere to develop. The objector's issues should be specific as to a line item and the basis of the inquiry. The ratepayers ultimately bear the burden for increased costs associated with recreating the wheel for the objector.

Witness O'Brien suggested that parties should be able to file specific objections to staff's recommendation. The staff recommendation and case file can be used to develop objections. It should then take no longer than five months to resolve the case, for a total time period of ten months. Mr. O'Brien also stated that if the process is to be efficient, it must presume that the facts gathered by staff are reasonable. Specific parts of the staff's recommendation should be challenged for good cause. Broad objections which open up the whole case and result in the waste of all the effort expended up to that date, should be avoided.

Witness Kimball stated that the hearing process is extremely expensive, but could be controlled somewhat by requiring protests to be specific and then limiting the hearings to addressing only those issues. Witness Thompson also testified that the Commission should limit hearings to protested issues. She believes that staff should be required to bring cases to hearing within 90 days.

The various parties' support for the Commission requiring protests to be specific and that subsequent hearings be limited to those specific issues seems to spring uniformly from the desire to limit the increased costs generated by hearings that start from ground zero after the Commission has issued a PAA order. Some of the parties' suggestions, while practical, may not be in accord with case law regarding the applicant's burden of proof.

Section 120.57(1), Florida Statutes, requires the Commission to grant a hearing to a protestant if that protestant demonstrates that there is a dispute of material fact and that he or she will be substantially affected by the Commission's proposed action.

At the present time, the typical protest filed to a PAA order of this Commission is filed by the Office of Public Counsel (OPC) and identifies no specific facts in dispute. Such a protest usually contains a statement that the protestant is concerned that the components of rate base, net operating income, or capital structure, as set forth in the particular order, have not been properly determined and, therefore, the ultimate rates are overstated.

Section 350.0611, Florida Statutes, provides that OPC has

the right to participate as a party representing the Citizens of Florida in any matter before the Commission. In light of this, traditionally, when OPC has intervened in a matter before the Commission, a general protest has been accepted as sufficient. OPC generally does not participate in a PAA proceeding until the point of filing a protest. Therefore, OPC may not have facts any more specific than general concerns with categories of issues to include in its protest.

When protests have been received from other persons, simply stating that they were substantially affected and that they disputed a material fact in a PAA order, the Commission has generally granted the protestant a hearing. This is because the same rationale, regarding the lack of participation in the process up to the point of issuance of a PAA order, applies.

The First District Court of Appeals has spoken to the question of whether protests to a preliminary agency action can result in a hearing on limited issues. In Florida Department of Transportation v. J.W.C. Company, Inc., at 396 So.2d 778, the Court stated:

> The petition for a formal 120.57(1) hearing, as in this case, commences a de novo proceeding. See General Development Corp. v. Division of State Planning, 352 So.2d 1199 (Fla. 1st DCA 1977); Couch Construction Company v. Department of Transportation, supra; McDonald v. Department of Banking and Finance, supra. Section 120.57 proceedings "are intended to formulate final agency action, not to review action taken earlier and preliminarily". McDonald v. Department of Banking and Finance, supra, at 584

The Court further stated that the appellant's position:

> ... ignores the firmly established principle, already alluded to in this opinion, that the proceeding leading up to the issuance of DER's notice of intent is of the type that has been characterized as "freeform" action, and as such the decision produced is merely "preliminary". Capeletti Brothers Inc. v. Department of Transportation, supra. Under Rule 17-1.62(3), Florida Administrative Code, a letter of intent to issue or deny a permit is "proposed agency action", which becomes "final agency action" only if no hearing is requested by an objecting party within fourteen days of receipt of notice of the proposed action. Clearly, there was no final agency action by DER in this proceeding prior to the petitioning landowners' request for a hearing. Their request for a hearing commenced a de novo proceeding, which, as previously indicated, is intended "to formulate final agency

> action, not to review action taken earlier and preliminarily". See McDonald v. Department of Banking and Finance, at 396 So.2d 778, at 786-787.

We read the language in this case to require us to institute a de novo hearing when an appropriate petition is filed protesting a PAA order issued by this Commission since such order is preliminary in nature. Further, in a rate case setting, the utility applying for increased rates bears the ultimate burden of proof in such a proceeding. Therefore, it would not be legally appropriate for the Commission to attempt to narrow the scope of such a proceeding at the outset to specifically protested issues.

However, the concerns raised over this matter are shared by the Commission. Rate case expense is a vexing matter since utilities are entitled to recover their reasonable and prudent expenses. As a first step, we will therefore initiate a task force and invite OPC and industry representatives to work with our staff to develop statutory proposals that would permit a more cooperative and efficient process than the Commission is currently required to utilize.

RATE CASE PROCESS

Witness O'Brien suggested some specific steps be eliminated from the Commission's current procedures in conducting a formal rate case. He suggested that the preliminary prehearing conference and the formal establishment of issues be eliminated, as well as his perceived redundancy in filing rebuttal testimony and responses to audit findings. He testified that the benefit obtained by these steps is not worth the time invested to take the steps.

We believe that in most instances the establishment of issues, exchange of information, and the consolidation or stipulation of issues that take place during such informal conferences may save a great deal of time and effort in the long run. However, in some cases, these steps may be eliminated. An audit response is not the same as rebuttal testimony, so there is not a redundancy. We believe it appropriate to tailor the procedures to the type and complexity of the cases and will continue to review and refine our procedures.

HEARING OFFICERS

Presently, the Commission hears its own cases under the authority contained in Chapter 350, Florida Statutes. In previous years, the Commission sent cases to the Division of Administrative Hearings (DOAH) for hearing or utilized its own hearing officers. In this investigation, we examined the questions of whether we should send cases to DOAH or reinstitute Commission hearing officers.

Three witnesses testified in support of the Commission sending cases to DOAH for hearing. The witnesses stated that

using DOAH hearing officers would give the Commissioners more time to consider policy matters and would give the Commission greater flexibility in establishing hearings. It was suggested that using DOAH hearing officers rather than re-instituting PSC hearing officers would be more cost-effective since DOAH hearing officers were already in place and would engender greater public perception of objectivity. Witness Bentley testified that it is not necessary for the agency head to conduct every hearing in order to make policy decisions. He stated that policy decisions are ultimately based on what the facts ultimately are and that you surround those facts with policy.

We are not persuaded by the testimony in this proceeding to change our practice and stop hearing cases. The record shows that in order for DOAH to hear a case there must be a dispute. It is quite common in water and sewer rate cases to have no intervenor. Under DOAH's parameters, it would appear they would not be able to hear those rate cases because there is no "dispute" since there is no other party.

DOAH is designed to be the fact-finder in adversarial, judicial-type proceedings. Much of what the Commission does is legislative in nature and case law holds that rate regulation is legislative in nature. United Telephone Company v. Mayo, 345 So 2d 648 (Fla. 1977). Further, a utility must prove its case when it seeks rate relief, whether there is another party or not. DOAH apparently would not hear those cases in which there is no other party to put a matter "at issue" and thus no "controversy". However, the Supreme Court in South Florida Natural Gas Company v. Public Service Commission, 534 So. 2d 695 (Fla. 1988), stated that the "act of filing a rate case creates issues of material fact for all facts comprising the justification for the increase." Thus, matters can and must be put "at issue" in a rate case and in Commission-conducted hearings we can do that whether there is an intervenor or not. Staff can put the matters at issue in its role of assisting the Commission in investigating and determining the actual legitimate costs of the property of each utility company actually used and useful in the public service.

Also, DOAH does not hear public testimony, per se. Input of customers is essential as quality of service is an important determinant in a rate case.

Finally, DOAH hearing officers make findings of fact and conclusions of law, with questions of law and policy being left to the agency head. Under Subsection 120.57(10), Florida Statutes, the agency may reject or modify the conclusions of law, but may not reject or modify the findings of fact unless the agency first determines from a review of the record, that the findings of fact were not based upon competent, substantial evidence. If the hearing officer recommends a penalty, the agency may not change the penalty without review of the record also. However, a great many of the "factual" findings made in Commission proceedings are imbued with policy considerations that are within the special expertise of the Commission. The law allows the agency to reject such findings of fact made by the hearing officers. For example, an apparently factual issue such as "what is the appropriate level of working capital" is

tied to the policy issue of whether the balance sheet or formula method should be used to make that calculation. Thus, if a DOAH hearing officer made a finding of fact on the working capital allowance and used the formula method, the Commission would likely look at that issue again because of the policy implications arising from how that allowance was calculated. Thus, there would be little time saved for the Commissioners.

Finally, if the Commission no longer conducted water and sewer hearings, it would lose the interaction with the public and industry witnesses that occurs during the hearing. The Commission would be isolated from those who are affected by its decisions.

If the Commission were to have its own hearing officers, the same concerns would be present. Upon consideration, we do not believe sufficient evidence has been presented in this limited investigation to cause us to change our present procedure.

STATEWIDE RATES

Most of the witnesses that offered testimony on this issue were in favor of the Commission encouraging statewide uniform rates for companies that operate multiple systems. Witness Cardy testified at length as to the benefits of statewide rates. He stated that cost differentials are narrowing between divisions of Florida Cities Water Company, the utility he represents. He explained that the utility would likely phase-in uniform rates gradually using "rate zones". Witnesses Kimball and Sweat, on behalf of Southern States Utilities, testified to the many benefits of uniform rates and how their company is moving towards the goal of uniform statewide rates.

We believe there is merit to the concept of statewide uniform rates. Cost savings due to a reduction in accounting, data processing and rate case expense can be passed on to the ratepayers. Cross-subsidization can be minimized if the rates are established that recognize, for example, the differences in types of treatment and facilities. We believe this is an approach worth exploring and so direct our staff to initiate rulemaking on statewide uniform rates.

Another matter addressed in this proceeding was whether we should require a utility that operates multiple systems and is actively acquiring new systems to cease acquisition activity for a reasonable period of time so that we may do a company-wide assessment of rates and charges, rates of return, and earnings, with a view towards establishing uniform statewide rates. All of the witnesses addressing this question were opposed to the restriction. Witness Cardy testified that the Commission's rate-making practices and an individual utility's acquisition activity are two separate areas. Witnesses Sweat and Kimball, on behalf of Southern States Utilities which has an active acquisition program, testified that often there is only a "window of opportunity" to acquire a system. This restriction could create a situation where a larger utility would be precluded from making the logical choice to acquire a property.

We agree and believe that no such restriction is necessary at this time. This Commission should encourage, rather than discourage, the acquisition of small, troubled systems by larger, financially-viable companies.

SMALL-SYSTEM EXEMPTION

Currently, Section 367.022(6), Florida Statutes, provides an exemption from regulation for systems with the capacity to serve 100 or fewer persons. The question was raised whether we should pursue a statutory change to raise the threshold of the exemption to 100 Equivalent Residential Connections (ERCs).

Only Witness Cardy testified on this issue and supported raising the threshold. However, he supports basing the threshold on the number of customers rather than the number of ERCs.

We are not persuaded by the evidence presented that a change is warranted.

ALTERNATIVES TO
RATE BASE REGULATION

In our exploration of ways to refine rate-setting procedures and thus reduce rate case expense, we have, in this investigation, begun to discuss alternatives to traditional rate base regulation for the small (Class C) utilities. Several witnesses testified in favor of using an operating ratio.

The testimony we received in this proceeding, while helpful, is not adequate to arrive at a conclusion on this important issue. More information is needed from the industry, particularly the Class C utilities, as well as from OPC. In addition to operating ratios, some other alternatives worth exploring may be "optimal rates", which are the city or county rate levels with an allowance to cover costs unique to investor-owned utilities, or "comparative rates", which places a ceiling on rates based on the optimal sized plant and number of customers. Of course, any such departure from rate base regulation would require amendment of Chapter 367, Florida Statutes. The authority to utilize alternatives to rate base regulation has been included in the Commission's proposed changes to the Chapter as a part of the Sunset review process. If the statutory change is authorized, we will institute rulemaking on this subject.

CIRCUIT RIDER PROGRAM

Witness Heil, representing Jacksonville Suburban Utility Corporation, recommended the formation of a technical assistance program for small water and sewer utilities. The program would also provide education to these small utilities about the industry and the Commission. Members of the Florida Waterworks Association (Association) would provide these

services on a voluntary basis. We believe this is an excellent concept. Should the Association create such a program, Commission staff will assist to the extent feasible.

Based on the foregoing, it is, therefore

ORDERED by the Florida Public Service Commission that, contingent upon legislative authority being granted, the amended limited proceeding authority, set forth in proposed Section 367.0822, Florida Statutes, is appropriate to consider the impacts on water and sewer utilities of the EPA/DER requirements implementing the Safe Drinking Water Act Amendments. Any rate increase resulting from an application under this authority shall become effective 90 days after its filing, contingent upon the improvements being placed in service. It is further

ORDERED that staff shall initiate rulemaking to implement the simple beginning and year-end average method to calculate the components of the test year for water and sewer utilities. It is further

ORDERED that staff shall initiate rulemaking to implement the formula method (1/8 of Operation and Maintenance Expense) for calculating working capital for water and sewer utilities. Deferred charges, including rate case expense, will not be treated as a separate component of working capital. It is further

ORDERED that, contingent upon legislative authority being granted, a utility shall not utilize the price index procedure during the pendency of a rate case for twelve months from the official date of filing. It is further

ORDERED that, contingent upon legislative authority being granted, a utility shall have the option to choose the proposed agency action process for a rate case with a "five-month time clock" for the PAA decision. A second "eight-month time clock" would begin upon the filing of a valid protest to the PAA. It is further.

ORDERED that a task force should be established to develop proposed statutory changes to narrow the focus of hearings subsequent to a valid protest of a proposed agency action order. It is further

ORDERED that staff shall initiate rulemaking on the issue of encouraging statewide uniform rates for companies with multiple systems. It is further

ORDERED that, contingent upon legislative authority being granted, staff shall initiate rulemaking to explore alternatives to rate base regulation for Class C utilities. It is further

ORDERED that upon the creation of a "circuit rider" instructional program by the Florida Waterworks Association, Commission staff may provide assistance to the program to the extent feasible. It is further

ORDERED that each and all of the specific findings herein are approved in every respect. It is further

ORDERED that this docket is closed.

By ORDER of the Florida Public Service Commission this 8th day of May, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

SFS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.