

State of Florida



# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** January 6, 2017  
**TO:** Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk  
**FROM:** Adria Harper, Senior Attorney, Office of General Counsel *AEH*  
**RE:** Docket 160246-WS

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Please include the correspondence from Mr. Williams in the above-mentioned docket. *(documents tab)*

COMMISSION  
CLERK

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## Florida Rural Water Association Comments on the PSC Reserve Fund Proposed Rule

1. Even if statute doesn't specifically require emergency reserve it doesn't prevent it and should be added/considered if only for Class C utilities to protect customer quality, service, and reliability. FRWA understood this to be the intent of Study Committee discussions and Legislative action event though language may be unclear
2. Your interpretation and proposal for the Rule to include treatment is important and supported. If treatment (water/wastewater) isn't included, utility sustainability, reliability and continued service will suffer, burdening customers and public from a public health and environmental protection basis.
3. Projects needed for restoration of service, repair of critical components, and emergency failures need to be added to project eligibility to protect customer service. Further, weather related and "Acts of God" failures/loss of service and damages need to be eligible uses of reserve funds for repair and added to project eligibility.
4. IOU study committee intent review/discussions/proposals. Here is the whole reserve fund section from the IOU study committee report. It may help in understand intent and discussions related to reserve fund establishment and emergency use purposes::

***The creation of a reserve fund to make low-cost funding accessible to investor-owned water and wastewater utilities for addressing critical infrastructure needs.***

### **Background**

Affordable, accessible financing is an ongoing issue for the water and wastewater industry and is a particularly acute need for smaller systems. Smaller utilities, both those regulated by the Public Service Commission and by counties, have difficulty securing low-cost, long-term financing because the characteristics and track record of the industry make smaller systems more risky in the view of lending institutions. Timing is also an issue, particularly when critical system failures occur and small utilities do not have the cash reserves to address such short-term needs. In addition, regulatory policy frequently does not provide sufficient cash flow to fully service the debt over the term of the loan. The establishment of individual utility reserve funding and/or establishment of a broader statewide reserve fund could reduce borrowing costs and make funding more readily available.

At both the September 6 and October 1, 2012 meetings, the Committee discussed the issue of the availability of low-cost financing for investor-owned water and wastewater utilities. As a subset of that discussion several members expressed the need for some type of reserve fund to provide readily accessible, low-cost funding.

Another Committee member suggested a utility specific reserve be built into each utility's rates to provide funding for addressing emergencies or critical system failures. The member suggested \$10,000 per year for Class C utilities, \$20,000 per year for Class B utilities, and \$30,000 per year for Class A utilities. It was also mentioned that a reserve fund may help to reduce the need for more frequent rate cases, thus reducing the impact of rate case expense.

Mr. Willis, representing PSC staff, responded to a series of member questions on PSC practices as they relate to reserve funds and escrow accounts. He noted the PSC does not currently have statutory authority to provide such reserves for water and wastewater utilities in the rate setting process. He explained that a storm damage reserve fund has been implemented in the electric industry by Commission rule and the recovery of storm related expenses have been approved for water and wastewater utilities in the past, but in the context

of a rate case or limited proceeding. He also indicated he believes funded reserves for water and wastewater utilities should be protected in some way to ensure the money will be available when needed. Mr. Willis stated that the PSC frequently establishes escrow funds for planned investments. Finally, he observed the electric industry is more stable as to ownership and longevity than the water and wastewater industry. One member noted that the water and wastewater industry is as susceptible to storm damage as other utility industries.

A member inquired about the amount of regulatory assessment fee applicable to water and wastewater utilities and whether a certain portion of those fees could be set aside for utilities to access when needed. Mr. Willis responded that the current regulatory assessment fee for the water and wastewater industry is set at 4.5 percent. Mr. Willis pointed out the PSC is funded through the regulatory assessment fees and the current assessment barely covers the costs of 68 existing regulation. Taking a portion of that assessment to put to another purpose would require reducing regulatory staff and programs.

A member of the public, Mr. Frank Reams, also suggested the Committee consider a reserve fund similar to the Universal Service Fund used to promote universal telecommunications access. The Universal Service Fund is funded by a contribution from all telecommunications customers on their monthly bill. Mr. Reams suggested that a similar approach could be taken to establishing a statewide water/wastewater reserve fund to address infrastructure needs. A member of the Committee also suggested this concept for the Committee to consider. Based on the discussion at the October 1, 2012 meeting, the Committee considered the following conceptual proposals at the November 1, 2012 meeting.

1. Seek legislative authority to permit the PSC and counties that regulate investor-owned water and wastewater utilities to establish an infrastructure repair and replacement reserve for each individual utility that would be funded via a portion of the utility's rates. The fund would be secured either through an escrow account or through a letter of credit and would be available to the utility only with the approval of the PSC or PSC staff. Funding levels would be determined on a case-by-case basis by the PSC.
2. Seek legislative authority to levy an incremental assessment on each water and wastewater customer each month through their monthly bill. The assessment shall be structured as either a per thousand gallon assessment or as a flat monthly assessment. The assessments shall be submitted to a fund administrator who will establish procedures and rules to administer low-cost loans to qualifying utilities.

### **Proposal 1 Discussion**

At the November 1, 2012 meeting the members considered conceptual Proposals 1 and 2. One member asked how a master-meter scenario would be handled for assessment purposes and observed that a gallonage-based surcharge might be more just than a flat-rate mechanism. The Committee was informed that a flat monthly rate would be easier to apply for master-metered circumstances. One member suggested that once the PSC authorized the creation of a reserve fund for a utility, the PSC staff should then have the authority to approve withdrawals from the reserve fund upon submission of appropriate documentation from the affected utility. Another member suggested removing counties from Proposal 1 since not all counties would be interested in such a mechanism. Another member commented that in counties which have elected to regulate investor-owned water and wastewater utilities, it should be up to the county to determine whether an individual IOU would qualify for a reserve account, and added, it should be up to the county to administer the account.

Pursuant to Section 367.171(8), Florida Statutes, counties electing to regulate investor-owned water and wastewater utilities must set rates and charges in accordance with Section 367.081, paragraphs

(1), (2), (3), and (6), F.S. The Committee was advised the statute permits<sup>69</sup> the establishment of a reserve fund account for water and wastewater companies under paragraph (1). The PSC could establish rules establishing the eligibility and administrative criteria for a reserve fund account. Each county regulating investor-owned water and wastewater utilities could also, pursuant to Section 367.081(1), F.S., establish a method to create a reserve fund account for individual utilities under its jurisdiction.

At the November 28, 2012 meeting, the Committee considered modified proposals which incorporate some of the comments and suggestions raised by the members at the November 1, 2012 meeting. Specific reference to county participation was removed from Proposal 1. The removal of county references would not exclude counties from the ability to establish reserve fund accounts for investor-owned water and wastewater utilities, but recognizes existing statutes can be interpreted to allow counties that option. Language was added to require the PSC to conduct rulemaking to address the criteria under which a reserve fund account can be established, the options available to utilities to secure the funds, and the criteria authorizing PSC staff to approve use of the reserve funds without having to obtain further Commission approval.

**Proposal 1 (modified)**

Recommend PSC rulemaking to permit the establishment of an infrastructure repair and replacement reserve account for individual water and/or wastewater utilities that would be funded by a portion of the utility's rates. The PSC rulemaking should address the conditions under which a reserve account would be approved, the magnitude of the account for each utility, options for securing the account, the criteria for allowing PSC staff authorization of account withdrawals, and any other necessary administrative details.

A member inquired about how a reserve fund account as proposed differed from what is currently done for the electric industry. Mr. Willis, PSC staff, informed the Committee that the fuel clause for energy, for example, is a three-year process including projected fuel costs for a three-year period that are trued-up annually. He went on to say he envisioned the reserve fund account would be handled differently. In his view, the PSC would approve the creation of the account and the utility would secure the funds in a manner approved by the PSC. The utility would then be allowed to access the funds when specified projects arose. Mr. Willis also said the utility would be expected to account for the money collected in its Annual Report to the Commission and also noted collections would be considered utility revenue and therefore, subject to Regulatory Assessment Fees.

Mr. Kelly, the Public Counsel and a nonvoting Committee member, opined that the PSC currently does not have statutory authority to conduct rulemaking to establish a reserve fund account. Mr. Kelly distributed a list of concerns and safeguards he thought would be necessary in order for the OPC to support a reserve fund account (Attachment IV.6-A). The list of concerns included: (1) the need for a long-term capital improvement and investment plan; (2) the account be limited to funding only significant capital projects to provide major refurbishment or replacement of aging water and wastewater infrastructure; (3) there should be some Commission or Commission staff review and approval before funds are spent; and (4) whether the account should be limited to Class B and C utilities only and whether the utility's rate of 70 return should be adjusted to reflect the lower risk associated with the funding mechanism. Additional concerns are enumerated in Attachment IV.6-A.

Other members noted they expected savings associated with a reserve account for large capital projects as identified in the utility's long-range plan and that borrowing costs could be avoided in some situations. Members also suggested it may be possible to avoid rate cases by being proactive in capital improvements rather than reactive as is currently the case. Other members concurred and one member further emphasized the need for a five-year capital improvement and investment plan requirement. Several members

supported a utility specific, self-funded mechanism, and one member also supported OPC's proposals to protect the ratepayers.

The Committee discussed the best way to proceed and whether it would be appropriate to approve i.e. modified Proposal 1 with the proviso that if, after further research, it was determined legislation was required to permit PSC rulemaking on a reserve fund account then legislation would be proposed.. The Committee determined it would be best to consider statutory language to permit the PSC to conduct rulemaking on a reserve fund account for water and wastewater utilities.

One member questioned whether more detail relating to suggested rulemaking was necessary. The Committee Chair suggested the details of the rule would best be considered in PSC rulemaking, and the PSC's rulemaking process was discussed.

One member opined that the proposal presented an excellent opportunity to address the issues of capital availability and aging infrastructure and an opportunity to communicate these needs to the Legislature in a transparent, efficient, cost-effective manner that improves quality of service to customers. Another member suggested the proposal should require the PSC to determine whether the utility's proposed investment plan was really the best solution and that the utility should be required to have a capital improvement plan in place. The OPC representative requested the Chair to encourage the PSC to conduct at least one rulemaking workshop at a central location in the state to allow affected utilities and customers to easily attend.

The Committee voted to amend modified Proposal 1 to include statutory language to enable the PSC to initiate rulemaking to determine the appropriate parameters under which it would approve a reserve account for individual water and wastewater utilities.

At the December 19, 2012 meeting, the Committee considered proposed statutory language to enable the PSC to pursue rulemaking to establish by rule the circumstances under which it would permit and approve a reserve account for investor-owned water and wastewater utilities. The proposed language appears as Attachment IV.6-B.

One member inquired whether a utility would be permitted to borrow against the future accumulation of funds in a reserve account. The Committee determined the decision would be up to the specific lending institution. Another member opined that rulemaking would be the appropriate venue to address the question of borrowing against a reserve account.<sup>71</sup> Other concerns raised by the members included the length of time an account would accumulate, whether the mechanism would be sufficient to assist small Class C utilities, and whether the utility requesting the reserve account would be required to have a long-term capital improvement plan in place in order to establish a reserve account. In addition, the OPC's Committee representative requested the list of concerns OPC had previously provided relating to this issue be included in the report (Attachment IV.6-A). Several members responded that many of the concerns and implementation details would be appropriately addressed in the recommended rulemaking proposal.

A newly appointed Committee member asked whether the Committee had considered the proposal put forth by Mr. Reams, a member of the public, and was told that the concept had been proposed and discussed extensively at prior meetings and the Committee had ultimately decided not to pursue it. Analysis of the proposal is discussed under Proposal 2.

### **Proposal 1 Decision**

After a unanimous vote, the Committee approved modified Proposal 1 to seek statutory authority to require the PSC to initiate rulemaking to permit the establishment of an infrastructure repair and replacement reserve account for individual water and/or wastewater utilities that would be funded by a portion of the utility's rates. The PSC rulemaking shall consider the conditions under which a reserve account would be approved, the magnitude of the account for each utility, options for securing the account, the criteria for allowing PSC staff authorization of account withdrawals, and any other necessary administrative details. Proposed statutory language appears in Attachment IV.6-B.

### **Proposal 2 Discussion**

During the November 1, 2012 meeting discussion of Proposal 1, a member noted that DEP, as the current State Revolving Fund administrator, would be well positioned to administer a statewide loan fund. The Committee representative from DEP committed to researching whether that would be feasible. Other member comments and suggestions included placing a cap on the fund, using a portion of sales taxes paid by investor-owned water and wastewater utilities to create a fund, and including appropriate safeguards to ensure the funds were used for the intended purpose. One member commented that Proposal 2 seemed like a tax to which the member was opposed. Another member suggested utilities be required to put forward a 5-, 10-, or 20-year plan as the basis for a self-funded reserve. Another member favored a utility specific, self-funded mechanism as the preferred approach and other members concurred. One member commented that the focus of the proposal should remain on small IOUs. The Committee expressed the desire to consider further adjustments to Proposal 2 for the November 28, 2012 meeting.

The Committee considered modifications made to original Proposal 2 including the designation of DEP as the fund administrator, addition of a maximum amount to be collected over a five-year period, and limiting funding available only to those IOUs eligible for staff assistance pursuant to Section 367.0814(1), F.S., (annual revenues of less than \$250,000).<sup>72</sup> At the November 28, 2012 meeting, Committee members expressed concerns regarding the collection of funds from customers of utilities that would not have access to the funds. One member characterized the funding mechanism as a tax and opposed it on that basis. Another member thought it unfair to collect from all utilities and limit the benefits to only a few. The member who had suggested pursuing the proposal withdrew the proposal from further consideration.

### **Proposal 2 Decision**

Proposal 2 was withdrawn from further consideration.

### **Proposal 3 Discussion**

Based on a member suggestion, Proposal 3 was developed to recommend the Legislature set aside a portion of sales tax or general revenue to fund a revolving fund that would be available to small IOUs. The proposal designates DEP as the fund administrator and the proposal contains a cap on the fund.

The Committee member suggested an alternate proposal clarified that the proposal was to use sales tax revenue paid by IOUs as funding for a loan program. One member opined it was not a good time to be proposing new uses for tax revenues and another member suggested that the issue be dropped since Proposal 1 adequately covers the original purpose.

The Committee voted 11 to 1 to withdraw the proposal from further consideration.

### **Conclusion**

The Committee considered three proposals relating to reserve funding for water and wastewater utilities. As presented for final vote, all three proposals would apply to both PSC and county-regulated water and wastewater utilities. The Committee approved one proposal, one proposal was withdrawn by the proposing member, and the Committee voted to withdraw a third proposal.

Proposal 1: The Committee recommends the following statutory amendment to grant rulemaking authority to the PSC to determine the conditions under which it would approve a reserve fund account for a water and/or wastewater utility:<sup>73</sup> Subsection (2)(c) is added to section 367.081, Florida Statutes, to read:

#### **367.081 Rates; procedure for fixing and changing.**

(c) In establishing rates for a utility, the commission may authorize creation of a utility reserve fund. The commission shall adopt rules to govern such a fund, including, but not limited to, expenses for which the fund may be used, segregation of reserve account funds, requirements for a capital

improvement plan, and requirements for commission authorization prior to disbursements from the reserve fund.

Subsection 367.0814(3), Florida Statutes, shall be amended to read:

5. More details on considerations from page 7- these are suggestions for review not absolutes, right?
6. Pre vs. post events. If the reserve fund is used for planned infrastructure projects one set of documents may be needed. Whereas, if reserve is used in unplanned infrastructure repair a different set of reporting, requesting, draw down documents, and approvals may be needed. Unplanned event approvals need to occur within 24 hours and allow for usage of money ASAP. These emergency events may require accounts to be accessible directly by water utility with PSC oversight instead of having approvals/disbursement go through a PSC clerk.
7. Blended financing of projects needs to be allowed, encouraged, and used to secure best financing of project. If reserve funds are insufficient to fully cover the cost of a project, the reserve funds may be needed as match, collateral, local share, down payment, etc. to secure outside financing to complete the project. Flexibility will be needed for use of the fund, reimbursement and leveraging to secure best financing and project cost options.
8. The reporting requirement for water utilities need to be less burdensome and difficult. Instead of monthly or quarterly, less frequent reporting needs to occur, especially for smaller systems and no disbursement activity reserve funds.
9. Disbursement of Funds – will need emergency draw down and reimbursement options additionally. If systems receives FEMA or other reimbursement down the road for damages will want ability to repay or increase reserve fund.
10. Final Disposition of Utility Reserve Fund – the reserve fund should continue and not end to be used for emergency project use. A percentage or amount of total assets, budget or some financial parameter should exist to achieve a fully funded reserve account for service, critical component and emergency event protection. These funds are developed, used, protected and a safety net in almost all Florida Water Utilities who aren't private, for-profit, or IOU utilities.
11. No transfers/use outside of intended Reserve Fund purpose for which they were collected from customers if ownership transfers to other and governmental entities. May have to be refunded to customers prior to transfer. This is important and if transfers to governmental entity is considered a matter of right by PSC something must be done prior to that transfer and matter of right to protect the customer reserve funds. Governmental agencies could and have a track record of transferring funds out of Water utility enterprise funds to other governmental functions. Additionally, since this may occur the reserve fund shouldn't, as the amounts in them grow, become a target and enhancement encouraging governmental takeover of Private and IOU systems to get the reserve fund monies, customers and future revenue/ability to sharply increase rates to continue enterprise fund transfers to outside of water utility functions.

12. All contact of governmental bodies, media and other parties on reserve accounts to occur by PSC not the water utility. The recent court reversal of the DEP Emergency Pollution Notification Rule is affirmation legally that agencies don't have authority to require regulated parties to make notification to the media and affected parties. The invalidation of the rule indicated regulated parties can be required to report to the agency who can do outside reporting but they can't be required to do the outside reporting by the agency.
13. Rule simplified and tools developed for smaller utilities to understand and use this rule to enhance sustainability reliability and service to their customers.
14. Many need a two-party rule that offers easier, less burdensome path for smaller systems – Class C's to utilize and benefit from this rule. Maybe reserve account is limited to emergency reserve for Class C to start out with until fund is sufficient to use as infrastructure planning project fund.
15. Maybe a simple fund rule can be developed and revised as needed going forward if situations and need arises.