

ARTICLE VIII. REGULATION OF WATER, WASTEWATER AND EFFLUENT REUSE UTILITIES*

***Editor's note:** Ord. No. 2002-20, § 14, adopted Oct. 8, 2002, repealed the former art. VIII and enacted a new article as set out herein. The former art. VIII, §§ 28-291--28-305, pertained to regulation of water and wastewater systems and bulk utilities and derived from Ord. No. 94-14, §§ 1--15, adopted July 26, 1994, and Ord. No. 2002-17, § 1, adopted Aug. 27, 2002.

Cross references: Water and wastewater facilities, § 28-210 et seq.

Sec. 28-291. Title, authority and intent.

This article shall be known as the "Hernando County Water, Wastewater and Effluent Reuse Utilities Regulatory Ordinance."

It is the intent of the board of county commissioners (board) that mediation be attempted to settle all disputed matters before the county utility regulatory authority (authority) and the board before utilizing more formal dispute resolution procedures. It is the further intent of the board that all issues between a regulated utility and its customers be initially submitted to the administrator as herein defined for attempted resolution of issues prior to submission to the authority.

All references in this article to Florida Statutes and Rules in the Florida Administrative Code shall automatically include all amendments to all of the same without inserting any such changed reference into this article or in the rules of the board or the authority. The board or the authority may incorporate rules of the Florida Public Service Commission (FPSC) by specific reference thereto.

The authority and board may refer to all procedural rules of the FPSC that relate to water and wastewater utilities for guidance on how to determine an issue of procedure that is not specified in this article, by rule of the board, or by rule of the authority.

(Ord. No. 2002-20, § 1, 10-8-02)

Sec. 28-292. Definitions.

For the purposes of this article the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory. The word "may" is precatory.

Administrator. The director of regulatory and franchise administration as appointed by the county administrator with the concurrence of the authority or, if such position is vacant or abolished, the county administrator or his/her designee.

Advocate. An attorney, experienced in utility regulatory matters, appointed and compensated by the authority to represent the interests of the utility's ratepayers, with particular emphasis on the residential ratepayer.

Authority. The Hernando County Utility Regulatory Authority, which shall be comprised of the board of county commissioners. Failure of the board to formally adjourn as the board and/or to convene or re-convene as the authority shall have no effect on the validity of actions taken by the authority pursuant to this article or rules hereunder.

Board. The Board of County Commissioners of Hernando County.

Bulk water utility. Any person or business entity of any kind whatsoever, lessee, trustee, or receiver owning, operating, managing, or controlling a system or proposing construction of a system to provide untreated or treated water to a utility, bulk user or distributor of water for compensation.

Clerk of the board. The clerk of the county board of county commissioners.

Contribution-in-aid-of-construction (CIAC). Any amount or item of money, services or property, or any combination thereof directly or indirectly received by a utility, at no cost to the utility or which have value in excess of the consideration given by the utility for the same, the excess of which represents a gift, donation, or contribution to the capital of the utility and is used or planned to be used to offset the acquisition, improvement or construction costs of the utility's property, facilities, or equipment used to provide service to the customers of the utility. The term CIAC includes payments to the utility such as system capacity charges, main extension charges, plant expansion fees, customer connection charges, and other similar monetary or in kind payments to the utility.

Corporate undertaking. The unqualified guarantee of a utility to pay a refund and any interest, as may be required by the board.

County. Hernando County, a political subdivision of the State of Florida.

Domestic wastewater. Wastewater principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants.

Franchise certificate or franchise, or certificate of authorization, or certificate of authority. A privilege granted by the board to authorize a utility to provide utility services.

Governmental authority. A political subdivision as defined in F.S. § 1.01, authorized to provide water, wastewater and effluent reuse service.

Industrial wastewater. Wastewater not otherwise defined as domestic wastewater, including runoff and leachate from areas that receive pollutants associated with industrial or commercial storage, handling, or processing.

Official date of filing. The date specified by the authority, or its designee, pursuant to this article which certifies that a utility has filed with the county complete minimum filing requirements established by this article and/or rules of the board, and/or the authority, for the respective application or proceeding.

Person. Any individual, corporation, governmental authority or its representative, estate, trust, partnership, association, fiduciary, and all other groups or combinations thereof, or any other entity.

Presiding officer. The hearing officer, or chair of the authority, when conducting a hearing under this article.

Pro forma year. The twelve-month period immediately following the test year. Data presented is limited to adjustments for known and anticipated changes which are expected to occur during the pro forma year.

Rule of the authority. A rule or resolution approved by the authority pursuant to this article. "Rule" always includes the plural "rules" unless the context indicates the contrary.

Rule of the board. A rule or resolution approved by the board pursuant to this article. Rules of the board may not be amended, or repealed without a public hearing. "Rule" always includes the plural "rules" unless the context indicates the contrary.

Service. The readiness and ability on the part of a utility to furnish and maintain water and/or wastewater and/or effluent reuse service to a point of delivery for each lot and/or tract, or pursuant to applicable rules and/or regulations of any applicable government agency having jurisdiction.

System. Utility facilities and land used and useful in providing service, and, upon a finding by the authority, may include a combination of functionally related facilities and land.

Territory. The geographical service area described as such in a utility's franchise certificate or certificate of authorization. Territory may be referred to herein and in rules as "service area(s)," or "certificated areas."

Test year. A twelve-month period, commencing no more than eighteen (18) months prior to the official date of filing of an application. The data presented in any statement by a utility concerning a test year shall be limited to actual income and expenses, without alteration, as determined on an accrual basis during the subject time period. Adjustments may be identified by the utility pursuant to rules of the authority. A test year may consist of at least six (6) months actual and not more than six (6) projected months, if the test year data is updated during the rate case to reflect actual income and expenses. At its option, the utility may also present a test year which includes known material capital additions that go beyond the test year.

Utility. Any person, government, authority, or business entity, lessee, trustee, and/or receiver, owning, operating, managing, controlling a system or proposing construction of a system, who or which is providing or proposes to provide or offers to provide or holds itself available to provide potable water and/or non-potable water, bulk water, wastewater service, effluent reuse water, or any combination thereof, within the county to the public for compensation, except as provided in section 24-293(b).

Utility trust account. An account maintained by the county clerk of court for the purpose of receiving, holding and expending utility funds, fees and penalty monies as provided under this article.

Wastewater or sewage or sewerage. A combination of the liquid and water-carried pollutants from any residence, commercial building, industrial plant, or institution together with any groundwater, surface runoff, or leachate that may be present.

Wastewater system or sewer, sewer system, or sewerage system. Any and all plant, system, facility or property, and additions, extensions and improvements constructed or acquired as a part thereof, useful or necessary or then having capacity for future use in connection with the collection, treatment, purification and disposal of effluent and/or sludge and/or sewage of any nature, originating from any source, and, includes but is not limited to treatment plants, pumping stations, lift stations, valves, force mains, intercepting sewers, laterals, pressure lines, mains and all necessary appurtenances and equipment; all wastewater mains and laterals for the reception and collection of sewerage connected therewith; all real and personal property and any interest therein, rights, easements, and franchisees of any nature relating to any such system and necessary or convenient for the operation thereof.

Water system. Any and all plant, system, facility or property, and additions, extensions and improvements thereto, constructed or acquired as a part thereof, useful or necessary or the having the present capacity for future use in connection with the development of sources, treatment, purification or distribution of water, and, including but not limited to wells, water treatment facilities, membrane processing "concentrate disposal" facilities, fire hydrants, reservoirs, storage tanks, lines, valves, pumping stations, laterals and pipes for the purpose of carrying water to the premises connected with such system; also includes all real and personal property and any interests or rights therein, easements, and franchises of any nature whatsoever relating to any such system and necessary or convenient for the operation thereof.

(Ord. No. 2002-20, § 2, 10-8-02)

Cross references: Definitions and rules of construction generally, § 1-2.

Sec. 28-293. Powers and duties of the county utility regulatory authority.

(a) The Hernando County Utility Regulatory Authority (authority), hereby established, shall have the authority:

- (1) To grant, amend, deny, modify, revoke, suspend, transfer, or otherwise act related to a franchise certificate of a utility;
- (2) To institute litigation;
- (3) To fix rates which are just, reasonable, compensatory, not unfairly discriminatory and fairly balance the interest of the utility and the ratepayers pursuant to United States and Florida Constitutions and decisions of the U.S. and Florida Supreme Courts;
- (4) To approve, modify, or deny the filing of any tariff, or other rule or regulation proposed to be established by or on behalf of an applicant or utility;
- (5) To establish, and from time-to-time amend a uniform system and classification of accounts for all regulated utilities which among other things, shall establish adequate, fair and reasonable depreciation rates and charges. The uniform system and classification of accounts to be utilized shall be the latest class of accounts as published by National Association of Regulatory Utility Commissioners (NARUC), unless otherwise specified by the authority;

- (6) To require regular or emergency reports from a utility, including, but not limited to, financial reports, as the authority deems necessary to ensure that reasonably safe, adequate and proper service is provided to any person entitled to such service, as economically feasible, at appropriate rates. If the authority finds a financial report to be incomplete, incorrect, or inconsistent with the uniform system and classification of accounts, the authority may require a new report or supplemental report, either of which the authority for good cause may require to be certified by an independent public accountant licensed under Florida Statute;
- (7) To compel repairs, improvements, additions and/or extensions to any utility facility or to require the construction of a new facility, if deemed reasonably necessary by the authority to provide safe, adequate and proper service to any person entitled to such service; except that no utility shall be required either to extend its utility service outside the service territory described in its franchise certificate, or to make additions to its plant or equipment to serve outside such service territory unless the authority first finds that the utility is financially able to make such additional investment without impairing its capacity to serve its existing customers;
- (8) To compel interconnections of service or facilities between utilities; and to approve any plant capacity charges, or rates related to either, provided the authority first finds that the utility is financially able to make such additional investment without impairing its ability or capacity to serve its existing customers;
- (9) To enter orders regarding any matter pertaining to the regulation of utilities, deemed by the authority to be necessary or convenient to carry out this article or rule of the board, including but not limited to actions on written petitions to the authority by customers of a regulated utility who are dissatisfied with issue resolution efforts of the administrator and who have provided ten (10) days notice to the administrator of intent to file such a petition, provided that any such order shall issue only upon due notice to and opportunity for the affected utility to be heard before the authority in a public meeting;
- (10) To issue charging documents to any utility or franchisee for enforcement of a legal order, mandate, decree, or instruction of the authority and/or for violation of any provision of this article, or the rules of the board, or of the authority; and to take all actions necessary to fully prosecute said charges as provided for in this article;
- (11) To hold hearings with respect to the provisions of this article or to appoint a hearing officer for the purpose of conducting hearings on such matters involving utilities as the authority may designate, including, but not limited to, rates, fees, charges, rules, regulations, conditions of service and franchise applications, extensions, renewals, suspensions, and revocations;
- (12) To adopt rules for the conduct of such hearings;
- (13) To take testimony under oath, if deemed necessary by the authority;
- (14) To require the filing of reports and/or other information and data by a

utility and/or any affiliated companies, including its parent company, regarding transactions or allocations of common and other costs among the utility and such affiliated companies; the authority may also require reports or other data necessary for it to ensure that the utility's ratepayers do not subsidize non-utility activities. It shall be in the authority's discretion to make a determination as to what shall constitute an affiliate. However, if there is a dispute as to whether such entity is an affiliate, all reports required by the authority for that entity shall be promptly supplied but shall be kept under seal by the authority pending an opinion by a court of competent jurisdiction;

(15) To employ, contract with or appoint, and fix the compensation of an administrator, accountants, advocates, technical, legal, clerical employees and experts necessary to carry out this article, pursuant to its budget. Compensation shall be consistent with normal charges by experts of similar experience in the state. The budget shall be not greater than the revenues anticipated for the year and available from prior years, unless otherwise approved by the board. The board, at its option, may employ or contract with, and fix the compensation of an administrator, accountants, technical, legal, clerical employees and experts necessary to support the authority;

(16) To take actions, including seeking injunctive relief, to effectuate any provision of this article;

(17) For all matters not covered by this article or reserved to the board, or any regulation in the future adopted by the board or authority, the authority may follow the appropriate rules of the Florida Public Service Commission (FPSC), currently Chapter 25-30, F.A.C., for guidance as needed. No rule of the FPSC shall per se grant to any person or entity any procedure or substantive right or privilege not granted in this article, or in any rule of the board, or the authority, or require any duty or obligation not required or authorized to be required by this article, or any rule of the board or the authority;

(18) To issue subpoenas;

(19) To enact rules to carry out its duties and responsibilities and to apply and effectuate the provisions of this article;

(20) Unless prohibited by law, the authority or administrator, for good cause, may grant extensions to time periods specified in this article or in rules of the board or authority;

(21) To appoint, at its sole discretion, hearing officers to hear any or all disputes pertaining to this article or utility service in the county. The hearing officer shall promptly render to the authority a written recommended order containing findings of fact, conclusions or law and recommendations;

(22) To prescribe standards of quality and measurements and to prescribe service rules to be observed by each utility, except to the extent such authority is expressly given to another governmental agency;

(23) To prescribe and amend forms for use by utilities in compliance with any provision of this article or rule of the board;

(24) Upon reasonable notice, which is deemed to be at least forty-eight (48) hours, to have the staff or experts employed or contracted by the authority inspect any and all utility facilities and plant; and

(25) To otherwise do all things necessary or convenient to full and complete exercise of its jurisdiction and/or duties under this article.

(b) The following are not subject to regulation by the board or the authority as a utility nor are they subject to the provisions of this article, except as expressly provided in this article or other valid ordinance of the board:

(1) Property used solely or principally in the business of bottling, selling, distribution or furnishing bottled water or portable treatment facilities; or

(2) Systems owned, operated, managed, or controlled by governmental authorities, which are governed by collegial boards composed of natural persons who are either elected by voters in all or any portion of the county or appointed by such collegial elected officials, including water or wastewater facilities operated by private firms under water or wastewater facility privatization contracts as defined in F.S. § 153.91; and non-profit corporations formed for the purpose of acting on behalf of a political subdivision within the county with respect to a water or wastewater facility; or

(3) Manufacturers providing such utility service solely in connection with their own manufacturing operations; or

(4) Each public lodging establishment providing such utility service solely in connection with lodging service to its guests; or

(5) Each landlord or homeowners association providing utility service solely to their own tenants or unit owners without specific compensation for such utility service;

(6) Nonprofit corporations, associations, or cooperatives providing service solely to members who own and control such nonprofit corporations, associations, or cooperatives;

(7) Any person who resells water or wastewater service within the county at a rate or charge which does not exceed the actual purchase price thereof, if such person files at least annually with the authority a list of charges and rates for all water or wastewater service sold, the source and actual purchase price thereof, and any other information required by the authority to justify the exemption;

(8) Wastewater treatment plants operated exclusively for disposing of industrial wastewater;

(9) Any person providing only nonpotable water for irrigation purposes in a geographic area where potable water service is available from a governmentally or privately owned utility or a private well; or

(10) The sale for resale of bulk supplies of water to utility which is regulated pursuant to this article or which is operated by the county, any department thereof, or the county water and sewer district or any successor entity; or by a

municipality within the county.

(c) County employees shall keep an accurate record of any time they spend on authority matters. In order to be reimbursable, all such time spent by county employees shall be authorized by the administrator. An accounting of the time spent shall be submitted by the administrator to the authority monthly for approval. The authority shall reimburse the county for the approved services of county employees at the employees' normal rate of pay plus benefits. Any disputes concerning the propriety of the level of expenses shall be decided by the board.

(d) The authority shall establish and amend the regulatory and franchise fee. The amount of the regulatory and franchise fee shall be determined by the authority from time-to-time by public hearing, but shall never become effective earlier than sixty (60) days after adoption of each such implementing resolution. The regulatory and franchise fee replaces the regulatory assessment fee now in effect and is a continuation thereof. The board, through its rules, may provide for declaratory statements and for any other procedures not otherwise provided for in this article. Minutes of each authority meeting shall be kept and prepared under the general supervision and direction of the clerk of the board.

(Ord. No. 2002-20, § 3, 10-8-02)

Sec. 28-294. Appointment, powers and duties of hearing officers.

(a) *Appointment of hearing officers.* The authority shall have the authority to appoint hearing officers for the purpose of conducting public hearings on such matters involving utilities as the authority may designate, including, but not limited to rates, fees, charges, rules, regulations, conditions of service, transfers, and franchise application, extensions, amendments, renewals, suspensions, and revocations.

(1) Hearing officers shall be attorneys licensed to practice in the State of Florida.

(2) The authority may contract with individual attorneys or with the state agency responsible for conducting administrative hearings for state agencies for purposes of assignment to any public hearing to be scheduled or held pursuant to this article or rules thereunder. Any such contract between an attorney or agency and the board shall be considered a contract with the authority.

(3) Hearing officers shall not be county employees, but shall be compensated at a rate not to exceed that rate established by resolution of the authority. In addition, hearing officers may be reimbursed for such travel, mileage, and per diem expenses as may be authorized by the authority.

(4) Detailed invoices from the hearing officer for costs and fees must be submitted to the administrator for review.

(5) Approved costs and fees for hearing officers shall be paid out of the utility trust account in accordance with section 24-297(e).

(b) *Hearing procedures.* All hearing procedures established in this article shall be followed by the hearing officer, including all procedures contained in section 24-300.

(Ord. No. 2002-20, § 4, 10-8-02)

Sec. 28-295. Rates and charges.

(a) Except as provided by subsections (k) and (m) of this section, if implemented by the authority in its sole discretion, a utility may only charge rates and charges that have been approved by the authority, or by the Florida Public Service Commission (FPSC) and/or were pending before the FPSC prior to the effective date of the ordinance from which this article derives.

(b) Any franchisee may apply to the authority to establish or change rates, fees and charges, rules and regulations or conditions of service. The application shall specify in detail any changes requested, the current tariff, and current tariff modified with the requested changes highlighted. The application shall set forth the relief requested and shall be accompanied by a complete written transcript of any testimony expected to be submitted in support of the pleadings and shall be accompanied by the documentary evidence expected to be offered by the utility. The specific content of such application, including the minimum filing requirements (MFRs), until changed by the rules of the authority are as required or described by Subsections (e), (f), (g) and (h) of this section.

(c) The authority shall set a date for all hearings necessary to dispose of such applications, including public and evidentiary hearings, and shall require the utility to publish notice of such hearings as specified in the rules of the authority; except that setting evidentiary hearing dates will be within the authority of a hearing officer if one is appointed.

(d) The Authority shall approve, modify or reject the application based on the criteria prescribed in this article within ninety (90) days after close of the evidentiary hearings and receipt of the final briefs or the recommended order from the applicant.

(e) Until changed by rules of the authority, all applications for rate adjustments by utilities with a gross annual revenue in excess of one hundred fifty thousand dollars (\$150,000.00) for water or wastewater or greater than three hundred thousand dollars (\$300,000.00) combined, shall include the following minimum filing requirements (MFRs):

- (1) A statement of financial operations in historical form for the previous three (3) fiscal years and a statement of financial operations for the test year and for the pro forma year at existing and proposed rates;
- (2) A balance sheet for the test year, for the previous three (3) fiscal years, and for the pro forma year;
- (3) A schedule of existing rates, fees and charges, and of actual revenues and number of customers by rates and by class for the test year and pro forma year at existing and proposed rates;

- (4) A statement of the proposed increases or changes which will result in increases. Such statement shall set forth the proposed rate structure with reasonable clarity and with appropriate rate classification where applicable, including bill comparisons between existing and proposed rates;
- (5) A detailed statement of annualized revenues by class of customers by meter size served by rate applicant at the end of the test year, including the number of customers by class;
- (6) A detailed schedule of all fixed assets needed to serve customers during the test year and pro forma year including their original cost, depreciated costs and an explanation of the depreciation. Such depreciation rates are subject to authority review and approval;
- (7) Actual and pro forma expense adjustments with supporting detail set forth by the accounts effected. Such adjustments shall be supported by competent substantial evidence and shall not include estimates based solely on speculation and conjecture;
- (8) A comparative schedule of operation and maintenance expenses in historical form, classified according to the utility's chart of accounts, for the test year and prior three (3) fiscal years;
- (9) A detailed statement of rate case expenses in accordance with subsection (n);
- (10) Rate base and rate of return in historical form for the prior three (3) fiscal years, and for the test year and the pro forma year, at existing and proposed rates;
- (11) A schedule of the cost of capital and rate of return;
- (12) Federal income tax calculation for the utility for the test year and pro forma year computed at the present and proposed rates;
- (13) Calculation of state taxes based on income for the test year and pro forma year, computed at both the existing and proposed rate;
- (14) Detailed schedules showing the computation of the property used and useful in the provision of service to the public to arrive at the percentage in reduction of rate base for existing capacity. Identify in detail the capacity of the utility system by functional component (treatment, transmission, collection, etc.); and the portions thereof that are used and useful in the provision of service to the public;
- (15) Detailed maps showing the service area of the franchise, lines in the grounds and lots served. Lots presently being served and proposed extensions shall be distinguished from lots not presently connected;
- (16) A listing of the utility's connection and extension fees together with a statement of the utility's service extension policy, general rules and regulations, and any proposed changes in any of the foregoing. All such changes are subject to authority review and approval;

- (17) A schedule of connection fees received and other contributions in aid of construction;
 - (18) Detailed schedules to determine the percentage for reduction in ad valorem taxes and depreciation expenses due to excess capacity where applicable;
 - (19) A detailed schedule of service or commodities supplied to associated companies;
 - (20) Any orders or requirements imposed or likely to be imposed by any other regulation or government authority; and
 - (21) Any other information which the utility or the authority deem relevant under the particular circumstances.
- (f) Until changed by rules of the authority, all applications for a rate adjustment by utilities with current gross revenues up to and including one hundred fifty thousand dollars (\$150,000.00) for water or wastewater or less than three hundred thousand dollars (\$300,000.00) combined, shall include the following information:
- (1) A brief description of the system;
 - (2) Detailed maps showing the service area of the franchise, lines in the ground, and lots served. Lots presently being served and proposed extensions shall be distinguished from lots not presently connected;
 - (3) The rates, fees and charges the utility is presently charging and the proposed rates, fees and charges;
 - (4) The number of customers served by the utility, itemized by classes and presented on such seasonal or annual basis as is appropriate;
 - (5) A statement of the utility's revenue for the test year at both the existing and proposed rates by customer class;
 - (6) An income statement and balance sheet for the test year at existing rates;
 - (7) A pro forma income statement showing the estimated results for the test year at the proposed rates;
 - (8) A detailed statement of fixed assets as in subsection (e)(6) above;
 - (9) The calculation of the rate base and rate of return for the test year and for the pro forma year;
 - (10) A copy of the tariff, terms and conditions of service, and service availability policy;
 - (11) Detailed schedules showing the computation of the property used and useful in the provision of service to the public to arrive at the percentage in reduction of rate base for existing capacity. Identify in detail the capacity of the utility system by functional component (treatment, transmission, collection, etc.) And the portions thereof that are used and useful in the provision of service to the public;

- (12) Any orders or requirements imposed or likely to be imposed by any other regulation or government authority; and
 - (13) Any other information which the utility or the authority may deem relevant under the particular circumstances;
- (g) In addition to the requirements stated in this section, all applications shall include the following information for both the test year and pro forma year:
- (1) A comparison of operating expenses giving reasons for the major changes in excess of five (5) percent;
 - (2) A comparison of rate base giving detailed reasons for any changes;
 - (3) A comparison of actual cost of capital and pro forma cost of capital.
- (h) In determining rates, the authority:
- (1) Shall consider the value and quality of service and the cost of providing the service;
 - (2) Shall include in the cost of providing service, at a minimum, debt interest, working capital, maintenance, depreciation, tax, and operating expenses incurred in the operation of all property used and useful in the public service;
 - (3) Shall include a fair return on the utility's investment in all property used and useful in the public service; which return shall be no less than the weighted cost of the capital of the utility; including debt and equity;
 - (4) Shall not include contributions-in-aid-of-construction (CIAC) in the rate base of any utility during a rate proceeding;
 - (5) Shall not reduce rate base by any accumulated depreciation on CIAC;
 - (6) Shall not include depreciation on CIAC as a cost of providing service;
 - (7) Shall consider the investment of the utility in land acquired or facilities constructed or to be constructed in the public interest within a reasonable time in the future, not to exceed twenty-four (24) months, unless extended by the authority, from the end of the historical test period used to set final rates;
 - (8) Shall reduce rate base by accumulated deferred and unamortized income tax and investment tax credit.
- (i) The authority in establishing initial rates for a utility may project the financial and operational data as set out in this section, to a point in time when the utility is expected to be operating at a reasonable level of capacity.
- (j) In fixing rates, the authority may determine the prudent cost of providing service during the period of time the rates will be in effect following the entry of a final order relating to the rate request of the utility and may use such costs to determine the revenue requirements that will allow the utility to earn a fair rate of return on its rate base.
- (k) Pass through increases and price index adjustments.
- (1) The authority may by the authority's sole discretion, authorize or require

pass through increases or decreases by rule;

(2) On or before March 31 of each year, the authority at its sole discretion may by order establish a price increase or decrease index for major categories of operating costs incurred by utilities subject to its jurisdiction reflecting the percentage of increase or decrease in costs from the most recent twelve-month historical data available. The authority may by rule establish the procedure to be used in determining such indices and a procedure by which a Utility, without further action by the authority, or the authority on its own motion, may implement an increase or decrease in its rates based upon the application of the indices to the amount of the major categories of operating costs incurred by the utility during the immediately preceding calendar year, except to the extent of any disallowances or adjustments for those expenses of that utility in its most recent rate proceeding before the authority. The rules, if established, shall provide that, upon a finding of good cause, including for inadequate service, the authority 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 section 24-296. A utility may not use this procedure, if such a procedure has been established, between the official filing date of the rate proceeding and one year thereafter, unless the case is completed or terminated at an earlier date. A utility may not use this procedure to increase any operating cost for which an adjustment has been made to increase its rates by application of a price index other than the most recent price index, if any, authorized by the authority at the time of filing;

(3) Before implementing a change in rates under this subsection, the utility shall file an affirmation under oath as to the accuracy of the figures and calculations upon which the change in rates is based, stating that the change will not cause the utility to exceed the range of its last authorized rate of return on equity. Whoever makes a false statement in the affirmation required hereunder, which statement he or she does not believe to be true in regard to any material matter, is guilty of a felony of the third degree, punishable, as provided in F.S. §§ 775.082, 775.083 or 775.084;

(4) If, within fifteen (15) months after the filing of a utility's annual report, the authority finds that the utility exceeded the range of its last authorized rate of return on equity after an adjustment in rates as authorized by this subsection was implemented within the year for which the report was filed or was implemented in the preceding year, the authority may order the utility to refund, with interest, the difference to the ratepayers and adjust rates accordingly. This provision shall not be construed to require a bond or corporate undertaking not otherwise required;

(5) Notwithstanding anything herein to the contrary, a utility may not adjust its rates under this subsection more than two (2) times in any twelve-month period. For the purpose of this subsection, a combined application or simultaneously filed applications, that were filed under provisions of subsection (1) and (2) shall be considered one rate adjustment;

(6) The authority may regularly, establish a leverage formula or formulae that reasonably reflects the range of returns on common equity for an average

water or wastewater utility and which, for purposes of this section, shall be used to calculate the last authorized rate of return on equity for any utility which otherwise would have no established rate of return on equity. In any other proceeding in which an authorized rate of return on equity is to be established, a utility, in lieu of presenting evidence on its rate of return on common equity, may move the authority to adopt the range of rates of return on common equity that has been established under this paragraph. The authority in its sole discretion may require the utility to present evidence on its rate of return on common equity and not allow the utility to use the range of rates on common equity that has been established under this paragraph. The authority in its sole discretion may adopt the leverage formula established annually by the state public service commission;

(7) No utility shall implement any rate change pursuant to this article unless it has filed with the authority its current annual financial report and all other reports required by the authority and is then current in the payment of its fees to the authority.

(l) An application for rate change must be accompanied by a fee as set by the board, or if not yet set by the board, by the fee that would have been payable to FPSC if the utility had been subject to FPSC regulation, except that no fee shall be required for an application for a rate change made pursuant to subsection (j).

(m) The authority may withhold consent to the operation of any rate request or any portion thereof by a vote to that effect within sixty (60) days after the date of filing of the rate request, or within a shorter period established by rule of the authority. The order shall state a reason or statement of good cause for the withholding of consent. The authority shall provide a copy of the order to the utility and all interested persons who have requested notice. Such consent shall not be withheld for a period longer than 8 months following the date of filing. The new rates or all or any portion thereof not consented to may be placed into effect by the utility under a bond, escrow, or corporate undertaking subject to refund at the expiration of such period upon notice to the authority and upon filing the appropriate tariffs. The authority shall determine whether the corporate undertaking may be filed in lieu of a bond or escrow.

(1) The utility shall keep accurate, detailed accounts of all amounts received because of such rates becoming effective under bond, escrow or corporate undertaking subject to refund, specifying by whom and in whose behalf such amounts were paid.

(2) In its final order relating to such rate request, the authority shall direct the utility to refund, with interest at a fair rate to be determined by the authority in such manner justified and which are collected during the periods specified. The authority shall provide by rule for the disposition of any funds not refunded, but in no event shall such funds accrue to the benefit of the utility. The authority shall take final action on the docket and enter its final order within twelve (12) months of the official date of filing.

(n) Rate case expenses.

(1) The authority shall determine the reasonableness of rate case expenses and shall disallow all rate case expenses determined to be unreasonable. No

rate case expense determined to be unreasonable shall be paid by the consumer. In determining the reasonable level of rate case expense the authority shall consider the extent to which a utility has utilized or failed to utilize the provisions of subsection (j)(1) and (2) if authorized by the authority, and such other criteria as it may establish by rule. The utility shall provide detailed expense reports in support of its request for rate case expenses. Such reports shall include the time spent by each person generating that expense and a detailed explanation of the activities performed related specifically to the each phase of the preparation and prosecution of the rate case, to enable a determination of the validity of such expenses. Hourly rates will be based on the marketplace in Florida for like experience and quality. Time will be assessed on the basis of a reasonable number of hours for the tasks performed and the elimination of duplication;

(2) The amount of rate case expense determined by the authority pursuant to the provisions of this section to be recovered through a utility's rate shall be apportioned for recovery over a period of four (4) years. At the conclusion of the recovery period, the rate of the utility shall be reduced immediately by the amount of the rate case expense previously included in rates.

(o) A utility may specifically request the authority to process its petition for rate relief using the proposed agency action procedure, as prescribed by authority rule. The authority shall enter its vote on the proposed agency action within five (5) months of the official filing date. If the authority's proposed action is protested, the final decision shall be rendered by the authority within eight (8) months of the date the protest is filed. At the expiration of five (5) months following the official filing date, if the authority has not taken action or, if the authority's action is protested by a party other than the utility, the utility may place its requested rates into effect under bond, escrow, or corporate undertaking subject to refund, upon notice to the authority and upon filing the appropriate tariffs. The utility shall keep accurate records of amounts received as provided by subsection (m).

(p) Until such time as the authority implements regulations which amplify or modify this subsection, subsections (1) through (5) below shall be utilized in all rate change applications. The utility may also present, as a second example, its rate case using other principles. However, the utility has the burden of proof to show that the principles it utilizes provides a fairer balance of rate payer and utility interests.

(1) Rate base standards: Absent extraordinary occurrences the utility shall use a thirteen (13) month average rate base;

(2) The utility must prove its entitlement to a margin reserve by, at a minimum, providing evidence of its planning cycle, historic and planned development of its system including timing of significant investments by the utility, its developer agreement policy, present and historic, and payments to the utility by its parent and/or affiliated companies for providing utility services;

(3) Economies of scale factor shall not be used;

(4) The cost of a utility's transmission and distribution system shall be allocated between present and future customers based on the ratio of lots occupied to lots available; and

(5) The utility's working capital requirements shall be calculated in accordance with FPSC Rule 25-30.433. The calculated working capital shall be added to rate base if it is a positive number and subtracted from rate base if it is a negative number.

(q) Cost of capital.

(1) At the discretion of the authority, the utility shall establish the cost of equity either by expert rate of return testimony or by utilizing the authority's leverage formula or, if that formula has not been established, by using the FPSC's leverage formula in effect at the time of the authority's decision;

(2) The cost of debt shall be the utility's actual cost of long term debt and of short term debt;

(3) The utility's stand alone capital structure shall be used by the utility in its filing if that structure is appropriate for a regulated utility and accurately reflects the total cost of capital.

(r) Net operating income. The average number of customers and consumption shall be used to calculate test year revenues and service rates.

(s) Staff assisted rate cases are intended to provide the small utility with the means to obtain rate relief and management guidance through staff-assistance and thereby try to reduce rate case expenses of the utility and its customers and improve utility operations.

(1) The authority may establish rules by which a water or wastewater utility whose gross revenues are one hundred fifty thousand dollars (\$150,000.00) or less, or a combined total of three hundred thousand dollars (\$300,000.00), may request and obtain staff assistance for the purpose of changing its rates and charges. A utility may request staff assistance by filing an application with the authority;

(2) The official date of filing is established as thirty (30) days after official acceptance by the authority of the application. If a utility does not remit a fee, as provided by the board, or if a fee has not been provided by the board as would be payable to the FPSC if the utility was regulated by the FPSC, within thirty (30) days after acceptance, the authority may deny the application. The authority has fifteen (15) months after the official date of filing within which to issue a final order;

(3) The provisions of subsections (a), (h), and (j) shall apply in determining the utility's rates and charges. However, the authority by rule may establish standards and procedure whereby rates and charges for small utilities maybe set using criteria other than those set forth in subsections (a), (h), and (j);

(4) The utility, in requesting staff assistance, shall agree to accept the final rates and charges approved by the authority unless the final rates and charges produce less revenue than the existing rates and charges;

(5) In the event of a protest or appeal by a party other than the utility, the authority may provide for temporary rates subject to refund with interest;

- (6) The utility, in requesting staff assistance, shall agree to a management audit of the utility, and agree where practical to follow the recommendations of the audit. The utility's actions taken in response to the management audit shall be considered in its future rate cases.
- (t) Rate investigations. On its own motion or on a written complaint signed by a person applying for or receiving utility services, or by request of the utility itself, the authority may investigate to determine if the rates charged or collected by a utility, or if the utility's practices affecting the rates, are unjust, unreasonable, discriminatory, or non-compensatory, or are in violation of this article, or rule of the board or the authority. If it appears that any change may be appropriate, the authority shall hold a public hearing to determine just and reasonable rates, fees, or practices to be changed thereafter. Public notice of the public hearing shall be published one time in a newspaper of general circulation in the county at least ten (10) days before the hearing. Notice of the hearing shall be given to the utility and to the complainant, if any, at least thirty (30) days before the date of the hearing.
- (u) The authority may require a utility to provide service for resale. However, before requiring the provision of service, the authority shall first find that the utility is financially able to make such additional investment as is required without impairing its capacity to serve its existing customers. Any utility which provides service for resale shall provide such service upon such terms and conditions established by the authority, and no utility shall discontinue such service without the approval of the authority. In the event a governmental authority exempted from this article pursuant to section 28-293(b) hereof voluntarily enters into an agreement for resale, such agreement shall provide that the service will not be discontinued without ninety (90) days notice being given to the purchaser prior to discontinuing such service. Nothing contained herein shall be construed to prohibit the governmental authority from requiring adequate security being given to such authority to ensure payment required in the agreement.
- (v) If the furnishing of service by a utility requires the extension of or addition to its existing facilities, the utility may require the applicant for such service to pay reasonable sums of service availability or reasonable deposits guaranteeing compensatory revenues from the service territory to be served, or reasonable CIAC to help defray the costs of facilities which will be used and useful in furnishing that service, or reasonable construction or other advances evidenced by refundable or non-refundable written agreement(s) or combination thereof, as a condition precedent to furnishing that utility service. The authority upon request or upon its own motion, may investigate service agreements or proposals for charges and conditions to service availability. Each franchisee must provide a copy of any such agreement to the authority at no cost.
- (w) Each utility shall provide to each person reasonably entitled thereto such safe, efficient, and sufficient utility service as is prescribed by the Florida Safe Drinking Water Act and the Florida Air and Water Pollution Control Act and/or rules adopted pursuant thereto, or the applicable chapters of the Florida Administrative Code, or the successor in function to each; also such service shall not be less safe, less efficient or less sufficient than is consistent with the approved engineering design of the particular system and reasonable and proper operation of the utility in the public interest. If the

authority finds that utility has failed to provide its customers with water or wastewater that meets the standards promulgated by the department of environmental protection or the appropriate water management district, the authority may issue a final order to reduce the utility's return on equity until such time as the standards are met.

(Ord. No. **2002-20**, § 5, 10-8-02)

Sec. 28-296. Interim rates.

(a) The authority may, during any proceeding for a change of rates, upon its own motion, upon petition from any party, or by a tariff filing of a utility or a regulated company, authorize the collection of interim rates until the effective date of the final order. Such interim rates maybe based upon a test period different from the test period used in the request for permanent rate relief. Upon application by a utility, the authority may use the projected test year rate base when determining the interim rates or revenues subject to refund. To establish a prima facie entitlement for interim relief, the authority, the petitioning party, the utility, or the regulated company shall demonstrate that the utility or the regulated company is earning outside the range of reasonableness on rate of return calculated on a rate bases as calculated in the last rate proceeding in accordance with subsection (e).

(b) Interim rates relief.

(1) In a proceeding for an interim increase in rates, the authority shall authorize, within sixty (60) days of the filing for such rate relief, the collection of rates sufficient to earn the minimum of the range of rate of return on a rate base as calculated in the last rate proceeding in accordance with subsection (e). The difference between interim rates and the previously authorized rates shall be collected under bond, escrow, letter of credit, or corporate undertaking subject to refund with interest at a rate ordered by the authority.

(2) In a proceeding for a interim decrease of rates, the authority shall authorize, within sixty (60) days of the filing for such relief, the continued collection of the previously authorized rates; however, revenues collected under those rates sufficient to reduce the achieved rate of return to the maximum of the rate of return on a rate base as calculated in the last rate proceeding calculated in accordance with subsection (e) will be placed under bond, escrow, letter of credit, or corporate undertaking subject to refund with interest at a rate ordered by the authority.

(3) The authority shall determine whether escrow, letter of credit, or corporate undertaking may be filed in lieu of the bond.

(c) In granting such relief, the authority may, in an expedited hearing, but within sixty (60) days of the commencement of the proceeding, upon petition or upon its own motion, preclude the recovery of any extraordinary or imprudently incurred expenditures or, for good cause shown, increase the amount of the bond, escrow, letter of credit, or corporate undertaking.

(d) Any refund ordered by the authority shall be calculated to reduce the rate of return of the utility or regulated company during the pendency of the proceeding to the same

level within the range of the newly authorized rate of return which is found fair and reasonable on a prospective basis, but the refund shall not be in excess of the amount of the revenues collected subject to refund and in accordance with subsection (b)(2). In addition, the authority may require interest on the refund at a rate established by the authority.

(e) In setting interim rates or setting revenues subject to refund, the authority shall determine revenue deficiency or excess by calculating the difference between the achieved rate of return of a utility or regulated company and its required rate of return applied to an average investment rate base or an end-of-period investment rate base. For purposes of this subsection:

(1) "Achieved rate of return" means the rate of return earned by the utility for the most recent twelve-month period on a rate base as calculated in the last rate proceeding. The achieved rate of return shall be calculated by applying appropriate adjustments consistent with those which were used in the most recent individual rate proceeding of the utility or regulated company and annualizing any rate changes occurring during such period;

(2) "Required rate of return" shall be calculated as the weighted average cost of capital for the most recent twelve-month period, using the last authorized rate of return on equity of the utility, the current embedded cost of fixed-rate capital, the actual cost of short-term debt, the actual cost of variable-cost debt, and the actual cost of other sources of capital which were used in the last individual rate proceedings of the utility or regulated company; and

(3) In a proceeding for an interim increase, the term "last authorized rate of return on equity" used in subparagraph (2) means the minimum of the range of the last authorized rate of return on equity established in the most recent individual rate proceeding of the utility or regulated company on a rate base as calculated in the last rate proceeding. In a proceeding for an interim decrease the term "last authorized rate of return on equity" used in subparagraph (2) means the maximum of the range of the last authorized rate of return on equity established in the most recent individual rate proceeding of the utility or regulated company on a rate base as calculated in the last rate proceeding. The last authorized return on equity for purposes of this subsection shall be established only in the most recent rate case of the utility; in a limited scope proceeding for the individual utility; by voluntary stipulation of the utility approved by the authority; or pursuant to section 28-295(k)(6).

(f) Nothing in this section shall be construed to prohibit the authority from authorizing interim rates for a utility which does not have an authorized rate of return previously established by the authority.

(g) If a utility becomes exempt from authority regulation or jurisdiction during the pendency of a rate case, the request for rate relief pending before the authority is deemed to have been withdrawn. Interim rates, if previously approved, must be discontinued, and any money collected pursuant to interim rate relief must be refunded to the customers of the utility with interest.

(Ord. No. 2002-20, § 6, 10-8-02)

Sec. 28-297. Certificate of authorization/franchise.

(a) Any utility which is engaged in the operation or construction of a system and which has not previously received express authority for operation from the board, shall make application by filing with the authority, within one hundred twenty (120) days of the effective date of the ordinance from which this article derives, the following:

(1) A detailed map of its existing system, or system under construction, and planned extensions;

(2) A certified copy of the certificate of authorization issued by the FPSC; including a legal description of the service area for which the certificate of authorization was issued and a certified copy of all orders issued by the FPSC granting the certificate;

(3) A tariff, listing all FPSC or FCURIA approved rates and charges then in effect, all of which shall remain in effect until thereafter lawfully changed by the authority;

(4) A copy of the FPSC or FCURIA approved operating regulations and procedures of the utility then in effect, which shall remain in effect until thereafter lawfully changed by the authority;

(5) The then current rate base of the utility, as found by the FPSC or FCURIA which shall then continue to be the rate base of the utility until thereafter lawfully changed by the authority; and

(6) Other minimum filing requirements as may be required by rule of the authority.

(b) If a utility fails to comply completely with subsection (a) above, within one hundred twenty (120) days after the adoption of these regulations the Utility shall pay an administrative penalty of five hundred dollars (\$500.00). Each day the utility is not in compliance with subsection (a) may be considered a separate violation subject to the administrative penalty. The administrative penalty paid by the utility shall not be included in any rate case in any manner but shall be borne entirely by the utility, not the utility's customers. Interest will accrue daily and be payable at a rate to be set by the authority. The administrative penalty may be collected in a civil court of law of competent jurisdiction.

(c) Within sixty (60) days of a utility's submission of an application pursuant to subsection (a), the authority shall render a decision whether such application is complete and thereupon set the official date of filing.

(d) If the authority finds that the application is deficient for failure to satisfy all filing requirements, the authority shall return the application to the utility for revisions. The utility shall have thirty (30) days to revise and resubmit such application to the authority which shall have twenty (20) to review the revised application. These time periods may be summarily extended by the administrator for good cause. Penalties, as in subsection (b), shall apply if the revised application is not submitted within the time period specified herein.

- (e) At such times as the authority determines the utility's application satisfies all requirement of subsection (a), the authority shall issue one or more franchise certificates to the utility.
- (f) No person shall build, install, maintain, or operate any privately owned public water or wastewater system or bulk water system in any area of the county unless the authority has granted a franchise to the person, or active application to acquire a franchise certificate for the respective service is then pending before the authority or unless the person is exempt under this article and the regulations adopted by the authority.
- (g) No utility shall create or give an undue or unreasonable preference or advantage to any person or locality, or subject any person or locality to any undue or unreasonable prejudice or disadvantage in any respect.
- (h) A franchisee shall have the responsibility of serving the entire area covered by the franchise upon acceptance of the franchise.
- (i) The franchise shall have no monetary value if the county or any other appropriate governmental agency seeks to acquire the utility by any lawful means.
- (j) The issuance of the franchise is not a bar to the acquisition of the utility by the county or any other governmental authority.
- (k) No franchisee shall provide water or wastewater service to any customer for new construction unless the customer provides evidence to the franchisee that all applicable building permits required by the county or other legally enabled government entity have been issued.
- (l) A new utility is a utility applying for a franchise from the county, except pursuant to subsection (a).

- (1) Each applicant for issuance of a franchise certificate for a new utility shall:
 - a. Provide information required by rule of the board and/or authority which may include detailed inquiry into the ability of the applicant to provide service, the planned service territory, all facilities involved, the need for service in the planned service territory involved, and the existence or nonexistence of that utility service from other sources within nearby geographical proximity to the service territory applied for;
 - b. File with the authority schedules showing all proposed rates, fees, classification and charges for service of every kind to be furnished by it; also all policies, procedures, and written contracts relating thereto;
 - c. Submit an affidavit that the applicant has caused notice of its intention to file an application for the new franchise; which notice must be delivered by mail or other actual delivery to the authority, and to such other persons and in such other manner as may be prescribed by rule of the authority. Such notice shall be given at least twenty (20) days prior to the filing of such application;
 - d. If required by the administrator, or by the authority, file a certified copy of its certificate of incorporation, if any; any audited financial

statement; an inventory of assets; and other information such that the authority can determine whether or not the applicant is qualified to be issued a franchise certificate. The authority may require the applicant to post a bond, satisfactory to the authority in form and sureties, to guarantee compliance with any conditions imposed by the authority for issuance of the franchise(s);

e. File the application fee established by the authority, or if no fee has been established, the fee that would be required by the FPSC for the same application;

f. The application shall be signed by the person who will be the holder of the franchise; and

g. Establish that the applicant has met all other local, state and federal requirements for a new utility.

(2) The authority may issue an order approving the franchise certificate in whole or in part, with or without modification, or deny any franchise certificate. No utility shall be granted greater authority than that requested in the application and any amendments thereto, the authority shall not issue an order to grant a franchise certificate for a proposed system or for the extension of an existing system which will be in competition with, or a duplication of, any other system or portion of a system, unless it first determines that such other system or portion thereof is not adequate to meet the reasonable needs of the service area and all other service commitments, if any, outside of the service area, or that the system is unable to, or that its principals refuse to or have neglected to, provide adequate utility services;

(3) If the authority does not receive written objection to such an application within twenty (20) days following the official date of filing of the application, the authority may issue an order on the application without a public hearing thereon;

(4) If, within twenty (20) days following the official date of filing of such an application, the authority receives from a utility, a governmental authority, or any consumer that would be substantially affected by the requested certification, a written objection requesting a hearing, the authority may conduct a public hearing, generally within twenty (20) days from actual receipt of the written objection, unless the hearing is extended by the authority or its administrator. The authority may also appoint a hearing officer to conduct an evidentiary hearing pursuant to sections 28-294 and 28-300;

(5) A hearing held pursuant to subsection (1)(4), above, shall result in an order issued by the authority, if the authority conducts the hearing. If a hearing officer conducts the hearing and issues a recommended order, within sixty (60) days of the issuance of such recommended order, the authority should review the matter and may hear legal arguments concerning the recommended order. Based upon such review and any such legal arguments presented, the authority shall enter a final order on the matter; and

(6) The authority may deny the application or require amendment to any

certificate on the grounds that such service will violate the established local comprehensive plan adopted by the county pursuant to Florida Statutes.

(m) In reviewing the application, the authority shall consider the following:

(1) The applicant's apparent ability to have or acquire sufficient resources to build, install and operate the proposed utility consistent with all applicable regulations;

(2) The apparent ability of the applicant to provide the proposed service(s) to the territory with the proposed facilities involved, the need for service in the territory involved, and the existence or nonexistence of such utility service from other sources within the geographical proximity to the territory for which the utility has applied; and

(3) Whether the application conflicts with the county's local comprehensive plan, including all relevant capital improvement programs adopted by the board.

(n) Each franchise certificate applied for, except those described in subsection (a) above, shall specify and acknowledge:

(1) Such terms and conditions as may be deemed necessary by the board to protect the public health, safety or welfare;

(2) Whether the franchise is for a water system, wastewater system, or bulk water utility, or applicable combination thereof;

(3) The franchise certificate for a bulk water utility may include all or part of an area covered by the franchise of another utility. Subject to economic feasibility, the utility must serve its entire certificated area(s);

(4) That the franchise certificate is not any impediment to acquisition of the utility or any part of its territory by the county and/or any other governmental agency, by purchase, condemnation, or otherwise;

(5) That the county has full power and authority to grant a license or franchise to any other person or entity to construct, maintain, repair, operate, and remove lines for the transmission of water, wastewater, gas, power, television, telephone, and/or any other public utilities whatsoever, under, on, over, across, through, and/or along every public road, public highway, other public right-of-way, or utility easement for the respective uses acquired by the county, by any other governmental agency, by purchase, gift, devise, dedication, prescription, or by any other means;

(6) That the utility shall prevent the creation of and shall not allow or suffer to continue the obstruction or any other conditions which are or may become physically dangerous to any member of the general public;

(7) That the utility shall repair any and all damage and/or injury to public and private streets, roads, highways, and all other tangible property caused by reason of the exercise of any privileges granted in the franchise and at no direct cost to the county or other governmental agency, shall promptly repair all such damage or injury to all public streets, roads, highways, and other tangible

property, restoring each to the conditions at least equal to the conditions that existed immediately prior to the infliction of such physical damage or injury by or on behalf of the utility;

(8) That the utility shall indemnify and hold harmless the county, the board, and its members, the authority and its administrator, and all employees and members of all of the above, from any claims, suits, and damages that may result, directly or indirectly, from any exercise of (or failure to exercise) any rights, privilege(s) and/or licenses granted or authorized by the franchise certificate;

(9) That in the event of widening, repairing, relocating, or reconstruction, of any public street, public road or public right-of-way, the utility shall, at no cost to the county or any other governmental authority, relocate as needed all utility lines and other tangible property of that utility;

(10) That the issuance of the franchise certificate shall not entitle the franchisee to any consideration and shall not otherwise prevent, bar, or hinder the county and/or any other governmental agency from closing, abandoning, relocating, vacating, discontinuing, improving, or reconstructing any public street, road, or other right-of-way or easement, except those that are private;

(11) That the utility shall comply with all then applicable rules, regulations, and standards pertaining to such utility from all governmental agencies having jurisdiction;

(12) That the utility shall always maintain and keep all improvements in good repair and, subject to economic feasibility of the utility, shall provide all franchised utility services within a reasonable time to all persons requesting such service to be provided within the certificated territory;

(13) That if the authority determines that it is appropriate to install fire hydrants for the purposes of combating fires, the county has the right and privilege of doing so, and may order the utility to make such connections and charge to its customers, pro rata, for labor and materials used in the installation of said fire hydrants and other appurtenances necessary for furnishing water from the respective distribution system to said fire hydrants; in such cases the charge to the utility's customers shall be the utility's actual cost for making the connections, together with a fair return on the utility's investment therein;

(14) That the franchise certificate shall not be deemed to constitute a county requirement that any landowner use the utility's water, nor shall this article be construed to constitute a county imposed prohibition against any landowner using well water for consumption, irrigation, recreation and/or yard maintenance;

(15) Provision for revocation of the franchise certificate in the event of any violation of its terms or of violation of this article, and/or any other logically related county ordinance or rule of the authority;

(16) Provisions for the reasonable time within which the utility service granted in the franchise shall be made available to the customers of the utility, including a schedule of estimated dates by which each utility service will be provided to

customers; and that if no such service is provided within the time prescribed, that the franchise shall be automatically void unless the authority extends that time for good cause shown provided that an application for such an extension of time is made before expiration of the "no actual utility service" time prescribed in the franchise. The grant of a time extension will require additional conditions that the authority deems appropriate to assure the provision of adequate service within an additional reasonable time;

(17) Such modifications of any provisions authorized under the preceding paragraphs as may be necessary;

(18) Provisions for purchase of the utility by the county on such terms and conditions as the board shall determine to be proper to best serve the public health, safety and/or welfare;

(19) That the system shall be approved by all appropriate governmental agencies as to design, construction, operation, capacity, maintenance, expansion and otherwise;

(20) That the franchise may be amended at any time upon mutual consent of the parties thereto;

(21) If a utility requires a deposit from its customers, it shall once each year, credit to each respective customer account, pro rata all interest accrued on the principal. Such accrued and unpaid interest shall be credited or paid to the customer when the customer's deposit is discontinued; and

(22) Additional provisions as are required from time-to-time by rule of the board or the authority.

(o) Claim of exemption from regulation. Each person who or entity that claims an exemption from regulation by the county through application of any one or more of subparagraphs of section 28-293(b), must file with the Authority an affidavit sworn to upon personal knowledge and signed by the affiant, who must be an authorized representative of the applicant. The affidavit must contain the name of the utility, its complete street and mailing address, and sufficient information describing the utility system upon which a determination as to the applicant's asserted exempt status can be ascertained by the authority, plus citation to the specific subparagraph of section 28-293(b) above, upon which the asserted exemption is based. Such application for declaration of exemption may be granted by final order of the authority without any public hearing thereon, but if a complaint is filed by any person or entity with standing, the authority may hold a public hearing to consider and decide the merits of the application by final order.

(p) Transfer of franchise certificate, facilities, or control. No utility shall sell, assign, or otherwise transfer its franchise certificate, its system facilities or any portion thereof, or majority organizational control, without determination and approval from the authority that the proposed sale, assignment, or transfer is in the public interest and that the buyer, assignee or any other transferee can and will fulfill the commitments, duties and obligations of the existing utility. The minimum filing requirements shall be as specified by rules of the board or authority.

(1) The board may grant or deny an application for any defined utility transfer

upon requiring such further relevant information as it deems necessary and upon findings pertaining to the following criteria:

- a. The application is made in good faith;
- b. The transferee has sufficient resources to serve the area for which the transfer is sought;
- c. The transferor utility is in regulatory compliance;
- d. The known and projected economic impact on the utility's customer base and the utility's improvements elements;
- e. The application's compliance and compatibility with the county's master land use plan, including capital improvements elements.

(2) Any transfer approval in accordance with this article is subject to the agreement that the authority shall retain the right to regulate utility rates pertaining to any utility under its authority.

(q) The transferor shall remain liable for any outstanding regulatory and franchise fees, assessment fees, fines of the utility due to the county or refunds of the utility due to its customers.

(r) Following a determination by the authority that the application is complete, the authority may grant, deny, or amend the application for any transfer upon such conditions as it deems proper, based upon substantial, competent evidence as to the public interest, and after requiring such further relevant information as it deems necessary.

(s) A request for transfer of certificate of authorization or franchise, facilities or any portion thereof, to a non-governmental entity, or to a governmental entity or quasi-governmental entity not providing services entirely within its own jurisdiction shall include the following:

- (1) The complete name and address of the seller;
- (2) The complete name and address of the buyer;
- (3) The nature of the buyer's business organization, i.e., corporation, partnership, limited partnership, sole proprietorship or association with documentation supporting same;
- (4) The name(s) and address(es) of all of the buyer's corporate officers, directors, partners or any other person(s) who will own an interest in the utility with documentation supporting same;
- (5) Same as subsections (3) and (4) above for all affiliates of buyer, i.e., parent corporation, affiliated corporation or other related entities with documentation supporting same;
- (6) The date and state of incorporation or organization of the buyer;
- (7) The names and location of any other water or wastewater utilities owned by the buyer or owned entities in any way affiliated with the buyer;

- (8) A list of penalties, fines, and regulatory procedures imposed within the last five (5) years on the buyer or any related entities resulting from the operation of water and/or wastewater facilities;
- (9) A detailed list of all governmental regulatory entities, with addresses, having regulatory jurisdiction over any aspect of the business of the buyer or any of its affiliates;
- (10) A list of all pending items, as in subsection (8) above, of which the buyer and its affiliated entities are aware;
- (11) A copy of the contract for sale and all auxiliary or supplemental agreements, which shall include, if applicable:
 - a. Purchase price and terms of payment;
 - b. A list of and the dollar amount of the assets purchased and liabilities assumed or now assumed, including those of non-regulated operations or entities; and
 - c. A description of all consideration of any kind between the parties or individuals employed or to be employed by either party;
- (12) The contract for sale shall also provide for the disposition, where applicable, to the following:
 - a. Customer deposits and interest thereon;
 - b. Any guaranteed revenue contracts;
 - c. Developer agreements;
 - d. Customer advances;
 - e. Debt of utility; and
 - f. Leases;
- (13) A statement describing the financing of the purchase in detail;
 - (14) A statement indicating how the transfer is in the public interest, including a summary of the buyer's experience in water or wastewater utility operations, a showing of the buyer's financial ability to provide service, and a statement that the buyer will fulfill the commitments, obligations and representations of the seller with regard to all utility matters;
 - (15) A list of all entities upon which the applicant is relying to provide funding to the buyer, and an explanation of the manner and amount of such funding, which shall include their financial statements and copies of any financial agreements with the utility;
 - (16) The proposed net book value of the system as of the date of the proposed transfer. If rate base has been established by the FPSC, the FCURIA, or subsequently by the authority, state the order number and date issued and identify all adjustments made to update this rate base to the date of transfer and provide a certified copy of said order;

- (17) If the books and records of the seller are not available for inspection by the authority or are not adequate for the purpose of establishing the net book value of the system, a statement by the buyer that a good faith, extensive effort has been made to obtain such books and records for inspection by the authority and detailing the steps taken to obtain the books and record;
- (18) A statement from the buyer that it has obtained or will obtain copies of all of the federal income tax returns of the seller from the date the utility was first established or rate base was last established by the authority, or if not by the authority by the FPSC, the FCURIA, or, if the tax returns have not been obtained, a statement from the buyer detailing the steps taken to obtain the returns;
- (19) A statement from the buyer that after reasonable investigation, the system being acquired appears to be in satisfactory condition and in compliance with all applicable standards set by the department of environmental protection (DEP) or, if the system is in need of repair or improvement, has any outstanding notice of violation of any standard set by the DEP or any outstanding consent order with the DEP, the buyer shall provide a list of improvements and repairs needed and the approximate cost to make them, a list of the action taken by the utility with regard to the violation, a copy of the notice of violation(s), a copy of the consent order and a list of the improvements and repairs consented to and the approximate cost to make them and a schedule of when and how the improvements are to be made;
- (20) Evidence that the utility owns the land upon which the utility treatment facilities are located, or a copy of the agreement which provides for the continued use of the land, such as a ninety-nine (99) year lease. The authority may consider a written easement or other cost-effective alternative;
- (21) A statement regarding the disposition of any outstanding regulatory and franchise fees, fines or refunds owed;
- (22) The original and two (2) copies of sample tariff sheets reflecting the change in ownership; and
- (23) The utility's current certificate(s), or if not available, provides an explanation of the steps the applicant took to obtain the certificate(s).
- (t) In a request for a change in majority organizational control, the application shall include the following:
- (1) The complete name and address of the seller;
 - (2) The complete name and address of the buyer;
 - (3) The nature of the buyer's business organization, i.e., corporation, partnership, limited partnership, sole proprietorship or association;
 - (4) The name(s) and address(es) of all of the buyer's corporate officers, directors, partners or any other person(s) who will own an interest in the utility;
 - (5) Same as in subsections (3) and (4) above for all affiliates of buyer, i.e., parent corporation, affiliated corporation or other related entities;

- (6) The date and state of incorporation or organization of the buyer;
 - (7) The names and location of any other water or wastewater utilities owned by the buyer or owned entities affiliated with the buyer;
 - (8) A list of penalties, fines, and regulatory procedures imposed within the last five (5) years on the buyer or its related entities resulting from the operation of water and/or wastewater facilities;
 - (9) A list of all pending items, as in subsection (8) above, of which the buyer and its affiliated entities are aware;
 - (10) A copy of the contract for sale and all auxiliary or supplemental agreements, which shall include the purchase price and terms of payment;
 - (11) A statement describing the financing of the purchase;
 - (12) A statement indicating how the transfer is in the public interest, including a summary of the buyer's experience in water or wastewater utility operations, a showing of the buyer's financial ability to provide service, and a statement that the buyer will fulfill the commitments, obligations and representations of the seller with regard to utility matters;
 - (13) A list of all entities upon which the applicant is relying to provide funding to the buyer, and an explanation of the manner and amount of such funding, which shall include their financial statements and copies of any financial agreements with the utility;
 - (14) A statement from the buyer that after reasonable investigation, the system being acquired appears to be in satisfactory condition and in compliance with all applicable standards set by the department of environmental protection (DEP) or, if the system is in need of repair or improvement, has any outstanding notice of violation(s) of any standard set by the DEP or any outstanding consent order with the DEP, the buyer shall provide a list of improvements and repairs needed and the approximate cost to make them, a list of the action taken by the utility with regard to the violation, a copy of the notice of violation(s), a copy of the consent order and a lists of the improvements and repairs consented to and the approximate cost to make them;
 - (15) Evidence that the utility owns the land upon which the utility treatment facilities are located, or a copy of the agreement which provides for the continued use of the land, such as a ninety-nine (99) year lease. The authority may consider a written easement or other cost-effective alternative;
 - (16) The original and two (2) copies of sample tariff sheets reflecting the change in ownership; and
 - (17) The utility's current certificate(s), or if not available, provides an explanation of the steps the applicant took to obtain the certificate(s).
- (u) Deletion of territory.
- (1) Each utility, within a reasonable time, shall provide service to the territory

described in its franchise certificate. If the authority finds that a utility has failed to provide service to any person reasonably entitled thereto, or finds that extension of that service to any such person can be accomplished only at an unreasonable cost and that transfer of subject territory to another utility is reasonable, economical and feasible, it may issue an order to amend the franchise certificate to delete the territory not being serviced or not being properly served by the utility. If utility service has not been provided to any part of the territory which a utility is authorized to serve, whether or not there has been a demand for such service, within five (5) years after the date of the utility's first authorization for such services, to such part of the territory, the authority may issue an order to amend or revoke such authorization for service, including deletion of that territory from the certificated or franchise area of the utility.

(2) Each applicant who requests deletion of a utility's service territory shall:

a. Provide the minimum filing requirements, which shall include a detailed inquiry into the ability or lack of ability of the applicant to provide the utility service in the area sought to be deleted, the need or lack of need for the utility service in that area, and the existence or nonexistence of the utility service from other sources within close geographical proximity to that area.

b. Submit a sworn affidavit based on personal knowledge of an officer of the utility that the applicant has caused notice of its intention to file an application to delete that service territory to be delivered by mail or other means of actual delivery to the authority. Such notice shall be delivered at least twenty (20) days prior to the initial filing of that application.

(3) If the authority does not receive written objection to the application within twenty (20) days following the official filing date of the applications, the authority may issue an order on the application without a hearing.

(4) If within twenty (20) days following the official date of filing, the authority received a written objection requesting a hearing from any governmental agency, from another utility, or from a person who would be substantially affected by deletion of any part of the requested territory, the authority may conduct a hearing thereon and then issue an order on the application. The authority may also appoint a hearing officer to conduct a hearing pursuant to section 28-294.

(5) The authority shall consider the same criteria and standards for consideration of any application relating to a franchise certificate.

(v) Additional service area.

(1) Proposed additions of utility service into any additional service area shall not be commenced until the utility first obtains an amended franchise certificate from the authority.

(2) An application to amend a franchise certificate to add to the utility's territory shall be made at any time within sixty (60) days following the

completion of all notice requirements for same. The application shall be filed with the applicable application fee, or if no fee has been established, the fee that would be required by the FPSC for the same application, and shall contain a map and legal description of all additional territory proposed to be served, along with such other minimum filing requirements by rules of the authority. The authority shall issue a final order regarding the application.

(3) Except in very exceptional instances and always based on necessity, the authority will not authorize extension of franchise territory to any land that is not contiguous to the utility's then service territory or that is not within the county, or in such manner as to create pockets of unserved areas. Any application for extension of any service territory that is not in accord with this policy shall specify in detail the necessity for variance to this policy and how the public interest will be served notwithstanding lack of adherence to this policy.

(4) The authority may render its decision upon such conditions as the authority deems proper, and may require further relevant information as it deems necessary. The authority shall consider whether:

- a. The application is made in good faith;
- b. The applicant has sufficient resources to serve the area for which the extension is sought;
- c. The utility has sufficient capacity to serve the proposed added area;
- d. The conceptual plan that shows the layout of the proposed system filed by the applicant demonstrates that, as applicable, the source of water, method treatment of water, method of treatment of wastewater, and method of disposing of sewage effluent are adequate to protect the public health, safety, and welfare;
- e. Whether the application conflicts with the county's local comprehensive plan, including capital improvement elements.

(5) The authority may hold hearings to consider an application for a boundary change. The authority may also appoint a hearing officer to conduct a hearing pursuant to section 28-294.

(6) The utility, at no cost to the county, shall file with the authority a copy of the construction plans for the system which plans must have been approved as required by applicable governmental agencies prior to any utility construction being initiated, at no cost to the county.

(w) Abandonment. Water or wastewater service to customers of a utility shall not be interrupted by the actual or constructive abandonment or placement into receivership of a utility. To that end:

(1) No person owning, operating, managing or controlling a utility shall abandon the utility without giving at least sixty (60) days advance written notice of such intent to the county and to the authority. Anyone who violates the provisions of this subsection is guilty of an offense in the manner of a misdemeanor, punishable pursuant to F.S. § 162.21.

(2) After receiving such notice, the authority, absent compelling circumstances, may petition the circuit court to appoint a receiver, which may be the administrator of the authority, or any person deemed appropriate by the court. The receiver shall operate the utility from the date of abandonment until such time as the receiver disposes of the property of the utility in a manner designed to continue the efficient and effective operation of all such utility services. All costs of the receivership, including expenses of the receiver operating and disposing of the utility, plus attorney's fees incurred by the receiver and by the authority or the board, if any, shall be assessed as a lien against and paid by the owner of the utility.

(3) The notice to the county and to the authority under subsection (1), above, is sufficient cause for revocation, suspension, or amendment of the franchise certificate of the utility as of the date of the abandonment. The person designated to operate such utility shall automatically be considered to hold temporary authorization to operate from the authority.

(x) Revocation of a franchise. No franchise certificate shall be revoked until the authority or an appointed hearing officer has held an evidentiary hearing on such matter. Notice of intent to consider revocation shall be given to the utility in a charging document at least sixty (60) days before the date of the evidentiary hearing. Such notice shall be issued by the authority and shall specify all reasons on which revocation is sought, stating the facts on which such reasons for revocation are based. If the authority determines after the evidentiary hearing that the basis for revocation has been established, the authority shall issue an order to revoke the franchise certificate or may require any other remedy provided for in this article or otherwise by law.

(Ord. No. 2002-20, § 7, 10-8-02)

Sec. 28-298. Fees.

(a) Regulatory and franchise fee. Each utility shall pay a regulatory and franchise fee to the authority in quarterly installments. So long as a utility is regulated by the authority there will be no period of time for which the regulatory fee is not applicable. Each quarterly installment must be paid within ninety days (90) days of the end of that fiscal quarter of the utility, i.e. the payments are made ninety (90) days in arrears. With each payment, the utility shall file with the authority, a statement of gross receipts for the applicable quarter, verified under oath by an authorized financial officer of the utility.

(b) The regulatory fee shall be four and one-half (4 1/2) percent of the utility's gross revenue, derived from the utility's gross receipts billed within the county for the quarter. Such regulatory percentage fee shall continue until amended by the board.

(c) The fee shall be charged pro rata to the utility's customers and each utility may add to its customer invoices a separate line item for the then applicable regulatory and franchise fee paid to the county if the utility also lists as a separate line item all governmental fees and taxes paid by the utility.

(d) Each utility that fails to promptly submit to the county all required fees and accurate statement of gross receipts within the prescribed period shall pay the county a late regulatory fee charge of one percent of the delinquent fee per month, or fraction of a month plus all cost incurred by the authority in collecting the fee.

(e) All fees and administrative penalties collected by the county from utilities pursuant to this article shall be placed in a separate enterprise fund to be called the water and wastewater utility regulatory fund (utility trust account) and such funds shall at all times remain separate and distinct from other county funds unless and until any particular regulated utility comes under the regulatory jurisdiction of an entity other than the authority, or until a particular utility is acquired by a public entity exempt from regulation hereunder. If a regulated utility comes under the regulatory jurisdiction of another entity, regulatory fees remaining after paying all expenses of the authority with respect to such utility shall be refunded, with any interest accrued thereon, pro rata to each then regulated utility for refund to its customers. All such funds in the utility trust account at the end of each fiscal year of the county shall automatically become the beginning balance for the succeeding fiscal year. In the event that a regulated utility is being acquired or is acquired by a public entity exempt from regulation hereunder, the proceeds in the water and wastewater utility regulatory fund may be used as provided in subsection (f).

(f) The regulatory fees are to be used to pay for the ongoing costs of supervising and regulating utilities in the county and enforcing and administering this article, including the county's costs for any court appointed receivers, and for operation, maintenance, and/or repair to abandoned franchised utilities, which may include extraordinary repairs to protect the health, safety and welfare of the general public. Extraordinary repairs are those that are neither typical nor customary and which occur infrequently, and payment of which shall require authority approval. Regulatory fees may also be used to pay for costs incurred when a public entity exempt from regulation hereunder seeks to acquire a county-regulated utility. When a regulated utility is acquired by a public entity exempt from regulation hereunder, the balance of funds in the water and wastewater utility regulatory fund may be used for costs incurred by the entity in operating the acquired utility. In any such case, the authority shall have discretion to approve such costs or to enter such other orders as may be determined to be in the best interest of the utility's customers, including but not limited to refunds directly to customers.

(g) Application fees. Only the authority may establish or amend application fees. any application filed by a utility shall be accompanied by the applicable application fee. Such fees may be based upon the existing or proposed capacity of the utility system.

(h) Miscellaneous fees. The authority shall set a reasonable fee for the examination and testing of meters used for measuring any utility service. Any person may have a meter tested by the utility upon payment of the applicable fee fixed by rule of the authority. Utility customers, at their discretion, may pay the fee at the time of the request or have the utility include the fee in the next regularly scheduled bill. However, the fee shall be repaid to the customer if the meter is found to have been incorrect to the disadvantage of the customer in excess of the degree or amount of tolerance allowed for such meters, or otherwise as may be provided in the rules of the authority.

(i) The board of county commissioners may withdraw from the utility regulatory fund

an amount not to exceed five hundred thousand dollars (\$500,000.00) each fiscal year and transfer such funds to the general fund to be used exclusively for storm water drainage purposes within the local franchise area served by a county-regulated utility, which shall include, but not be limited to all associated engineering fees and property acquisition costs for any storm water projects. Before such transfer may occur, the county's director of regulatory and franchise administration/property management or his successors, must certify to the board that there are sufficient funds in the utility regulatory trust fund account to pay for and cover all reasonably anticipated expenses for any regulatory activities including any rate cases likely to occur during that fiscal year. Without such certification, the board may not transfer any funds from the utility regulatory trust fund to the general fund for storm water management or for any other purpose.

(Ord. No. 2002-20, § 8, 10-8-02; Ord. No. 2003-13, § 1, 6-24-03; Ord. No. 2003-16, § 1, 10-14-03)

Sec. 28-299. Reporting requirements.

(a) Each utility shall annually, within one hundred twenty (120) days of the close of its fiscal year, file with the authority a financial report of its operation during the fiscal year. Such report shall be sworn to by the financial officer of the utility. When end-of-fiscal-year adjustments in the total regulatory fee paid to the county during the fiscal year then being reported shall be paid concurrently with submission of the annual report, or where an annual report correctly shows that overpayments of regulatory fees had been paid by the utility during the fiscal year being reported, a final order allowing credit for the amount of the overpayment shall be issued by the authority for the next fiscal year, provided the utility is not then delinquent in the payment or any other monies owed to the county.

(b) If the utility has an outstanding loan that is secured by utility assets, the utility must describe in its annual financial report the status of the loan and the status of the utility improvement paid for by such borrowed funds.

(c) Each franchisee that fails to promptly submit to the county all required fees, fines, or penalties, and its accurate annual financial report within the prescribed time shall pay to the authority a late charge of one percent of the delinquent fee per month, or fraction thereof plus all cost incurred by the authority in collecting the required fee.

(Ord. No. 2002-20, § 9, 10-8-02)

Sec. 28-300. Procedures, notices, and conduct of hearings.

(a) The requirements of this section are in addition to other provisions in this article regarding hearings and shall apply to hearings conducted by the authority or by its appointed hearing officer. The utility shall provide notice of each hearing as specified.

(1) The hearing officer or presiding officer shall have the authority to:

a. Administer oaths and affirmations;

- b. Subpoena witnesses or production of documents or things for the purpose of taking the testimony of such witnesses and inspection of documents at a public hearing;
- c. Take, or cause to be taken, depositions or witnesses; whenever the ends of justice would be served thereby;
- d. Regulate the course of hearings;
- e. Rules upon offers of proof and receive relevant and material evidence;
- f. Dispose of procedural requests, objections and similar matters;
- g. Hold conferences for simplification of issues by consent of the parties;
- h. Enter such orders, except a final order on the merits of the matter being heard, as are necessary to effectuate the intent and purposes of this article relating to public utility matters; and
- i. Cause the testimony at hearings and other proceedings to be preserved.

(2) The hearing officer or presiding officer shall have the authority to request at the conclusion of a hearing that all parties submit proposed findings of fact, conclusions of law, and proposed recommended orders or legal briefs on the issues within a time designated by the hearing officer.

- a. Proposed findings of fact shall be entitled as such, and must be presented on a document separate from all other post-hearing memoranda, and may not be contained in an extensive narrative for or contain mixed questions of fact and law.
- b. Each proposed finding of fact shall be separately stated and numbered consecutively, and shall contain citations to the record in support.

(3) The hearing officer or presiding officer shall timely file a recommended order, which shall include a caption, time and place of hearing, appearances entered at hearing, statement of the issues, findings of fact and conclusions of law, separately stated, and recommendation for final authority action.

(4) Exceptions and replies.

- a. Parties may file exceptions to a recommended order within fifteen (15) days of the entry of the recommended order. Such exceptions shall fully set forth the error claimed and the basis in law therefor. A party's failure to serve or timely file written exceptions shall constitute a waiver of any objections to the recommended order.
- b. Any other party may reply to the exceptions by filing and serving such reply within ten (10) days of the filing of the exceptions.

(5) A notice of each public hearing before the authority or its hearing officer

shall contain the name of the applicant, an accurate description of the purposes of the hearing, and the date and time of the hearing before the authority.

(6) If the public hearing is for the purpose of proposed agency action or making its final decision regarding a rate increase, the affected utility shall mail a notice to each of its customers by regular mail or placed in its regular bills, but such posted notice must be received by the utility's customers at least ten (10) days before the date of that scheduled hearing.

(7) If the notice is for a public hearing on a matter initiated by the authority, such notice shall be served by certified mail, return receipt requested, on the affected utility at least twenty (20) days before the first day of the public hearing and shall be published one time in a newspaper of general circulation in the county at least ten (10) days before the first day of the public hearing.

(8) If the notice is for a public or evidentiary hearing to establish or change rates, fees, charges, other tariff items, or conditions of service, the utility shall publish notice of the hearing, the topic of the hearing and its location in a newspaper of general circulation in the county once a week for two (2) consecutive weeks, the first publication begin at least twenty-one (21) days before the date of hearing. Said notice shall be in a display type advertisement no less than one-eighth (1/8) of a page and shall include the current rates and any proposed changes in total dollars and percentages, identify the effect, as accurately as possible, of the proposed changes on each class of customers. The notice is subject to the authority's administrator's approval before publication.

(9) Notice of any hearing, other than those specified herein shall be as established by the rules of the authority.

(b) The following rules apply to all hearings before the authority or before a hearing officer:

(1) All hearings shall be recorded and minutes shall be kept. All hearings of the authority shall be open to attendance by the general public except at such times, if any, when the specific subject to be discussed is exempt from public attendance by application of Florida Statutes.

(2) Each matter before the authority or a hearing officer shall be presented by the party who initiated the matter or that person's designated representative. All parties to the matter shall be provided an opportunity to appear and present evidence, cross-examine witnesses, and present arguments on each matter.

(3) Each party shall be entitled to receive copies of all pleadings, motions, notices, orders, and all other matters filed in the proceeding unless exempt from such disclosure by Florida Statute, administrative rule of the Florida Administrative Code, or any other controlling law, rule or regulation. Such matters are exempt from public disclosure in authority proceedings as would be exempt if the proceedings were before the FPSC.

(4) Terms and conditions for filing, service of documents, computation of time, and other similar procedural matters shall conform to the Florida Rules of

Civil Procedure.

(5) The initial pleading shall be either an application or other filing by a utility, or by a person with standing in the matter, by resolution of the authority, or by appropriate charging document.

(6) Pleadings shall substantially conform to the Florida Rules of Civil Procedure as to content, form, size, signatures, and certifications, and shall be served upon all parties. The original and five (5) copies shall be submitted to the administrator of the authority, except applications for any change in rates, which shall require an original and ten (10) copies. In each specific case the administrator may require the applicant to submit additional copies.

(7) The presiding officer may issue an order to require the filing of pre-hearing statements.

(8) The presiding officer may require the parties to hold such conferences, exchange such information and submit such papers as may aid in the organization of the proceeding and efficient disposition of the matter or part thereof. The presiding officer may participate in such informal conferences as appropriate.

(9) Upon seven (7) days written notice to the parties, one or more pre-hearings may be conducted for the purpose of hearing arguments on pending motions, clarifying or simplifying issues, discussing possibility of settlement of issues or the entire matter, examining documents and exhibits exchanging names and addresses, and otherwise attempting to resolve the matter.

(10) The presiding officer may issue pre-hearing orders.

(11) Parties may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.400 Florida Rules of Civil Procedure (FRCP). The presiding officer may issue appropriate orders to effectuate the purposes of discovery and to prevent delay and unnecessary expenses, and may impose appropriate sanctions under rule 1.380 FRCP, other than contempt, or award any expenses, fee, or damages. Sanctions may include dismissal of the entire proceeding.

(12) All testimony at a hearing shall be under oath and shall be recorded. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of Florida. All witnesses who testify shall be subject to cross-examination.

(13) At the conclusion of hearings conducted by a hearing officer or as soon thereafter as practicable, the hearing officer shall issue a recommended order containing findings of fact based on the evidence in the record, and conclusions of law.

(14) Decisions of the authority shall be by motion approved by at least three (3) members present and voting.

(15) Except for pass-through, indexing, or staff assisted rate cases, persons other than the original parties who can demonstrate a substantial interest in the proceeding and who desire to become a party may petition the presiding officer for leave to intervene. Each petition must be received by the administrator of the authority at least five (5) days prior to commencement of the next scheduled hearing date and must include allegations sufficient to demonstrate that the intervenor is entitled to participate in the matter as a matter of law. Interventions may be allowed at any time into the specific proceeding, but all intervenors shall take the matter as they find it. Intervention shall never be allowed if the intervention would unduly prejudice any party if the intervenor could have entered into the proceeding at an earlier date. The administrator shall forward the petition to the presiding officer.

(16) For procedures involving expert witnesses, subpoenas, recordation, due process protection, evidence, post hearing procedures, motions for reconsideration, stay pending judicial review, and receivers, and dismissals, the rules of the board or the authority will control.

(17) The presiding officer may grant a continuance of a hearing for good cause shown or upon stipulation of all parties. Requests for a continuance shall be made in writing or upon oral motion at a hearing. Except in cases of emergency, requests for continuance must be made at least five (5) days prior to the date notice for the start of the hearing.

(c) Procedures for authority consideration of a recommended order of a hearing officer.

(1) In order for a recommended order of a hearing officer to be effective, it must be approved by an order or resolution issued by the authority, with or without modifications, at any regular or special meeting of the authority.

(2) Any party, including an individual customer of a utility, who is dissatisfied with any recommended order of a hearing officer may object to possible approval of such order by the authority by filing with the clerk of the authority a written notice of objection within ten (10) days of issuance of the recommended order. Upon the filing of such notice, the authority may set a public hearing to consider that recommended order, shall review any record from the proceedings before the authority, and may hear legal arguments related to that recommended order. Based upon such information, the authority shall decide whether to approve, amend and approve, reverse the recommended order, remand the matter back to the hearing officer or take other action as the authority deems appropriate.

(3) In the event a notice of objection is not filed within ten (10) days of issuance of a recommended order, the authority may confirm such order without a hearing, whereupon the recommended order shall take effect as specified by the authority. Unless otherwise specified, the order shall become fully effective upon approval by the authority.

(4) A final order of the authority shall take effect as directed by the authority without confirmation by the board.

(5) At any public hearing before the authority for the consideration of a recommended order, the authority shall consider the record of the proceedings before the authority and the legal arguments of the affected utility, any party, and of the staff. No recommended order of a hearing officer shall be binding on the authority. The authority may rely on the findings of fact found by the hearing officer unless the authority determines that the specific finding of fact was not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law. If the authority determines that any unaccepted finding of fact cannot be relied upon, it shall refer the matter back to the hearing officer to establish such additional record evidence.

(Ord. No. 2002-20, § 10, 10-8-02)

Sec. 28-301. Enforcement and penalty provisions.

(a) Any person violating any of the provisions of this article shall be prosecuted as described in Chapter 2, Article III as amended from time to time. Each incident or separate occurrence of any act that violates this article shall be deemed a separate offense. In addition to the penalties provided under this section, violators of this article shall be subject to any other appropriate civil or criminal action provided by law in a court of competent jurisdiction, including, but not limited to, injunctive relief and code enforcement under Chapter 162, Florida Statutes.

(b) For any violation of a franchise or this article or any written rule of the board or of the authority under this article, not otherwise specified in this article, the authority may assess an administrative penalty not exceeding five hundred dollars (\$500.00), which may be collected in civil court of law of competent jurisdiction. Each day of a violation continues may be considered as a separate violation.

(c) For any refusal to comply with or willful violation of any rule, order of the board or the authority, or of this article, the authority may amend, suspend or revoke any franchise certificate issued by it. Each day that such refusal or violation continues shall constitute a separate offense.

(d) Whenever any filing requirement of any utility, including all required accompanying documentation are not filed within the applicable prescribed time period, the utility shall be notified of the delinquency by certified mail or other means of actual delivery. If the notice of delinquency has been received by the utility, or within lesser time as specified in the notice, the authority may conduct an independent audit of the book and records of the franchise to determine the amount of the fee that is due, or may calculate the fee by projecting the fee from the utility's previous most recent experience. If the county calculates any such fees because the utility has not done so in a prompt and complete manner, the utility shall be liable for all applicable late charges plus all of the county's costs, including attorney's fees, cost of collection and costs of legal action(s) to enforce collection.

(e) Any utility, officer, agent, or employee, or other person convicted under the provisions of this article shall pay, to the fullest extent allowed by the law, all costs and expenses involved in that case.

(f) Any penalty authorized and established pursuant to this article shall be a lien upon the real and personal property of the utility, enforceable by the authority as a statutory lien under F.S. ch. 85.

(g) The county may take such other lawful action in any court of competent jurisdiction as the county deems necessary to prevent or remedy any refusal to comply with, or any violation of, this article and/or any rule or order of the board or the authority. such actions may include and shall not be limited to an equitable action for injunctive relief, or any action at law for damages or other relief or remedy.

(h) Notwithstanding the enforcement and penalty provisions of this section 28-301, any violation of federal or state law, which is also a violation of this article, may be prosecuted under the applicable federal or state law.

(Ord. No. 2002-20, § 11, 10-8-02; Ord. No. 2004-09, § 14, 7-13-04)

Sec. 28-302. Appellate review.

Any person directly aggrieved by an order, resolution or other action of the authority may have it reviewed by the circuit court on petition for a writ of certiorari, pursuant to Rule 9.100, Florida Rules of Appellate Procedure or its successor in function rule, as then applicable. Matters before the authority may not be appealed to the board. Parties may, in lieu thereof, and as provided for in this article, file timely objections to recommended orders that are at that time scheduled for presentation to the authority for action by the authority.

(Ord. No. 2002-20, § 12, 10-8-02)

Secs. 28-303--28-315. Reserved.