

Charlotte County Board Of County Commissioners
Agenda Item Summary

1 DEPARTMENT MAKING REQUEST

County Attorney

2 MEETING DATE

7/22/2014 9:00:00 AM

3 REQUESTED MOTION/ACTION

Conduct a public hearing to consider approving an Ordinance amending County Code Chapter 3-8, Article II, concerning the regulated water and wastewater utilities, clarifying applicability, effectiveness, and enforcement.

4 AGENDA

TimeRequired

5 IS THIS ITEM BUDGETED (IF APPLICABLE) -

Budget Action

No action required.

Financial Impact Summary Statement

None.

Detailed Analysis Attached - No

Budget Officer-

6 BACKGROUND (Why is this Action Necessary, and What Action will be accomplished)

On February 12, 2013, the Board of County Commissioners (Board) adopted a Resolution transferring regulation of the privately-owned for-profit water and wastewater utilities within the County back to the Florida Public Service Commission (PSC). Since that time, many questions have arisen as to the applicability of County Code Chapter 3-8 Article II concerning the regulated water and wastewater utilities, including which parts remain effective and who is responsible for enforcement. The proposed Ordinance clarifies that most of Article II only becomes effective when the County is regulating the private utilities, except for the requirements for mandatory connection to central utilities, which remain in effect.

The proposed Ordinance also deletes provisions for a hardship program established by the Board in 1989, which has never been funded or placed into effect.

ATTACHMENTS:

Name:

Description:

Type:

[Amend Standards for Water Sewer Utilities 2014.doc](#)

Ord. amending Ch. 3-8 Art. II on regulated utilities

Ordinance

[Amend Standards for Water Sewer Utilities 2014 EIE.doc](#) Economic Impact Estimate

Cover
Memo

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O R D I N A N C E
NUMBER 2014_____

AN ORDINANCE OF THE BOARD OF COUNTY
COMMISSIONERS OF CHARLOTTE COUNTY,
FLORIDA, AMENDING THE CODE OF LAWS AND
ORDINANCES OF CHARLOTTE COUNTY,
FLORIDA, CHAPTER 3-8 ARTICLE II RELATING TO
THE REGULATED WATER AND WASTEWATER
SYSTEM UTILITIES; CLARIFYING APPLICABILITY,
EFFECTIVENESS, AND ENFORCEMENT; AND
PROVIDING AN EFFECTIVE DATE.

RECITALS:

WHEREAS, Florida Statutes Chapter 367, the Florida State Water and Wastewater System Regulatory Law, establishes Florida Public Service Commission (PSC) jurisdiction over the privately-owned for-profit water and wastewater utilities, declaring such regulation to be in the public interest through the State's police power to protect the public health, safety and welfare; and

WHEREAS, Chapter 3-8 Article II of the Charlotte County Code contains provisions applying to the privately owned for profit utilities within the unincorporated part of the County; and

WHEREAS, on February 12, 2013, the Board adopted Resolution No. 2013-003 declaring Charlotte County subject to Florida Statutes Chapter 367 and effectively transferring regulation of the private for-profit water and wastewater utilities back to the PSC, where it must remain for a minimum of ten years; and

WHEREAS, the Board now desires to amend Chapter 3-8 Article II to clarify its applicability to the water and wastewater utilities within the County,

1 including when its regulatory provisions become effective, and which portions
2 remain in effect even when the County is not regulating said utilities.

3 NOW, THEREFORE, BE IT ORDAINED by the Board of County
4 Commissioners of Charlotte County, Florida:

5 Section 1. Charlotte County Code Section 3-8 Article II is hereby
6 amended as follows:

7
8 **ARTICLE II. STANDARDS FOR WATER AND WASTEWATER UTILITIES**

9 ***DIVISION 1. GENERALLY***

10 **Sec. 3-8-11. Jurisdiction.**

11 (a) When the board has acted pursuant to Chapter 367 Florida Statutes to
12 exclude the county from the provisions of that chapter, in effect taking back
13 regulatory jurisdiction over the private water and wastewater utilities from the
14 PSC, the Board must proceed as though the county is the PSC and must
15 follow the minimum requirements contained within this Article II.

16 ~~(a)~~(b) The board of county commissioners shall have exclusive jurisdiction over
17 each utility in the unincorporated part of the county with respect to its
18 authority, service and rates.

19 ~~(b)~~(c) This article shall supersede all other ordinances on the same subject. This
20 article shall not impair or take away vested rights other than procedural rights
21 or benefits.

22 (d) The requirements for mandatory water and wastewater connections
23 contained in Division 4 "Connections" shall remain in effect whether
24 regulatory jurisdiction is with the county or the PSC.

25 **Sec. 3-8-12. Definitions.**

26 As used in this article, the following words and terms shall have the following
27 meanings:

28 *Board* means the board of county commissioners of Charlotte County,
29 Florida.

30 *Bulk water utility* means every person owning, leasing, constructing,
31 operating or managing any water system or water source or both supplying
32 untreated or treated water to bulk users or distributors of water for a
33 consideration.

1 *Certificate* means a document issued by the board authorizing a utility to
2 provide service in a specific territory.

3 *Certificated utility* means the holder of a public water system, public
4 wastewater system, or bulk water utility certificate governed by this article.

5 *Corporate undertaking* means the unqualified guarantee of a utility to pay a
6 refund and any interest connected therewith which may be ordered by the board
7 at such time as the obligation becomes fixed and final.

8 *Governmental agency* means a county, a public authority created by an act
9 of the legislature of this state, an incorporated city, town or village in this state, or
10 any special district created by law.

11 *Rule* means a statement by the board of general applicability that
12 implements, interprets, or prescribes policy.

13 *System* means facilities and property used or useful in providing service and,
14 upon a finding by the board, may include a combination of functionally related
15 facilities and land.

16 *Territory* means the geographical area described in a certificate.

17 *Uniform systems of accounts for water and wastewater utilities* means the
18 most recent edition of the uniform system of accounts of the National Association
19 of Regulatory Utility Commissioners (NARUC) as compiled on the effective date
20 of this article or as last amended.

21 *Utility* means a water or wastewater utility and, except as provided in section
22 3-8-13, includes every person, lessee, trustee, or receiver owning, operating,
23 managing, or controlling a system, or proposing construction of a system, who is
24 providing, or proposes to provide, water or wastewater service to the public for
25 compensation. The term shall include bulk water utilities.

26 **Sec. 3-8-13. Exemptions.**

27 The following are not subject to regulation by the board as a utility nor are
28 they subject to the provisions of this article, except as expressly provided:

- 29 (1) The sale, distribution or furnishing of bottled water.
- 30 (2) Systems owned, operated, managed or controlled by governmental
31 agencies.
- 32 (3) Manufacturers providing service solely in connection with their
33 operations.
- 34 (4) Public lodging establishments providing service solely in connection with
35 service to their guests.
- 36 (5) Landlords providing service to their tenants without specific
37 compensation for the service.

- 1 (6) Systems with the capacity, or proposed capacity, to serve one hundred
2 (100) or fewer persons.
- 3 (7) Nonprofit corporations, associations or cooperatives providing service
4 solely to members who own and control such nonprofit corporations,
5 associations or cooperatives which have filed a copy of their corporate
6 charter or other organizational document with the board and received a
7 certificate.
- 8 (8) Any person who sells or resells water or wastewater service at a rate or
9 charge which does not exceed the actual purchase price of the water or
10 wastewater.
- 11 (9) Wastewater treatment plants operated exclusively for disposing of
12 industrial wastewater.
- 13 (10)The sale of bulk supplies of desalinated water to a governmental
14 authority.
- 15 (11)Any person providing only nonpotable water for irrigation or fireflow
16 purposes in a geographic area where potable water service is available
17 from a governmentally or privately owned utility or a private well.
- 18 (12)The sale for resale of bulk supplies of water or the sale or resale of
19 wastewater services to a governmental agency or to a utility regulated
20 pursuant to this article.

21 **Sec. 3-8-14. Powers and duties of the board.**

22 The board is authorized to:

- 23 (1) Prescribe and enforce regulations for the protection of the health, safety
24 and welfare of the citizens of Charlotte County, Florida, including but not
25 limited to water quality and quantity, fire protection, disaster
26 preparedness, wastewater collection, treatment and disposal;
- 27 (2) Prescribe, after a public hearing, fair and reasonable rates and charges,
28 classifications, standards of quality and measurement; and to prescribe
29 service rules to be observed by each utility;
- 30 (3) Prescribe, after a public hearing, uniform systems and classifications of
31 accounts for all utilities and the books, papers and records to be
32 maintained and the manner in which the books, records and papers shall
33 be maintained;
- 34 (4) Require every utility to charge a fair and reasonable sum as an operating
35 expense annually for depreciation and to credit the sum so charged to a
36 depreciation reserve which shall be charged with retirement of
37 depreciable property from service; also, the board shall either, upon
38 request or upon its own motion, fix rates which are just, reasonable,
39 compensatory and not unfairly discriminatory;

- 1 (5) Appraise and fix the value of the whole or any part of the property of any
2 utility to advance the purposes of this article;
- 3 (6) Require utilities to file annual reports of a uniform content and form as
4 prescribed by the board; and require special reports respecting any
5 matter about which the board is authorized to inquire or to keep itself
6 informed for enforcement of any of the provisions of this article or any
7 rules and regulations made pursuant to it;
- 8 (7) Adopt, after a public hearing, and collect from the utility reasonable
9 charges for the administration and enforcement of this article;
- 10 (8) Employ and fix the compensation of examiners and technical, legal and
11 clerical employees necessary to carry out this article;
- 12 (9) Prescribe, after a public hearing, rules and regulations reasonably
13 necessary and proper for administration and enforcement of this article;
- 14 (10)The board and its duly authorized representatives may, during all
15 reasonable hours, enter upon any premises occupied by any utility and
16 set up and use thereon all necessary equipment to make investigations,
17 inspections, examinations and tests or exercise any power under this
18 article. The utility has the right to reasonable notice of and to be
19 represented at the making of any investigations, inspections,
20 examinations and tests; and
- 21 (11)Order interconnections of service or facilities between utilities and to
22 approve any plant capacity charges or wholesale service charges or
23 rates related thereto, provided that the board first finds that the utility is
24 financially able to make such additional investment as is required without
25 impairing its capacity to serve its existing customers; and it may resolve
26 conflicts or duplications of service and bring the utilities into compliance
27 with the county's comprehensive land use management plan or its 201
28 facilities plan or county master waste and wastewater program as
29 required by public convenience and necessity.

30 **Sec. 3-8-15. Examination and testing of meters.**

- 31 (a) The board shall provide for the examination and testing of all meters used for
32 measuring any product or service of a utility.
- 33 (b) Any customer or user may have any such meter tested by the utility upon
34 payment of the fee fixed by the board.
- 35 (c) The board shall establish reasonable fees to be paid for testing such meters
36 on the request of the customers. The fee shall be paid by the customer or
37 user at the time of his request. However, the fee shall be paid by the utility
38 and repaid to the customer or user if the meter is found defective or incorrect
39 to the disadvantage of the customer or user in excess of the degree or
40 amount of tolerance customarily allowed for such meters, or as may be

1 provided for in rules and regulations of the board. No fee may be charged for
2 any such testing done by the board or its representatives.

3 (d) The board may purchase materials, apparatus and standard measuring
4 instruments for such examinations and tests or provide contractually for such
5 testing services.

6 **Sec. 3-8-16. Reserved.**

7 **Sec. 3-8-17. Records.**

8 (a) Water and wastewater utilities shall use the uniform system of accounts for
9 water and wastewater utilities of NARUC as compiled on the effective date of
10 this article or as from time to time amended, and all applications and reports
11 shall be made with reference thereto.

12 (b) All records of the utilities shall be preserved in accordance with NARUC
13 "Regulations to Govern the Preservation of Records of Electric, Gas and
14 Water Utilities."

15 (c) Each utility shall maintain on file at its principal office located within Charlotte
16 County suitable maps, drawings and records of its system and facilities to
17 show size, location, character, date of installation and installed cost of major
18 items of plan and extension of facilities.

19 **Sec. 3-8-18. Availability of service.**

20 Each utility shall, where economically feasible, furnish to each person within
21 its territory applying therefor reasonably adequate, efficient service in accordance
22 with its certificate and the rules and regulations prescribed by the board. If the
23 furnishing of the service by a utility requires the extension or an addition to its
24 existing facilities, the utility may require the applicant to pay reasonable sums for
25 service availability or reasonable deposits guaranteeing compensatory revenues
26 from the territory to be served or reasonable contributions in aid of construction
27 to help defray the cost of the facilities which will be used and useful in furnishing
28 the service, or any combination thereof, or reasonable construction or other
29 advances evidenced by refundable or nonrefundable agreements as a condition
30 precedent to furnishing service. All rates and charges made, demanded or
31 received by any utility for any service rendered or to be rendered by it and each
32 rule and regulation of the utility must be fair and reasonable and approved by the
33 board. No utility shall make or give any undue or unreasonable preference or
34 advantage to any person or locality or subject them to any undue or
35 unreasonable prejudice or disadvantage in any respect.

1 **Sec. 3-8-19. Service for resale.**

2 The board may require a utility to provide service for resale. However, before
3 requiring the performance of service, the board shall first find that the utility is
4 financially able to make such additional investment as is required without
5 impairing its capacity to serve its existing customers or its ability to earn a fair
6 rate of return on its investment. Any utility which provides service for resale will
7 provide such service upon terms and conditions established by the board and no
8 utility will discontinue such service without sixty (60) days' prior notice to the
9 board. In the event a governmental agency voluntarily enters into an agreement
10 for resale, such agreement shall provide that the service will not be discontinued
11 without ninety (90) days' notice being given to the purchaser prior to
12 discontinuing such service. Nothing contained herein shall be construed to
13 prohibit the governmental agency from requiring adequate security being given to
14 such agency to insure payments required in the agreement, except those
15 agreements held by the City of Punta Gorda and the Englewood Water District.

16 **Sec. 3-8-20. Receivership.**

- 17 (a) If a certified utility fails or refuses to operate the public water or wastewater
18 system or bulk water utility in compliance with this article and the certificate,
19 the board may apply to the circuit court for a receiver to operate the utility.
- 20 (b) If a certificate is revoked, the board shall apply to the circuit court for
21 appointment of a receiver to operate the utility or bulk water utility until a new
22 certificate for operation of the utility is granted by the board or the circuit
23 court otherwise orders.
- 24 (c) The board or any other government agency may condemn or purchase the
25 assets of the utility from the receiver in accordance with law.

26 **Sec. 3-8-21. Acquisition of utility by Charlotte County.**

- 27 (a) Notwithstanding any other section of this article, upon acquisition by
28 Charlotte County either through merger, transfer, negotiated sale, eminent
29 domain or otherwise:
- 30 (1) Any and all certificates or temporary certificates of public convenience
31 and necessity and designated service areas possessed by the acquired
32 utility shall be cancelled and terminated and of no further force and effect
33 as to said utility as of the date upon which Charlotte County acquires the
34 duties, title to such utility, and its property. On that date, Charlotte
35 County shall assume the duties and responsibilities of providing water or
36 wastewater service without any further action of the board.
- 37 (2) Any and all escrowed funds possessed by the acquired utility or being
38 held on its behalf, escrowed pursuant to board order, shall be released to
39 the use of Charlotte County for the purpose of providing water or

1 wastewater service to consumers within the service area of the acquired
2 utility. If funds have been escrowed by the acquired utility for certain
3 capital projects or other particular purposes, Charlotte County shall
4 assume the responsibility for fulfillment of those specific projects or
5 purposes without the need for such escrow accounts and shall rebate to
6 the consumers of the acquired utility or to those consumers directly
7 responsible for establishing said fund or funds any of such funds not so
8 utilized for those specific projects or purposes.

9 (b) Upon acquisition of a utility, Charlotte County shall be liable to make
10 construction cost refunds to developers for which the acquired utility was
11 liable, except to the extent that such liability is extinguished by the terms of
12 the agreement reflecting a sale, merger or transfer or by eminent domain
13 proceedings.

14 (c) In the interim period between the date upon which Charlotte County signs a
15 letter of intent with a utility or such other date as may be agreed to between
16 Charlotte County and the acquired utility to purchase that utility and the date
17 upon which the change of title of that utility to Charlotte County occurs, the
18 rates, charges, fees, construction standards and specifications imposed by
19 the utility upon consumers within its franchised service area shall remain
20 subject as before to control of the board. However, any developer who
21 desires to enter into a service agreement with that utility during the interim
22 period described above shall be required to install improvements and to
23 submit design data that meet the standards set forth in the rules and
24 regulations of Charlotte County. Said developer shall have the right to appear
25 before the board during the interim period to obtain a waiver or modification
26 of said standards during the interim period where the developer can show
27 mitigating circumstances that pre-existed the date upon which binding
28 contract, agreement or settlement agreement was signed that justify such a
29 waiver modification.

30 (d) Notwithstanding any other provision of this article, personnel rules or any
31 other rules, regulations or administrative orders, the director of the utility
32 department (when the system is acquired by the county) or the county
33 administrator (when the system is acquired by the county) may determine
34 that all or certain of the employees of the acquired utility (except for acquired
35 utilities of municipalities) should be retained as employees in those or similar
36 capacities in the county's service in order to maintain service continuity and
37 prevent a detrimental interruption of those essential services. In so doing, the
38 determination of the director or the administrator shall result in the waiver of
39 any requirements for competitive or promotional examinations and the
40 director or county administrator may place said employees in a job status or
41 classification reasonably comparable to that held by the employee prior to
42 the acquisition, if available. Any employee so hired shall be considered and
43 treated as a new county employee and shall serve a probationary period as
44 determined by the county administrator or director.

1 (e) The terms of this section shall be applicable to all utilities heretofore or
2 hereafter acquired by Charlotte County.

3 **Sec. 3-8-22. Nonprofit utilities.**

4 Any utility owned and operated by a nonprofit corporation may, by a
5 summary procedure, apply to the board for a certificate describing its territory.
6 For planning purposes, such utilities shall provide the county budget department
7 with a copy of its most recent annual financial report before January 15 of each
8 year.

9 **Sec. 3-8-23. Waiver.**

10 Utilities may request a waiver of specific portions of these rules from the
11 board by submitting a written statement setting forth the reason in detail why the
12 waiver should be granted.

13 **Sec. 3-8-24. Charges for service availability.**

14 (a) Charges and conditions for service availability in effect on the effective date
15 of this article shall remain in effect and may be modified only with the
16 approval of the board.

17 (b) The board by rule may set standards for service availability charges and
18 service availability conditions. Charges and conditions made by a utility shall
19 be just and reasonable, allowing the utility a fair return on investment. The
20 board shall, upon request or upon its own motion, investigate agreements or
21 proposals for charges and conditions to be made by a utility for service
22 availability. The board shall, upon due notice and hearing, set just and
23 reasonable charges and conditions for service availability.

24 (c) Applications for approval of charges and conditions for service availability
25 shall be accompanied by a fee as hereinafter set forth and shall be subject to
26 the provisions of this article.

27 ***DIVISION 2. ADMINISTRATION AND ENFORCEMENT***

28 **Sec. 3-8-25. Charlotte County budget department.**

29 (a) The established utility regulatory function for Charlotte County shall operate
30 within the budget department.

31 (b) The budget director is authorized to employ a utility regulatory staff to be
32 under his supervision.

33 (c) Reserved.

34 (d) The budget department shall participate or provide representation as a party
35 in any and all public hearing proceedings as addressed herein. The budget

1 department staff's primary duty is to represent and consider the public
2 interest and see that all relevant facts and issues are clearly presented to the
3 board for its consideration.

4 (e) The budget director shall recommend to the board rules and regulations for
5 the proper administration of the public utilities in the public interest.

6 (f) The budget director shall make recommendations to the board on such
7 matters involving the rates, fees, charges, rules, regulations and conditions
8 of service of public utilities as the board may refer to the budget department.
9 When such matters are referred by the board to the budget department, the
10 budget director shall have administrative authority to:

11 (1) Exercise supervision of the administration of this article;

12 (2) Carry out studies and investigations, and provide recommendations upon
13 such matters relating to public utilities requested by the board;

14 (3) Assign such studies or solicit assistance of an independent qualified
15 expert (consultant) as authorized by the board in undertaking
16 investigations on matters referred to him;

17 (4) Study and observe utility operation and conditions, and recommend to
18 the board actions necessary to abate nuisances caused by violations of
19 this article;

20 (5) Develop and recommend through the county administrator to the board
21 current and long range plans to provide for the operations of the budget
22 department and for compliance with this article by all utilities;

23 (6) Recommend the employment of such staff as may be necessary from
24 time to time to properly administer the budget department and
25 recommend enforcement of the provisions of this article;

26 (7) Perform any and all inspections of utilities as may be required by the
27 budget director or the board; and

28 (8) Exercise additional powers to be described and delegated by the budget
29 director or the board.

30 **Secs. 3-8-26—3-8-28. Reserved.**

31 **Sec. 3-8-29. Enforcement.**

32 When the board of county commissioners finds that the rates, charges or
33 classifications charged or serviced by a utility for any services, or that the rules,
34 regulations, measurements, practices or contracts of a public utility are unjust,
35 unreasonable, insufficient, discriminatory or preferential or are in violation of this
36 article or the certificate or the rules and regulations made pursuant to this article,
37 or any services are inadequate or cannot be obtained, the board may determine
38 after a public hearing and by order fix the fair and reasonable rates and charges

1 or classifications in the manner prescribed by this article and the reasonable
2 rules, regulations, measurements, practices, contract or services to be imposed,
3 observed, furnished, or followed in the future. After a public hearing, the board
4 may require repairs, improvements, additions and extensions to the plant and
5 equipment of any utility reasonably necessary to promote the convenience and
6 welfare of the public served thereby and secure adequate service or facilities for
7 those reasonably entitled thereto except as provided in section 3-8-24 of this
8 article.

9 ***DIVISION 3. CERTIFICATE***

10 **Sec. 3-8-30. Required.**

- 11 (a) It shall be unlawful for any utility to provide service until the utility has
12 obtained a certificate therefor.
- 13 (b) After the effective date of this article, no person may build, install, maintain or
14 operate any public water or public wastewater system or bulk water utility in
15 the unincorporated area of Charlotte County unless the board has granted a
16 certificate to the person or the person is exempt under this article. All
17 certificates heretofore granted by the board or legally established before the
18 effective date of this article shall remain in force in accordance with their
19 respective provisions.
- 20 (c) The board may grant a certificate to a qualified applicant upon proper
21 application and payment of the appropriate fees.

22 **Sec. 3-8-30.5. Grandfather certificates.**

23 Each applicant for a certificate of authorization under the provisions of F.S.
24 section 367.171 shall provide the following information:

- 25 (1) A map of its existing system or system under construction;
- 26 (2) A certified copy of the certificate of authorization issued by the Florida
27 Public Service Commission (PSC), including a legal description of the
28 service area for which the certificate of authorization was issued;
- 29 (3) A tariff, listing all rates and charges then in effect, which shall remain in
30 effect until thereafter lawfully changed by the board; and
- 31 (4) A copy of the operating regulations and procedures of the utility then in
32 effect, which shall remain in effect until thereafter lawfully changed by the
33 board.

34 **Sec. 3-8-31. Application for certificate or extension thereof.**

- 35 (a) Except as provided in subsection 3-8-30(b), applications for the issuance of a
36 new certificate or extension of an existing certificate shall be filed with the

1 clerk of the board in a form prescribed by the board by rule and accompanied
2 by the fee hereinafter required. Upon receipt thereof, the clerk shall notify the
3 board which shall set the matter for public hearing, giving due notice thereof.
4 At the hearing, the board, considering the ability of the applicant to provide
5 service, the territory and facilities involved, the need for service in the
6 territory involved and the existence or nonexistence of service from other
7 sources within geographical proximity to the territory applied for, shall
8 approve or deny the granting of the certificate or extension in whole or in part
9 or with modifications in the public interest, but may in no event grant authority
10 greater than that contained in the notice of hearing. Any certificate may be
11 revoked or modified at any time upon public hearing if it is found that the
12 certificate holder is not providing service or that the service is no longer
13 required.

14 (b) Each application must be addressed to the board and filed with the clerk of
15 circuit court in a minimum of fifteen (15) complete copies.

16 (c) Each application shall be subscribed and sworn to before a notary public or
17 other officer authorized to administer oaths in substantially the following form:

18 STATE OF FLORIDA

19 COUNTY OF _____

20 I, _____, do solemnly swear that facts stated in the foregoing
21 application and all exhibits attached hereto are true and correct to the best of
22 my belief, and that said statement of facts constitutes a complete statement
23 of the matter to which it relates.

24 _____

25 Subscribed and sworn to before me this _____ day of
26 _____, _____.

27 My Commission Expires:

28 _____

29 Notary
30 State of Florida at Large

Public

31 (d) Each application for a certificate shall include a detailed map showing
32 existing lines and facilities and extensions thereof under construction in the
33 territory served thereby, the map to be of sufficient scale and detail to enable
34 correlation with a description of the territory professed to be served.

35 (e) All applications must provide the following information:

36 (1) Full and accurate name and address of the applicant;

37 (2) Character of the organization such as corporation, partnership, individual
38 proprietorship or association;

- 1 (3) Names and addresses of any corporate officers and directors, and
2 names and addresses of any persons owning an interest in any
3 organization not a corporation;
- 4 (4) Date the organization was established;
- 5 (5) Number of connections in operation on the date of filing;
- 6 (6) Schedule prepared in accordance with the following requirements
7 showing all rates, classifications and charges for service of every kind
8 furnished or to be furnished, and all rules and regulations relating
9 thereto. The schedule shall contain at least:
- 10 a. *Title page.* The title sheet shall identify the utility and identify the
11 volume as the rate book or tariff filed by the particular utility with the
12 board.
- 13 b. *Previous tariff.* If the utility was previously regulated by the public
14 service commission, a copy of the last tariff approved by that
15 commission.
- 16 c. *Description of territory served.* A brief, general description and/or
17 map of the territory served by the utility and any proposed extensions
18 thereof.
- 19 d. *Miscellaneous.* The schedule should contain all information relevant
20 to the application not addressed by other sections or subsections of
21 this article.
- 22 e. *Technical terms and abbreviations.* This section must fully define all
23 technical and special terms, abbreviations, and all reference marks
24 used in the application.
- 25 f. *Rules and regulations.* This section shall include all rules,
26 regulations, practices, services, classifications, exceptions and
27 conditions made or observed relative to the utility service furnished
28 which are general and applied to all or many of the rate schedules or
29 exchange areas served.
- 30 g. *Rate schedules.* All standard rates schedules governing service to
31 customers, each on a separate sheet, shall be placed in and made
32 part of this section. The sequence of arrangement for rate schedules
33 will be as follows:
- 34 Rate schedules of general applicability
- 35 Rate schedules for residential (domestic) service
- 36 Rate schedules for rural service
- 37 Rate schedules for commercial service
- 38 Rate schedules for industrial service

1 Rate schedules for municipal service

2 Rate schedules for miscellaneous or special services

3 (f) Each rate schedule must provide the following information:

4 (1) *Identification of schedules.* In any tariff in which a number of schedules is
5 shown applicable to various uses, each schedule shall be identified by a
6 letter or letters and/or a number. The letters used for schedule
7 designation shall be indicative of the class of service to which the
8 schedule is applicable.

9 (2) *Availability.* The availability clause shall define the areas or communities
10 in which the rate schedule is effective. Where schedules are available in
11 a large number of communities, the list of communities and available rate
12 schedules shall be complete and accurate, in which case the availability
13 of a rate schedule may be indicated by reference to such indexed list.

14 (3) *Applicability.* The applicability clause shall define the class of customer
15 or type of use to which the rate schedule applies.

16 (4) *Limitations of service.* Any limitations or restrictions applicable to service
17 under the particular rate schedule should be clearly stated.

18 (5) *Minimum charge.* Here state clearly the minimum charge and the period
19 which it covers. If there is no minimum charge, so state.

20 (6) *Terms of payment.* Where the rate or rates are subject to discount or
21 penalty, this clause shall state the conditions governing such provisions.

22 (7) *Billing adjustments.* Where the rate or rates are subject to application of
23 adjustment clauses, the provisions governing such application shall be
24 clearly stated. Where any given clause is applicable to all or many of the
25 rates employed, such clause shall be set forth on separate sheets,
26 together with an index of the rates to which it applies, in which case each
27 rate schedule may make reference to each such sheet and index.

28 (8) *Demand charges.* Where a demand component is used in the rate
29 structure, there shall be set forth a clause defining the method of
30 determination of demand.

31 (9) *Term of service.* If the rate shown is subject to usage over any specified
32 minimum period, that fact should be stated.

33 (10) *Additional clauses.* Any other clauses which modify or have application
34 to the rate set forth shall be included where applicable.

35 (11) *Miscellaneous.* Any special rules, regulations, provisions or privileges
36 which the utility may require or permit.

37 (12) *Rate or rates.* If different from the rates currently in effect, the difference
38 shall be explained.

1 **Sec. 3-8-32. Additional application support.**

2 In addition to other material, the application shall include:

- 3 (1) A statement relating to the capacity of existing lines and facilities and
4 extensions thereof under construction in the territory professed to be
5 served thereby;
- 6 (2) A description of the territory to be served using metes and bounds with
7 township, range and section references;
- 8 (3) A serial number or numbers and respective date or dates of approval of
9 engineering plans and specifications for any existing or proposed water
10 or sewer system given by the state department of health and
11 rehabilitative services, division of health. Permit number or numbers and
12 respective dates of issuance of any permit for sewer systems issued by
13 the department of pollution control pursuant to Florida Statutes chapter
14 403;
- 15 (4) A detailed statement of the financial condition of the applicant showing
16 all assets and liabilities of every kind and character, to be certified by an
17 independent certified public accountant in accordance with the uniform
18 system of accounts for water and sewer utilities, as defined in section 3-
19 8-12 herein;
- 20 (5) A statement of profit and loss (operating statement) of an applicant for
21 the preceding calendar or fiscal year, if applicant has operated for such
22 period, or any lesser period if applicant has not operated for a full year,
23 said statement to be certified by an independent certified public
24 accountant.

25 **Sec. 3-8-33. Service extension and extension of certificate.**

26 Except as hereinbefore provided in section 3-8-30:

- 27 (1) A utility may extend its water and wastewater service for a distance of
28 not greater than one thousand (1,000) yards outside of the boundary of
29 the territory described in its certificate with the permission of the board
30 granted without notice of hearing or requirement of fee if the extension
31 does not involve territory of an organizationally unrelated utility, territory
32 served by a governmental agency, or territory receiving similar service
33 from any other utility or governmental agency.
- 34 (2) A utility shall extend both water and wastewater service simultaneously
35 unless granted a specific exemption therefrom by the board. If a utility
36 provides only one regulated service (water or wastewater) or if the utility
37 has the capability to provide both water and wastewater services but
38 does not furnish both such services in the area for which an extension is
39 being requested, the applicant shall demonstrate to the satisfaction of
40 the board why such limited service extension should be permitted.

- 1 (3) It is the policy of the board to require all utilities to provide, directly or
2 indirectly, potable water and wastewater treatment to all residents under
3 its jurisdiction and eliminate the use of septic tank systems as it is the
4 board's decision that such private systems are deemed not to be in the
5 public interest. Private wells used for irrigation, fire protection, and other
6 wells for general use, other than for potable water, are excepted from
7 this provision. Potable wells abandoned during connection to a utility
8 system when service is made available can be converted to nonpotable
9 use as permitted by the State of Florida.
- 10 (4) An application to extend a certificate may be made upon the petition of
11 the utility or at the motion of the board. The applications or motions shall
12 contain a description of all additional territory proposed to be served
13 within Charlotte County and a map showing the additional territory. Upon
14 receipt of the application and map, the board shall establish a time within
15 which objections shall be filed and give notice thereof by publication
16 once in a newspaper of general circulation in Charlotte County and by
17 mailing notice thereof to each utility in the county at least twenty (20)
18 calendar days before the expiration of such period of time.
- 19 (5) If no written objections have been received at the expiration of the time
20 for making objections, the board may proceed without further notice or
21 hearing to grant the certificate of extension.
- 22 (6) If written objections are timely filed by the budget department, a
23 governmental agency, a utility, or a consumer who will be substantially
24 affected by the proposed extension as determined by the board, the
25 petition for extension shall be considered an application for a new
26 certificate and shall be considered in accordance with the procedures
27 established therefor by sections 3-8-30, 3-8-31 and 3-8-32 or such less
28 stringent procedures as may be allowed by the board.

29 **Sec. 3-8-34. Application for certificate or extension as required under**
30 **section 3-8-30.**

31 Before any certificate is granted, the board shall be satisfied that:

- 32 (1) The application is made in good faith;
- 33 (2) The applicant has the means to build, install and operate the proposed
34 public utility;
- 35 (3) The applicant has sufficient resources to serve the area for which an
36 application is made;
- 37 (4) The proposed system is sufficiently large to serve the area for which the
38 franchise is sought;
- 39 (5) The applicant has filed with the board a conceptual plan showing the
40 layout of the proposed system, including the source of water and method
41 of treatment of water, and method of disposing of wastewater effluents

1 which sources and methods shall be demonstrated to be adequate to
2 protect public health, safety and welfare;

3 (6) The applicant has filed the proposed rates for service; and

4 (7) The applicant is meeting the required level of service established in the
5 water and wastewater element in the comprehensive plan.

6 **Sec. 3-8-35. Form of extension application.**

7 (a) The board has prescribed a form of application for certificates in section 3-8-
8 30 and the following section. The board shall require an applicant to file a
9 certified copy of its certificate of incorporation, if any; a financial statement on
10 which an unqualified opinion has been made by a certified public accountant;
11 an inventory of capital assets; and such other data so that the board can
12 determine whether or not the applicant is qualified under this article. Where
13 the certificated utility is a division or subsidiary of a larger company,
14 company-wide accounting opinions and audits are acceptable where such
15 reports provide the same information as a report limited in scope to the
16 certificated utility. The board shall require the applicant to post a bond,
17 satisfactory in form and sureties to the board, to guarantee compliance with
18 any condition imposed by the board for issuance of a certificate.

19 (b) Before a certificate is granted, a schedule of rates and charges for the utility
20 shall be filed with the board for its approval. A public hearing on the rates and
21 charges may be combined with that for granting a certificate.

22 **Sec. 3-8-36. Public hearing.**

23 (a) The board shall hold a public hearing on the application before any certificate
24 for an area is granted. Notice of the hearing, the name of the applicant, the
25 area to be included in the certificate, the proposed rates and hook-up
26 charges, the period for which the certificate is requested and the time and
27 place of the hearing shall be published in the newspaper once a week for two
28 (2) consecutive weeks with the first publication at least twenty-one (21) days
29 prior to the date of the hearing. The board may alter or reject any of the items
30 set out in the notice without publishing a new notice.

31 (b) The board may grant approval for a certificate upon such conditions as it
32 deems proper and after requiring such data as it deems necessary. The
33 applicant shall file with the board copies of the construction plans for the
34 system and, after completion, a set of the as-built drawings. All plans
35 mentioned in this subsection shall be approved by the appropriate
36 governmental agencies prior to any construction being initiated.

37 (c) The board may waive the requirement for a public hearing when the
38 applicant already holds a certificate under this article and when the pending
39 application is for an extension of the existing certificate for a distance of one
40 thousand (1,000) yards or less.

- 1 (d) The application shall be executed by the person who will be the certificate
2 holder or his authorized representative.
- 3 (e) The board may prescribe a reasonable time, not to exceed five (5) years,
4 within which the authority granted in a certificate shall be exercised. If the
5 service authorized by the certificate is not provided within the time
6 prescribed, the certificate shall be automatically cancelled, but the board may
7 extend the time for good cause shown if application therefor is made before
8 expiration of the time prescribed in the certificate. In such event, the board
9 may impose such conditions as it deems proper to assure the provision of
10 adequate service at a reasonable cost.

11 **Sec. 3-8-37. Transfer of certificate.**

12 The following procedure shall be followed for transfer of a certificate,
13 including transfers by sale, transfer of stock or assignment of assets:

- 14 (1) The certificate holder shall apply in writing to the board for approval of
15 the transfer, setting forth therein the following information:
 - 16 a. The means by which the transfer will be accomplished;
 - 17 b. The name and address of the person, firm or corporation to whom
18 the certificate is to be transferred;
 - 19 c. The date by which proposed transfer is expected to be
20 accomplished;
 - 21 d. If to a corporation, fifteen (15) certified copies of the corporate
22 charter;
 - 23 e. The financial statement of the person, firm or corporation to whom
24 the certificate is to be transferred on which an independent certified
25 public accountant has expressed an unqualified opinion, together
26 with inventory of capital assets, except when the new certificate
27 holder is a wholly-owned subsidiary of the former certificate holder.
- 28 (2) Before any certificate transfer is approved, the board shall hold a public
29 hearing and shall be satisfied that the application for transfer meets the
30 applicable requirements of sections 3-8-30 through 3-8-38 and all rules
31 and regulations adopted hereunder. Such approval shall not be
32 unreasonably withheld.

33 **Sec. 3-8-38. Certificate application and rate adjustment fees.**

34 All applications for the issuance of new certificates or extension of existing
35 certificates or for a change of rate (excluding price index or pass-through rate
36 adjustments) shall be accompanied by a fee based upon the existing or proposed
37 capacity of the system or extension as follows:

From 1 to 500 connections	\$1,000.00
From 501 to 2,000 connections	\$2,000.00
From 2,001 to 4,000 connections	\$3,500.00
4,001 or more connections	\$4,500

1 All such fees shall be deposited into the county utility regulatory fund.

2 **Sec. 3-8-39. Revocation.**

3 (a) After a public hearing, the board may revoke any certificate for the following
4 reasons:

5 (1) Willful refusal to comply with any lawful order of the board entered after a
6 public hearing;

7 (2) Willful charging or collecting of any rate or charge not approved by the
8 board;

9 (3) Willful violation of the rules and regulations of the board;

10 (4) Willful failure to file reports required under this article.

11 (b) No certificate may be revoked until the board has held a hearing providing
12 due process. Notice of the hearing shall be given to the certificate holder at
13 least twenty-one (21) calendar days before the date of the hearing. Notice
14 shall be in writing and shall specify the grounds on which revocation is
15 sought stating the facts on which such grounds for revocation are based with
16 such particularity as to inform the certificate holder of the nature of the
17 complaint made against it. If the board determines after the public hearing
18 that the complaint against the certificate holder has been established, the
19 certificate may be revoked, or any other order provided for in this article may
20 be entered by the board.

21 **Sec. 3-8-40. Service.**

22 (a) Each utility shall provide service to the territory described in its certificate
23 within a reasonable time after request. If the board finds upon due notice and
24 hearing that any utility has failed to provide service to any person reasonably
25 entitled thereto, it may amend the certificate to delete the territory not served
26 or not properly served, or it may rescind the certificate, or it may direct the
27 utility to provide the service. If the board finds that extension of service to any
28 such person could be accomplished only at an unreasonable cost and that
29 the addition of such territory to that of another utility company is economical
30 and feasible, it may amend the certificate to delete the territory not served or

1 not properly served by the utility, or it may rescind the certificate, after due
2 notice and hearing. If utility service has not been provided to any part of the
3 territory which a utility is authorized to service, whether or not there has been
4 a demand for such service, within five (5) years after the date of authorization
5 for service to that part, then the authorization may be reviewed and amended
6 or revoked by the board. However, the board may extend the time for good
7 cause shown if application therefor is made before expiration of such time
8 period. In such event, the board may impose such conditions as it deems
9 proper to assure the provision of adequate service at a reasonable cost.

- 10 (b) Each utility shall provide to each person reasonably entitled thereto such
11 safe, efficient and sufficient service as is prescribed by the Florida Safe
12 Drinking Water Act and the Florida Air and Water Pollution Control Act, or
13 rules adopted pursuant thereto or, if applicable, the Florida State Department
14 of Environmental Protection. Service shall not be less safe, less efficient or
15 less sufficient than is consistent with the approved engineering design of the
16 system and the reasonable and proper operation of the utility in the public
17 interest.

18 ***DIVISION 4. CONNECTIONS***

19 **Sec. 3-8-41. Water and wastewater connections.**

20 All existing and new residential development shall tie into a centralized
21 sanitary wastewater and potable water system where such connections are
22 located contiguous to the right-of-way which contains these utilities and within
23 one hundred (100) feet of the projection of any property corner normal to the
24 utility lines, and the facility has sufficient capacity to accommodate the
25 development. In addition, all commercial, industrial, and high density multi-family
26 development property located within one hundred (100) feet of a main line
27 extension for the above described utility lines shall be required to connect to
28 these available utilities provided the facility has sufficient capacity to
29 accommodate the development. Parcels of five (5) acres or more with a single-
30 family residential unit shall be exempt from the requirement of this policy. All
31 such connections shall be made in accordance with the rules and regulations
32 which shall be adopted from time to time by the board, which rules and
33 regulations shall provide for a charge for making such connections in such
34 reasonable amount as the board may fix and determine by resolution, or in the
35 case of a private utility, the rules and regulations adopted by the utility and
36 approved by the board or the PSC.

37 **Sec. 3-8-42. Connection time sequence.**

38 It shall be required that connections to centralized water and wastewater
39 systems will be accomplished within one (1) year of availability and that any
40 existing on-site facility be discontinued. On-site treatment facilities include
41 potable water wells, septic tanks and package plants. On-site treatment facilities

1 existing after the effective date of this section may remain in use for a period not
2 to exceed five (5) years from the date of the issuance of the certificate of
3 occupancy. ~~Section 3-8-44 herein provides for monetary penalties for~~
4 ~~noncompliance and for extensions where severe hardship can be demonstrated~~
5 ~~in an owner-occupied dwelling.~~

6 **Sec. 3-8-43. Wastewater connections required for county-approved**
7 **certificated utilities.**

8 All connections to the water supplies of approved certificated utilities shall be
9 simultaneously connected to a central wastewater system or approved
10 certificated utility, unless the wastewater service is not available, as determined
11 by the board. No water service shall be provided without wastewater, exceptions
12 determined by the board when deemed not economically feasible.

13 **Sec. 3-8-44. Exceptions Enforcement.**

14 (a) If after one (1) year after notice of availability by a certified utility, any owner
15 of any lot or parcel of land within the county shall fail or refuse to connect
16 with and use the facilities of the potable water or wastewater system of the
17 certificated utility, ~~a list of these owners shall be forwarded to the county~~
18 ~~budget department. The budget department will the utility may then send out~~
19 ~~certified letters to each individual who has not paid the required connection~~
20 ~~fees. Within the letter, a request to connect will again be made along with an~~
21 ~~enclosed form for hardship review. That form is more fully described in~~
22 ~~subsection (c), below. The owner then has twenty (20) days to reply. If the~~
23 ~~application is not received, the base facility charge will begin on the twenty-~~
24 ~~first day.~~

25 ~~If the application is received, the budget department staff shall check for~~
26 ~~completeness and forward it to the county human services department for review~~
27 ~~to determine if the applicant qualifies for hardship consideration, pursuant to the~~
28 ~~criteria in subsection (c) below. If the human services department review~~
29 ~~indicates the owner does not qualify, subsection 3-8-44(b) shall take effect. If,~~
30 ~~however, the human services department review indicates the owner does~~
31 ~~qualify for hardship consideration, a lien shall be placed against the property to~~
32 ~~cover the connection fees, the hardship review fee, and any accrued base facility~~
33 ~~charges.~~

34 ~~The lien shall be of equal dignity with the lien of state and county and~~
35 ~~municipal taxes.~~

36 ~~The lien may be foreclosed by the county in the same manner provided by~~
37 ~~the laws of Florida for the foreclosures of mortgages upon real estate. This lien~~
38 ~~shall be paid back to the county in equal yearly payments over a maximum of a~~
39 ~~ten-year period or until the property is either sold, leased or has a change of use.~~
40 ~~The yearly payment shall be due by September 1 of each year.~~

1 ~~The county shall set up a revolving fund to pay the connection fees to the~~
2 ~~utility company and shall also pay the county human services department for its~~
3 ~~review fee. The fund will be repaid by the yearly payment or when the property is~~
4 ~~either sold, leased, or has a change of use.~~

5 (b) The county or certificated utility shall be authorized to make connections,
6 entering on or upon any such lot or parcel of land for the purpose of making
7 such connections. The base facility charge of the approved certificated utility
8 shall apply beginning twenty (20) days after notification to connect. The
9 county or certificated utility shall thereupon be entitled to recover by suit in
10 any court of competent jurisdiction the cost of making such connection,
11 together with accrued base facility charges, interest, attorney's fees, and
12 social services department review fee. The interest, shall accrue after the
13 twentieth day at three (3) percentage points above the prime lending rate as
14 published in The Wall Street Journal, for each day, including Saturdays,
15 Sundays, and holidays.

16 ~~(c) The application form attached to Ordinance No. 89-26 as exhibit A, and~~
17 ~~incorporated herein by reference, shall be used by the county budget and~~
18 ~~human services departments for hardship determination. The criteria~~
19 ~~attached as Exhibit B, as modified from time to time by the department of~~
20 ~~health and human services and incorporated herein by reference, shall be~~
21 ~~used by the human services department to determine hardship cases.~~

22 ***DIVISION 5. RATES AND CHARGES***

23 ***Sec. 3-8-45. Generally.***

24 (a) All rates and charges of every utility and bulk water utility in effect on the
25 effective date of this article and which have been approved by the board shall
26 be the lawful rates and charges of the utility. All rates and charges shall
27 continue in effect as lawful rates and charges until changed by the board as
28 provided in this article.

29 (b) A utility shall not charge or receive, directly or indirectly, any rate or charge
30 not approved by and on file with the board for the particular class of service
31 involved.

32 (c) On its own motion or a written complaint signed by a person applying for or
33 receiving services from the utility, or the utility itself, the board may
34 investigate to determine if the rates charged or collected by any utility, or if
35 the rules, regulations or practices affecting the rates are unjust,
36 unreasonable, discriminatory or noncompensatory, or are in violation of this
37 article or the franchise or the rules and regulations made under this article. If
38 any change (except for price index or pass-through rate adjustments)
39 appears proper, the board shall hold a public hearing to determine just and
40 reasonable rates, charges, rules and regulations, or practices to be thereafter
41 imposed.

1 (d) Notice of the public hearing shall be published one (1) time in a newspaper at
 2 least fifteen (15) calendar days before the hearing. Notice of the hearing and
 3 of the complaint and matters to be considered at the hearing will be given to
 4 the public utility and to the complainant, if any, at least fifteen (15) calendar
 5 days before the date of the hearing.

6 **Sec. 3-8-46. Schedule of daily rated gallonage for various occupancies.**

7 The following usages shall be deemed to be applicable for rate adjustment
 8 applications. Commercial, institutional and residential units not identified herein
 9 shall conform to the department of health and rehabilitative services section 10D-
 10 6.48.

11 **SCHEDULE OF DAILY RATED GALLONAGE FOR VARIOUS OCCUPANCIES**

Types of Building Usage	
Apartments	155 gpd (1)
Bars, cocktail lounges, restaurants, fast food	20 gpd/seat
Boarding schools (student and staff)	75 gpcd (2)
Bowling alleys (toilet wastes only, per lane)	50 gpd + 20 gpd per bar and restaurant seat
Country clubs (per member)	5 gpd + 20 gpd per bar and restaurant seat
Day schools (students and staff)	6 gpcd + 4 gpcd if shower + 4 gpcd if cafeteria
Factories (with showers)	30 gpcd
Factories (without showers)	10 gpd/100 sq. ft.
Gas stations without food outlets, per restroom	225 gpd
Car wash	Based on equipment supplier data
Hospitals (with or without laundry)	200 gpd/bed
Hotels and motels *	125 gpd/room or unit + 20 gpd per restaurant and bar seat
Laundromats	225 gpd/washer
Mobile home parks	185 gpd/trailer
Movie theatres, auditoriums, churches (per	3 gpd

seat)	
Churches	3 gpd per seat or per capita if no seat
Nursing homes	100 gpd/bed
Office buildings	10 gpd/100 sq. ft.
Public institutions (other than those listed herein)	75 gpcd
Single-family residence:	
Water: 5/8" x 3/4" meter	225 gpd
Wastewater	190 gpd
Townhouse residences (3)	155 gpd
Stadiums, frontons, ballparks, etc. (per seat)	3 gpd
Stores (without kitchen wastes)	5 gpd/100 sq. ft.
Speculative buildings	30 gpd + 10 gpd/100 sq. ft.
Warehouses (each unit)	30 gpd + 10 gpd/1000 sq. ft.

1

2 gpd—gallons per day

3 gpcd—gallons per capita per day

4 Condominiums shall be rated in accordance with the type (apartments,
5 townhouses, etc.)

6 *Hotels and motels with other facilities to be qualified as per schedule (that
7 is, with laundry add 50 gpd, with restaurant add gpd per seat). Note:
8 Wastewater gallonage refers to wastewater flow on a unit basis for average
9 daily flow in gallons per day.

10 **Sec. 3-8-47. Rate adjustment applications.**

11 (a) Utilities subject to regulation under this article desiring to request an
12 adjustment of their rates for service shall do so under the provisions of this
13 article. In all cases, the utility is obligated to submit competent substantial
14 evidence to justify its requested rate modification.

15 (b) Prior to the filing of an application for a general rate increase (except for price
16 index and pass-through rate adjustments and miscellaneous filings), the
17 applicant shall submit to the board a written request for approval of a test
18 year, supported by a statement of reasons and justifications therefor,
19 showing that the requested test year is representative of company
20 operations.

1 (c) Each application for adjustment of rates and support exhibits shall be filed
2 with the clerk of the board in fifteen (15) copies.

3 **Sec. 3-8-48. Contents of application.**

4 Each application shall contain:

5 (1) The exact name of the applicant as it appears on the certificate, if one
6 has been issued for the system concerned, and the address of the
7 applicant's principal place of business;

8 (2) If a corporation, the date of incorporation or date licensed to do business
9 in Florida, and the names and addresses of all owners of five (5) percent
10 or more of the stock of the corporation; or, if unincorporated, the names
11 and addresses of the owners of the business and the type of business
12 organization under which the utility operations are conducted;

13 (3) The particular subsection of this article under which the applicant is
14 proceeding;

15 (4) A copy of the last order by the board or by the public service commission
16 which previously considered the applicant's rates;

17 (5) As appropriate, a prepared statement to explain the detailed information
18 required to present the application and demonstrate the relation of utility
19 personnel and the facilities used and useful in providing the service to
20 the public and other relevant data;

21 (6) A schedule showing:

22 a. The utility's investment (shareholder's equity) and rate of return for
23 the test year;

24 b. Constructed or pro forma computations for the test year and an
25 average for the test year showing:

26 1. Original cost of plant used and useful in the public service as of
27 the date first dedicated to the public service, indicating cost of
28 original construction and yearly additions by dollar amount, or
29 the original cost of the plant used and useful in the public service
30 previously approved by the board or the public service
31 commission, as applicable, and yearly additions by dollar
32 amount;

33 2. The total amount of money invested by the utility (equity or debt)
34 in plant, used and useful;

35 3. Construction work in progress, separately identifying that on
36 which interest is charged during construction and the rate or
37 amount of such interest allowance for equity returns, as per
38 accounting for AFUDC;

39 4. Customer advances for construction currently outstanding;

- 1 5. Total contributions in aid of construction showing the monthly
- 2 balance for the test year for tap fees, connection fees, main
- 3 extension charges, contributions in aid of construction and/or
- 4 customer advances for construction;
- 5 6. Accumulated depreciation;
- 6 7. Allowance for working capital.

7 **Sec. 3-8-49. Applications for adjustment of rates.**

- 8 (a) The board shall prescribe a standard format for use in applying for rate
- 9 adjustment including, but not limited to:
 - 10 (1) A listing of all fixed assets, depreciated, based upon original cost to the
 - 11 owner first dedicating them to public service;
 - 12 (2) A balance sheet for the utility's most recent completed test year;
 - 13 (3) The related income statement for the utility's most recently completed
 - 14 test year;
 - 15 (4) A computation of any acquisition adjustment and a statement to support
 - 16 its inclusion in the rate base;
 - 17 (5) A schedule showing test year total contributions in aid of construction
 - 18 including contributed assets;
 - 19 (6) A listing of the utility's existing rates, connection and extension fees
 - 20 together with a statement of the utility's service extension policy and
 - 21 proposed changes in any of the foregoing;
 - 22 (7) A calculation of a rate base for the utility's most recently completed test
 - 23 year;
 - 24 (8) A statement of all assets over five hundred thousand dollars
 - 25 (\$500,000.00) intended to be placed in service during the utility's current
 - 26 fiscal year;
 - 27 (9) A statement of the utility's return on rate base for the current fiscal (pro
 - 28 forma) year under the existing rate and under the proposed rate; and
 - 29 (10)After the application is found sufficient, any other information which the
 - 30 county may deem relevant under the particular circumstances.
- 31 (b) All the above data shall be identified as relating to either water or
- 32 wastewater.

33 **Sec. 3-8-50. Application; hearing.**

- 34 (a) Any certificate holder may apply in writing at any regular meeting of the
- 35 board for a change in its rates and charges, rules and regulations, or
- 36 conditions of service. The application shall specify the changes requested.

1 (b) Each petition shall be deemed as filed when received by the clerk of the
2 board. Filing petitions with the clerk does not constitute acceptance by the
3 board. Within sixty (60) calendar days from receipt of a petition for tariff
4 adjustments from date of filing with the clerk of the board, the board shall
5 determine the petition sufficient or deficient and schedule a public hearing as
6 provided in sections 3-8-29 and 3-8-68 through 3-8-73.

7 (c) A notice of the hearing containing the name of the applicant and the general
8 nature of the proposed change shall be published in a newspaper once a
9 week for two (2) consecutive weeks, the first publication at least twenty-one
10 (21) calendar days before the date of the hearing. The board may require the
11 applicant to furnish such data or other information as is reasonably
12 necessary for a determination on the application based on the criteria
13 prescribed herein within ninety (90) calendar days after the close of the
14 hearing.

15 **Sec. 3-8-51. Plant and lines.**

16 Every rate application shall include:

- 17 (1) A statement regarding the treatment plant and distribution and collection
18 lines showing:
- 19 a. How and when acquired (built by present, contributed or purchased);
 - 20 b. The basis used to establish the investment in the price, engineer's
21 appraisal, present reproduction cost;
- 22 (2) The cost and capacities must be provided separately for each system in
23 at least the initial application for rate adjustment;
- 24 (3) A schedule showing by month depreciation reserve balance for the test
25 year and annual balance from previous year. Information shall be
26 provided outlining the depreciation practices of the utility, including the
27 rates employed. Where a composite is used, the derivation thereof shall
28 be detailed.

29 **Sec. 3-8-52. Financial data to support application.**

30 Every application shall include; both consolidated and allocated per
31 treatment facility site financial data:

- 32 (1) A comparative balance sheet for the beginning and end of the test year;
- 33 (2) A schedule showing present rates and any that may be proposed;
- 34 (3) A constructed income statement for the test year showing the effect of
35 the proposed rates and of any known change in operating revenue or
36 expenses. Expenses that are shared with a commonly owned, controlled
37 or operated company shall be allocated on a fair and reasonable basis.
38 The basis for allocation of common or shared expenses shall be stated;

- 1 (4) An analysis by month of the revenues collected by means of purchased
2 power adjustment or a fuel adjustment clause, if applicable;
- 3 (5) A schedule showing monthly customer deposit balances for the test year
4 indicating the rate of interest paid and method of payment;
- 5 (6) A schedule of materials and supplies showing monthly balances for the
6 test year and the next succeeding month. Records for the thirteen (13)
7 months are required. If available, a transcript of the materials and
8 supplies account of the utility for the above period may be submitted;
- 9 (7) A schedule showing by month for the test year outstanding capital
10 segregated into common stock, preferred stock, capital surplus and
11 retained earnings, and amount of dividends paid or accrued and so
12 identified;
- 13 (8) A schedule of comparative income statements for the test year and the
14 year preceding the test year;
- 15 (9) A schedule detailing expenses by month by primary accounts for the test
16 year;
- 17 (10)A statement of application of funds in accordance with accepted
18 accounting principles, including a statement showing the increases or
19 decreases in working capital for the test year;
- 20 (11)A schedule showing all tax expenses during the test year, segregated by
21 taxing authority as to those passed on to the consumer and those
22 recorded as operating expenses (showing account number) and showing
23 payments and accruals, with a further breakdown of federal income tax
24 credits;
- 25 (12)Utilities commonly owned by, or subsidiaries of, land development
26 companies shall file a statement showing all payments received from the
27 parent company except those for which a valuable consideration was
28 exchanged;
- 29 (13)Utilities obtaining debt financing from an affiliated source shall show that
30 the true and actual cost of the debt financing to the utility is no greater
31 than the prevailing cost of such financing from nonaffiliated courses at
32 the time the financing was obtained.

33 **Sec. 3-8-53. Rate information.**

34 The utility's application for rate amendment shall include:

- 35 (1) The number of bills issued at each consumption level beginning with
36 zero, broken down by customer class, (residential, general service,
37 industrial service, or wholesale service) and by meter size. A separate
38 analysis shall be provided for master-metered multiple dwelling
39 structures, broken down by meter size. In preparing this analysis, the
40 utility shall round consumption to the nearest one thousand (1,000)

- 1 gallons. A billing analysis with consolidated factor at every consumption
2 level shall be required for each consumer class by meter size. Where the
3 utility is presently charging for service to a master-metered dwelling
4 structure on a per-unit basis, a separate analysis will be provided, broken
5 down by number of units;
- 6 (2) A schedule of present and proposed rates with a calculation of revenue
7 at each rate using the billing analysis provided;
- 8 (3) A schedule showing by month and customer classification the number of
9 customers either billed or served during the test year;
- 10 (4) A list of all outstanding contracts or agreements with rates or conditions
11 different from those approved in the tariff of the utility on file with the
12 public service commission or the board of county commissioners;
- 13 (5) A schedule showing the present and proposed service availability
14 charges, including but not limited to tapping fees, meter installation fees,
15 connection charges and main extension charges;
- 16 (6) Copies of all guarantee revenue contracts from which the utility received
17 revenues during the test year with a schedule showing billings and
18 receipts by month for the test year by customer class.

19 **Sec. 3-8-54. Engineering information for applications.**

20 In addition to the foregoing exhibits, the following shall be provided if not
21 previously filed:

- 22 (1) A map showing the certificated territory of the utility at the end of the test
23 year and any areas not included therein to which service has been
24 extended or to which notice of intention to extend service has been
25 given. The area should be identifiable with section, range and township
26 references and legend;
- 27 (2) A detailed map showing the location and size of distribution and
28 collection lines, plant sites and the location of the utility's customers,
29 including identification as to class or type with legend. If the utility
30 proposes to include in its plan investment the cost of investment of
31 property required by a "duly authorized governmental authority to be
32 constructed in the public interest," the following must also be provided:
- 33 a. A copy of the order or directive of the agency requiring a particular
34 service improvement;
- 35 b. An estimate by an independent engineer establishing the cost of
36 compliance with the regulatory order and the period of time required
37 for completion of construction. The applicant shall submit an analysis
38 showing the portion of the proposed rate increase which relates to
39 the financial support of the required improvement;

- 1 c. A statement of a registered professional engineer that the approved
2 plan, when executed, will not unreasonably exceed the system's
3 need to meet the requirements for improvements in capacity or
4 costs.
- 5 (3) A schedule showing by month, for the test year, the quantity of water
6 produced, purchased, interchanged and total delivered to the system,
7 sold, used by the company, interchanged and unaccounted for. A
8 wastewater utility shall show the total volume of sewage treated for the
9 test year.
- 10 (4) All of such information shall relate to the overall plan and operation of the
11 utility which is utilized to serve the customers within the unincorporated
12 area of Charlotte County.

13 **Sec. 3-8-55. Burden of proof.**

14 In each instance, the utility shall be able to support any schedule submitted
15 as well as any adjustments or allocations relied on by the utility. The work sheets
16 or other material supporting the schedules and data submitted shall be organized
17 in a systematic and rational manner so as to enable the auditing personnel of the
18 board or the board's independent consultant to verify the schedules in an
19 expedient manner. The supporting work sheets, etc., shall list all reference
20 sources necessary to enable the auditing personnel of the board to trace to the
21 original source of entry into the financial and accounting system and, in addition,
22 verify amounts to the appropriate schedules.

23 **Sec. 3-8-55.1 Staff-assisted rate cases.**

24 Staff-assisted rate cases are intended to provide the small utility with the
25 ability to obtain rate relief in a timely manner, reduce the cost of processing a
26 change in rates, provide a method to reduce rate shock to customers, and allow
27 the utility an opportunity to recover its operating costs and to receive a return on
28 its investment so that it remains viable. They are initiated by a request from the
29 utility or on the board's own motion.

- 30 (1) The utility may withdraw an application for a staff-assisted rate case prior
31 to the public hearing. The utility, in requesting staff assistance, shall
32 agree to accept the final rates and charges approved by the board
33 unless the final rates and charges produce less revenue than the existing
34 rates and charges.
- 35 (2) To be considered for this type of an increase, the utility must meet all the
36 following requirements unless specifically waived by the board:
- 37 a. For the most recent annual report period, revenues may not exceed
38 two hundred fifty thousand dollars (\$250,000.00) for each service or
39 five hundred thousand dollars (\$500,000.00) for combined services.

- 1 b. Payment of the franchise administration fees must be current.
- 2 c. The annual report must be timely filed.
- 3 d. The minimum filing requirements must be satisfied.
- 4 e. The utility must pay a nonrefundable filing fee based on the fee
- 5 schedule referenced in section 3-8-38.
- 6 (3) Any utility seeking to increase its rates based upon the application for a
- 7 staff-assisted rate case shall meet the following minimum filing
- 8 requirements:
- 9 a. Complete and execute an application for staff-assisted rate case
- 10 using the latest annual report or financial data which is available in
- 11 the form of ledgers or check registers. No action will be taken on
- 12 incomplete applications.
- 13 b. Prepare a proposed notice to customers notifying them that the utility
- 14 has filed an application for a staff-assisted rate case, seeking an
- 15 increase in rates.
- 16 c. Have the following items available for staff review:
- 17 1. A copy of a detailed general ledger or other accounting records
- 18 which may be traced to the last annual reports.
- 19 2. Copies of canceled checks or, at a minimum, a copy of the check
- 20 register or cash disbursement journal which supports annual
- 21 report expenses.
- 22 3. Copies of the most recent and previous two (2) federal income
- 23 tax returns which report utility assets, contributions in aid of
- 24 construction and utility operations.
- 25 4. Copies of power bills for the annual report year, batched by
- 26 individual meter, identifying the meter as to a particular well, lift
- 27 station or other appropriate utility function.
- 28 5. Copies of the invoices for chemicals used for water and/or
- 29 wastewater treatment.
- 30 6. Copies of the latest utility ad valorem property tax bill(s),
- 31 occupational license tax bill, and ad valorem tangible personal
- 32 property tax bill(s).
- 33 7. Schedule of any cost increases subsequent to the test period, if
- 34 applicable.
- 35 8. Copies of all permits issued by either the Department of
- 36 Environmental Protection (DEP) or the Department of Health
- 37 (DOH).
- 38 9. Copies of DEP monthly operation reports for the 12-month test
- 39 period.

- 1 10. Copies of the latest DEP sanitary survey and/or wastewater
2 compliance inspection report for the 12-month test period.
- 3 11. Any written notice of violation order or consent order from a
4 government agency.
- 5 d. Depending on the current workload, the county budget director or
6 designee shall schedule the staff-assisted rate case and notify the
7 utility of the schedule.
- 8 (4) Initially, determinations of eligibility may be conditional, pending an
9 actual examination of the condition of the petitioner's books and records.
10 After an initial determination of eligibility, county staff shall examine the
11 books and records of the utility before making a final determination of
12 eligibility.

13 **Sec. 3-8-56. Pass-through rate adjustment.**

14 Applications for adjustment of rates shall include the following:

- 15 (1) A copy of the order, ordinance or other evidence whereby the rates for
16 utility services are increased by the governmental agency or other utility;
- 17 (2) A statement setting out by month the charges for utility service
18 purchased from the governmental agency or regulated utility for the most
19 recent twelve-month period;
- 20 (3) A schedule of proposed rates to pass the increased cost of the utility
21 service on to the customers on a fair and nondiscriminatory basis;
- 22 (4) A statement by class of customer and meter size, setting out by month
23 the gallons of water or wastewater treatment for the most recent twelve-
24 month period. If wastewater treatment service is not based on a metered
25 flow, the number of units by which the service is measured;
- 26 (5) A statement by class of customer and meter size setting out by month
27 gallons of water and units of sewage service sold by the utility for the
28 most recent twelve-month period.

29 **Sec. 3-8-57. Pass-through rates.**

- 30 (a) The approved rates of any utility which receives all or any portion of its utility
31 service from a governmental agency or from a water or wastewater utility
32 regulated by the board and which redistributes that service to its utility
33 customers shall be automatically increased or decreased without hearing
34 upon verified notice to the board thirty (30) calendar days prior to its
35 implementation of the increase or decrease that the rates charged by the
36 governmental agency or other utility have changed. The approved rates of
37 any utility which is subject to an increase or decrease in the rates that it is
38 charged for electric power or the amount of ad valorem taxes assessed
39 against its property may be increased or decreased by the utility without

1 action by the board upon verified notice to the board thirty (30) calendar days
2 prior to its implementation of the increase or decrease that the rates charged
3 by the supplier of the electric power or the taxes imposed by the
4 governmental body have changed. The new rates authorized will reflect the
5 amount of the change of the ad valorem taxes or rates imposed upon the
6 utility by the governmental agency, other utility or supplier of electric power.
7 Provisions of this subsection shall not prevent a utility from seeking changes
8 in rates pursuant to the provisions of sections 3-8-45, 3-8-47 through 3-8-55
9 herein.

10 (b) Before implementing a change in rates under this section, the utility shall file
11 an affirmation under oath as to the accuracy of the figures and calculations
12 upon which the change in rates is based and that the change shall not cause
13 the utility to exceed the range of its last authorized rate of return. Whoever
14 makes a false statement in the affirmation required hereunder which he does
15 not believe to be true in regard to any material matter shall be guilty of a
16 misdemeanor, punishable as provided in F.S. section 125.69.

17 (c) If, within twenty-four (24) months of an adjustment in the rates as authorized
18 by this subsection, the board finds that a utility has exceeded the range of its
19 last authorized rate of return, it may order the utility to refund the difference
20 to the ratepayers. This provision shall not be construed to require a bond or
21 corporate undertaking not otherwise required.

22 (d) Notwithstanding anything herein to the contrary, no utility may adjust its rates
23 under this subsection more than two (2) times in any twelve-month period.

24 (e) If any certificate holder requires a deposit from its customers, it shall pay
25 interest at the rate of eight (8) percent to the customer on the amount of the
26 deposit. The certificate holder may credit the customer's bill annually with the
27 amount of interest or pay it when the customer discontinues the certificate
28 holder's services.

29 (f) The provisions of this section shall be applicable to all utilities, including
30 those operated by a nonprofit corporation, which have been granted a
31 certificate by the board, provided that rates and charges for nonprofit
32 corporations shall be fixed and determined solely in accordance with this
33 article.

34 (g) Applications for rate changes shall be filed with the clerk of the board and
35 shall be in such form as the board may specify by rule and, except for
36 applications for rate changes made pursuant to subsection (a), shall be
37 accompanied by a fee as hereinafter provided.

38 (h) The board may withhold consent to the operation of any rate request or any
39 portion thereof by filing an order to that effect with the clerk of the board
40 within sixty (60) calendar days after the date of filing of the rate request. The
41 order shall state a reason or statement of good cause for the withholding of
42 consent. The board shall provide a copy of the order to the utility, and
43 consent shall not be withheld for a period longer than eight (8) months

1 following the date of filing. The new rates or any portion not consented to
2 shall go into effect under a bond or corporate undertaking subject to refund at
3 the expiration of such period upon notice to the board. The board shall
4 determine whether a corporate undertaking may be filed in lieu of the bond.
5 The utility shall keep accurate, detailed accounts of all amounts received
6 because of such rates becoming effective under bond, subject to refund,
7 specifying by whom and in whose behalf such amounts are paid. In its final
8 order relating to such rate request, the board shall direct the utility to refund
9 such portion of the increased rates which are found not to be justified and
10 which were collected during the time periods specified. The board shall
11 provide for the disposition of any funds not refunded, but in no event shall
12 such funds accrue to the benefit of the utility. The board shall take final action
13 and enter its final order within twelve (12) months of the date of filing of the
14 request.

15 **Sec. 3-8-57.5. Price index rate adjustment.**

16 (a) On or before April 30 of each calendar year, the board shall adopt a price
17 index for water and wastewater utilities equivalent to the price index
18 established annually by the PSC, which shall be the price index used by all
19 regulated utilities until the board authorizes a change.

20 (b) The index shall be applied to all operation and maintenance expenses,
21 except for amortization of rate case expense, costs subject to pass-through
22 adjustments pursuant to section 3-8-58, and adjustments or disallowances
23 made in a utility's most recent rate proceeding.

24 (c) If a utility files its annual report on other than a calendar-year basis, the utility
25 shall file additional supplemental information to segregate expense, revenues
26 and customer billing data on a calendar-year basis. The source for this pro
27 rata distribution shall be the utility's annual reports.

28 (d) A utility shall not file for a price index review adjustment during the pendency
29 of any other rate review or rate proceeding. Further, a utility shall not file for a
30 price index rate adjustment within one (1) year from the effective date of the
31 last rate increase. The utility may incorporate the current price indexing in a
32 rate adjustment application. A utility shall not use this procedure to increase
33 any operating cost for which an adjustment has been or could be made
34 under the pass-through provision of this article.

35 (e) Any utility seeking to increase its rates based upon the board-authorized
36 price index shall file a verified notice of intent with the board at least sixty
37 (60) days prior to the effective date of the increase. The adjustment in rates
38 shall take effect on the date specified in the verified notice of intent unless
39 the board finds that the notice of intent or accompanying materials do not
40 comply with the requirements of law or ordinances or rules and regulations
41 adopted by the board or relevant state law. The verified notice to the board
42 shall be accompanied by:

- 1 (1) A schedule of proposed rates which will pass the increased costs to the
2 current customers in a fair and nondiscriminatory manner and a
3 calculation showing how the rates were determined;
- 4 (2) A computation schedule showing the increase in annual revenue that will
5 result if the index is applied;
- 6 (3) An affirmation stating the figures and calculations upon which the change
7 in rates is based are accurate and that the change will not cause the
8 applicant utility to exceed its last authorized rate of return. If the utility
9 has no authorized rate of return, the utility shall calculate a rate of return
10 using the PSC's current leverage formula.
- 11 (4) A copy of the notice to customers required by subsection (g) of this
12 section;
- 13 (5) The authorized rate of return or the calculated rate of return that the
14 utility is affirming it will not exceed;
- 15 (6) An annualized revenue figure for the test year used in the index
16 calculation reflecting the rate change, along with an explanation of the
17 calculation, if there has been any change in the utility's rates during or
18 subsequent to the test year.
- 19 (f) The maximum allowable increase resulting from the application of the index
20 shall be no greater than the price index. The provisions of this subsection do
21 not prevent a utility from seeking a change in rates pursuant to the provisions
22 of section 3-8-49.
- 23 (g) Not less than fifteen (15) days prior to the time a customer begins
24 consumption at the adjusted rates, the utility shall notify each of its
25 customers of the increase authorized and explain the reasons for the
26 increase in writing, delivered by U.S. mail.
- 27 (h) No utility shall implement a rate increase pursuant to this article unless the
28 utility has on file with the board a current annual financial report as required
29 by this article and the utility is current in the payment of its franchise fees.
- 30 (i) If, within fifteen (15) months after the filing of a utility's annual report required
31 by this article, the board finds that the utility exceeded its last authorized rate
32 of return after a price index rate adjustment was implemented either within
33 the year for which the report was filed or in the preceding year, the board
34 may, after hearing, order the utility to refund the difference to the rate payers
35 with interest and adjust its rate accordingly.

36 **Sec. 3-8-58. Test year.**

37 Each certificate holder shall request in writing approval of a test year as a
38 condition precedent to filing for rate relief. The request shall state the reason for
39 selecting a test year which does not coincide with the certificate holder's fiscal
40 year. Further, the request shall be supported by a statement of reasons and

1 justifications therefor showing the requested test year is representative of
2 company operations. The board shall not approve any test year request from any
3 certificate holder that has not complied with the provisions of this article. The
4 board shall approve or disapprove the requested test year within sixty (60)
5 calendar days from the receipt thereof. If the board fails to act within the
6 prescribed time, the test year requested by the certificate holder shall be
7 automatically approved.

8 **Sec. 3-8-59. Interim rates procedure.**

9 (a) During any proceeding for a change of rates, the board may, upon its own
10 motion or petition from any party, authorize the collection of interim rates until
11 the effective date of the final order. Such interim rates may be based upon a
12 test period different from the test period used in the request for permanent
13 rate relief. To establish a prima facie entitlement for interim relief, the board,
14 the petitioning party or the utility shall demonstrate that the utility is earning
15 outside the range of reasonableness on the rate of return previously
16 authorized by the board. This determination shall be based upon the rate of
17 return calculated in compliance with subsection (b), items (4), (5) and (6).

18 (b) During any proceeding for interim rates, on its own motion or petition from
19 any party, the board may adopt any of the following:

20 (1) In a proceeding for an interim increase in rates, the board shall authorize
21 the collection of rates sufficient to earn a rate of return at the minimum of
22 the range of the last authorized equity rate of return within sixty (60)
23 calendar days of the filing for such relief. The difference between the
24 interim rates and the previously authorized rates shall be collected under
25 bond or corporate undertaking, subject to refund with interest at a rate
26 ordered by the board.

27 (2) In a proceeding for an interim decrease in rates, the board shall
28 authorize the continued collection of the previously authorized rates
29 within sixty (60) calendar days of the filing for such relief. However,
30 revenues collected under those rates sufficient to reduce the achieved
31 rate of return shall be placed under bond or corporate undertaking,
32 subject to refund with interest at a rate ordered by the board.

33 (3) The board shall determine whether corporate undertaking may be filed in
34 lieu of the bond.

35 (4) In granting such relief, the board may, in an expedited hearing but within
36 sixty (60) calendar days of the commencement of the proceeding, upon
37 petition or its own motion, preclude the recovery of any extraordinary or
38 imprudently incurred expenditures or for good cause shown increase the
39 amount of the bond or corporate undertaking.

40 (5) Any refund ordered by the board shall be calculated to reduce the utility's
41 rate of return during the pendency of the proceeding to the same level
42 within the range of the newly authorized rate of return which is found fair

1 and reasonable on a prospective basis, but the refund shall not be in
2 excess of the amount of revenues collected subject to refund and in
3 accordance with paragraph (2) of subsection (b). In addition, the board
4 may require interest on the refund at a rate established by the board.

5 (6) In setting interim rates or setting revenues subject to refund, the board
6 shall determine the deficiency or excess by applying the factors set out in
7 section 3-8-60 below.

8 **Sec. 3-8-60. Factors.**

9 (a) The rate of return for the utility for the most recent twelve-month period shall
10 be calculated by applying appropriate adjustments consistent with those
11 which were used in the utility's most recent rate case, and annualizing any
12 rate changes occurring during such period, but based upon an average
13 investment rate base; or

14 (b) The rate of return calculated in accordance with subsection (a) but based
15 upon an end-of-period investment rate base.

16 (c) Nothing in these sections shall be construed to prohibit the board from
17 authorizing interim rates for a utility which does not have an authorized rate
18 of return previously established by the board.

19 (d) The board may condition the granting of new rates, charges, rules,
20 regulations or conditions of service to any certificate holder upon compliance
21 with the standards of operation required pursuant to the provisions of this
22 article and all other applicable county, state and federal laws.

23 (e) Each request for interim rates shall be preceded by a written request for
24 approval of a test year if such request is different than that requested under.
25 If the test year under this section is to be identical with that requested under
26 sections 3-8-56—3-8-60, the provisions of that section control the action of
27 the board.

28 **Sec. 3-8-61. Fees and reports.**

29 (a) Each certificated utility collecting rates, fees or charges shall file with the
30 clerk of the board an annual financial report on forms prescribed by the board
31 in compliance with NARUC standards. The facility demand and capacity
32 information shall be included as part of the utility annual report. The annual
33 financial report filed by any certificate utility which has annual gross receipts
34 of more than fifty thousand dollars (\$50,000.00) shall be accompanied by an
35 unqualified opinion expressed by a certified public accountant hereinafter
36 referred to as a "full opinion audit." The annual financial report shall be filed
37 by April 30. If the utility provides service in Charlotte County through a
38 subsidiary or separate operating division of a parent corporation which does
39 business in locations other than Charlotte County, the annual financial report
40 and full opinion audit required by this subsection shall be provided by the

1 utility in such form as shall clearly show the financial details of the Charlotte
2 County certificated operation as a separate operational unit of the parent
3 corporation. In such case, company-wide accounting opinions and audits are
4 acceptable where such reports provide the required information. In addition
5 thereto, the board may require such regular or additional reports from a
6 utility, including, but not limited to, financial reports, as the board may deem
7 necessary, in such form and detail as the board may determine. In the
8 conduct of its administrative function hereunder, the board may make such
9 rules, conduct such hearings and issue such orders as it deems necessary,
10 but all only after due notice and opportunity to be heard to all interested
11 persons. For the purpose of this section "due notice" shall be construed to
12 mean publication one (1) time at least fifteen (15) days prior to the conduct of
13 any hearing in a newspaper of general circulation published within the
14 county, and the mailing of notice by first class mail to each certified utility
15 within the county. Such mailing shall be considered complete upon deposit
16 with postal authority and shall not be considered jurisdictional if mailed and
17 not received. A registry of all adopted rules and orders shall be maintained
18 by the clerk as public record.

19 (b) Each certificated utility shall pay to the county a county certificated utility
20 administration fee of five (5) percent of gross receipts which shall defray the
21 county's expense of regulating the public utility. Any change in such fee shall
22 be determined after public hearing by the board, shall become effective not
23 less than three (3) days after adoption of an implementing resolution, shall be
24 assessed as a percentage of gross receipts, and shall be charged pro rata to
25 the customers of the public utility. All fees collected shall be placed in the
26 county utility regulatory fund.

27 (c) Gross receipts shall be construed to be funds received by the certificate
28 holder from routine service billings and all other receipts except the interest
29 earned on invested funds and management funds.

30 (d) This fee shall be forwarded annually to the county by April 30 and shall be
31 accompanied by an unaudited statement of gross receipts.

32 (e) The fee accompanying the annual financial reports shall be the net amount
33 due for the concerned fiscal year.

34 (f) Each certificated utility which fails to submit its county certificated utility
35 administrative fee annual financial report and full opinion audit, where
36 required, within the time prescribed shall pay interest of one (1) percent per
37 month of the annual county administration fee due.

38 (g) When an annual financial report and full opinion audit, where required, have
39 not been filed within the prescribed time, the certificate holder shall be
40 notified of the delinquency by certified mail, return receipt requested. If the
41 reports have not been filed within thirty (30) days after the notice of
42 delinquency has been received, the board may conduct an independent audit
43 of the books and records of the certificated utility to determine the fee due.
44 Thereupon, the certificate holder shall be liable not only for the certificate

1 utility administration fee due and interest, but all costs of the audit and a
2 reasonable attorney's fee for collection.

3 (h) A full opinion audit may be waived for utilities of limited economical resources
4 upon written request to the utility director and approved by the board.

5 (i) Each certificated utility will be required to submit, along with the financial
6 statements, a five-year capital improvement program.

7 **Sec. 3-8-62. Reasonable rates; original cost; customer contributions.**

8 (a) The board has the duty and authority to determine and fix reasonable rates
9 and charges that may be charged by any utility for its services. The board
10 shall determine and investigate the actual original cost of the property of
11 each utility used and useful in public service and shall keep a current record
12 of the net investment of each utility in such property. The value as so
13 determined by the board shall be used for rate-making purposes, less
14 accrued depreciation, and shall not include any contribution in aid of
15 construction or any good will or value of a going-concern. Facilities
16 constructed by order of the board will be deemed used and useful for rate-
17 making purposes. The board shall fix and determine a rate which allows for
18 reimbursement of operating costs including depreciation on all properties,
19 excluding contributed properties, and a fair and reasonable net return on the
20 original cost of a system incurred by the person first dedicating it to public
21 service, which shall not include contributions in aid of construction or
22 customer contributions. The board shall not allow the inclusion of
23 contributions in aid of construction in the rate base of any utility during a rate
24 proceeding; and accumulated depreciation on such contributions in aid of
25 construction shall not be used to reduce the rate base, nor shall depreciation
26 on such contributed assets be considered a cost of providing utility service.
27 Contributions in aid of construction shall include any amount or item of
28 money, services or property received by a utility from any person or
29 governmental agency, any portion of which is provided at no cost to the utility
30 and which represents a donation or contribution to the capital of the utility
31 and which is utilized to offset the acquisition, improvement or construction
32 costs of the utility's property, facilities or equipment used to provide utility
33 services to the public. The board shall also consider the utility's investment in
34 property required by duly authorized governmental authority to be
35 constructed in the public interest within a reasonable time in the future, not to
36 exceed twelve (12) months.

37 (b) After January 1, 1987, any water and wastewater utility regulated under this
38 article may collect from developers and others who transfer property and
39 amounts to a utility as contributions in aid of construction an amount equal to
40 the tax impact under the United States Internal Revenue Code resulting from
41 the repeal of former section 118(b) of that code. The tax impact amount to be
42 collected by each utility shall be determined by using this formula:

43
$$\text{Tax Impact} = R/1.0 - R \times (F + P);$$

1 R = The applicable marginal rate of federal income tax and state corporate
2 income tax, if one is payable, on the value of CIAC which must be included in
3 taxable income of the utility.

4 R shall be determined as follows:

$$5 R = ST + FT (1 - ST)$$

6 ST = Applicable marginal rate of State Corporate Income Tax.

7 FT = The applicable marginal rate of federal income tax, either corporate or
8 individual.

9 F = The dollar amount of charges paid to a utility as contributions in aid of
10 construction which must be included in taxable income of the utility, which
11 had been excluded from taxable income pursuant to former section 118(b) of
12 the Internal Revenue Code.

13 P = The dollar amount of property conveyed to the utility which must be
14 included in taxable income of the utility, which had been excluded from
15 taxable income pursuant to section 118(b) of the Internal Revenue Code.

16 (c) The CIAC tax impact amounts, as determined in this section of this article,
17 shall be deposited as received into a fully funded interest bearing escrow
18 account, hereinafter referred to as the "CIAC tax impact account,"
19 established with a local financial institution. Monies in the CIAC tax impact
20 account may be withdrawn periodically for the purpose of paying that portion
21 of the estimated federal and state income tax expense which can be shown
22 to be directly attributable to the repeal of section 118(b) of the Internal
23 Revenue Code and the inclusion of CIAC in taxable income. Annually,
24 following the preparation and filing of the utility's annual federal and state
25 income tax returns, a determination shall be made as to the actual federal
26 and state income tax expense that is directly attributable to the inclusion of
27 CIAC in taxable income for the tax year. CIAC tax impact monies received
28 during the tax year that are in excess of the actual amount of tax expense
29 that is attributable to the receipt of CIAC, together with interest earned on
30 such excess monies held in the CIAC tax impact account must be refunded
31 on a pro rata basis to the parties who made the contribution and paid the tax
32 impact amounts during the tax year. The utility will be required to maintain
33 adequate records to account for the receipt, deposit, and withdrawal of
34 monies in the CIAC tax impact escrow account. A detailed statement of the
35 CIAC tax impact account, including the annual determination of actual tax
36 expense attributable to the repeal of section 118(b) of the Internal Revenue
37 Code, shall be submitted as a part of the annual financial report required of
38 the utility.

39 (d) The CIAC tax impact amount collected pursuant to this section shall not be
40 considered as contributions in aid of construction.

1 **Secs. 3-8-63. Reserved.**

2 **Sec. 3-8-64. Miscellaneous fees and other nonrecurring charge tariff**
3 **adjustments.**

4 Upon petition by the utility, or on its own motion, the board may add or
5 change miscellaneous fees and other nonrecurring charges other than the
6 monthly rates for service, or service availability charges. The board shall
7 determine the issues to be considered during such a proceeding and may grant
8 or deny any request.

9 (a) An application to establish, increase, or change a rate or charge, other than
10 the monthly rates for service or service availability charges, must be
11 accompanied by a cost justification. The board may withhold consent to the
12 operation of any or all portions of the new rate schedules, by a vote to that effect
13 within sixty (60) days giving a reason or statement of good cause for withholding
14 its consent. The board shall render its final decision on the application within
15 eight (8) months after the official date of filing.

16 (b) If a protest is filed within twenty-one (21) days of the order, the docket will
17 remain open and a public hearing will be considered based on the merits of the
18 protest.

19 (c) If no protest is filed within twenty-one (21) days of the order, the order
20 becomes final.

21 **Sec. 3-8-65. Reserved.**

22 ***DIVISION 6. HEARING PROCEDURES***

23 **Sec. 3-8-66. Generally.**

24 All hearings conducted pursuant to the provisions of this article, except as set
25 forth in section 3-8-29, shall be governed by the provisions of sections 3-8-67
26 through 3-8-71, each inclusive.

27 **Sec. 3-8-67. Powers and duties.**

28 The board shall have the authority to:

29 (1) Administer oaths and affirmations;

30 (2) Rule upon offers of proof and receive relevant evidence;

31 (3) Take or cause depositions to be taken whenever the ends of justice
32 would be served thereby;

33 (4) Regulate the course of the hearing;

- 1 (5) Hold conferences for the settlement or simplification of the issue by
2 consent of the parties;
- 3 (6) Dispose of procedural requests or similar matters;
- 4 (7) Enter any order to carry out the purposes of this article; and
- 5 (8) Appoint hearing officers for the purpose of conducting hearings on such
6 matters as the board may designate, including, but not limited to, quality
7 of service, rates, fees, charges, rules, regulations, conditions of service,
8 and certificate applications, extensions, renewals, and terminations. The
9 hearing officer may conduct all evidentiary hearings, as well as hearings
10 on motions regarding substantive and procedural matters. The board
11 may refer any matter requiring an evidentiary or procedural hearing to a
12 hearing officer for the conduct of the hearing. As such, the hearing officer
13 will function in place of the board for all matters referred to the hearing
14 officer. When a case is assigned for hearing to a hearing officer, the case
15 shall be decided by the board. The decision to refer a specific case or
16 matter to a hearing officer shall rest in the sole discretion of the board.

17 **Sec. 3-8-68. Prehearing statement.**

- 18 (a) The board may issue an order requiring each party to file a prehearing
19 statement. Such order shall provide a date by which time such prehearing
20 statement is due and shall further state that the failure of each party to file a
21 prehearing statement shall be a waiver of any issues not raised by other
22 parties or by the board, as well as the ability to present testimony in favor of
23 its position. An order requiring a prehearing statement may address any
24 matter which may aid in the orderly disposition of the proceeding. In an order
25 requiring a prehearing statement, the board may require each party:
 - 26 (1) To identify all known witnesses that may be called and indicate the
27 subject matter of this testimony;
 - 28 (2) To identify all known exhibits, identify their contents, and indicate
29 whether they may be identified on a composite basis;
 - 30 (3) To provide a statement of its basic position in the proceeding;
 - 31 (4) To provide a statement of each question of fact the party considers at
32 issue;
 - 33 (5) To provide a statement of each question of law the party considers at
34 issue;
 - 35 (6) To provide a statement of each policy question the party considers at
36 issue;
 - 37 (7) To provide a statement of the party's position on each issue identified
38 pursuant to subsections (4), (5) and (6) above;

- 1 (8) To provide a statement of issues that have been stipulated to by the
2 parties;
- 3 (9) To provide a statement of all pending motions or other matters the party
4 seeks action upon;
- 5 (10) To provide a statement as to any requirement set forth in the prehearing
6 order that cannot be complied with and the reasons therefor;
- 7 (11) To include such other matters in the prehearing statement as will aid the
8 board in achieving an orderly disposition of the proceeding.
- 9 (b) The failure or refusal of the applicant to comply with any lawful order may be
10 cause for dismissing the party from the proceeding.

11 **Sec. 3-8-69. Prehearing conference.**

- 12 (a) A prehearing conference shall be held by the budget director with support
13 staff in attendance for investigation of any rate case application. The
14 purposes of the conference are to identify issues, the positions of the parties
15 and the nature of the testimony as well as to agree to the extent of the issues
16 to be tried and the admissibility of documents and evidence. The budget
17 director shall be designated by the board to preside at the conference.
- 18 (b) All parties and the budget director shall attend the prehearing conference, at
19 which time the participants shall advise the county as to the issues known to
20 be in dispute, as well as the parties' positions thereon.
- 21 (c) The budget director may issue a prehearing report which sets for the issues
22 in the case, as well as the positions of the parties, and which addresses such
23 other matters as may aid in the conduct of the hearing and the efficient and
24 fair disposition of the proceeding. Issues raising primarily questions of fact
25 shall be stated separately from issues raising solely legal questions. Except
26 for good cause, an objection to any aspect of the prehearing report shall be
27 raised at the start of or prior to the hearing.
- 28 (d) The budget director shall set the time and place for all conferences and shall
29 issue notice thereof to all parties of record. No less than twenty (20) days'
30 notice shall be given for the final conference on the merits of the petition,
31 complaint, application or other initial pleading unless otherwise agreed by the
32 parties. No less than seven (7) days' notice shall be given for all other
33 conferences.
- 34 (e) The budget director shall serve upon all parties written notice of any
35 recommended report not later than fourteen (14) days after service of notice.

36 **Sec. 3-8-70. Procedure for due process.**

37 The board shall afford each party in a hearing authorized under the
38 provisions of this article the right to:

- 1 (1) Receive twenty-one (21) calendar days' notice of the time, place and
2 nature of the hearing, and the matters of fact and law asserted;
- 3 (2) Present his case or defense by oral and documentary evidence;
- 4 (3) Submit rebuttal evidence and conduct such cross-examination as may
5 be required for a full and true disclosure of the facts;
- 6 (4) Submit for the consideration of the hearing examiner or the board, if it
7 receives the evidence, proposed findings and conclusions and
8 supporting reasons therefor;
- 9 (5) Submit exceptions to a recommended order, if one is made, and make
10 oral arguments in support of any such exceptions;
- 11 (6) Make offers of settlement or proposals of adjustment;
- 12 (7) Be accompanied, represented and advised by counsel, or represent
13 himself; and
- 14 (8) Be notified within twenty-one (21) calendar days of the denial in whole or
15 in part of any written application, petition or other request.

16 **Sec. 3-8-71. Evidence.**

17 In adjudicatory hearings, irrelevant, immaterial, or unduly repetitious
18 evidence shall be excluded, but all other evidence of a type commonly relied
19 upon by reasonably prudent men in the conduct of their affairs shall be
20 admissible whether or not such evidence would be admissible in the trial of a civil
21 action in the courts of Florida.

22 **Sec. 3-8-72. Legislative functions.**

23 Section 3-8-66 shall not apply to any hearings held by the board under the
24 provisions of this article in which the board is acting in its legislative or quasi-
25 legislative capacity.

26 **Sec. 3-8-73. Rate case expenses.**

- 27 (a) Rate case expense shall be includable as a reimbursable expense. Other
28 investigation costs may be includable by the applicant as rate case expense
29 in the determination of a requested rate adjustment.
- 30 (b) Costs incurred by the county in the defense of any order issued by the board
31 shall be payable by the regulated company if there was a complete lack of
32 any justiciable issue.
- 33 (c) Costs so incurred shall be assessed against the regulated company but are
34 not includable in allowable costs and shall be assumed by the shareholders
35 of the regulated company. No ratepayer shall pay any portion of those costs
36 assessed to the regulated company.

1 **Secs. 3-8-74, 3-8-75. Reserved.**

2
3 Section 2. Severability. In the event any portion of the foregoing conflicts
4 with any other Charlotte County Code or other applicable law, the more
5 restrictive shall apply. If any section, subsection, sentence, clause, phrase, or
6 portion of this article is for any reason held invalid or unconstitutional by any
7 court of competent jurisdiction, such portion shall be deemed a separate, distinct,
8 and independent provision, and such holding shall not affect the validity of the
9 remaining portions hereof.

10
11 Section 3. Inclusion. It is the intention of the Board of County
12 Commissioners and it is hereby ordained that the provisions of this ordinance
13 shall become and be made a part of the Code of Laws and Ordinances, Charlotte
14 County, Florida, and the sections of this ordinance may be renumbered to
15 accomplish such intention.

16
17 Section 4. Effective Date. This ordinance shall take effect upon its filing
18 in the Office of the Secretary of State, State of Florida.

19
20
21 PASSED AND DULY ADOPTED this _____ day of _____,
22 2014.

23
24
25
26
27
28

BOARD OF COUNTY COMMISSIONERS
OF CHARLOTTE COUNTY, FLORIDA

By: _____
Kenneth W. Doherty, Chairman

ATTEST:

Barbara T. Scott, Clerk of
Circuit Court and Ex-officio
Clerk of the Board of County
Commissioners

By: _____
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

By: _____
Janette S. Knowlton
County Attorney

ECONOMIC IMPACT ESTIMATE

An ordinance amending the Code of Laws and Ordinances of Charlotte County, Florida, Chapter 3-8 Article II, relating to the regulated water and wastewater system utilities; clarifying applicability, effectiveness, and enforcement; and providing an effective date.

PURPOSE: The ordinance amends the existing County Code by inserting additional language describing when the County has jurisdiction over the water and wastewater utilities. It also deletes references to a hardship program established by the Board in 1989, when the County was regulating the utilities, which has never been funded or made operational.

IMPACT:

A. Cost of Implementation:

There will be no cost to implement these changes; the result should be to save staff time in answering questions from the public about applicability of this portion of the County Code.

B. Source of Funds/Ultimate Burden of Costs:

None needed.

C. Effect on Competition and the Employment Market:

None.

D. Benefits on Implementation:

This ordinance should result in fewer questions arising about the applicability of this portion of the County Code, and less confusion about which portions remain in effect even when the County is not the regulator.