

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendment of Rules 25-30.455, F.A.C., Staff Assistance in Rate Cases, 25-30.456, F.A.C., Staff Assistance in Alternative Rate Setting, and 25-30.457, F.A.C., Limited Alternative Increase for all water and wastewater utilities.	DOCKET NO. 080414-WS ORDER NO. PSC-08-0782-FOF-WS ISSUED: December 1, 2008
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The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

NOTICE OF ADOPTION OF RULES

BY THE COMMISSION:

NOTICE is hereby given that the Florida Public Service Commission, pursuant to Section 120.54, Florida Statutes, has adopted the amendments to Rules 25-30.455, 25-30.456 and 25-30.457, Florida Administrative Code, relating to staff assistance in ratemaking, without changes.

The rules were filed with the Department of State on November 26, 2008 and will be effective on December 16, 2008. A copy of the rules as filed with the Department is attached to this Notice.

This docket is closed upon issuance of this notice.

By ORDER of the Florida Public Service Commission this 1st day of December, 2008.



ANN COLE
Commission Clerk

(SEAL)

RG

DOCUMENT NUMBER-DATE
11001 DEC-18
FPSC-COMMISSION CLERK

25-30.455 Staff Assistance in Rate Cases.

(1) Water and wastewater utilities whose total gross annual operating revenues are ~~\$250,000~~~~\$150,000~~ or less for water service or ~~\$250,000~~~~\$150,000~~ or less for wastewater service, or ~~\$500,000~~~~\$300,000~~ or less on a combined basis, may petition the Commission for staff assistance in rate applications by submitting a completed staff assisted rate case application. In accordance with Section 367.0814(4), F.S., a utility that requests staff assistance waives its right to protest by agreeing to accept the final rates and charges approved by the Commission unless the final rates and charges would produce less revenue than the existing rates and charges. If a utility that chooses to utilize the staff assistance option employs outside experts to assist in developing information for staff or to assist in evaluating staff's schedules and conclusions, the reasonable and prudent expense will be recoverable through the rates developed by staff. A utility that chooses not to exercise the option of staff assistance may file for a rate increase under the provisions of Rule 25-30.443, F.A.C.

(2) Upon request, the Division of Economic Regulation shall provide the potential applicant with the appropriate application form, Commission Form PSC/ECR 2-W (Rev. 11/86), "Application for Staff Assisted Rate Case", which is incorporated by reference in this rule, and a copy of Rule 25-30.455, F.A.C., governing staff assisted rate cases. The form may be obtained from the Commission's Division of Economic Regulation, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

(3) Upon completion of the form, the petitioner may return it to the Office of Commission Clerk, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0870.

(4) Upon receipt of a completed application, the Office of Commission Clerk shall

acknowledge its receipt, assign a docket number for identification, and shall forward the application to a committee comprised of one member each of the Commission's Divisions of Economic Regulation, Regulatory Compliance and Consumer Assistance, and Office of General Counsel.

(5) Within 30 days of receipt of the completed application, the committee shall evaluate the application and determine the petitioner's eligibility for staff assistance.

(a) If the Commission has received four or more applications in the previous 30 days; or, if the Commission has 20 or more docketed staff assisted rate cases in active status on the date the application is received, the Commission shall deny initial evaluation of an application for staff assistance and close the docket. When an application is denied under the provisions of this subsection, the applicant shall be notified of the date on which the application may be resubmitted.

(b) Initially, determinations of eligibility may be conditional, pending an actual examination of the condition of petitioner's books and records. After an initial determination of eligibility, the Division of Regulatory Compliance and Consumer Assistance committee shall examine the books and records of the utility before making a final determination of eligibility.

(c) All recommendations of ineligibility shall be in writing and shall state the deficiencies in the application with reference to guidelines set out in subsection (8) of this rule.

(6) Upon reaching a decision to officially accept or deny the application, the Director of the Division of Economic Regulation shall notify the petitioner by letter and initiate staff assistance for the accepted applicant.

(7) The official date of filing will be 30 days after the date of the letter notifying the applicant of the official acceptance of the application by the Commission.

(8) In arriving at a recommendation whether to grant or deny the petition, the following shall be considered:

(a) Whether the petitioner qualifies for staff assistance pursuant to subsection (1) of this rule;

(b) Whether the petitioner's books and records are organized consistent with Rule 25-30.110, F.A.C., so as to allow commission personnel to verify costs and other relevant factors within the 30-day time frame set out in this rule;

(c) Whether the petitioner has filed annual reports;

(d) Whether the petitioner has paid applicable regulatory assessment fees;

(e) Whether the petitioner has at least 1 year's actual experience in utility operation;

(f) Whether the petitioner has filed additional relevant information in support of eligibility, together with reasons why the information should be considered;

(g) Whether the petitioner has complied in a timely manner with all Commission decisions and requests affecting water and wastewater utilities for 2 years prior to the filing of the application under review;

(h) Whether the utility has applied for a staff assisted rate case within the 2-year period prior to the receipt of the application under review.

(9) The Commission will deny the application if a utility does not remit the fee as provided by Section 367.145, F.S., and paragraph 25-30.020(2)(f), F.A.C., within 30 days after official acceptance.

(10) An aggrieved petitioner may request reconsideration which shall be decided by the full Commission.

(11) A substantially affected person may file a petition to protest the Commission's

proposed agency action in a staff assisted rate case within 21 days of issuance of the Notice of Proposed Agency Action as set forth in Rule 25-22.036, F.A.C.

(12) In the event of a protest of the Commission's Notice of Proposed Agency Action (PAA Order) in a staff assisted rate case, the utility shall:

(a) Provide prefiled direct testimony in accordance with the procedural order in the case.

At a minimum, that testimony shall adopt the Commission's PAA Order in the case;

(b) Sponsor a witness to support source documentation provided to the Commission staff in its preparation of the staff audit, the staff engineering and accounting report and the staff PAA recommendation in the case;

(c) Include in its testimony the necessary factual information to support its position on any issue that it chooses to take a position different than that contained in the Commission's PAA Order;

(d) Meet all other requirements of the order establishing procedures.

(13) Failure to comply with the dates established in the procedural order, or to file timely a request for extension of time for good cause shown, may result in dismissal of the staff assisted rate case and closure of the docket.

(14) In the event of a protest of the Commission's PAA Order in a staff assisted rate case the Commission staff shall:

(a) File prefiled direct testimony to explain its analysis in the PAA recommendation. In the event the staff wishes to alter its PAA position on any issue, it shall provide factual testimony to support its changed position.

(b) Meet all other requirements of the order establishing procedures;

(c) Provide to the utility materials to assist the utility in the preparation of its testimony

and exhibits. This material shall consist of an example of testimony filed by a utility in another case, an example of testimony that would support the PAA Order in this case, an example of an exhibit filed in another case, and examples of prehearing statements and briefs filed in other cases.

Specific Authority 350.127(2), 367.0814, 367.121 FS.

Law Implemented 367.0814 FS.

History—New 12-8-80, Formerly 25-10.180, Amended 11-10-86, 8-26-91, 11-30-93, 1-31-00.

25-30.456 Staff Assistance in Alternative Rate Setting.

(1) As an alternative to a staff assisted rate case as described in Rule 25-30.455, F.A.C., water and wastewater utilities whose total gross annual operating revenues are ~~\$250,000~~~~\$150,000~~ or less for water service or ~~\$250,000~~~~\$150,000~~ or less for wastewater service, or ~~\$500,000~~~~\$300,000~~ or less on a combined basis, may petition the Commission for staff assistance in alternative rate setting by submitting a completed staff assisted application for alternative rate setting.

(2) Upon request, the Division of Economic Regulation shall provide the potential applicant with the application form, PSC/ECR 25 (11/93), titled “Application for Staff Assistance for Alternative Rate Setting” which is incorporated by reference in this rule, and a copy of the rules governing Staff Assistance in Alternative Rate Setting. The form may be obtained from the Commission’s Division of Economic Regulation, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

(3) Upon completion of the form, the applicant may return it to the Office of Commission Clerk, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida

32399-0870.

(4) Upon receipt of an application, the Office of Commission Clerk shall acknowledge its receipt, assign a docket number for identification, and shall forward the application to the Commission's Division of Economic Regulation.

(5) Within 30 days of receipt of the completed application, the Division of Economic Regulation shall evaluate the application and determine the petitioner's eligibility for staff assistance.

(a) If the Commission has received four or more alternative rate setting applications in the previous 30 days; or, if the Commission has 20 or more docketed staff assisted rate cases in active status on the date the application is received, the Commission shall deny initial evaluation of an application for staff assistance and close the docket. When an application is denied under the provisions of this subsection, the applicant shall be notified of the date on which the application may be resubmitted.

(b) Determinations of eligibility may be conditional, pending an actual examination of the condition of petitioner's books and records.

(c) All recommendations of ineligibility shall be in writing and shall state the deficiencies in the application with reference to guidelines set out in subsection (8) of this rule.

(6) Upon reaching a decision to officially accept or deny the application, the Director of the Division of Economic Regulation shall notify the applicant by letter and initiate staff assistance for the accepted applicant.

(7) The official date of filing will be 30 days after official acceptance of the application by the Commission.

(8) In deciding whether to grant or deny the application, the following shall be

considered:

(a) Whether the applicant qualifies for staff assistance pursuant to subsection (1) of this rule;

(b) Whether the applicant has filed annual reports;

(c) Whether the applicant has paid applicable regulatory assessment fees;

(d) Whether the applicant has at least 1 year's actual experience in utility operation;

(e) Whether the applicant has filed additional relevant information in support of eligibility, together with reasons why the information should be considered;

(f) Whether the applicant has made a good faith effort in a timely manner to comply with all Commission decisions and requests affecting water and wastewater utilities for 2 years prior to the filing of the application under review;

(g) Whether the utility has been granted a staff assisted rate case or alternative rate setting within the 2-year period prior to the receipt of the application under review.

(9) The Commission shall deny the application if a utility does not remit the fee, as provided by Section 367.145, F.S., and paragraph 25-30.020(2)(f), F.A.C., within 30 days after official acceptance.

(10) An aggrieved applicant may request reconsideration which shall be decided by the full Commission.

(11) The Commission shall, for the purposes of determining the amount of rate increase, if any, compare the operation and maintenance expenses (O & M) of the utility to test year operating revenues. The Commission shall consider an allowance for return on working capital using the one-eighth of O & M formula approach.

(12) The Commission shall limit the maximum increase in operating revenues to 50

percent of test year operating revenues.

(13) The Commission shall vote on a proposed agency action (PAA) recommendation establishing rates no later than 90 days from the official filing date as established in subsection 25-30.455(7), F.A.C.

(14) A substantially affected person may file a petition to protest the Commission's PAA Order regarding a staff assisted alternative rate setting application within 21 days of issuance of the Notice of Proposed Agency Action as set forth in Rule 28-106.201, F.A.C.

(15) In the event of protest of the PAA Order by a substantially affected party, the rates established in the PAA Order may be implemented on a temporary basis. At that time the utility may elect to pursue rates set pursuant to the rate base determination provisions of Rule 25-30.455, F.A.C.

(16) In the event of a protest the maximum increase established in subsection (13) above shall no longer apply.

(17) In the event of a protest of the Commission's PAA Order in a staff assisted alternative rate setting application, the utility shall:

(a) Provide prefiled direct testimony in accordance with the procedural order in the case. At a minimum, that testimony shall adopt the Commission's PAA Order in the case;

(b) Sponsor a witness to support source documentation provided to the Commission staff in its preparation of the staff engineering and accounting analysis and the staff PAA recommendation in the case;

(c) Include in its testimony the necessary factual information to support its position on any issue that it chooses to take a position different than that contained in the Commission's PAA Order;

(d) Meet all other requirements of the order establishing procedures.

(18) Failure to comply with the dates established in the procedural order, or to timely file a request for extension of time for good cause shown, may result in dismissal of the staff assisted alternative rate setting application and closure of the docket.

(19) In the event of protest of the Commission's PAA Order in a staff assisted alternative rate setting application the Commission staff shall:

(a) File prefiled direct testimony to explain its analysis in the PAA recommendation. In the event the staff wishes to alter its PAA position on any issue it shall provide factual testimony to support its changed position.

(b) Meet all other requirements of the order establishing procedures;

(c) Provide to the utility materials to assist the utility in the preparation of its testimony and exhibits. This material shall consist of an example of testimony filed by a utility in another case, a sample of testimony that would support the PAA Order in this case, an example of an exhibit filed in another case, and examples of prehearing statements and briefs filed in other cases.

Specific Authority 350.127(2), 367.0814, 367.121 FS.

Law Implemented 367.0814 FS.

History--New 11-30-93, Amended 1-31-00.

25-30.457 Limited Alternative Rate Increase.

(1) As an alternative to a staff assisted rate case as described in Rules 25-30.455 and 25-30.456, F.A.C., water utilities whose total gross annual operating revenues are ~~\$250,000~~\$150,000 or less for water service and wastewater utilities whose total gross annual operating revenues are

~~\$250,000~~~~\$150,000~~ or less for wastewater service may petition the Commission for a limited alternative rate increase of up to 20 percent applied to metered or flat recurring rates of all classes of service by submitting a completed application that includes the information required by subsections (8) and (9). In accordance with Section 367.0814(6), F.S., a utility that requests staff assistance waives its right to protest by agreeing to accept the final rates and charges approved by the Commission unless the final rates and charges would produce less revenue than the existing rates and charges. The original and two copies of the application shall be filed with the Office of Commission Clerk.

(2) Upon filing a petition for a limited alternative rate increase, the utility shall mail a copy of the petition to the chief executive officer of the governing body of each municipality and county within the service areas included in the rate request and retain a copy at the utility's business office.

(3) Within 30 days of receipt of the completed application, the Division of Economic Regulation shall evaluate the application and determine the petitioner's eligibility for a limited alternative rate increase.

(4) Upon reaching a decision to officially accept or deny the application, the Director of the Division of Economic Regulation shall notify the petitioner by letter. If the application is accepted, the Director will initiate limited alternative rate setting. If the application is denied, the letter shall state the reasons for denial.

(5) The official date of filing will be 30 days after official acceptance of the application by the Commission.

(6) A utility described in subsection (1) will qualify for limited alternative rate setting if it satisfies the following criteria:

(a) The petitioner has filed all annual reports required by subsection 25-30.110(3), F.A.C.;

(b) The petitioner has paid applicable regulatory assessment fees as required by Rule 25-30.120, F.A.C.;

(c) The petitioner has at least 1 year's actual experience in utility operation;

(d) The petitioner has complied in a timely manner with all Commission decisions affecting water and wastewater utilities for 2 years prior to the filing of the application under review;

(e) The utility has not been granted a staff assisted rate case pursuant to Rule 25-30.455, F.A.C., or a staff assisted alternative rate setting pursuant to Rule 25-30.456, F.A.C., within the 2-year period prior to the receipt of the application under review;

(f) The utility has not been granted a limited alternative rate increase pursuant to this rule within the 3-year period prior to the receipt of the application under review;

(g) The utility is currently in compliance with any applicable water management district permit conditions concerning rate structure; and

(h) A final order in a rate proceeding that established the utility's rate base, capital structure, annual operating expenses and revenues has been issued for the utility within the 7-year period prior to the receipt of the application under review.

(7) The Commission shall deny the application if a petitioner does not remit the fee, as provided by Section 367.145, F.S., and paragraph 25-30.020(2)(f), F.A.C., within 30 days after official acceptance of the application.

(8) Each petitioner for limited alternative rate increase shall provide the following general information to the Commission:

(a) The name of the utility as it appears on the utility's certificate and the address of the utility's principal place of business; and

(b) The type of business organization under which the utility's operations are conducted: If the petitioner is a corporation, the date of incorporation and the names and addresses of all persons who own 5 percent or more of the petitioner's stock; if the petitioner is not a corporation, the names and addresses of the owners of the business.

(9) The petitioner shall provide a schedule showing:

(a) Annualized revenues by customer class and meter size for the most recent 12-month period using the rates in effect at the time the utility files its application; and

(b) Current and proposed rates for all classes of customers.

(10) The petitioner shall provide a statement that the figures and calculations upon which the change in rates is based are accurate and that the change will not cause the utility to exceed its last authorized rate of return on equity.

(11) A financial or engineering audit of the utility's financial or engineering books and records shall not be required in conjunction with the application under review.

(12) The application will be approved, denied, or approved with modifications within 90 days from the official filing date as established in subsection (5) above.

(13) In consideration of subsections (11) and (12), the utility agrees to hold any revenue increase granted under the provisions of this rule subject to refund with interest in accordance with Rule 25-30.360, F.A.C., for a period of 15 months after the filing of the utility's annual report required by Section 367.121, F.S., for the year the adjustment in rates was implemented.

(14) To insure overearnings will not occur due to the implementation of this rate increase, the Commission will conduct an earnings review of the utility's annual report to determine any

potential overearnings for the year the adjustment in rates was implemented.

(15) If, within 15 months after the filing of a utility's annual report required by Section 367.121, F.S., the Commission finds that the utility exceeded the range of its last authorized rate of return on equity after an adjustment in rates, as authorized by this rule, was implemented within the year for which the report was filed, such overearnings, up to the amount held subject to refund, with interest, shall be disposed of for the benefit of the customers as provided in Section 367.081(4)(d), F.S.

(16) In the event of a protest of the proposed agency action (PAA) order pursuant to Rule 28-106.201, F.A.C., by a substantially affected person other than the utility, unless the PAA Order proposes a rate reduction, the utility may implement the rates established in the PAA Order on a temporary basis upon the utility filing a staff assisted rate case application pursuant to Rule 25-30.455, F.A.C., within 21 days of the date the protest is filed.

(17) In the event of a protest, the limit on the maximum increase provided in subsection (1) above shall no longer apply.

(18) If the utility fails to file a staff assisted rate case application within 21 days in the event there is a protest, the application for a limited alternative rate increase will be deemed withdrawn.

Specific Authority 350.127(2), 367.0814, 367.121 FS.

Law Implemented 367.0814 FS.

History—New 3-15-05.