

**PROPOSED NEW AND AMENDED RULES
FOR WATER AND WASTEWATER
DOCKET NUMBER 911082-WS
COMMENTS OF
GREGORY L. SHAFER
ON BEHALF OF THE STAFF**

DOCUMENT NUMBER-DATE

05321 MAY 1988

FPSC-RECORDS/REPORTING

COMMENTS OF GREGORY L. SHAFER

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2 Q. Would you please state your name and address?

3 A. Gregory L. Shafer, 101 E. Gaines Street, Tallahassee, Florida
4 32399.

5 Q. By whom are you employed and in what capacity?

6 A. I am employed by the Florida Public Service Commission,
7 Division of Water and Wastewater, as Chief of the Bureau of
8 Special Assistance.

9 Q. What are your current responsibilities as Bureau Chief in the
10 Special Assistance Bureau?

11 A. I presently manage two section supervisors. Combined, the
12 sections consist of eight Regulatory Analysts and three
13 Engineers--all of which are under my supervision. The Bureau
14 processes Staff Assisted Rate Cases for Class C Water and
15 Wastewater utilities, limited proceedings for Class A, B and C
16 utilities, index and pass-through applications for Class A, B and
17 C utilities, miscellaneous complaints and inquiries, and tariff
18 related matters.

19 Q. What is the purpose of your comments in this docket?

20 A. I am advocating that the Commission adopt proposed rule 25-
21 30.456 Staff Assistance in Alternative Rate Setting and I will
22 also address comments filed by the Office of Public Counsel (OPC)
23 regarding Rule 25-30.455 Staff Assistance in Rate Cases and Rule
24 25-30.456.

25 Q. In regard to the comments filed by the Office of Public

1 Counsel pertaining to Rule 25-30.455, do you believe it is
2 necessary in the event of protested Staff Assisted Rate Cases to
3 require by rule some form of mandatory arbitration?

4 A. No. OPC states in their comments that arbitration should be
5 mandated but goes on to say it is unsure how such arbitration
6 might work, but believes it should be seriously considered during
7 these hearings. Since no party other than OPC has put forth such
8 a proposal it is difficult to envision procedurally how it would
9 work. Furthermore, it has been my experience having participated
10 in approximately 70 staff assisted rate cases that when these
11 cases are protested, informal prehearing meetings are conducted
12 between parties and settlement options are routinely explored and
13 encouraged by the Commission staff assigned to the cases. In the
14 event that effort fails to produce an agreement the next step is
15 the prehearing where the prehearing officer typically advises the
16 parties of the wisdom of some type of compromise settlement.
17 Failing that, the case proceeds to hearing. In my experience
18 only one protested staff assisted rate case has ever progressed
19 all the way through the hearing process. It hardly seems
20 necessary to modify the existing rule to accommodate less than 2%
21 of the cases that are being processed.

22 Finally, the utility would be well within the bounds of
23 prudent business practice to secure legal counsel for any
24 arbitration proceeding, thus inflating rate case expense and in
25 some respects defeating the purpose of arbitration. Depending

1 | on the nature of any arbitration mechanism in lieu of the hearing
2 | procedure the Commission may also be depriving the parties of
3 | their due process.

4 | Q. Would you explain the underlying reasoning that led to the
5 | development of Rule 25-30.456 Staff Assistance in Alternative
6 | Rate Setting?

7 | A. Yes. The underlying objective of the staff assisted program
8 | has always been to encourage Class C systems to maintain their
9 | economic viability and provide safe and efficient service. More
10 | specific goals that we attempted to address include making the
11 | process faster and less costly and therefore more attractive to
12 | the utility than a comprehensive Staff Assisted Rate Case; to
13 | protect the consumer as much as is practical from severe rate
14 | shock; to discourage expensive and time consuming protests and
15 | hearings; and to encourage utilities to get their rates in line
16 | with at least their expenses in order to maintain quality of
17 | service at a safe level for protection of customers.

18 | Q. Can you briefly describe the features of the proposed rule on
19 | alternative rate setting that you believe will lead to attaining
20 | the goals you outlined above?

21 | A. Yes. First of all, paragraph (12) states that operating
22 | revenues will be compared to expenses for the purposes of
23 | establishing rates rather than the current rate base method. At
24 | the present time we realize that the word "comparison" is
25 | somewhat ambiguous. Our hope is that through experience we will

1 | be able to make the language more precise such that it may for
2 | example allow rates that generate revenues 'equal to' or 'equal
3 | to plus 5% of' or 'equal to 80% of' expenses. The concern with
4 | choosing some arbitrary level at this time is that it may turn
5 | out to be more restrictive in practice than initially intended.
6 | That is, it may lead to increases that frequently reach the
7 | revenue cap or conversely, to increases so minimal that
8 | everyone's time is wasted.

9 | Paragraph (13) imposes a maximum increase limited to 50% of
10 | test year operating revenues. This is a clear signal to the
11 | utility that this process is not designed to be a make whole
12 | vehicle. In addition, by limiting the increase to 50% I believe
13 | the likelihood of protest will be reduced. Our experience with
14 | staff assisted rate cases is such that increases of 100% or even
15 | 200% are not uncommon. Although the magnitude of the increase is
16 | not always the basis for protest it is a very common theme.
17 | Again, experience will have to be the basis for future
18 | modification if we find that 50% is not appropriate or sufficient
19 | for the intended effect. It is an arbitrary amount and could as
20 | easily be set higher or lower. In the alternative a rate level
21 | maximum could be established to accomplish a similar objective.

22 | Paragraph (14) states that the Commission will vote on a PAA
23 | recommendation within 90 days of the official filing date. This
24 | is simply a way to signal the utility that the Commission is
25 | committed to a faster turnaround using this process. The Special

1 Assistance staff gave considerable thought to the 90 day time
2 frame and has assured me that it is workable.

3 Paragraph (16) states that in the event of protest the
4 maximum increase will be removed and the utility given the option
5 of having rates set on rate base thus increasing the likelihood
6 of greater increases. This is a disincentive for protest.
7 Although it may seem that the customer is placed at a
8 disadvantage it should be noted that should paragraphs (13) and
9 (16) come into play it would most likely be in situations that
10 the utility would be entitled to more revenue should they have
11 opted for a staff assisted rate case. The assumption is that
12 they have chosen the new alternative to reduce their turnaround
13 time and have accepted lesser rates to achieve that end. If the
14 case is protested and the time frames default to that of a
15 typical rate case it is only fair that the utility be afforded
16 the opportunity to seek fully compensatory rates.

17 Q. Have you reviewed the Comments filed by OPC as they pertain
18 to proposed Rule 25-30.456?

19 A. Yes.

20 Q. Would you briefly summarize the concerns regarding proposed
21 Rule 25-30.456 raised by OPC?

22 A. The concerns raised by OPC seem to be, first of all, that the
23 methodology proposed in the rule is 'untried and untested'. It
24 also raises a concern over the ambiguity of the language of
25 paragraph (12) regarding the comparison of operating expenses and

1 | revenues as a basis for determining revenue requirements.
2 | Finally OPC suggests that the proposed rule be eliminated from
3 | this proceeding altogether and considered under separate
4 | circumstances.

5 | Q. Do you have any response to the comments of OPC on proposed
6 | Rule 25-30.456?

7 | A. Yes, although it is true that the methodology of the proposed
8 | rule is untested at this time, that criticism is a bit of a
9 | paradox. The statutory authority for implementing a non-rate
10 | base regulatory scheme is explicitly tied to the rulemaking
11 | process. It is not clear that the Commission would have the
12 | authority to pursue such a practice prior to the approval of a
13 | rule. In addition, it my undersstanding that the Commission
14 | previously used a type of operating ratio in the regulation of
15 | the trucking industry.

16 | As noted earlier in my comments, the language of paragraph
17 | (12) is somewhat ambiguous but could certainly be amended to any
18 | of the options enumerated above. The danger in so doing is that
19 | the rule becomes too restrictive as to be beneficial. With the
20 | current language, the Commission could develop incipient policy
21 | within the context of the rule and modify that rule at a later
22 | date to incorporate Commission experience. Another way to
23 | address the issue and achieve the same end would be to implement
24 | at rate cap. This would serve to eliminate those utilities which
25 | already have higher than average rates from this alternative.

1 Finally, I do not believe that the concerns expressed by OPC
2 warrant elimination of this proposed rule at this late stage in
3 the process. Much time and effort has been expended by all the
4 parties including the Commission staff to get these proposed
5 rules before the Commission and many opportunities for input have
6 been afforded to everyone. I believe the rule is workable and
7 should not be eliminated but instead additional modifications
8 should be made if necessary to make it acceptable to the
9 Commission so that we may move forward and see whether our
10 objectives can be attained.

11 Q. Does this conclude your comments?

12 A. Yes, it does.

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