

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

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DATE: SEPTEMBER 18, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION ADMINISTRATIVE SERVICES (BAYO)

FROM: OFFICE OF THE GENERAL COUNSEL (CIBULA, RODAN) DIVISION OF ECONOMIC REGULATION (FITCHEL, HEWITT)

S.M.C. JAR
CBA JOJ

RE: DOCKET NO. 030830-WS - PROPOSED AMENDMENT OF RULE 25-30.420, F.A.C., ESTABLISHMENT OF PRICE INDEX, ADJUSTMENT OF RATES; REQUIREMENT OF BOND; FILINGS AFTER ADJUSTMENT; NOTICE TO CUSTOMERS.

AGENDA: 09/30/03 - REGULAR AGENDA - RULE PROPOSAL - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\030830.RCM

CASE BACKGROUND

Pursuant to Section 367.081(4)(a), Florida Statutes, the Commission was given the authority to establish by rule the procedure by which a utility may implement an increase or decrease in rates based on the application of the Commission's price index. The price index is based on changes for major categories of the utility's operating costs. Rule 25-30.420, Florida Administrative Code, sets forth the Commission's price index application procedure.

The Commission, pursuant to Section 367.081(4)(a) and Rule 25-30.420, reviews a utility's quality of service prior to implementing a price index rate increase. If a utility is found to have inadequate service, the Commission may hold any rate increase subject to refund with adequate security. In this regard, Rule 25-30.420(4) states that:

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[u]pon a finding of good cause, the Commission may require that a rate increase pursuant to section 367.081(4) (a), Florida Statutes, be implemented under a bond or corporate undertaking in the same manner as interim rates. For purposes of this subsection "good cause" shall include:

- (a) Inadequate service by the utility;
- (b) Inadequate record-keeping by the utility such that the Commission is unable to determine whether the utility is entitled to implement the rate increase or decrease under the rule.

Under the current rule, a staff engineer is assigned to determine whether the utility's service is adequate for each price index application filed with the Commission. To determine whether service is adequate, the staff engineer contacts the different regulatory agencies with jurisdiction over the applying utility to determine if the utility has any active complaints, corrective orders, consent orders or outstanding citations with the agencies. The majority of the utilities filing index applications either have no outstanding complaints, corrective orders, consent orders or citations, or those that do are not considered to rise to the level of inadequate service. Staff was unable to find an instance over the last ten years where a utility filing an index application was required to implement the increase under a bond or corporate undertaking.

In an effort to streamline the processing of index applications, staff recommended on January 9, 2003, as part of its annual recommendation on the reestablishment of the Commission's price index, that utilities filing a price index application should affirm under oath that they either do or do not have any active complaints, corrective orders, or outstanding citations with the Department of Environmental Protection (DEP) or the County Health Department(s). By proposed agency action Order No. PSC-03-0149-PAA-WS, issued January 28, 2003, the Commission ordered that such an affirmation should be included in a price index application.

Order No. PSC-03-0149-PAA-WS was protested by the Florida Waterworks Association (FWWA). The FWWA stated that it did not believe that the affirmation could be required without a rule. Rather than take the protest to hearing, the Commission, by Order

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No. PSC-03-0327-FOF-WS, issued March 7, 2003, instructed staff to initiate a rule development to address this matter.

On May 9, 2003, a workshop was held to take comments on this rulemaking. A representative of the FWWA was the only attendee and gave comments regarding the proposed rule. Staff provided interested persons an opportunity to submit comments, including proposed language, within 30-days following the workshop. Staff did not receive any post-workshop comments. However, staff incorporated the comments from the workshop into staff's recommended rule.

The Commission has rulemaking authority under Sections 367.081 and 120.54, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission propose the amendment to Rule 25-30.420, Florida Administrative Code, entitled Establishment of Price Index, Adjustment of Rates; Requirement of Bond; Filings After the Adjustment; Notice to Customers?

RECOMMENDATION: Yes. The Commission should propose the amendment of Rule 25-30.420, Florida Administrative Code. (CIBULA, RODAN, FITCH, HEWITT)

STAFF ANALYSIS: As stated in the case background, Rule 25-30.420(4)(a) states that the Commission may require that a rate increase pursuant to Section 367.081(4)(a) be implemented under a bond or corporate undertaking if a utility is found to have inadequate service. Under the current rule, staff researches every utility that files an application for a price index rate increase to determine whether there are any active written complaints, consent orders, corrective orders, or outstanding citations pending against the utility at the DEP or the County Health Department. Consequently, staff spends an inordinate amount of time addressing the quality of service issue for utilities filing price index applications. For the past 12-month period, approximately 68 price index applications have been processed.

Staff believes that the process for determining the adequacy of a utility's service can be streamlined by requiring the utility to give a statement as to whether it has any active complaints, consent orders, corrective orders, or outstanding citations pending at the DEP or County Health Department and, if so, to provide copies of such to the Commission as part of its price index application. This procedure will allow staff to focus its efforts on investigating those utilities which may have service problems. An example that a utility may use as guide to filing this statement is appended to this recommendation as Attachment B.

The Commission used a similar process to handle the 2002 index application of Florida Water Services Company (FWSC). FWSC's index application included 79 water and 35 wastewater systems. In that instance, the Commission found that it would have been difficult for staff to investigate each of these systems individually and complete the index application before the end of the statutory time frame expired. The process proved to be effective and provided

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administrative efficiency in processing FWSC's voluminous application.

At the rule development workshop held on May 8, 2003, the FWWA commented that the rule amendment should be narrow and well defined. Staff believes that the amended rule language addresses FWWA's concerns as subsections (h) and (i) of the amended rule (page 9) specifically inquire into and request copies of only active written complaints, corrective orders, consent orders, or outstanding citations issued by the DEP or the County Health Department(s).

Citing staff's statement that over the past ten years the security provision of Section 367.081(4)(a), Florida Statutes, has never been implemented, the FWWA also raised concerns about whether the rule revisions are necessary. Staff pointed out at the rule development workshop that the purpose of the rule amendment is to make the review of price index applications more administratively efficient. Staff believes that it is reasonable and prudent to require the utility to provide this information. This information should be readily available to the utility since the utility should be actively addressing its quality of service problems.

As mentioned in the case background, in proposed agency action Order No. PSC-03-0149-PAA-WS, the Commission required that the statement on whether the utility had any active complaints, consent orders, corrective orders, or outstanding citations be submitted under oath. The FWWA protested Order No. PSC-03-0149-PAA-WS. A basis for the protest was the requirement that the statement be made under oath and FWWA raised questions at the workshop as to the necessity of the oath. Upon further review, it does not appear necessary to require an oath for the quality of service information as Section 837.06, Florida Statutes, is applicable. Section 837.06 states that whoever knowingly makes a false statement with the intent to mislead a public servant in the performance of his official duty can be found guilty of a misdemeanor of the second degree.

Statement of Estimated Regulatory Costs:

The Florida Administrative Procedure Act encourages an agency to prepare a Statement of Estimated Regulatory Costs (SERC). A SERC was not prepared for this proposed rule development, however, staff does not believe that the additional requirements of the rule

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amendment will cause an unnecessary burden on utilities filing a price index application. Each utility should be aware of and have documentation for any active written complaints, consent orders, corrective orders, or outstanding citations and should be able to provide those to staff with minimal cost.

For the reasons specified above, staff recommends that the Commission propose the amendment of Rule 25-30.420, Florida Administrative Code.

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ISSUE 2 If no request for hearing or comments are filed, should the proposed rule be filed for adoption with the Secretary of State and the docket be closed?

RECOMMENDATION: Yes, the docket should be closed if no requests for hearing or comments are filed. (CIBULA, RODAN)

STAFF ANALYSIS: If no requests for hearing or comments are filed,, the proposed rule may be filed with the Secretary of State without further Commission action. The docket may then be closed.

Attachments:

Rule

An Example of a Quality of Service Statement

SERC Memorandum

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3 Attachment A

4 25-30.420 Establishment of Price Index, Adjustment of Rates;
5 Requirement of Bond; Filings After Adjustment; Notice to Customers.

6 (1) The Commission shall, on or before March 31 of each year,
7 establish a price increase or decrease index as required by section
8 367.081(4)(a), F.S. The Division of the Commission Clerk and
9 Administrative Services shall mail each regulated water and
10 wastewater utility a copy of the proposed agency action order
11 establishing the index for the year and a copy of the application.
12 Form PSC/ECR 15 (04/99), entitled "Index Application", is
13 incorporated into this rule by reference and may be obtained from
14 the Commission's Division of Economic Regulation. Applications for
15 the newly established price index will be accepted from April 1 of
16 the year the index is established through March 31 of the following
17 year.

18 (a) The index shall be applied to all operation and
19 maintenance expenses, except for amortization of rate case expense,
20 costs subject to pass-through adjustments pursuant to section
21 367.081(4)(b), F.S., and adjustments or disallowances made in a
22 utility's most recent rate proceeding.

23 (b) In establishing the price index, the Commission will
24 consider cost statistics compiled by government agencies or bodies,
25

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~~through~~ type are deletions from existing law.

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3 cost data supplied by utility companies or other interested
4 parties, and applicable wage and price guidelines.

5 (2) Any utility seeking to increase or decrease its rates
6 based upon the application of the index established pursuant to
7 subsection (1) and as authorized by section 367.081(4)(a), F.S.,
8 shall file an original and five copies of a notice of intention and
9 the materials listed in (a) through (i) ~~(g)~~ below with the
10 Commission's Division of Economic Regulation at least 60 days prior
11 to the effective date of the increase or decrease. The adjustment
12 in rates shall take effect on the date specified in the notice of
13 intention unless the Commission finds that the notice of intention
14 or accompanying materials do not comply with the law, or the rules
15 or orders of the Commission. The notice shall be accompanied by:

- 16 (a) Revised tariff sheets;
- 17 (b) A computation schedule showing the increase or decrease
18 in annual revenue that will result when the index is applied;
- 19 (c) The affirmation required by section 367.081(4)(c), F.S.;
- 20 (d) A copy of the notice to customers required by subsection
21 (6);
- 22 (e) The rate of return on equity that the utility is
23 affirming it will not exceed pursuant to section 367.081(4)(c),
24 F.S.;
- 25

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3 (f) An annualized revenue figure for the test year used in
4 the index calculation reflecting the rate change, along with an
5 explanation of the calculation, if there has been any change in the
6 utility's rates during or subsequent to the test year;

7 (g) The utility's Department of Environmental Protection
8 Public Water System identification number and Wastewater Treatment
9 Plant Operating Permit number.

10 (h) A statement that the utility does not have any active
11 written complaints, corrective orders, consent orders, or
12 outstanding citations with the Department of Environmental
13 Protection (DEP) or the County Health Department(s) or that the
14 utility does have active written complaints, corrective orders,
15 consent orders, or outstanding citations with the DEP or the County
16 Health Department (s).

17 (i) A copy of any active written complaints, corrective
18 orders, consent orders, or outstanding citations with the
19 Department of Environmental Protection (DEP) or the County Health
20 Department (s).

21 (3) If the Commission, upon its own motion, implements an
22 increase or decrease in the rates of a utility based upon the
23 application of the index established pursuant to subsection (1) and
24 as authorized by section 367.081(4) (a), F.S., the Commission will
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3 require a utility to file the information required in subsection
4 (2).

5 (4) Upon a finding of good cause, the Commission may require
6 that a rate increase pursuant to section 367.081(4)(a), F.S., be
7 implemented under a bond or corporate undertaking in the same
8 manner as interim rates. For purposes of this subsection, "good
9 cause" shall include:

10 (a) Inadequate service by the utility;

11 (b) Inadequate record-keeping by the utility such that the
12 Commission is unable to determine whether the utility is entitled
13 to implement the rate increase or decrease under this rule.

14 (5) Prior to the time a customer begins consumption at the
15 rates established by application of the index, the utility shall
16 notify each customer of the increase or decrease authorized and
17 explain the reasons therefor.

18 (6) No utility shall file a notice of intention pursuant to
19 this rule unless the utility has on file with the Commission an
20 annual report as required by Rule 25-30.110(3), F.A.C., for the
21 test year specified in the order establishing the index for the
22 year.

23 (7) No utility shall implement a rate increase pursuant to
24 this rule within one year of the official date that it filed a rate
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3 proceeding, unless the rate proceeding has been completed or
4 terminated.

5 Specific Authority: 350.127(2), 367.081(4)(a), 367.121(1)(c),
6 367.121(1)(f), F.S.

7 Law Implemented: 367.081(4), 367.121(1)(c), 367.121(1)(g), F.S.

8 History: New 04/05/81, Amended 09/16/82, Formerly 25-10.185,
9 Amended 11/10/86, 06/05/91, 04/18/99, XX/XX/XX.

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Attachment B

STATEMENT OF QUALITY OF SERVICE

Pursuant to Rule 25-30.420(2)(h) and (i), Florida Administrative Code, _____.
(Utility Name)

[] does not have any active written complaints, corrective orders, consent orders, or outstanding citations with the Department of Environmental Protection (DEP) or the County Health Departments.

[] does have the attached active written complaint(s), corrective order(s), consent order(s), or outstanding citation(s) with the DEP or the County Health Department(s). The attachment(s) includes the specific system(s) involved with DEP permit number and the nature of the active complaint, corrective order, consent order, or outstanding citation.

This statement is intended such that the Florida Public Service Commission can make a determination of quality of service pursuant to Section 367.081(4)(a), Florida Statutes, and Rule 25-30.420(4)(a), Florida Administrative Code.

Name: _____
Title: _____
Telephone Number: _____
Fax Number: _____
Date: _____



Public Service Commission
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DATE: August 14, 2003
TO: Office of the General Counsel (Cibula)
FROM: Division of Economic Regulation (Hewitt) *COA* *1/18/03*
RE: Statement of Estimated Regulatory Costs for Proposed Amendment to Rule 25-30.420, F.A.C., Establishment of Price Index

Rule 25-30.420, F.A.C., allows water and wastewater companies to pass-through certain cost changes after the Commission establishes a price increase or decrease index each year according to statute. As part of the "Index Application" process for cost pass-throughs, a regulated company must file a notice of intention and certain informational materials.

The proposed rule amendment would require a statement from the applying utility that it does or does not have any complaints, corrective orders, consent orders, or outstanding citations with the DEP or County Health Departments.

The Administrative Procedures Act encourages an agency to prepare a Statement of Estimated Regulatory Costs (SERC). However, an applying utility should be aware of and have documentation for any active complaints, corrective orders, consent orders or outstanding citations and would have minimal costs making a such a statement. There also should be no significant negative impacts on utilities, small businesses, small cities, or small counties. Therefore, a SERC will not be prepared for the proposed rule amendment at this time.

cc: Mary Andrews Bane
Joe Jenkins
Ryan Fitch
Hurd Reeves