

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: July 8, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayo)

FROM: Office of the General Counsel (Moore, Jaeger)
Division of Economic Regulation (Hewitt, Rendell, Willis)

RE: Docket No. 040246-WS – Proposed adoption of Rule 25-30.457, F.A.C., Limited Alternative Rate Increase, and Rule 25-30.458, F.A.C., Notice of and Public Information for Application for Limited Alternative Rate Increase.

AGENDA: 07/20/04 – Regular Agenda – Rule Proposal – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\040246.RCM.DOC

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Discussion of Issues

Issue 1: Should the Commission propose the adoption of new rules, Rule 25-30.457, Florida Administrative Code, entitled Limited Alternative Rate Increase, and Rule 25-30.458, Florida Administrative Code, entitled Notice of and Public Information for Application for Limited Alternative Rate Increase?

Recommendation: Yes. (Rendell, C. Moore)

Staff Analysis: Subsection 367.0814(9), Florida Statutes, authorizes the Commission to establish standards and procedures whereby rates and charges of small utilities may be set using criteria other than those set forth in s. 367.081(1), (2)(a), and (3). Pursuant to this authority, staff recommends the Commission propose a rule that provides an alternative to the current staff assisted rate case procedure for water or wastewater utilities with gross annual revenues of \$150,000 or less to obtain a limited amount of rate relief more quickly. (Attachment A.) Providing small utilities with another method to obtain rates that are closer to compensatory

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levels may help to mitigate "rate shock," lower rate case expense, and reduce the Commission's labor. Staff believes the result will be less costly regulation.

Under recommended Rule 25-30.457, F.A.C., Limited Alternative Rate Increase, any revenue increase will be limited to a maximum of 20 percent and will be held subject to refund for 15 months after the utility files its annual report for the year the rate adjustment was implemented. Commission staff will not be required to audit the utility's financial or engineering books and records; however, it will follow the current practice of conducting an earnings review of each annual report. The rule requires Commission staff to evaluate the application and determine the petitioner's eligibility for this type of proceeding within 30 days of receipt of a completed application. The official date of filing is 30 days after official acceptance and the rule requires the Commission to act on a recommendation establishing rates no later than 90 days after the official date of filing.

Subsection (1) of the recommended rule authorizes certain small water and wastewater utilities to request a limited rate increase if they submit an application including the information required by subsections (9) and (10) of the rule. **That information includes:** 1) basic identification and ownership; 2) annualized revenues by customer class and meter size for the most recent 12-month period; 3) the utility's current and proposed rates for all classes of customers; and 4) a statement that the rate change will not cause the utility to exceed its last authorized rate of return on equity. The petitioner must also pay the staff assisted rate case (SARC) application fee of \$200 to \$1,000 as provided by Rule 25-30.020(2)(f), F.A.C.

Only small utilities that meet the criteria listed in subsection (6) of the rule will qualify for this type of rate case. Those criteria include that the petitioner: 1) has filed annual reports; 2) has paid regulatory assessment fees; 3) has at least one year's experience in utility operation; and 4) has complied with all Commission decisions for two years prior to applying for a limited rate increase. The utility must not have been granted a SARC within two years prior to applying for the limited increase nor granted a limited increase under this rule within the prior three years; must be in compliance with water management district permit conditions concerning rate structure; and must—within the seven-year period prior to the receipt of the application under review—have had a final order issued in a rate proceeding that established the utility's rate base, capital structure, annual operating expenses and revenues.

In the event a protest is filed, the utility may implement the new rates on a temporary basis if and when it files a SARC application. If the utility files for a SARC, the 20 percent limit on the maximum increase no longer applies. If it does not file a SARC within 21 days of the protest, however, its application for the limited alternative rate increase is deemed withdrawn.

A rule development workshop was held in Orlando on February 12, 2004. Catherine Walker of the St. Johns River Water Management District and Stephen Reilly of the Office of Public Counsel (OPC) participated and later submitted comments. Also attending were Attorney Martin Friedman, of Rose, Sundstrom & Bentley LLP, and Richard Bair, W.B.B. Utilities, Inc. Jay Yingling of the Southwest Florida Water Management District submitted comments after the workshop. As a result of the comments of the water management districts, a requirement was added for the utility to be in compliance with any applicable water management district permit conditions concerning rate structure.

Date: July 8, 2004

Staff also revised Rule 25-30.457 and added a new rule to accommodate several of OPC's concerns. The changes to Rule 25-30.457 include requiring a copy of the utility's petition to be placed in its business office; requiring the petitioner to have filed all annual reports required by Commission rule instead of only the report for the historical test year; and modifying the requirement that there must have been a final order in a rate proceeding issued for the utility within the seven-year period prior to the application to specify that the order must have established the utility's rate base, capital structure, annual operating expenses and revenues. In addition, Rule 25-30.458 was added to respond to OPC's concern that no customer meeting would be held. Commission staff will conduct a customer meeting prior to filing a recommendation on the limited alternative rate increase. Rule 25-30.458 thus requires the utility to send a customer notice prior to the meeting as well as another notice after the issuance of a PAA order granting the rate increase.

Statement of Estimated Regulatory Costs

The recommended rule should make the rate case process more efficient and less time consuming than a SARC and thus less costly for small utilities and their customers. The Commission should benefit from the streamlined rate change process through the elimination or reduction of staff duties and costs for travel, meetings, and hearings. Although the total cost savings will depend on the number of rate proceedings conducted under the new rule, the potential estimated savings are discussed in the attached Statement of Estimated Regulatory Costs. (Attachment B.)

Issue 2: Should this docket be closed?

Recommendation: Yes, if no requests for hearing or comments are filed, the rules as proposed should be filed for adoption with the Secretary of State and the docket closed. (C. Moore)

Staff Analysis: Unless comments or requests for hearing are filed, the rules as proposed may be filed with the Secretary of State without further Commission action. The docket may then be closed.

Attachments

1 25-30.457 Limited Alternative Rate Increase.

2 (1) As an alternative to a staff assisted rate case as described in Rules 25-30.455 and 25-
3 30.456, F.A.C., water and wastewater utilities whose total gross annual operating revenues are
4 \$150,000 or less for water service or \$150,000 or less for wastewater service, or \$300,000 or less on
5 a combined basis, may petition the Commission for a limited alternative rate increase by submitting a
6 completed application that includes the information required by sections (9) and (10). In accordance
7 with subsection 367.0814(6), F.S., a utility that requests staff assistance waives its right to protest by
8 agreeing to accept the final rates and charges approved by the Commission unless the final rates and
9 charges would produce less revenue than the existing rates and charges. The original and five copies
10 of the application shall be filed with the Division of the Commission Clerk and Administrative
11 Services.

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

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

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

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

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1 by the Commission.

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

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

5 (b) The petitioner has paid applicable regulatory assessment fees as required by Rule 25-
6 30.120, F.A.C.;

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

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

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

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

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

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

20 (7) Any increase in operating revenues approved pursuant to this rule shall be limited to a
21 maximum of 20 percent applied to metered or flat recurring rates of all classes of service.

22 (8) The Commission shall deny the application if a petitioner does not remit the fee, as
23 provided by section 367.145, F.S., and Rule 25-30.020(2)(f), F.A.C., within 30 days after official

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1 acceptance of the application.

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

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

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

10 (10) The petitioner shall provide a schedule showing:

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

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

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

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

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

21 (14) In consideration of subsections (12) and (13), the utility agrees to hold any revenue
22 increase granted under the provisions of this rule subject to refund for a period of 15 months after the
23 filing of the utility's annual report required by section 367.121, F.S., for the year the adjustment in

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1 rates was implemented.

2 (15) To insure overearnings will not occur due to the implementation of this rate increase,
3 the Commission will conduct an earnings review of the utility's annual report to determine any
4 potential overearnings for the year the adjustment in rates was implemented.

5 (16) If, within 15 months after the filing of a utility's annual report required by section
6 367.121, F.S., the Commission finds that the utility exceeded the range of its last authorized rate of
7 return on equity after an adjustment in rates as authorized by this rule was implemented within the
8 year for which the report was filed, the Commission may order the utility to refund, with interest, the
9 difference to the ratepayers and adjust rates accordingly.

10 (17) In the event of a protest of the proposed agency action (PAA) order pursuant to Rule
11 28-106.201, F.A.C., by a substantially affected person other than the utility, unless the PAA Order
12 proposes a rate reduction, the utility may implement the rates established in the PAA Order on a
13 temporary basis upon the utility filing a staff assisted rate case application pursuant to Rule 25-
14 30.455, F.A.C., within 21 days of the date the protest is filed.

15 (18) In the event of a protest, the limit on the maximum increase provided in (7) above
16 shall no longer apply.

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

20 Specific Authority: 350.127(2), 367.0814(9), 367.121(1)(a), F.S.

21 Law Implemented: 367.0814, 367.121, 350.123, 367.145(2), F.S.

22 History: New XX/XX/XX.

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1 **25-30.458 Notice of and Public Information for Application for Limited Alternative**

2 **Rate Increase.**

3 (1) This rule applies to all requests for a limited alternative rate increase.

4 (2) No less than 14 days and no more than 30 days prior to the date of a customer
5 meeting, the utility shall provide, in writing, a customer meeting notice to all customers within its
6 service area and to all persons in the same service area who have filed a written request for service or
7 who have been provided a written estimate for service within the 12 calendar months prior to the
8 month the petition is filed. The customer meeting will be conducted by the Commission staff no less
9 than 15 days prior to Commission action on the application.

10 (3) The customer meeting notice shall be approved by Commission staff prior to
11 distribution and shall include the following:

12 a. The date the notice was issued;

13 b. The time, date, location, and purpose of the customer meeting;

14 c. A statement that the utility has applied for a limited alternative rate increase and the
15 general reason for doing so;

16 d. A statement of the location where copies of the application are available for public
17 inspection during the utility's regular business hours;

18 e. A comparison of current rates and charges and the proposed new rates and charges;

19 f. The utility's address, telephone number, and regular business hours;

20 g. A statement that written comments regarding utility service or the proposed rates and
21 charges should be addressed to the Director, Division of the Commission Clerk and Administrative
22 Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0870, and that such comments
23 should identify the docket number assigned to the proceeding;

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1 h. A statement that complaints regarding service may be made to the Commission's
2 Division of Consumer Affairs at the following toll-free number: 1-800-342-3552; and

3 1. The docket number assigned by the Commission's Division of the Commission Clerk
4 and Administrative Services.

5 (4) The customer meeting notice shall be mailed to the out-of-town address of all
6 customers who have provided the utility with an out-of-town address.

7 (5) If the Commission issues a proposed agency action (PAA) order granting a limited
8 alternative rate increase, the utility shall notify its customers of the order and any revised rates. The
9 customer notification shall be approved by Commission staff and be distributed no later than with the
10 first bill containing any revised rates.

11 Specific Authority: 350.127(2), 367.0814(9), 367.121(1), F.S.

12 Law Implemented: 367.0814, 367.121, 350.123, F.S.

13 History: New XX/XX/XX.

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

DATE: June 30, 2004
TO: Office of General Counsel (Moore)
FROM: Division of Economic Regulation (Hewitt) *CH*
RE: Revised Statement of Estimated Regulatory Costs for Proposed Rule 25-30.457, F.A.C., Limited Alternative Rate Increase; Docket No. 040246-WS

SUMMARY OF THE RULE

The Proposed Rule 25-30.457, F.A.C., Limited Alternative Rate Increase would establish an abbreviated procedure for rate increases for Class C water and wastewater utilities who are otherwise eligible for a staff assisted rate case increase under Section 376.0814, Florida Statutes. Although the proposed rule would streamline the rate increase process for qualifying companies, eligibility criteria must be met, support documentation would be required, and proper notice made. Rate increases would be limited to a maximum of 20 percent, no more frequently than every two years.

The proposed rule should make the rate case process more efficient and less time consuming than a staff assisted rate case (SARC) and thus less costly for small utilities and their customers. New rates would be implemented quicker which would benefit the under-earning utility and the rate increase cap would limit the risk of even higher rates to customers. The total potential savings are unknown.

ESTIMATED NUMBER OF ENTITIES REQUIRED TO COMPLY AND GENERAL DESCRIPTION OF INDIVIDUALS AFFECTED

There are 123 active Class C water and wastewater companies certified by the Commission. The Class C utilities that are eligible for a SARC and meet the qualifying criteria would be the entities that save time and money with the proposed rule for an alternative process. These Class C's customers would benefit to some degree from reduced rate case expenses.

RULE IMPLEMENTATION AND ENFORCEMENT COST AND IMPACT ON REVENUES FOR THE AGENCY AND OTHER STATE AND LOCAL GOVERNMENT ENTITIES

The Commission would benefit by not having to bear the cost of a full blown SARC for many Class C rate cases. The proposed rule would eliminate many of the SARC requirements and reduce costs for eligible cases. SARCs require an engineering inspection, an audit of the utility's books, and many hours of staff time, most of which would be eliminated or reduced. Also reduced would be travel costs, meeting costs, and hearing costs. The estimated savings for each avoided SARC would be approximately \$41,580 for Commissioners and staff time spent on

proceedings and travel costs, salaries, any overtime, rental costs for meeting space, attorney, economist, auditing and engineering reviews and analyses, as well as administrative overhead. Offsetting this cost somewhat would be the cost of the Limited Alternative at an estimated cost of \$5,190 for an estimated net savings of \$36,390. The total cost savings annually would depend on the number of rate proceedings processed under the new rule as opposed to the current SARC process.

ESTIMATED TRANSACTIONAL COSTS TO INDIVIDUALS AND ENTITIES

There would be a net benefit from reduced rate case expenses to qualifying Class C utilities. The approximate cost to a utility is \$27,000 for a SARC with a formal hearing and \$3,000 without a hearing, one of which would be saved for every SARC avoided. These costs would be somewhat offset by the filing costs for the Limited Alternative process. Ratepayers, who ultimately pay for rate cases, would also benefit from reduced rate case expenses.

IMPACT ON SMALL BUSINESSES, SMALL CITIES, OR SMALL COUNTIES

There would be a net benefit to Class C utilities that are small businesses. There should be no negative impacts on non-utility small businesses, small cities, or small counties; however, they would benefit somewhat if they are a customer of a Class C utility that utilizes the new process.

cc: Mary Andrews Bane
Troy Rendell ✓
Hurd Reeves