

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed adoption of Rule 25-30.091, F.A.C., Petition to Revoke Water Certificate of Authorization, and proposed amendment of Rule 25-30.440, F.A.C., Additional Engineering Information Required of Class A and B Water and Wastewater Utilities in an Application for Rate Increase.

DOCKET NO. 140205-WS
ORDER NO. PSC-14-0703-NOR-WS
ISSUED: December 22, 2014

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman
LISA POLAK EDGAR
RONALD A. BRISÉ
EDUARDO E. BALBIS
JULIE I. BROWN

NOTICE OF RULEMAKING

BY THE COMMISSION:

NOTICE is hereby given that pursuant to Section 120.54, Florida Statutes, the Florida Public Service Commission has proposed the adoption of Rule 25-30.091, Florida Administrative Code (F.A.C.), relating to petitions to revoke a water certificate of authorization, and the amendment of Rule 25-30.440, F.A.C., relating to additional engineering information required of Class A and B water and wastewater utilities in an application for rate increase. Pursuant to Rule 25-30.443, F.A.C., the amendment of Rule 25-30.440 will also apply to Class C utilities seeking a rate increase.

The attached Notice of Proposed Rules appeared in the December 22, 2014 edition of the Florida Administrative Register.

If timely requested, a hearing will be held at a time and place to be announced in a future notice.

Written requests for hearing and written comments on the rules must be received by the Office of Commission Clerk, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0862, no later than January 12, 2015.

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By ORDER of the Florida Public Service Commission this 22nd day of December, 2014.



CARLOTTA S. STAUFFER
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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Notice of Proposed Rule

PUBLIC SERVICE COMMISSION

RULE NOS.: RULE TITLES:

[25-30.091](#) Petition to Revoke Water Certificate of Authorization

[25-30.440](#) Additional Engineering Information Required of Class A and B Water and Wastewater Utilities in an Application for Rate Increase

PURPOSE AND EFFECT: New Rule 25-30.091, F.A.C., would be adopted to implement the statutory requirements contained in Section 367.072, F.S., by establishing a process by which customers may petition for revocation of their water utility's certificate of authorization to provide water service, and would incorporate by reference instructions for petitioning for revocation of water certificate and a sample petition form. In addition, Rule 25-30.440, F.A.C., would be amended to require that when a Class A or Class B water utility applies for a rate increase, it must provide a copy of all customer complaints that it has received during the past 5 years regarding secondary water quality standards as established by the Department of Environmental Protection. Rule 25-30.443, F.A.C., Minimum Filing Requirements for Class C Water and Wastewater Utilities, which references Rule 25-30.440, F.A.C., would thereby require Class C utilities seeking a rate increase to also provide a copy of all such customer complaints.

Docket No. 140205-WS

SUMMARY: Newly enacted Section 367.072, F.S., authorizes the Commission to revoke a water utility's certificate of authorization to provide water service if, after at least 65 percent of the utility's customers file a petition for revocation, the Commission finds that due to quality of water service issues, revocation is in the best interest of the customers in accordance with that section. Rule 25-30.091, F.A.C., adopts the format of and requirements for a petition for revocation, as required by that section, and the process by which the Commission will consider the petitions. Moreover, newly enacted Section 367.0812, F.S., requires the Commission to consider, when setting rates, the extent to which a water utility provides service that meets secondary water quality standards as established by the Department of Environmental Protection (DEP). Therefore, Rule 25-30.440, F.A.C., is amended to require water utilities to provide a copy of all customer complaints the utility has received regarding DEP secondary standards during the past 5 years when applying for a rate increase.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION: The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has been prepared by the Agency.

The SERC examined the factors required by Section 120.541(2)(c), F.S., and concluded that the new rule and rule amendment will not have an adverse impact on economic growth, business competitiveness, or small business.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: based on the information contained in the SERC.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: [350.172\(2\)](#), [367.072](#), [367.0812 FS](#).

LAW IMPLEMENTED: [367.072](#), [367.081](#), [367.0812 FS](#).

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Rosanne Gervasi, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850)413-6224, E-MAIL ADDRESS: rgervasi@psc.state.fl.us.

THE FULL TEXT OF THE PROPOSED RULE IS:

25-30.091 Petition to Revoke Water Certificate of Authorization.

(1) Purpose. The purpose of this rule is to establish a process by which customers of investor-owned drinking water utilities may petition the Commission to revoke a utility's certificate of authorization pursuant to Section 367.072, F.S.

(2) Pursuant to Section 367.0812(3), F.S., customers may not petition the Commission to revoke a utility's water certificate of authorization if the utility is the subject of a proceeding under Chapter 367, F.S. For the purposes of this rule, a proceeding under Chapter 367, F.S., means any rate proceeding in which quality of water service is addressed, such as a general rate proceeding under Section 367.081, F.S., a staff assisted rate proceeding under Section 367.0814, F.S., or a limited proceeding under Section 367.0822, F.S. A general rate proceeding under Chapter 367, F.S., is initiated upon the utility's filing of a request for approval of a test year pursuant to Rule 25-30.430, F.A.C. Other rate proceedings under Chapter 367, F.S., are initiated upon the utility's filing of an application for rate relief.

(3) Letter of Intent. Utility customers who intend to petition the Commission for revocation of their utility's certificate of authorization pursuant to Section 367.072, F.S., shall notify the Commission in writing of their intent to file a petition for revocation of certificate. In the letter of intent, the customers shall advise the Commission of the name and address of their water utility. The letter of intent shall be filed with the Office of Commission Clerk.

(4) Within 10 days after receipt of the letter of intent, the Commission staff will notify the utility of the customers' intent to file a petition for revocation of its certificate of authorization.

(5) In the notification letter to the utility, the Commission staff will request that the utility certify, within 30 days after receipt of the notification letter, the number of water customers the utility serves by counting its service connections, and provide staff with a list of its customers' names and addresses.

(6) If the utility fails to certify the number of customers it serves by the date requested in the notification letter, Commission staff will utilize the number of customers reported by the utility in its most recent annual report on file with the Commission to evaluate the sufficiency of the petition pursuant to Section 367.072(1)(b), F.S.

(7) Upon receipt of the utility's response to the Commission staff's request to certify the number of customers the utility serves, or, if the utility fails to respond to the Commission staff's request to certify the number of customers the utility serves, upon the expiration of 30 days from the utility's receipt of the Commission staff's request, the Commission staff will send the following materials to customers who file a letter of intent pursuant to subsection (3) of this rule:

(a) "Instructions for Petitioning for Revocation of Water Certificate," (EFF. 12/14), which are incorporated herein by reference and are available at [hyperlink];

(b) Form PSC 1000 (12/14), entitled "Florida Public Service Commission: Petition to Revoke the Certificate of Authorization of [Utility Name]," which petition form the customers must copy and use for the collection of signatures to be submitted to the Commission. A sample of Form PSC 1000 (12/14) is incorporated herein by reference for informational purposes only, and is available at [hyperlink]. The sample petition form incorporated herein must not be used for the collection of signatures;

(c) A copy of Section 367.072, F.S.;

(d) A copy of this rule; and

(e) A copy of the state primary and secondary drinking water standards, as contained in Rule 62-550.828, F.A.C.

(8) For a petition for revocation to be deemed sufficient, the following criteria must be met:

(a) Each petition form must include the printed name, signature, service address, and telephone number of the customer-signatory;

(b) Each petition form must state with specificity each issue that the customer-signatory has with the quality of water service provided, each time the issue was reported to the utility, and how long the issue has existed; and

(c) Petition forms must be completed by at least 65 percent of the utility's customers, as that term is defined in Section 367.072, F.S.

(9) The customers must file the completed petition forms with the Office of Commission Clerk within 90 days after receipt of the staff's instructions.

(10) Within 10 days after receipt of the petition, the staff will provide notice to the customers who filed the letter of intent or their designated representative by letter as to whether the petition is sufficient for the Commission to act, and will provide a copy of the notice to the utility. If the petition is deficient, the notice will specify what additional information is required.

(11) If the notice identifies deficiencies in the petition, the customers must file a corrected petition with the Office of Commission Clerk curing the noticed deficiencies within 30 days after receipt of the notice, and must provide a copy of the cured petition to the utility. The staff will notify the customers who file a corrected petition or their designated representative by letter as to whether the corrected petition has cured the deficiencies specified in the notice provided under subsection (10), and will provide a copy of the letter to the utility. If the customers fail to timely cure the noticed deficiencies, the petition will be dismissed pursuant to Section 367.072(1)(b), F.S.

(12) The utility may file a response to a sufficiently filed petition with the Office of Commission Clerk within 14 days from the staff letter notifying the customers that the petition is sufficient for the Commission to act.

(13) The staff will file a recommendation for the Commission to determine at a scheduled agenda conference whether the issues identified in a sufficiently filed petition support a reasonable likelihood that the utility is failing to provide quality water services.

(14) If the Commission determines that the issues identified in the petition do not support a reasonable likelihood that the utility is failing to provide quality water services, the Commission's order dismissing the petition will be issued as a proposed agency action. The notice of proposed agency action will give substantially affected persons an opportunity to request a Section 120.569 or 120.57, F.S., hearing on the matter within 21 days after issuance of the notice, pursuant to Rule 25-22.029, F.A.C.

(15) If the Commission determines that the issues identified in the petition support a reasonable likelihood that the utility is failing to provide quality water services, the Commission will order the utility to show cause as to why its water certificate of authorization should not be revoked, and will set the matter for hearing pursuant to Sections 120.569, 120.57, 120.60(5), and 367.072(5), F.S. The utility's response to the show cause order shall use the criteria set forth in Section 367.072(3)(a) and (b), F.S., in addressing the issues identified within the petition.

Rulemaking Authority 350.127(2), 367.072, 367.0812 FS. Law Implemented 367.072, 367.0812 FS. History--New

25-30.440 Additional Engineering Information Required of Class A and B Water and Wastewater Utilities in an Application for Rate Increase.

(1) through (2) No change.

(3) The most recent chemical analyses for each water system conducted by a certified laboratory covering the inorganic, organic turbidity, microbiological, radionuclide, secondary and unregulated contaminants specified in Chapter ~~62-550~~ 47-550, F.A.C.

(4) through (6) No change.

(7) Any Notices of Violation, Consent Orders, Letters of Notice, or Warning Notices from the health department or the DEP ~~in since the utility's last rate case or the previous five years, whichever is less.~~

(8) through (10) No change.

(11) Provide a copy of all customer complaints that the utility has received regarding DEP secondary water quality standards during the past five years.

Rulemaking Authority 350.127(2), 367.0812(5), 367.121 FS. Law Implemented 367.081, 367.0812 FS. History--New 11-10-86, Amended 6-25-90, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Kevin Bloom

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Public Service Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 18, 2014

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: Volume 40, Number 183, September 19, 2014.