

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendment of Rule 25-30.455,
F.A.C., Staff Assistance in Rate Cases; Rule
25-30.456, F.A.C., Staff Assistance in
Alternate Rate Setting; and Rule 35-30.457,
F.A.C., Limited Alternative Rate Increase.

DOCKET NO. 20230025-WS
ORDER NO. PSC-2023-0175-FOF-WS
ISSUED: May 31, 2023

The following Commissioners participated in the disposition of this matter:

ANDREW GILES FAY, Chairman
ART GRAHAM
GARY F. CLARK
MIKE LA ROSA
GABRIELLA PASSIDOMO

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 without changes Rules 25-30.455, 25-30.456, and 25-30.457, Florida Administrative Code.

The rules were filed with the Department of State on May 30, 2023, and will be effective on July 1, 2023. Copies of the rules as filed with the Department are attached to this Notice.

This docket is closed upon issuance of this Notice.

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By ORDER of the Florida Public Service Commission this 31st day of May, 2023.



ADAM J. TEITZMAN
Commission Clerk
Florida Public Service Commission
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Tallahassee, Florida 32399
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

Attachments: 25-30.455, Florida Administrative Code
25-30.456, Florida Administrative Code
25-30.457, Florida Administrative Code

SS

25-30.455 Staff Assistance in Rate Cases.

(1) Water and wastewater utilities whose total gross annual operating revenues are ~~\$335,000~~ ~~\$300,000~~ or less for water service or ~~\$335,000~~ ~~\$300,000~~ or less for wastewater service, or ~~\$670,000~~ ~~\$600,000~~ or less on a combined basis, may file with the Office of Commission Clerk an application for staff assistance in rate applications by submitting a completed staff assisted rate case application. Reasonable and prudent rate case expense is eligible for recovery through the rates developed by staff. Recovery of attorney fees and outside consultant fees related to the rate case is determined based on the requirements set forth in Section 367.0814(3), F.S. To be eligible for staff assistance under this rule:

(a) The applicant or utility owner must have at least one year of experience operating the utility for which the rate increase is being requested;

(b) The utility must be in compliance with its annual report filing in accordance with subsection 25-30.110(3), F.A.C.; and

(c) The utility must have paid all required regulatory assessment fees or must be current on any approved regulatory assessment fee payment plan.

(2) The appropriate application form, Commission Form PSC/AFD 2-W (11/86) (Rev. 06/14), entitled "Application for a Staff Assisted Rate Case," is incorporated into this rule by reference and is available at: <http://www.flrules.org/Gateway/reference.asp?No=Ref-04415>. The form is also available on the Commission's website, www.floridapsc.com.

(3) Upon completion of the form, the applicant shall file it with the Office of Commission Clerk, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0870.

(4)(a) Within 30 days of receipt of the completed application, the Commission will evaluate the application and determine the applicant's eligibility for staff assistance.

(b) 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 will deny initial evaluation of an application for staff assistance and close the docket. When an application is denied under the provisions of this paragraph, the Commission staff will notify the applicant of the date on which the application may be resubmitted.

(c) Initially, determinations of eligibility will be conditional, pending an examination of the condition of the applicant's books and records.

(5) Upon making its final determination of eligibility, the Commission staff will notify the applicant in writing as to whether the application is officially accepted or denied. If the application is accepted, a staff assisted rate case will be initiated. If the application is denied, the notification of application denial will state the deficiencies in the application.

(6) The date of Commission staff's written notification to the utility that the utility is eligible for staff assistance under this rule will be considered the date of official acceptance of the application by the Commission. The official date of filing is 30 days after the official acceptance of the application by the Commission staff.

(7) The application is deemed denied if the utility does not remit the filing fee, as provided by paragraph 25-30.020(2)(f), F.A.C., within 30 days after official acceptance.

(8) An applicant may request reconsideration of the application denial within 15 days of receipt of notification that the application is denied. The request will be decided by the full Commission.

(9) 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 Order, as set forth in Rule 28-106.111, F.A.C.

(10) A petition to protest the Commission's proposed agency action must conform to Rule 28-106.201, F.A.C.

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

(a) Provide prefiled direct testimony in accordance with the Order Establishing Procedure issued in the case. At a minimum, that testimony must adopt the Commission's Proposed Agency Action Order;

(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 proposed agency action 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 Proposed Agency Action Order; and,

(d) Meet all other requirements of the Order Establishing Procedure.

(12) Failure to comply with the dates established in the Order Establishing Procedure, or to timely file 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.

(13) In the event of a protest of the Commission's Proposed Agency Action Order in a staff assisted rate case, the Commission staff will:

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

(b) Meet all other requirements of the Order Establishing Procedure; and,

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

PROPOSED EFFECTIVE DATE: July 1, 2023

Rulemaking 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, 12-16-08, 8-10-14, 2-19-17, 7-1-18, 12-8-21, _____

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 ~~\$335,000~~ ~~\$300,000~~ or less for water service or ~~\$335,000~~ ~~\$300,000~~ or less for wastewater service, or ~~\$670,000~~ ~~\$600,000~~ or less on a combined basis, may file with the Office of Commission Clerk an application for staff assistance in alternative rate setting by submitting a completed staff assisted application for alternative rate setting. To be eligible for staff assistance under this rule:

(a) The applicant or utility owner must have at least one year of experience operating the utility for which the rate increase is being requested;

(b) The utility must be in compliance with its annual report filing in accordance with subsection 25-30.110(3), F.A.C.; and

(c) The utility must have paid all required regulatory assessment fees or must be current on any approved regulatory assessment fee payment plan.

(2) The application form, Commission Form PSC/AFD 25 (11/93) (Rev. 06/14), entitled "Application for Staff Assistance for Alternative Rate Setting," is incorporated into this rule by reference and is available at: <http://www.flrules.org/Gateway/reference.asp?No=Ref-04414>. The form is also available on the Commission's website, www.floridapsc.com.

(3) Upon completion of the form, the applicant must file it with the Office of Commission Clerk, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0870.

(4)(a) Within 30 days of receipt of the completed application, the Commission will evaluate the application and determine the applicant's eligibility for staff assistance.

(b) 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 will deny initial evaluation of an application for staff assistance and close the docket. When an application is denied under the provisions of this paragraph, the Commission staff will notify the applicant of the date on which the application may be resubmitted.

(c) Determinations of eligibility will be conditional, pending an examination of the condition of the applicant's books and records.

(5) Upon making its final determination of eligibility, the Commission staff will notify the applicant in writing as to whether the application is officially accepted or denied. If the application is accepted, staff assistance in alternative rate setting will be initiated. If the application is denied, the notification of application denial will state the deficiencies in the application.

(6) The date of Commission staff's written notification to the utility that the utility is eligible for staff assistance under this rule will be considered the date of official acceptance of the application by the Commission. The official date of filing is 30 days after the date of official acceptance of the application.

(7) The application is deemed denied if the utility does not remit the filing fee, as provided by paragraph 25-30.020(2)(f), F.A.C., within 30 days after official acceptance.

(8) An applicant may request reconsideration of the application denial within 15 days of receipt of notification that the application is denied. The request will be decided by the full Commission.

(9) The Commission will, 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 will consider an allowance for return on working capital using the one-eighth of O & M formula approach.

(10) The Commission will limit the maximum increase in operating revenues to 50 percent of test year operating revenues.

(11) The Commission will vote on a proposed agency action recommendation establishing rates no later than 90 days from the official filing date as established in subsection (6) of this rule.

(12) A substantially affected person may file a petition to protest the Commission's Proposed Agency Action Order regarding a staff assisted alternative rate setting application within 21 days of issuance of the Notice of Proposed Agency Action Order as set forth in Rule 28-106.111, F.A.C.

(13) A petition to protest the Commission's proposed agency action must conform to Rule 28-106.201, F.A.C.

(14) In the event of protest of the Proposed Agency Action Order by a substantially affected person, the rates established in the Proposed Agency Action Order may be implemented on a temporary basis, subject to refund with interest in accordance with Rule 25-30.360, F.A.C. 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.

(15) In the event of a protest, the maximum increase established in subsection (10) of this rule no longer applies.

(16) In the event of a protest of the Commission's Proposed Agency Action Order in a staff assisted alternative rate setting application, the utility must:

(a) Provide prefiled direct testimony in accordance with the Order Establishing Procedure issued in the case. At a minimum, that testimony must adopt the Commission's Proposed Agency Action Order;

(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 proposed agency action 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 Proposed Agency Action Order; and,

(d) Meet all other requirements of the Order Establishing Procedure.

(17) Failure to comply with the dates established in the Order Establishing Procedure, 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.

(18) In the event of protest of the Commission's Proposed Agency Action Order in a staff assisted alternative rate setting application, the Commission staff will:

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

(b) Meet all other requirements of the Order Establishing Procedure; and,

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

PROPOSED EFFECTIVE DATE: July 1, 2023

Rulemaking Authority 350.127(2), 367.0814, 367.121 FS. Law Implemented 367.0814 FS. History—New 11-30-93, Amended 1-31-00, 12-16-08, 8-10-14, 7-1-18, 12-8-21, _____.

25-30.457 Limited Alternative Rate Increase.

(1) As an alternative to a staff assisted rate case as described in Rule 25-30.455, F.A.C., or to staff assistance in alternative rate setting as described in Rule 25-30.456, F.A.C., water utilities whose total gross annual operating revenues are ~~\$335,000~~ ~~\$300,000~~ or less for water service and wastewater utilities whose total gross annual operating revenues are ~~\$335,000~~ ~~\$300,000~~ or less for wastewater service may file with the Office of Commission Clerk an application for a limited alternative rate increase of up to 20 percent applied to metered or flat recurring rates of all classes of service.

(2) The application for limited alternative rate increase must contain the following information:

(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;

(b) The type of business organization under which the utility's operations are conducted;

(c) If the utility is a corporation, the date of incorporation and the names and addresses of all persons who own five percent or more of the utility's stock;

(d) If the utility is not a corporation, the names and addresses of the owners of the business;

(e) A schedule showing the 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;

(f) A schedule showing the current and proposed rates for all classes of customers;

(g) A statement providing the specific basis or bases for the requested rate increase;

(h) If the requested rate increase is based upon the utility's underearning or the utility's expectation to underearn, a statement explaining why the utility is, or is expected to, underearn its authorized rate of return;

(i) 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;

(j) A statement that the utility is currently in compliance with its annual report filing in accordance with subsection 25-30.110(3), F.A.C.;

(k) A statement that the utility has paid all required regulatory assessment fees or is current on any approved regulatory assessment fee payment plan;

(l) A statement that an 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 official date of filing of the application; and

(m) Any additional relevant information in support of the application and reasons why the information should be considered.

(3) Within 30 days of the application's filing date, Commission staff will notify the utility in writing that the application requirements of subsection (2) of this rule have been met or that the requirements of subsection (2) have not been met with an explanation of the application's deficiencies.

(4) The date of Commission staff's written notification to the utility that the requirements of subsection (2) of this rule have been met will be considered the date of official acceptance by the Commission of the application. The official date of filing is established as 30 days after the official acceptance by the Commission of the application. The application is deemed denied if the utility does not remit the filing fee as required by paragraph 25-30.020(2)(f), F.A.C., within 30 days after the official acceptance of the application.

(5) A financial or engineering audit of the utility's financial or engineering books and records will not be required in determining whether to approve or deny the application.

(6) Based upon the criteria contained in subsection (2), the Commission will approve, deny, or approve the application with modifications that may include a reduction or an increase in the requested rate increase, within 90 days from the official filing date as established in subsection (4) of this rule.

(7) Any revenue increase granted under the provisions of this rule shall be held subject to refund with interest in accordance with subsection 25-30.360(4), F.A.C. Subsection 25-30.360(6), F.A.C., does not apply to any money collected subject to refund under this subsection.

(8) The Commission staff will conduct an earnings review of the twelve-month period following the implementation of the revenue increase.

(a) At the end of the twelve-month period, the utility has 90 days to complete and file Form PSC 1025 (03/20), entitled "Limited Alternative Rate Increase Earnings Review," which is incorporated into this rule by reference and is available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-11955>.

(b) In the event the utility needs additional time to complete the form, the utility may request an extension of time supported by a statement of good cause that must be filed with Commission staff within seven days prior to the 90-day deadline. “Good cause” means a showing of financial hardship, unforeseen events, or other events outside the control of the utility, but does not include reasons such as management oversight.

(c) If the Commission staff’s earnings review demonstrates that the utility exceeded the range of its last authorized rate of return on equity, such overearnings, up to the amount held subject to refund, with interest, shall be disposed of for the benefit of the customers. If the Commission staff determines that the utility did not exceed the range of its last authorized return on equity, the revenue increase will no longer be held subject to refund.

(9) In the event the proposed agency action order is protested pursuant to Rule 28-106.111, F.A.C., by a substantially affected person other than the utility, the utility must file a staff assisted rate case application pursuant to Rule 25-30.455, F.A.C., within 21 days from the date the protest is filed or the utility’s application for a limited alternative rate increase will be deemed withdrawn.

(10) Upon the utility filing a staff assisted rate case application pursuant to subsection (9) of this rule:

(a) The utility may implement the rates established in the proposed agency action order on a temporary basis subject to refund with interest in accordance with Rule 25-30.360, F.A.C.:

(b) The limit on the maximum increase provided in subsection (1) of this rule will no longer apply; and

(c) The application will be processed under Rule 25-30.455, F.A.C.

PROPOSED EFFECTIVE DATE: July 1, 2023

Rulemaking Authority 350.127(2), 367.0814, 367.121 FS. Law Implemented 367.0814 FS. History—New 3-15-05, Amended 12-16-08, 8-10-14, 7-1-18, 6-2-20, _____.