

**PROPOSED NEW AND AMENDED RULES
FOR WATER AND WASTEWATER
DOCKET NUMBER 911082-WS
COMMENTS OF
JOANN CHASE
ON BEHALF OF THE STAFF**

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WPC-RECORDS/REPORTING

1 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

2 A. My name is JoAnn Chase and my business address is 101 E. Gaines Street,
3 Tallahassee, Florida.

4 Q. BY WHOM ARE YOU EMPLOYED?

5 A. I have been employed by the Florida Public Service Commission for
6 approximately 17 years and have worked in the Division of Water and
7 Wastewater as well as the Divisions of Electric and Gas and Management
8 Studies.

9 Q. WHAT IS THE PURPOSE OF YOUR COMMENTS IN THIS DOCKET?

10 A. I would like to comment on the purpose of staff's proposed changes to
11 Rules 25-30.037, 25-30.060, and 25-30.111, Florida Administrative Code,
12 as well as the proposed new Rules 25-30.038, 25-30.039, and 25-30.090.
13 In addition, I would like to offer changes to Rules 25-30.037, 25-30.038
14 and 25-30.039.

15 Q. WHAT IS THE PURPOSE OF THE PROPOSED CHANGES TO RULE 25-30.037, FLORIDA
16 ADMINISTRATIVE CODE?

17 A. Rule 25-30.037, FAC, contains the filing requirements of applications
18 for transfer of utility systems. The overall purpose of the proposed
19 changes to this rule is to obtain more information in the application
20 about the purchaser and the utility system in order to better evaluate
21 the merits of proposed transfers on a timely basis. These changes will
22 further the PSC goal of ensuring that utilities are viable business
23 entities capable of providing adequate service at reasonable prices.
24 The proposed changes to the rule include an applicability statement
25 which clarifies that the rule applies to any application for transfer

1 of ownership or control of an existing system.

2 Other proposed revisions to the rule require certain information
3 or statements from the buyer with regard to the source of funding for
4 the purchase as well as the condition of the system being acquired
5 including a list of needed improvements, the approximate cost of
6 repairs, and copies of DER notices of violation and consent orders. The
7 purposes of these additions is to better ensure that the buyer has
8 adequate funding, and that the buyer, as well as the Commission, is
9 aware of the condition of the system being purchased and of the cost of
10 the improvements, if any, needed to bring the system into compliance.

11 The proposed rule revision clarifies that net book value shall be
12 calculated in accordance with Rule 25-30.0371, FAC, which is a proposed
13 new rule defining rate base at the time of transfer. Also, the rule
14 revision requires the buyer to detail the steps taken to obtain adequate
15 records for the purpose of establishing net book value if the records
16 of the utility are not adequate for such purpose. The proposed revision
17 further requires a statement from the buyer that it has obtained tax
18 returns of the seller going back to the establishment of the utility or
19 the last Commission order establishing rate base.

20 With regard to the transfer of a system to a governmental
21 authority, the proposed rule change requires a copy of the contract
22 transferring the system to the governmental body and a list of any
23 utility assets not transferred if these assets constitute a utility
24 system. These documents will help staff verify which party will be
25 responsible for outstanding regulatory assessment fees, fines or refunds

1 | owed, whether the selling utility has properly disposed of customer
2 | deposits, and whether any portion of the system is being retained by the
3 | selling utility. In addition, the rule revision eliminates the
4 | requirement that all outstanding regulatory assessment fees be paid
5 | before the certificate of a utility which has been sold to a
6 | governmental body is cancelled. Since the Commission is empowered to
7 | take whatever action is appropriate to collect RAFs regardless of
8 | whether the utility has a certificate, this requirement is unnecessary.
9 | Not cancelling the certificate after the sale is acknowledged creates
10 | confusion in the Commission's records because it remains on the utility
11 | list and, thus, is counted as a regulated company.

12 | Q. WHAT IS THE PURPOSE OF THE PROPOSED NEW RULE 25-30.038, FLORIDA
13 | ADMINISTRATIVE CODE?

14 | A. This rule is proposed to provide a new mechanism to encourage the
15 | acquisition of small systems by larger, more viable utilities. Over the
16 | years, the Commission has stated its desire to encourage the purchase
17 | of small systems by large utilities. In forming its policy, the
18 | Commission has recognized the difficulty in operating a small water and
19 | wastewater utility as a financially sound business. Most of the
20 | problems associated with small utilities can be traced to their size.
21 | Small utilities typically are unable to attract the capital necessary
22 | to provide adequate service, particularly in the face of increasingly
23 | more stringent and costly environmental requirements. If they are able
24 | to attract capital, the cost is high due to the associated risk of the
25 | investment. In addition, the operating costs of small utilities are

1 high on a per customer basis because such utilities lack economies of
2 scale, which are available to larger utilities able to spread costs over
3 a greater customer base. Further, small utilities usually suffer from
4 an inadequate or inexperienced technical and professional staff because
5 the customer base is not large enough to support the salaries.

6 While this Commission has in the past stated its desire to
7 encourage the purchase of small systems by large utilities, its current
8 rules and procedures often work against this policy. The systems being
9 purchased are often in need of some repair and the rates for service are
10 unrealistically low or nonexistent. Under our current rules, a
11 purchasing utility has to first file an application for approval of the
12 acquisition. This usually takes six to eight months to process because
13 a staff audit is needed to determine rate base at the time of
14 acquisition. In addition, in most cases, if the purchasing utility
15 wants to increase the rates (or establish rates if none have been
16 charged by the prior owner), a rate case or limited proceeding must be
17 filed which can take up to another eight months to process. Therefore,
18 the purchasing utility must incur the administrative and legal expense
19 of the acquisition case and subsequent rate case, as well as absorb up
20 to sixteen months of losses before reasonably compensatory rates can be
21 implemented.

22 This proposed new rule is designed to reduce some of this
23 regulatory lag and the resulting expense to the purchasing utility.
24 This rule is designed to be an alternative to Rule 25-30.037, FAC, and
25 is applicable to any Class A or B utility requesting approval to acquire

1 an existing small system and implement compensatory rates. For purposes
2 of this rule, a small system is defined as one whose total gross annual
3 operating revenue is \$150,000 or less for water or wastewater. Under
4 this proposed new rule, the purchasing utility would be applying for
5 approval of a transfer and a limited proceeding to implement or increase
6 rates. The rates which could be implemented would be restricted to
7 either: (1) those approved by the Commission for the buyer in the
8 county in which the system is located, as long as such rates have been
9 set by the Commission in a rate proceeding; or (2) the approximate
10 statewide average rates, which will be approved by the Commission at
11 least annually in a procedure similar to that used to establish the
12 annual price index for use by water and wastewater utilities.

13 This proposed rule provides that, within ninety days, the
14 Commission will grant or deny the acquisition and allow the purchasing
15 utility to implement reasonable rates, on a temporary basis, subject to
16 refund for a period of one year. In addition, the buyer must keep
17 separate records for the acquired system and file certain schedules
18 identified from the annual report form at the end of one year of
19 operation. At that time, the Commission will set permanent rates and
20 may establish rate base of the acquired system, based upon the
21 information supplied by the buyer.

22 Q. WHAT IS THE PURPOSE OF THE PROPOSED NEW RULE 25-30.039, FLORIDA
23 ADMINISTRATIVE CODE?

24 A. This new rule is intended to codify Commission requirements for a utility
25 name change where there is no change in ownership or control. In the

1 past, water and wastewater utilities have not generally notified the
2 Commission when a change in the utility's name has occurred, resulting
3 in errors in Commission records and confusion for the Commission staff
4 and customers. When the Commission does learn of a name change, the
5 staff must follow up with the utility to see that the proper
6 documentation is filed. The proposed rule puts utilities on notice that
7 the Commission must be advised of name changes and clearly delineates
8 the filing requirements, which include the reason for the name change,
9 the effective date, documents showing acceptance of the name change by
10 the appropriate office (if chartered by the state), a statement that the
11 ownership and control of the utility will not change under the new name,
12 a proposed tariff reflecting the new name of the utility, the utility's
13 current certificate, and a proposed notice to the customers advising of
14 the name change. Pursuant to the Administrative Procedures Manual, a
15 name change can be approved administratively by staff once the filing
16 requirements have been met.

17 Q. WHAT IS THE PURPOSE OF THE PROPOSED CHANGES TO RULE 25-30.060, FLORIDA
18 ADMINISTRATIVE CODE?

19 A. Rule 25-30.060, FAC, delineates the filing requirements for applications
20 for exemption from PSC regulation. The proposed revisions to the rule
21 reduce the required number of copies of applications for exemption as
22 a non-profit association, add a reference to rules and statutes
23 regarding the responsibilities of exempt resellers with regard to meter
24 accuracy, and remove an impractical requirement for landlord/tenant
25 exemption.

1 Currently, the rule requires the filing of an original and two
2 copies of applications for all types of exemption, except for those
3 filed under the non-profit association exemption. In that case, an
4 original and fifteen copies are required. The additional copies were
5 required because at the time this rule was adopted, it was Commission
6 policy that applications for exemption as a non-profit association were
7 brought before the Commission for decision rather than administratively
8 approved by staff. However, since that time, this policy has changed
9 and non-profit exemptions are treated as any other type of exemption.
10 That is, they can be approved administratively as long as they are clear
11 cut and without controversy. Therefore, the additional copies are not
12 needed. This revision will lessen the filing requirements of the
13 applicant and reduce waste.

14 According to Section 367.022(8), FS, entities which are exempt as
15 resellers are subject to statutory provisions and Commission rules
16 regarding meter accuracy, including examination and testing of meters.
17 The proposed revision to the reseller filing requirements is the
18 addition of a signed statement that the applicant is aware of these
19 meter accuracy requirements. Copies of these specific rules and
20 statutes are included as part of the exemption application package which
21 is sent to individuals upon request. In addition, copies are sent to
22 all exempt resellers once their application is approved.

23 Currently, this rule requires applicants for exemption as
24 landlords providing service without specific compensation to provide a
25 copy of the lease agreement which must state that there is no separate

1 charge for water or wastewater service. Since this rule was adopted,
2 staff has discovered that more often than not leases are silent as to
3 what is included in the rental amount. Rather, leases tend to disclose
4 the extra charges the tenant will be responsible for. Applicants for
5 landlord/tenant exemption have had to amend their leases to add a
6 statement that water and wastewater service is included in the rent in
7 order to be granted exempt status. This is true even though the
8 applicant has provided a signed statement that charges for water and
9 wastewater service are non-specifically contained in rental charges.
10 Staff believes this impractical requirement should be deleted from the
11 rule. Under the proposed revision, the applicant would be required to
12 provide a copy of the most recent version of the lease agreement which
13 would be reviewed by staff to ensure that there is no provision for a
14 separate charge for water or wastewater service.

15 Q. WHAT IS THE PURPOSE OF THE PROPOSED NEW RULE 25-30.090, FLORIDA
16 ADMINISTRATIVE CODE?

17 A. Section 367.165, FS, requires anyone planning to abandon a utility to
18 provide 60 days notice to the Commission and affected county or
19 counties. The statute further provides that in such cases the county
20 shall petition the circuit court to appoint a receiver, which is
21 authorized to charge the approved rates of the utility until changed by
22 the Commission.

23 The overall purpose of the proposed new Rule 25-30.090, FAC, is
24 to set forth requirements for the abandoning utility and ultimate
25 receiver in order to prevent service interruptions to the utility

1 customers. The rule delineates the information that must be contained
2 in the notice of abandonment, including among other items the dates of
3 the notice and impending abandonment, the reason for abandonment, the
4 utility's status with DER, whether both water and wastewater are being
5 abandoned and the location of the utility's books and records. This
6 information will aide the PSC staff and county personnel in evaluating
7 the situation more readily and finding an appropriate receiver. In the
8 past, notices of abandonment have been very sketchy and time has been
9 lost in attempting to get necessary information.

10 The proposed rule requirements for the court-appointed receiver
11 include a deadline of 10 days from the appointment to obtain from the
12 Commission a copy of the utility's tariff and annual report, and a 90
13 day deadline to file an amended title page to the utility's tariff
14 reflecting the name, address and telephone number of the receiver. The
15 rule also clarifies that the receiver is responsible for fulfilling the
16 utility's obligations pursuant to statute and Commission rules. These
17 requirements are intended to ensure that the receiver continues to
18 charge the Commission-approved rates and comply with Commission
19 requirements during the pendency of the receivership.

20 This new rule also clarifies that a receiver will not be held
21 responsible for failure to provide adequate service if acts predating
22 the appointment of the receiver have caused such failure, unless the
23 receiver has been given reasonable opportunity to rectify such failure.
24 The purpose of this provision is to afford the receiver some reasonable
25 time in order to assess and correct existing service problems and DER

1 violations before they would be held responsible. Without this
2 provision, staff believes it would be much more difficult to find
3 someone willing to take on the task of receiver.

4 Finally, the new rule clarifies that governmental authorities
5 acting as court-appointed receivers shall be exempt from Commission
6 regulation. The purpose of this provision is to encourage cities and
7 counties to become receivers by lessening unnecessary regulatory
8 restraints. In at least one case in the past (City of Kissimmee, Order
9 No. 25213), the Commission has found that the exemption pursuant to
10 Section 367.022(2), FS, for systems owned, operated, managed or
11 controlled by a governmental authority would apply in cases where such
12 a body was acting as a court-appointed receiver. In interpreting that
13 statute, the Commission noted that this is the only exemption allowed
14 which does not contemplate ownership of the system as a requirement for
15 exempt status. In addition, the Commission agreed that the public
16 health, safety and welfare of the customers would be adequately
17 protected by the provisions of Chapter 180, FS, and the oversight of the
18 receivership by the circuit court. Codifying this Commission policy in
19 rulemaking will enable governmental authorities to afford themselves of
20 this exemption without a costly and possibly time-consuming legal
21 process.

22 Q. WHAT IS THE PURPOSE OF THE PROPOSED CHANGE TO RULE 25-30.111, FLORIDA
23 ADMINISTRATIVE CODE?

24 A. According to Section 367.022(8), FS, entities which are exempt as
25 resellers must file annually with the Commission a report listing

1 certain information which justifies the exemption. Rule 25-30.111, FAC,
2 specifies the data that must be contained in this report. The proposed
3 revisions to the rule are to correct an error which omits reference to
4 wastewater service in describing the report requirements and to clarify
5 that reseller exemptions must be granted by the Commission, and not
6 simply "claimed" by the entity.

7 Q. DO YOU HAVE ANY FURTHER COMMENTS REGARDING THE PROPOSED RULES AT THIS
8 TIME?

9 A. Yes, I do. The first comment affects Rules 25-30.037 and 25-30.038
10 which relate to applications for transfer of utility systems.
11 Currently, Rule 25-30.037 requires the applicant to provide reasons for
12 the inclusion of an acquisition adjustment, if one is requested. This
13 same provision is being proposed in the new rule 25-30.038. In effect,
14 this provision relates only to positive acquisition adjustments since
15 it is highly unlikely that a utility would ever request a negative
16 adjustment. If a utility pays less than book value, it is not required
17 to justify why a negative acquisition adjustment is inappropriate. (See
18 Rule 25-30.037(2)(m) and Rule 25-30.038(11)(c).)

19 I would suggest a change to these rules that requires the
20 applicant to justify why a negative acquisition adjustment should not
21 be recognized. As long as the issue of acquisition adjustment is
22 addressed on a case-by-case basis, staff must review the appropriateness
23 of both positive and negative adjustments in order to make its
24 recommendation to the Commission. I believe it would be more efficient
25 and reasonable to require this information in the application rather

1 than put the burden on staff to gather information during the processing
2 of the case. This change is consistent with OPC's Comments on the rule
3 package which suggest that it should be the utility's burden to prove
4 that a negative acquisition adjustment should not be included in rate
5 base. My suggested changes to Rules 25-30.037(2)(m) and 25-
6 30.038(11)(c) are attached as Exhibit No. JC-1.

7 It should be noted, however, that if the Commission, through
8 either its rules or legislation, adopts a policy requiring that any
9 acquisition adjustment (positive or negative) be split between the
10 customers and stockholders, there may be no need to require
11 justification for either type of acquisition adjustment.

12 My other comment affects Rule 25-30.039 which relates to utility
13 name changes with no change in ownership or control. I suggest adding
14 a requirement that the applicant provide evidence that the new name of
15 the utility is reflected on the documents demonstrating ownership (or
16 continued use of) the land under the treatment facilities. The purpose
17 of this requirement is to ensure that if the utility changes its name,
18 there will be no problem with land ownership. There have been instances
19 in the past wherein utilities have either sold the land where treatment
20 facilities are located or failed to properly transfer it into the new
21 name of the utility when it was sold. This can be a problem when
22 improvements to the plant need to be made in the future or if the the
23 utility is subsequently sold or abandoned. For this reason, evidence
24 of land ownership is a requirement in the transfer application rules
25 (25-30.037 and 25-30.038), amendment rule (25-30.036) and in rate cases

1 (25-30.436(4)(i)). This requirement would not be an added burden to the
2 utility since it should be transferring the land into the new name
3 anyway and will have to provide such evidence in any future applications
4 for amendment, transfer or rate case. My suggested addition to Rule 25-
5 30.039 is attached as Exhibit No. JC-2.

6 Q. DOES THIS CONCLUDE YOUR COMMENTS IN THIS PROCEEDING?

7 A. Yes, it does.

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ADDITIONAL REVISIONS TO RULES RELATING TO ACQUISITION ADJUSTMENT

25-30.037(2) (m) -

a statement setting out the reasons for the inclusion of an
positive acquisition adjustment, if one is requested; or, if
appropriate, a statement setting out the reasons why a
negative acquisition adjustment should not be included.

25-30.038(11) (c) -

A statement setting out the reasons for the inclusion of an
positive acquisition adjustment, if one is requested; or, if
appropriate, a statement setting out the reasons why a
negative acquisition adjustment should not be included.

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4 **ADDITIONAL REVISIONS TO RULE 25-30.039 RELATING TO LAND**
5 **OWNERSHIP**

6
7 25-30.039 (2) -

8 (i) evidence that the utility's new name has been
9 incorporated on documents that demonstrate that the utility
10 owns the land upon which the treatment facilities are
11 located, or that provides for the continued use of the land,
12 such as a 99-year lease

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CODING: Words underlined are additions; words in
~~struck-through~~ type are deletions from existing law.