



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-

RECORDS AND REPORTING
DEC-3 AM 11:06
RECEIVED-PSC

DATE: 12/3/98

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF APPEALS (MOORE) *cm DS*
 DIVISION OF AUDITING AND FINANCIAL ANALYSIS (MAILHOT) *DM*
 DIVISION OF COMMUNICATIONS (SHELPER) *agst 117*
 DIVISION OF ELECTRIC AND GAS (KUMMER) *OK* (FUTRELL) *JDS*
 DIVISION OF RESEARCH AND REGULATORY REVIEW (HEWITT) *CSH*
 DIVISION OF WATER AND WASTEWATER (LOWE)

RE: DOCKET NO. 980569-PU - PROPOSED AMENDMENTS TO RULE 25-4.002, F.A.C., APPLICATION AND SCOPE; 25-4.141, MINIMUM FILING REQUIREMENTS FOR RATE OF RETURN REGULATED LOCAL EXCHANGE COMPANIES; COMMISSION DESIGNEE; 25-4.202, CONSTRUCTION AND WAIVERS; 25-24.455, SCOPE AND WAIVER; 25-6.002, APPLICATION AND SCOPE; 25-6.043, INVESTOR-OWNED ELECTRIC UTILITY MINIMUM FILING REQUIREMENTS; COMMISSION DESIGNEE; 25-6.0438, NON-FIRM ELECTRIC SERVICE - TERMS AND CONDITIONS; 25-17.087, INTERCONNECTION AND STANDARDS; 25-30.010, RULES FOR GENERAL APPLICATION; 25-30.011, APPLICATION AND SCOPE; 25-30.436, GENERAL INFORMATION AND INSTRUCTIONS REQUIRED OF CLASS A AND B WATER AND WASTEWATER UTILITIES IN AN APPLICATION FOR RATE INCREASE; 25-30.450, BURDEN OF PROOF AND AUDIT PROVISIONS; 25-30.455, STAFF ASSISTANCE IN RATE CASES; 25-30.456, STAFF ASSISTANCE IN ALTERNATIVE RATE SETTING; 25-30.570, IMPUTATION OF CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION; AND 25-30.580, GUIDELINES FOR DESIGNING SERVICE AVAILABILITY.

AGENDA: 12/15/98 - REGULAR AGENDA - RULE PROPOSAL - INTERESTED PERSONS MAY PARTICIPATE

RULE STATUS: PROPOSAL SHOULD NOT BE DEFERRED

SPECIAL INSTRUCTIONS: PURSUANT TO S. 120.536(2), F.S., THE COMMISSION MUST INITIATE THIS RULEMAKING PRIOR TO 1/1/99.

FILE NAME AND LOCATION: S:\PSC\APP\WP\980569.RCM

DOCUMENT NUMBER-DATE

13605 DEC-3 98

PSC-RECORDS/REPORTING

CASE BACKGROUND

In 1996, the Legislature substantially amended Chapter 120, Florida Statutes, the "Administrative Procedure Act" (APA). Among the changes to the APA was the adoption of section 120.542, Florida Statutes, governing rule waivers and variances, and section 120.536, requiring agencies to report to the Joint Administrative Procedures Committee (JAPC) its rules that exceed its rulemaking authority, and repeal those for which authorizing legislation does not exist. On September 9, 1997, the Commission approved the list of rules for which it lacked specific statutory authority. On September 25, 1997, by letter from Chairman Johnson, the Commission submitted its list to the JAPC. The Commission did not seek legislation to authorize the identified rules that provide generally for waivers and variances from the rules, because, as stated in the letter, specific authority is now contained in section 120.542, Florida Statutes, and specific uniform rules to implement the statute had been adopted by the Administration Commission.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission repeal Rules 25-4.141(4), 25-4.202(3), 25-24.455(4) and (5), 25-6.002(2) and (4), 25-6.043(3), 25-6.0438(9), 25-17.087(2), 25-30.011(2) and (4), 25-30.436(6), 25-30.455(11), 25-30.456(11), 25-30.570(2), 25-30.580(2), F.A.C., the individual provisions for rule variances and waivers; amend Rule 25-30.010 to delete the general provision for exceptions; amend 25-30.450, to delete the general provision for a waiver of the rule; and amend other provisions of these rules to update cross references?

RECOMMENDATION: Yes.

STAFF ANALYSIS: Section 120.536(2), Florida Statutes, requires the Commission to initiate rulemaking by January 1, 1999, to repeal the rules identified as exceeding its authority and "for which authorizing legislation does not exist." Those rules are listed below with a summary of their content. Rule 25-4.002(2) has been removed from the list because its repeal has been accomplished in Docket No. 951560-TI.

25-4.141(4), Minimum Filing Requirements for Rate-of-Return Regulated Local Exchange Companies; Commission Designees. Provides a waiver of MFR requirements for specific data or for the number of copies required by the rule upon a showing that production of the data would be impractical or impose an excessive economic burden on the company. In addition to deleting (4), the Commission should amend Rule 25-4.141(1)(d) to substitute the text of the cross-

referenced rule for the number of the rule because that rule is scheduled for repeal.

25-4.202(3), Construction and Waivers. Provides that when compliance with a commission requirement imposes an unreasonable hardship on the small LEC, would not be cost effective, or would not be in the public interest, the small LEC may apply for temporary rule waiver, repeal or amendment of the rule, or other similar relief.

Rule 25-6.002(2) and (4), Application and Scope. Provides for modification or exemption from rule requirements in cases of unusual hardship or difficulty or under exceptional conditions.

Rule 25-6.043(3), Investor-Owned Electric Utility Minimum Filing Requirements; Commission Designee. States that the Commission will waive the rule requirements upon a showing that data production would be impractical or impose an excessive economic burden on the utility.

Rule 25-6.0438(9), Non-Firm Electric Service - Terms and Conditions. Provides that the Commission may waive any provision of the rule after notice to all affected customers.

Rule 25-17.087(2), Interconnection and Standards. Allows a utility to modify the standards specified in the rule. The reference in section (3) to section (2) is deleted, rather than all of (3) as stated on the list submitted to JAPC. Section (3) does not in itself authorize a waiver of rules, but places the burden on the utility to demonstrate why interconnection with a qualifying facility (QF) should not be required or that the standards the utility seeks to impose on the QF are reasonable.

25-24.555(4) and (5), Scope and Waiver. Allows a Shared Tenant Service company to petition for waiver of any provisions of Part XII of Chapter 25-24. The waiver will be granted to the extent that the Commission determines that it is in the public interest to do so. Section (5) should also be repealed because it provides that rule waivers granted prior to the adoption of the rule are void and must be renewed. This section was adopted in 1987, and there is no basis to re-adopt such a provision now.

Rule 25-30.010, Rules for General Application. Provides that the water and wastewater utility rules are subject to such exceptions as the Commission may consider just and reasonable in individual cases.

Rule 25-30.011(2) and (4), Application and Scope. Section (2) authorizes application to the Commission for modification of or exemption from the rules for unusual hardship. Section (4) authorizes the Commission to alter and amend its rules as necessary to meet exceptional conditions.

Section (2) was not on the list submitted to the JAPC in 1997. Staff believes, however, that this was an oversight because the language of (2) is substantially the same as other provisions being repealed, and the law it implements does not provide any greater authority. In addition, section 120.542, Florida Statutes, provides the procedure and basis for obtaining a waiver or variance.

Rule 25-30.436(6), General Information Required in an Application for Rate Increase (Minimum Filing Requirements). Provides that the Commission may grant a waiver to filing specific data required by the rule upon a showing that production of the data would be impractical or impose an excessive economic burden upon the applicant.

Rule 25-30.450, Burden of Proof and Audit Provisions. The last sentence of this rule provides that utilities may request a waiver by submitting a written statement setting forth the reason, in detail, why a waiver should be granted.

Rule 25-30.455(11), Staff Assistance in Rate Cases. Provides that a petitioner may request a waiver of any of the factors listed in subsection (8), which provides the factors to be considered in recommending whether to grant or deny a petition for staff assistance in a rate application.

Rule 25-30.456(11), Staff Assistance in Alternative Rate Setting. Provides that an applicant may request a waiver of any of the factors set out in subsection (8), which provides the factors to be considered in recommending whether to grant or deny a petition for staff assistance in a rate application. In addition, section (15) is amended to add a reference to the uniform rule that has superseded the applicable part of Rule 25-22.036.

Rules 25-30.570(2), Imputation of Contributions-in-Aid-of-Construction. Provides for a waiver from the requirement in (1) that Contributions-in-Aid-of-Construction (CIAC) be imputed when the amount of CIAC has not been recorded in the utility's books and the utility does not submit competent substantial evidence as to the amount of CIAC. A waiver is authorized for unusual hardship or unreasonable difficulty and it is shown that it is not in the best interests of the customers of the utility.

Rule 25-30.580(2), Guidelines for Designing Service Availability Policy. Provides for a waiver of the requirement in (1) that a utility's CIAC should not exceed 75 percent of the total original cost, and that the minimum should not be less than a certain amount.

Rule Development Workshop:

A rule development workshop was held on June 23, 1998. Florida Power and Light (FPL) disagreed that repeal is necessarily

required by the new rulemaking standard in section 120.536, Florida Statutes. FPL also disagreed that section 120.542 requires all requests for variances and waivers to comply with the provisions of that statute.

Staff believes that although the Commission has authority to enumerate specific instances in which a rule does not apply, it does not have the authority for the identified general rules that allow rule waivers or variances and that provide a different procedure or standards than are authorized by section 120.542, Florida Statutes. Any authority for such general waiver or variance provisions has been superseded by the Legislature's enactment of section 120.542, the specific statute authorizing waivers and variances and providing the procedures for requesting a waiver, and the standards to be applied by an agency in deciding whether to grant such a request.

Staff agrees with FPL that the Legislature intended to encourage flexibility in the application of rules, however, the discretion the Commission has to do this is now constrained by the requirements of section 120.542 and the uniform rules adopted thereunder. FPL asserts that section 120.542 contains no requirement that all requests for rule variances and waivers must comply with that statute, however, Staff notes the statute specifically states that:

Agencies are authorized to grant variances and waivers to requirements of their rules consistent with this section and with rules adopted under the authority of this section.

(Emphasis supplied.) In addition, in a law review article on the APA's new variance and waiver provisions, the authors noted that:

It is not within the authority of an agency to substantively supplement or refine by rule the statutory standards for issuing a waiver or variance.

Donna E. Blanton and Robert M. Rhodes, Loosening the Chains that Bind: The New Variance and Waiver Provision in Florida's Administrative Procedure Act, 24 Fla. St. U. L. Rev. 353, 369 (1997).

FPL also points out that this statute provides that it "is supplemental to, and does not abrogate, the variance and waiver provisions in any other statute." The difficulty with this contention is that there are no specific variance or waiver provisions in the laws implemented by the rules recommended for

DOCKET NO. 980569-PU
DATE: DECEMBER 3, 1998

repeal; thus, waivers and variances must comply with section 120.542.

Statement of Estimated Regulatory Cost:

Because there should be no significant additional costs or negative impacts on utilities, small businesses, small cities, or small counties, a Statement of Estimated Regulatory Costs (SERC) was not prepared.

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

RECOMMENDATION: Yes.

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

Attachments:

Rules
SERC Memorandum

CTM/

1 25-4.141 Minimum Filing Requirements for Rate-of-Return
2 Regulated Local Exchange Companies; Commission Designee.

3 (1) General Filing Instructions.

4 (a) - (c) No change.

5 (d) Each page of the filing shall be numbered and on 8 ½ x
6 11 inch paper. Each witness' prefiled testimony shall be double-
7 spaced with 25 numbered lines on numbered pages. ~~and Exhibits~~
8 shall be on numbered pages and all exhibits shall be attached to
9 the proponent's testimony ~~and shall also comply with Rule 25-~~
10 ~~22.048, Evidence.~~ Each set of the filing, consisting of the
11 petition and its supporting attachments, testimony, and exhibits,
12 shall be bound in order of appearance in this rule in standard
13 three ring binders, with each schedule indexed and tabbed.

14 (e) - (i) No change.

15 (2) - (3) No change.

16 ~~(4) Waiver of MFR Requirements. The Commission may grant a~~
17 ~~waiver with respect to specific data or the number of copies~~
18 ~~required by this rule upon a showing that production of the data~~
19 ~~would be impractical or impose an excessive economic burden upon~~
20 ~~the company.~~

21 Specific Authority: 350.127(2), F.S.

22 Law Implemented: 364.05(4), F.S.

23 History: New 5/4/81, Amended 7/29/85, 6/11/86, 2/3/88, 3/10/96,
24 _____.

25

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

1 25-4.202 Construction and Waivers

2 (1) - (2) No change.

3 ~~(3) When compliance with a Commission imposed requirement~~
4 ~~would result in unreasonable hardship on a small local exchange~~
5 ~~company, would not be cost effective, or would not be in the~~
6 ~~public interest, the small local exchange company may apply for a~~
7 ~~temporary rule waiver pursuant to Rule 25-4.002(2), petition the~~
8 ~~Commission to amend or repeal its rule pursuant to Rule 25-~~
9 ~~22.012, or seek similar relief as appropriate.~~

10 Specific Authority: 350.127(2), F.S.

11 Law Implemented: 364.052, F.S.

12 History: New 3/10/96, Amended _____.

13

14 25-6.002 Application and Scope.

15 (1) No change.

16 ~~(2) In any case where compliance with any of these rules~~
17 ~~introduces unusual hardship, or if unreasonable difficulty is~~
18 ~~involved in immediate compliance with any particular rule,~~
19 ~~application may be made to the Commission for modification of the~~
20 ~~rule or for temporary exemption from its requirements, provided~~
21 ~~that the utility shall submit with such application a full and~~
22 ~~complete statement of reason thereafter.~~

23 (2)(3) No change.

24 ~~(4) The adoption of these rules shall in no way preclude~~
25 ~~the Commission, upon complaint, upon its own motion, or upon the~~

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

1 ~~application of any utility from altering or amending them, in~~
2 ~~whole or in part, or from requiring any other or additional~~
3 ~~service, equipment, facility or standard, or from making such~~
4 ~~modification with respect to their application as may be found~~
5 ~~necessary to meet exceptional conditions.~~

6 (3) ~~(5)~~ No change.

7 Specific Authority: 366.05(1), F.S.

8 Law Implemented: 366.05(1), F.S.

9 History: New 7/29/69, formerly 25-6.02, Amended _____.

10

11 25-6.043 Investor-Owned Electric Utility Minimum Filing
12 Requirements; Commission Designee.

13 (1) - (2) No change.

14 ~~(3) Waiver of Minimum Filing Requirements. The Commission may~~
15 ~~grant a waiver with respect to specific data required by this~~
16 ~~rule upon a showing that production of the data would be~~
17 ~~impractical or impose an excessive economic burden upon the~~
18 ~~company.~~

19 Specific Authority: 366.05(1), (2), 366.06(3), F.S.

20 Law Implemented: 366.06(1), (2), (3), (4), 366.04(2)(f), 366.071,
21 F.S.

22 History: New 5/27/81, formerly 25-6.43, Amended 7/5/90,
23 _____.

24

25

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

1 25-6.0438 Non-Firm Electric Service - Terms and Conditions.

2 (1) - (8) No change.

3 ~~(9) The Commission may waive any provision of this rule if it~~
4 ~~determines that such waiver is consistent with the purpose and~~
5 ~~intent of this rule after notice to all affected customers.~~

6 Specific Authority: 350.127(2), 366.05(1), F.S.

7 Law Implemented: 366.03, 366.04, 366.041, 366.05, F.S.

8 History: New 8/21/86, Amended 9/4/91, _____.

9

10 25-17.087 Interconnection and Standards.

11 (1) No change.

12 ~~(2) Nothing in this rule shall be construed to preclude a~~
13 ~~utility from evaluating each request for interconnection on its~~
14 ~~own merits and modifying the general standards specified in this~~
15 ~~rule to reflect the result of such an evaluation.~~

16 (2)~~(3)~~ Where a utility refuses to interconnect with a
17 qualifying facility or attempts to impose unreasonable standards
18 ~~pursuant to subsection (2) of this rule~~, the qualifying facility
19 may petition the Commission for relief. The utility shall have
20 the burden of demonstrating to the Commission why interconnection
21 with the qualifying facility should not be required or that the
22 standards the utility seeks to impose on the qualifying facility
23 ~~pursuant to subsection (2)~~ are reasonable.

24 (4) through (11) renumbered (3) through (10) No change.

25 Specific Authority: 366.051, 350.127(2), F.S.

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

1 Law Implemented: 366.04(2)(c)&(5), 366.051, F.S.

2 History: New 9/4/83, formerly 25-17.87, Amended 10/25/90,
3 5/6/93, _____.

4

5 25-24.455 ~~Scope and Waiver.~~

6 (1) - (3)

7 ~~(4) An interexchange company may petition for a waiver of~~
8 ~~any provision of this Part. The Commission may grant a waiver to~~
9 ~~the extent that it determines that it is consistent with the~~
10 ~~public interest to do so. The Commission may grant the petition~~
11 ~~in whole or part, may limit the waiver to certain geographic~~
12 ~~areas and/or may impose reasonable alternative regulatory~~
13 ~~requirements on the petitioning company. In disposing of a~~
14 ~~petition, the Commission may consider:~~

15 ~~(a) The factors enumerated in Section 364.337 (2), Fla.~~
16 ~~Statutes;~~

17 ~~(b) The extent to which competitive forces may serve the~~
18 ~~same function as, or obviate the necessity for, the provision~~
19 ~~sought to be waived; and~~

20 ~~(c) Alternative regulatory requirements for the company which~~
21 ~~may serve the purposes of this Part.~~

22 ~~(5) Any statutory exemptions or rule waivers granted prior to~~
23 ~~the adoption of this rule are void, and to the extent not covered~~
24 ~~in this rule, must be renewed.~~

25 Specific Authority: 350.127(2), F. S.

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

1 Law Implemented: 364.01, 364.337, F.S.

2 History: New 2/23/87, Amended.

3

4 25-30.010 Rules for General Application. The rules hereinafter
5 set forth are for general application and are subject to such
6 changes and modifications, permitted by law, as the Commission
7 from time to time may determine advisable. ~~The rules are subject~~
8 ~~to such exceptions as the Commission may consider just and~~
9 ~~reasonable in individual cases.~~ The rules are supplementary to
10 the Water and Wastewater System Regulatory Law, Chapter 367,
11 Florida Statutes.

12 Specific Authority: 367.121, F.S.

13 Law Implemented: 367.121, F.S.

14 History: Amended 2/3/70, 9/12/74, formerly 25-10.01, Transferred
15 from 25-10.001 11/9/86, Amended.

16

17 25-30.011 Application and Scope.

18 (1) No change.

19 ~~(2) In any case where compliance with any of these rules~~
20 ~~introduces unusual hardship, or if unreasonable difficulty is~~
21 ~~involved in immediate compliance with any particular rule,~~
22 ~~application may be made to the Commission for modification of the~~
23 ~~rule or for temporary exemption from its requirements, provided~~
24 ~~that the utility shall submit with such application a full and~~
25 ~~complete statement of reason therefor.~~

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

1 ~~(2)-(3)~~ No change.

2 ~~(4)~~ The adoption of these rules shall in no way preclude the
3 Commission, upon complaint, upon its own motion or upon the
4 application of any utility, from altering or amending them, in
5 whole or in part, or from requiring any other or additional
6 service, equipment, facility or standard, or from making such
7 modification with respect to their application as may be found
8 necessary to meet exceptional conditions.

9 ~~(3)-(5)~~ It is not intended that any rule or regulation
10 contained herein shall supersede or conflict with an applicable
11 regulation of the Department of Health and Rehabilitative
12 Services (DHRS) or the Department of Environmental Protection
13 Regulation (DEPR). Compliance by a utility with the regulations
14 of the DHRS or DEPR on a particular subject matter shall
15 constitute compliance with such of these rules as relate to the
16 same subject matter except as otherwise ordered by the
17 Commission.

18 ~~(4)-(6)~~ No change.

19 Specific Authority: 367.121, F.S.

20 Law Implemented: 367.121(1), F.S.

21 History: Amended 9/12/74, formerly 25-10.14, Transferred from
22 25-10.014 and Amended 11/9/86, _____.

23

24

25

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

1 25-30.436 General Information and Instructions Required of Class
2 A and B Water and Wastewater Utilities in an Application for Rate
3 Increase.

4 (1) through (5) No change.

5 ~~(6) Waiver of MFR Requirements. The Commission may grant a~~
6 ~~waiver with respect to specific data required by this rule upon a~~
7 ~~showing that the production of the data would be impractical or~~
8 ~~impose an excessive economic burden upon the applicant. All~~
9 ~~requests for waiver of specific portions of the minimum filing~~
10 ~~requirements shall be made as early as practicable.~~

11 ~~(6)-(7)~~ No change.

12 Specific Authority: 350.127(2), 367.121, F.S.

13 Law Implemented: 367.081, 367.083, 367.121, F.S.

14 History: New 11/9/86, Amended 6/25/90, 11/30/93, _____.

15

16 25-30.450 Burden of Proof and Audit Provisions. In each
17 instance, the utility must be able to support any schedule
18 submitted, as well as any adjustments or allocations relied on by
19 the utility. The work sheets, etc. supporting the schedules and
20 data submitted must be organized in a systematic and rational
21 manner so as to enable Commission personnel to verify the
22 schedules in an expedient manner and minimum amount of time. The
23 supporting work sheets, etc., shall list all reference sources
24 necessary to enable Commission personnel to track to original
25 source of entry into the financial and accounting system and, in

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

1 | addition, verify amounts to the appropriate schedules. ~~Utilities~~
2 | ~~may request a waiver of specific parts of the above rule from the~~
3 | ~~Commission by submitting a written statement setting forth the~~
4 | ~~reason, in detail, why the waiver should be granted.~~
5 | Specific Authority: 367.121, F.S.
6 | Law Implemented: 367.081, F.S.
7 | History: New 6/10/75, Transferred from 25-10.177 11/9/86,
8 | Amended _____.
9 |
10 | 25-30.455 Staff Assistance in Rate Cases.
11 | (1) through (4) No change.
12 | (5) Within 30 days of receipt of the completed application,
13 | the committee shall evaluate the application and determine the
14 | petitioner's eligibility for staff assistance.
15 | (a) through (b) No change.
16 | (c) All recommendations of ineligibility shall be in writing
17 | and shall state the deficiencies in the application with
18 | reference to guidelines set out in subsection (8) of this rule ~~or~~
19 | ~~with reference to subsection (11) of this rule.~~
20 | (6) through (10) No change.
21 | ~~(11) A petitioner may request a waiver of any of the~~
22 | ~~guidelines set out in subsection (8) of this rule.~~
23 | Specific Authority: 367.0814, 367.121, F.S.
24 | Law Implemented: 367.0814, F.S.
25 | History: New 12/8/80, Transferred from 25-10.180 and Amended

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

1 | 11/9/86, 8/26/91, 11/30/93, _____.

2

3 | 25-30.456 Staff Assistance in Alternative Rate Setting.

4 | (1) through (4) No change.

5 | (5) Within 30 days of receipt of the completed application,

6 | the Division of Water and Wastewater shall evaluate the

7 | application and determine the petitioner's eligibility for staff

8 | assistance.

9 | (a) through (b) No change.

10 | (c) All recommendations of ineligibility shall be in writing

11 | and shall state the deficiencies in the application with

12 | reference to guidelines set out in subsection (8) of this rule ~~or~~

13 | ~~with reference to subsection (11) of this rule.~~

14 | (6) through (10) No change.

15 | ~~(11) An applicant may request a waiver of any of the~~

16 | ~~guidelines set out in subsection (8) of this rule.~~

17 | (12) through (14) renumbered (11) through (13) No change.

18 | (14) ~~(15)~~ A substantially affected person may file a petition

19 | to protest the Commission's PAA Order regarding a staff assisted

20 | alternative rate setting application within 21 days of issuance

21 | of the Notice of Proposed Agency Action as set forth in Rule 28-

22 | 106.201 ~~25-22-036~~, F.A.C.

23 | (16) through (20) renumbered (15) through (19) No

24 | change. Specific Authority: 367.0814, 367.121, F.S.

25 | Law Implemented: 367.0814, F.S.

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

1 | History: New 11/30/93, Amended _____.

2
3 | 25-30.570 Imputation of Contributions-in-Aid-of-Construction.

4 | ~~(1)~~ No change.

5 | ~~(2) In any case where the provisions of subsection (1)~~
6 | ~~introduces unusual hardship or unreasonable difficulty, and the~~
7 | ~~Commission, utility or interested party shows that it is not in~~
8 | ~~the best interests of the customers of the utility, the~~
9 | ~~Commission may waive the applicability of the rule to the~~
10 | ~~utility.~~

11 | Specific Authority: 367.121(1), 367.101, F.S.

12 | Law Implemented: 367.101, F.S.

13 | History: New 6/14/83, formerly 25-30.57, Amended _____.

14
15 | 25-30.580 Guidelines for Designing Service Availability Policy.

16 | ~~(1)~~ A utility's service availability policy shall be designed
17 | in accordance with the following guidelines:

18 | (1)(a) No change.

19 | (2)(b) No change.

20 | ~~(2) In any case where compliance with the guidelines of~~
21 | ~~subsection (1) introduces unusual hardship or unreasonable~~
22 | ~~difficulty, and the Commission, utility, or interested party~~
23 | ~~shows that it is not in the best interests of the customers of~~
24 | ~~the utility to require compliance, the Commission may exempt the~~
25 | ~~utility from the guidelines.~~

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

1 Specific Authority: 367.121(1), 367.101, F.S.
2 Law Implemented: 367.101, F.S.
3 History: New 6/14/83, formerly 25-30.58, Amended _____.

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

MEMORANDUM

November 17, 1998

98 NOV 17 11:25 AM

TO: DIVISION OF APPEALS (MOORE)

FROM: DIVISION OF RESEARCH AND REGULATORY REVIEW (HEWITT) *BT PD AMJ*

SUBJECT: STATEMENT OF ESTIMATED REGULATORY COSTS FOR DOCKET NO. 980569-PU, PROPOSED REPEAL OF RULE PROVISIONS AUTHORIZING WAIVERS OR VARIANCES TO COMMISSION RULES

Currently, many Commission rules contain provisions to allow waivers or variances on a case-by-case basis. The 1996 changes to Section 120.542, Florida Statutes, removed rulemaking authority for waivers and variances. All rule waivers and variances must now comply with Section 120.542, F.S. The proposed repeal of rule provisions for waivers and variances would make Commission rules compliant with Section 120.542, F.S.

Regulated companies that want a waiver or variance from Commission rules would have to make a request in accordance with Section 120.542, F.S., but that process should not be significantly more costly than the current petitioning process.

The Administrative Procedures Act encourages an agency to prepare a Statement of Estimated Regulatory Costs (SERC). However, since there should be no significant additional costs or negative impacts on utilities, small businesses, small cities, or small counties, a SERC will not be prepared for the proposed rule change.

Please keep my name on the CASR.

CBH:tf/e-w&v

cc: Mary Andrews Bane
Hurd Reeves
Ann Shelfer
Mark Futrell
Connie Kummer
Bill Lowe
Dale Mailhot