

State of Florida



# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

**DATE:** May 20, 2004

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bay6)

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

*Handwritten signatures and initials: RAJ, CM, DS, J, W, etc.*

**RE:** Docket No. 040246-WS – Proposed adoption of Rule 25-30.457, F.A.C., Limited Alternative Rate Increase.

**AGENDA:** 06/1/04 – 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

### Discussion of Issues

**Issue 1:** Should the Commission propose a new rule, Rule 25-30.457, Florida Administrative Code, establishing a streamlined procedure for small utilities to obtain limited rate relief?

**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 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.

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Under the recommended rule, Commission staff will not audit the utility's financial or engineering books and records and a customer meeting will not be held. Any revenue increase will be limited to a maximum of 20 percent and is subject to refund for 15 months after the utility files its annual report for the year the rate adjustment was implemented. (Commission staff will follow its 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) through (11) of the rule. That information includes: 1) basic identification and ownership; 2) a proposed customer notice; 3) annualized revenues by customer class and meter size for the most recent 12-month period; 4) the utility's current and proposed rates for all classes of customers; and 5) an affirmation 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 an annual report for the historical test year; 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.

The utility must have a customer notice approved by staff and provided to its customers within seven days after a PAA order granting an increase is issued. 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.

Staff has also revised the recommended rule to accommodate several of OPC's concerns including requiring a copy of the utility's petition to be placed in its business office and including the information about its availability in the customer notice that is sent after the issuance of a PAA order granting the rate increase. Staff also modified the requirement that there has 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.

OPC also proposed adding the requirement for a customer meeting conducted by staff and a customer notice sent after the Commission officially accepts the utility's application but at least 21 days prior to the meeting. Staff believes such a requirement will defeat the purpose of the rule to provide a procedure for small utilities to obtain a minimal rate increase in a manner that is faster and less costly to the Commission and the utilities.

#### 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 would 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 rule 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 rule 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  
3 described in Rules 25-30.455 and 25-30.456, F.A.C., water and  
4 wastewater utilities whose total gross annual operating revenues  
5 are \$150,000 or less for water service or \$150,000 or less for  
6 wastewater service, or \$300,000 or less on a combined basis, may  
7 petition the Commission for a limited alternative rate increase by  
8 submitting a completed application that includes the information  
9 required by sections (9) and (10). The original and five copies of  
10 the application shall be filed with the Division of the Commission  
11 Clerk and Administrative Services.

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

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

21        (4) Upon reaching a decision to officially accept or deny the  
22 application, the Director of the Division of Economic Regulation  
23 shall notify the petitioner by letter. If the application is

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1 accepted, the Director will initiate limited alternative rate  
2 setting. If the application is denied, the letter shall state the  
3 reasons for denial.

4 (5) The official date of filing will be 30 days after  
5 official acceptance of the application by the Commission.

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

9 (a) The petitioner has filed an annual report as required by  
10 Rule 25-30.110(3), F.A.C., for the historical test year;

11 (b) The petitioner has paid applicable regulatory assessment  
12 fees;

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

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

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

23 (f) The utility has not been granted a limited alternative

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rate increase pursuant to this rule within the 3-year period prior to the receipt of the application under review;

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

(h) A final order in a rate proceeding, which 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 receipt of the application under review.

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

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

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

(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: If the petitioner is a

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1 corporation, the date of incorporation and the names and addresses  
2 of all persons who own 5 percent or more of the petitioner's stock;  
3 if the petitioner is not a corporation, the names and addresses of  
4 the owners of the business; and

5 (c) A proposed customer notice that includes the following:

6 1. A statement that the utility has applied for a rate  
7 change with the Commission and that a copy of the application can  
8 be reviewed at the utility's business office during normal business  
9 hours;

10 2. The utility's address, telephone number, and business  
11 hours;

12 3. A comparison of current rates and the proposed new rates;  
13 and

14 4. A statement that written protests regarding the utility's  
15 proposed rates must be addressed to the Director, Division of  
16 Commission Clerk and Administrative Services, 2540 Shumard Oak  
17 Boulevard, Tallahassee, Florida 32399-0850, that such protest must  
18 identify the docket number assigned to the proceeding and must be  
19 received prior to the expiration of the 21-day period after the  
20 issuance of the notice of proposed agency action (PAA) as provided  
21 in Rule 25-22.029, F.A.C., and must be in the form provided by Rule  
22 28-106.201, F.A.C.;

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

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

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

5       (11) The petitioner shall provide an affirmation stating that  
6 the figures and calculations upon which the change in rates is  
7 based are accurate and that the change will not cause the utility  
8 to exceed its last authorized rate of return on equity.

9       (12) The Commission shall not perform a financial or  
10 engineering audit of the utility's financial or engineering books  
11 and records in conjunction with the application under review.

12       (13) The Commission shall not conduct a customer meeting about  
13 the application under review.

14       (14) The Commission shall vote to approve, deny, or approve  
15 with modifications a recommendation establishing rates no later  
16 than 90 days from the official filing date as established in  
17 subsection (5) above.

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

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

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

14       (18) If the Commission issues a PAA order granting a limited  
15 alternative rate increase, the utility shall notify its customers  
16 of the order and revised rates. The customer notification shall be  
17 approved by Commission staff and be distributed to the customers no  
18 later than 7 days from the issuance date of the order.

19       (19) The customer notice shall be provided to all customers  
20 within the service areas included in the rate request and to all  
21 persons in the same service area who have a filed written request  
22 for service within the 12 calendar months prior to the month the  
23 application was filed.

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1       (20) In the event of a protest of the PAA Order pursuant to  
2 Rule 28-106.201, F.A.C., by a substantially affected person, other  
3 than the utility unless the PAA Order proposes a rate reduction,  
4 the utility may implement the rates established in the PAA Order on  
5 a temporary basis upon the utility filing a staff assisted rate  
6 case application pursuant to Rule 25-30.455, F.A.C., within 21 days  
7 of the date the protest is filed.

8       (21) In the event of a protest, the limit on the maximum  
9 increase provided in (7) above shall no longer apply.

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

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

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

16 History: New XX/XX/XX.

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**DATE:** May 7, 2004  
**TO:** Office of General Counsel (Moore)  
**FROM:** Division of Economic Regulation (Hewitt) *BA* *ca* *KS* *JDS*  
**RE:** Statement of Estimated Regulatory Costs for Proposed Rule 25-30.457, F.A.C.,  
Limited Alternative Rate Increase; Docket No. 040246-WS

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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, all 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 \$3,870 for an estimated net savings of \$37,710. The total cost savings 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 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