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WILL WEATHERFORD
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October 31, 2014

Carlotta S. Stauffer, Director
Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

DOCKET NO. 140205-WS, IN RE: PROPOSED ADOPTION OF RULE 25-30.091, F.A.C., PETITION TO REVOKE WATER CERTIFICATE OF AUTHORIZATION, AND PROPOSED AMENDMENT OF RULE 25-30.440, F.A.C., ADDITIONAL ENGINEERING INFORMATION REQUIRED OF CLASS A AND B WATER AND WASTEWATER UTILITIES IN AN APPLICATION FOR RATE INCREASE

Dear Ms. Stauffer:

Please find attached the Second Comments of the Office of Public Counsel related to the October 7, 2014, Staff Rule Development Workshop regarding Rule 25-30.091, and Rule 25-30.440, F.A.C. If you have any question, please do not hesitate to contact me.

A handwritten signature in black ink, appearing to read "Patricia A. Christensen".

Patricia A. Christensen
Associate Public Counsel

ELS:bsr

cc: Office of Industry Development and Market Analysis (Mark Futrell via email)
Office of General Counsel (Rosanne Gervasi via email)
Martin S. Friedman (via email)
Patrick C. Flynn (via email)
Troy Rendell (via email)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed adoption of Rule 25-30.091, F.A.C., Petition to Revoke Water Certificate of Authorization, and proposed amendment of Rule 25-30.440, F.A.C., Additional Engineering Information Required of Class A and B Water and Wastewater Utilities in an Application for Rate Increase	Docket No.: 140205-WS Filed: October 31, 2014
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SECOND COMMENTS TO THE NOTICED STAFF WORKSHOP

In response to the Staff Workshop held October 7, 2014, the Office of the Public Counsel (OPC or Citizens), through undersigned counsel, submits these comments. OPC's comments to the proposed Rules 25-30.091 and 25-30.440, Florida Administrative Code, as revised on October 02, 2014, are provided below and indicate the Section or subsections of the rules for which those comments are applicable.

I. Rule 25-30.091, Petition to Revoke Water Certification of Authorization

1. Prohibition on filing for revocation - Subsection (2) as proposed states:

(2) Pursuant to Section 367.0812(3), F.S., customers may not petition the Commission to revoke a utility's water certificate of authorization if the utility is the subject of a proceeding under Chapter 367, F.S. A general rate proceeding under Chapter 367, F.S., is initiated upon the utility's filing of a test year approval letter pursuant to Rule 25-30.430, F.A.C. Other rate proceedings under Chapter 367, F.S., are initiated upon the utility's filing of an application for rate relief.

Citizens have several concerns regarding when the Petition to Revoke the Certification of Authorization is considered officially prohibited from being filed under Section 367.0812, F.S., during the pendency of Chapter 367 proceedings.

- a. The rule proposes to establish the official filing date for a general rate proceeding under Chapter 367, F.S., to be the utility's filing of a test year approval letter pursuant to Rule 25-30.430, F.A.C. The rule also proposes that other rate proceedings under Chapter 367, F.S., are initiated upon the utility's filing of an application for rate relief. However, Section 367.021(9), F.S., states the "official date of filing" ". . .

means the date upon which it has been determined, pursuant to s. 367.083, by the commission that the utility has filed with the clerk the minimum filing requirements as established by rule of the commission.” OPC is concerned that the rule as proposed creates a conflicting definition of the official commencement date for rate proceedings which has already been defined by statute. OPC believes that the rule must adopt the statutory definition. In addition, Citizens is concerned that the rule, as proposed, would allow a utility, upon receipt of a letter of intent, to circumvent the customers’ petition by merely filing a test year letter.

- b. Citizens are also concerned that the rule does not define the type of proceedings that could prevent the filing of a petition. Section 367.0812, F.S., is entitled “Rate fixing; quality of water service as criterion.” OPC believes that the rule should include language that clarifies that a proceeding as contemplated in Section 367.0812(3), F.S., means a rate proceeding in which quality of water service issues are addressed, which could be a full evidentiary rate proceeding, a Proposed Agency Action proceeding, or a limited proceeding. An example of a proceeding that OPC believes should not be encompassed within a “proceeding” for purposes of Section 367.0812(3), would be a tariff filing that proposes only to change a late charge fee since it would not be addressing quality of water service issues.

2) Subsection (7)(b) as proposed states:

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

OPC has several areas of concern regarding this proposed subsection.

- a. The proposed rule language requires that the customers must copy and use the petition form for the collection of signatures. Yet the last sentence of this section states that the sample petition form incorporated herein must not be used for the collection of signatures. The apparent conflict is confusing and could inadvertently

thwart customers. OPC suggests that a sample form should be made available on the Commission's website without the word "sample" written on it, so that customers can copy the form for use in their submission.

- b. Citizens are also concerned about the requirement that the rule's specific petition form must be used in filing a petition. There may be instances where customer groups have obtained the necessary signatures and information but utilized a different format or computer program to organize and submit the information to the Commission. The ultimate goal should be the receipt of the statutorily required information, not whether a particular form is being used. Citizens do not believe that a lack of adherence to a prescribed "form" should become the basis upon which to dismiss an otherwise valid petition. Similar to the uniform rule requirements, the rule should only require that the necessary information be contained in the petition. In addition, the statute does not state that the customers must use a form "specified by the agency;" therefore, there is a question as to whether the rule can require a specific form be used.
- c. The proposed customer form attached to the rule contains language that "Customers signing petitions may be asked to testify under oath before the Commission and subject to cross-examination." Citizens believe that this specific language could unintentionally discourage or intimidate customers from signing the form. While Citizens believes that customers need notice that they may have to testify by signing the form, the language itself should be as non-threatening as possible. OPC would suggest the following language be substituted on the form: "By signing this form, you may be called to testify before the Commission to confirm your signature and verify the issues you list above. You may be questioned by the utility or the Commission about your statements and you will be asked to answer truthfully under oath." Citizens believe the use of plain English will make the process less intimidating and easier to understand.
- d. The proposed customer form should indicate on the left side of the boxes Issue 1, Issue 2, Issue 3, etc. While the form implies that the customer may identify multiple issues, the addition of separate issue numbering should provide additional clarification and ensure that customers include all relevant issues for the

Commission’s consideration. In the example below, an additional column was added to the left hand side of the boxes with Issues 1 and 2 added.

Issue 1			<input type="checkbox"/> 0-6 months <input type="checkbox"/> 6 months- 1year <input type="checkbox"/> 1 year or more
Issue 2			<input type="checkbox"/> 0-6 months <input type="checkbox"/> 6 months- 1year <input type="checkbox"/> 1 year or more

3) Subsection (8)(c) as proposed states:

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

The rule incorporates by reference the definition of customers in the introductory paragraph to Section 367.072, F.S., which states “[a]s used in this section, the term “customer” means an individual whose property is serviced by a single meter or a person whose name appears on the bill for a master meter.” However, Section 367.072(2)(b) refers to individuals being served by a master meter as “customers, tenants, or unit owners.” Citizens believe that these sections create an ambiguity as to how to determine whether 65% of a utility’s “customers” support a petition for revocation, and must be addressed in the proposed rule.

a. First, there is no clarification in the draft rule regarding how the 65% threshold would be determined for the customer base behind the master meter, or how the 65% threshold would be determined for a certificated water system that is made up of individual meters and master meters. For example, consider a utility that has 100 individual metered customers and 1,000 customers on a master meter. Assume that 50 of the individually metered customers vote to support a petition to revoke and 700 of the master meter customers vote to support the petition. Depending on how the weighting is implemented, two different results could occur despite the 1,100 individual customers all receiving the same water and wastewater service.

1. Option 1: Under one possible interpretation in this example, you could say that there is a total of 101 “customers” (i.e., 100 individual metered customers

plus one individual whose name appears on the master meter). Under this scenario, 51 “customers” support the petition which results in only 50.4% of total “customers;” thus, the petition would fail to meet the statutory requirement.

2. Option 2: Under a second possible interpretation in this example, you could say that there is a total of 1,100 “customers” (i.e., the total number of individual customers who receive water and wastewater service). Under this scenario, 750 customers support the petition which results in 68.2% of customers supporting the petition; thus, the petition could move forward.

Citizens believes that the appropriate application of the 65% threshold is to give equal weight to all customers that receive water and wastewater service irrespective of the type of metering chosen illustrated by Option 2.

- b. Second, OPC is concerned about what would happen if the individual whose name appears on a master meter bill refuses to sign the petition even though more than 65% of the customers, tenants, or unit owners support the petition. Citizens note that the individual or company in whose name that master meter is billed may not even receive direct water or wastewater service from the utility (i.e. an apartment management company). All customers who receive service from the water and wastewater utility irrespective of the method of billing (master metering versus individual metering) should have equal input regarding quality of service. Thus, Citizens believe that an individual whose name appears on the master meter should not be allowed to withhold his signature if 65% of the master metered customers support the petition, and the rule should address this potentiality.

4) Subsection (9) as proposed states:

(9) The customers must file the completed petition forms with the Office of Commission Clerk within 90 days after receipt of the staff's instructions, and must provide a copy of the petition forms to the utility.

Citizens are concerned that this requirement on customers to provide the utility with a copy of the petition and all attachments is unduly burdensome and unnecessary. First, under the proposed rule the Commission will notify the utility upon the customers filing a letter of intent to seek revocation. With that notification the utility has been placed on noticed that an action

against them has been commenced. Second, the Commission Clerk will be scanning a copy of the petition and all attachment (petition forms) and placing that documentation in electronic format on the Commission website, which is readily available to the utility for download at no additional cost to either the utility or customers. Thus, there is no reason to place this burden upon the customers.

5) Subsection (13) as currently drafted reads:

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

Based on the currently proposed language, it does not appear that any additional evidence beyond the petition forms will be reviewed by the Commission prior to a determination being made. The rule should specify what process and procedure will be implemented.

While the rule addresses how the Commission will proceed once a determination is made that the petition supports a reasonable likelihood the utility is failing to provide quality water service, it does not address how the customers can contest or protest a determination that there is no reasonable likelihood the utility is failing to provide quality water service. The rule should explain and clarify the exact process and time deadlines for customers to file a protest should the Commission make a determination that there is not a reasonable likelihood the utility is failing to provide quality water service.

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

Section (11) of the rule as drafted states:

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

Citizens have several concerns with this language. Citizens note that proving satisfactory quality of water service is the burden of the utility. OPC observes that, pursuant to Section 367.0812(1)(c), F.S., when setting rates, the Commission must consider “complaints regarding the applicable secondary water quality standards filed by customers with the Commission, the Department of Environmental Protection, the respective local governmental entity, or a county health department during the past 5 years.”

- a. If the utility is not required to make the inquiry of the various agencies of all customer complaints on file, the burden to obtain copies of those complaints from the agencies will fall to Commission staff. While Commission staff always retains the obligation to verify all information filed by the utility including complaints, this language might be interpreted as relieving the utility of its obligation to be aware of any on-going secondary water quality issues.
- b. Second, Citizens believe that limiting the requirement to file only customers’ complaints on the utility’s secondary water quality issues could inadvertently limit the Commission’s ability to consider any complaints made by counties, health departments, or others who have relevant information on the utility’s secondary water quality. Thus, at a minimum this rule should be amended to remove the word “customer” and require the utility to provide copies of all complaints it has received no matter who or what entity filed the complaint.

Respectfully submitted,

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