

State of Florida



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-

DATE: November 22, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Harper) *S.M.L.*
Division of Accounting and Finance (Golden) *ALM*
Division of Economics (Rome) *ORR* *ESD* *GB*

RE: Docket No. 160223-WS – Proposed amendments for Rules 25-30.425 and 25-30.455, F.A.C.

AGENDA: 12/06/16 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham

RULE STATUS: Proposal May Not Be Deferred

SPECIAL INSTRUCTIONS: None

Case Background

During the 2016 Legislative Session, the Florida Legislature enacted House Bill 491, which was incorporated into Chapter 2016-226, Laws of Florida. The legislation modified two subsections of the Florida Statutes (F.S.): Subsections 367.081(4) and 367.0814(3), F.S. To implement the new laws, staff is recommending revisions to Rule 25-30.425, F.A.C., Pass Through Rate Adjustment, and Rule 25-30.455, F.A.C., Staff Assistance in Rate Cases. Staff is recommending the rule changes so that the Commission rules will be consistent with the requirements of the 2016 legislation. Pursuant to the 2016 legislative amendments to Section 367.0814, F.S., the Commission must propose rules to administer Section 367.0814, F.S., by December 31, 2016.

The Commission's Notice of Development of Rulemaking was published in the Florida Administrative Register (F.A.R.), on September 20, 2016, in Volume 42, Number 183. Written comments were received from the Office of Public Counsel (OPC). In addition, staff received

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questions and suggestions from representatives of Florida Utility Services 1, LLC, Florida Rural Water Association, Friedman & Friedman, P.A., Marion Utilities, Inc., Sundstrom & Mindlin, LLP, U.S. Water Services Corporation, and Utilities Inc. of Florida. A rulemaking workshop was held on November 4, 2016.

This recommendation addresses whether the Commission should approve staff's proposed amendments of Rules 25-30.425 and 25-30.455, F.A.C. The Commission has jurisdiction pursuant to Sections 120.54, 350.127(2), and 367.121, F.S.

Discussion of Issues

Issue 1: Should the Commission propose the amendment of Rules 25-30.425 and 25-30.455, F.A.C.?

Recommendation: Yes. The Commission should propose the amendment of Rules 25-30.425 and 25-30.455, F.A.C., as set forth in Attachment A. (Harper, Golden, Rome)

Staff Analysis: The purpose of this rulemaking is to update, clarify, and streamline Commission Rules 25-30.425 and 25-30.455, F.A.C., consistent with the Florida Legislature's 2016 legislation. Staff is recommending that the Commission propose the amendment of the rules, as set forth in Attachment A. Below is a more detailed explanation of the rule amendments staff is recommending.

Rule 25-30.425, F.A.C., Pass Through Rate Adjustment

Rule 25-30.425, F.A.C., implements Section 367.081(4)(b), F.S., which allows for water and wastewater utilities regulated by the Commission to use pass-through provisions to obtain rate increases or decreases without the requirements for a rate proceeding. Prior to the 2016 legislation, Section 367.081(4)(b), F.S., allowed a utility to use the pass-through provisions to adjust its rates to reflect changes in the following specified expenses: (a) purchased water or wastewater service, (b) costs of electric power, (c) ad valorem taxes, (d) Commission Regulatory Assessment Fees, (e) Department of Environmental Protection (DEP) fees for the National Pollutant Discharge Elimination System (NPDES) Program, and (f) water quality or wastewater quality testing required by DEP.

The 2016 legislation modified subsection 367.081(4)(b), F.S., to expand the types of specified expenses that are eligible for a pass-through adjustment to include: (a) fees charged for wastewater biosolids disposal, (b) costs incurred for a tank inspection required by DEP or a local governmental authority, (c) treatment plant operator and water distribution system license fees required by DEP or a local governmental authority, (d) water or wastewater operating permit fees charged by DEP or a local governmental authority, and (e) consumptive or water use permit fees charged by a water management district.

Accordingly, staff is recommending language to amend sections (2), (3), and (4) of Rule 25-30.425, F.A.C., to assist applicants by clarifying the documentation that the Commission requires from utilities to evaluate the utilities' submissions for recovery of pass-through costs. Staff is also recommending additional amendments to subsection 25-30.425(2), F.A.C., to clarify how applicants may provide certain documentation to allow for the filing of concurrent pass-through and price index applications more efficiently.

In addition, the 2016 legislation allows the Commission to establish by rule additional expense items that are outside the control of the utility and have been imposed upon the utility by a federal, state, or local law, rule, order, or notice. Staff did not receive any requests to add any additional specified expenses at this time.

Staff received comments from OPC requesting better access to the pass-through petitions and filings, which are currently undocketed and processed administratively. Staff is reviewing possible options for improving public access to this information and will address this concern outside of the rulemaking process.

Staff believes the amendments to Rule 25-30.425, F.A.C., are consistent with the 2016 legislation, address the interested persons' comments, and will reduce the number of data requests that would be necessary to acquire the information from the utilities during the pass-through application process, thereby streamlining the process for both staff and the applicants.

Rule 25-30.455, F.A.C., Staff Assistance in Rate Cases

Rule 25-30.455, F.A.C., implements Section 367.0814(3), F.S., which was amended by the 2016 legislative session to specify that the Commission may not award rate case expenses to recover attorney fees or fees of other outside consultants who are engaged for the purpose of preparing or filing the case if a utility receives staff assistance in changing rates and charges pursuant to this section, unless the Office of Public Counsel or interested parties have intervened. The statute as amended provides that the Commission may award rate case expenses for attorney fees or fees of other outside consultants if such fees are incurred for the purpose of providing consulting or legal services to the utility after the initial staff report is made available to customers and the utility. The amended statute also provides that if there is a protest or appeal by a party other than the utility, the Commission may award rate case expenses to the utility for attorney fees or fees of other outside consultants for costs incurred after the protest or appeal. Thus, Rule 25-30.455, F.A.C., was amended to reflect the amendments to Section 367.0814(3), F.S., made in the 2016 legislation.

Statement of Estimated Regulatory Costs

Pursuant to Section 120.54, F.S., agencies are encouraged to prepare a statement of estimated regulatory costs (SERC) before the adoption, amendment, or repeal of any rule. The SERC is appended as Attachment B to this recommendation. The SERC analysis also includes whether the rule amendment is likely to have an adverse impact on growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within five years after implementation.

The SERC concludes that any economic impacts that might be incurred by affected entities would be a result of statutory changes to Sections 367.081 and 367.0814, F.S., made by the 2016 legislation and will not be the result of staff's recommended amendments to the Commission rules. Staff believes that the rule amendments will not likely directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in Florida within one year after implementation.

Further, the SERC concludes that the rule amendments will not likely have an adverse impact on economic growth, private-sector job creation or employment, private sector investment, business competitiveness, productivity, or innovation in excess of \$1 million in the aggregate within five years of implementation. Thus, the rule amendments do not require legislative ratification pursuant to Section 120.541(3), F.S.

In addition, the SERC states that the rule amendments will not have an adverse impact on small business and will have no impact on small cities or small counties. No regulatory alternatives were submitted pursuant to paragraph 120.541(1)(a), F.S. None of the impact/cost criteria established in paragraph 120.541(2)(a), F.S., will be exceeded as a result of the recommended revisions.

Conclusion

Based on the foregoing, staff recommends the amendment of Rules 25-30.425 and 25-30.455, F.A.C.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no requests for hearing or comments are filed, the rules may be filed with the Department of State, and this docket should be closed. (Harper)

Staff Analysis: If no requests for hearing or comments are filed, the rules may be filed with the Department of State, and this docket should be closed.

1 25-30.425 Pass Through Rate Adjustment.

2 ~~The verified notice to the Commission of an adjustment of rates under the provisions of~~
3 ~~Section 367.081(4)(b), F.S., shall be made in the following manner:~~

4 (1) This rule applies ~~Prior to any regulated water or wastewater utility that adjusts its an~~
5 ~~adjustment in rates pursuant to Section 367.081(4)(b), F.S., to reflect because of an increase or~~
6 ~~decrease in the rates, fees, or costs for the following specified expenses~~ purchased utility
7 ~~service, the utility shall file:~~

8 (a) ~~A certified copy of the order, ordinance or other evidence whereby the rates for~~ Water
9 ~~or wastewater utility service purchased from a are increased or decreased by the governmental~~
10 ~~authority agency or other by a water or wastewater utility regulated by the Commission; along~~
11 ~~with evidence of the utility service rates of that governmental agency or water or wastewater~~
12 ~~utility in effect on January 1 of each of the three preceding years.~~

13 (b) Purchased electric power; ~~A statement setting out by month the charges for utility~~
14 ~~services purchased from the governmental agency or regulated utility for the most recent 12-~~
15 ~~month period.~~

16 (c) Ad valorem taxes; ~~1. A statement setting out by month the gallons of water or~~
17 ~~wastewater treatment purchased from the governmental agency or regulated utility for the~~
18 ~~most recent 12-month period. If wastewater treatment service is not based on a metered flow,~~
19 ~~the number of units by which the service is measured shall be stated.~~

20 ~~2. A statement setting out by month gallons of water and units of wastewater service sold~~
21 ~~by the utility for the most recent 12-month period.~~

22 (d) National Pollutant Discharge Elimination System (NPDES) Permit Program fees
23 ~~charged by the Florida Department of Environmental Protection; A statement setting out by~~
24 ~~month the gallons of water or wastewater treatment purchased from any other government~~
25 ~~entity or utility company.~~

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- 1 (e) Regulatory Assessment Fees imposed ~~A statement setting out by the Commission;~~
2 ~~month the gallons of water pumped or wastewater treated by the utility filing the verified~~
3 ~~notice.~~
- 4 (f) ~~If the total~~ W~~water or wastewater quality testing required by the Department of~~
5 Environmental Protection (DEP); available for sale is in excess of 110% of the water sold, a
6 statement explaining the unaccounted for water.
- 7 (g) Wastewater biosolids disposal fees;
- 8 (h) Tank inspection required by the DEP or a local governmental authority;
- 9 (i) Treatment plant operator and water distribution system operator license fees required
10 by the DEP or a local governmental authority;
- 11 (j) Water or wastewater operating permit fees charged by the DEP or a local governmental
12 authority; or
- 13 (k) Consumptive or water use permit fees charged by a water management district.
- 14 (2) ~~Prior to an adjustment in rates pursuant to Section 367.081(4)(b), F.S., because of an~~
15 ~~increase or decrease in the charge for electric power the utility shall file its verified notice and~~
16 supporting documents with the Commission's Division of Accounting and Finance at least 45
17 days prior to the effective date of its pass through rate adjustment, or at least 60 days prior to
18 the effective date of its combined or simultaneously filed price index and pass through rate
19 adjustments if the utility requests an exception to the 45 day effective date, as referenced in
20 paragraph (2)(h), to allow the price index and pass through rate adjustments to be
21 implemented as one rate adjustment pursuant to Section 367.081(4)(e), F.S. Each verified
22 notice of a pass through rate adjustment shall include the following supporting documents. If
23 the same information or supporting document is required for both the price index and pass
24 through rate adjustments, such as revised tariff sheets, annualized revenue calculations, return
25 on equity affirmations, and customer notices, the applicant may file a combined supporting

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1 document to be used for both applications:

2 (a) Revised tariff sheets reflecting the increased or decreased rates; A certified copy of the
3 order, ordinance or other evidence which establishes that the rates for electric power have
4 been increased or decreased by the supplier, along with evidence of the electric power rates of
5 the supplier in effect on January 1 of each of the three preceding years.

6 (b) A schedule showing, ~~by month,~~ the calculation of charges for electric power and
7 consumption for the proposed rates, including most recent 12-month period, the following
8 information. If the pass through rate adjustment is combined with a price index rate
9 adjustment, a combined schedule that shows the calculation of both the price index and pass
10 through rate adjustments may be provided: charges that would have resulted had the new
11 electric rates been applied, and the difference between the charges under the old rates and the
12 charges under the new rates.

13 1. The calculation of the recurring annual or amortized annual amount of the new expense
14 or incremental change calculated as referenced in subsection (3);

15 2. The utility's actual annual revenue or calculation of the annualized revenue for the most
16 recent 12-month period, or 12-month test year if combined or simultaneously filed with a price
17 index application. If there were any Commission-approved changes to the utility's rates during
18 the 12-month period or test year, the revenue should be annualized to reflect the revenue that
19 would have resulted if the rate change had been in effect the entire 12 months. The annualized
20 revenue calculation should reflect the annual number of bills broken down by customer class
21 and meter size, and the annual gallons of water or wastewater service sold broken down by
22 customer class. Annualized revenues should be calculated separately if the utility provides
23 both water and wastewater service;

24 3. If the pass through of an increase or decrease in purchased water or wastewater utility
25 service, purchased power, or wastewater biosolids disposal is applied only to the gallonage

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1 charge in the rate adjustment calculation, provide a schedule showing the gallons of water or
2 wastewater service sold during each month of the most recent 12-month period or test year,
3 broken down by customer class and meter size, if not shown in the revenue calculation
4 previously provided in subparagraph (2)(b)2. above; and

5 4. The calculation of the proposed rates that shows the current rates, dollar amount of the
6 pass through increase or decrease, and proposed adjusted rates. The percentage increase or
7 decrease resulting from the pass through adjustment for any specified expense may be applied
8 to all rates equally or allocated between the base facility charge and gallonage charge based on
9 the following guidelines:

10 i. The percentage increase or decrease in purchased water or wastewater utility service,
11 purchased power, or wastewater biosolids disposal may be applied solely to the gallonage
12 charge;

13 ii. The percentage increase or decrease in ad valorem taxes may be applied solely to the
14 base facility charge;

15 iii. The percentage increase or decrease in any specified expense that was adjusted using a
16 specific allocation methodology in the utility's last rate proceeding or in a prior pass through
17 adjustment may be applied using that same methodology; and

18 iv. The percentage increase or decrease in any specified expense that reflects a single
19 assessment to the water and wastewater systems combined may be allocated between the
20 water and wastewater rates based on the equivalent residential connection ratio of water and
21 wastewater customers;

22 (c) A copy of ~~statement outlining~~ the current invoice, proof of payment, or other
23 documentation that demonstrates that ~~measures taken by~~ the specified expense has been
24 adjusted or is a new requirement. If the specified expense is an existing expense that was not
25 previously included in the utility's rates, also provide a statement confirming that the specified

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1 expense has never been included in the utility's rates; utility to conserve electricity.

2 (d) A copy of the invoice(s) or other documentation that supports the utility's calculation
3 of the recurring annual or amortized annual increase or decrease in the specified expense
4 referenced in subparagraph (2)(b)1., as follows:

5 1. For a frequently recurring specified expense, such as purchased power, provide a copy
6 of all invoices received for the most recent 12-month period or test year;

7 2. For a specified expense that occurs on an annual basis, such as ad valorem taxes,
8 provide a copy of the invoice received for the prior year;

9 3. For a specified expense that occurs less than annually, such as NPDES permit program
10 fees, provide a copy of the invoice received the last time the expense occurred; or

11 4. For the pass through of an incremental increase or decrease in regulatory assessment
12 fees that were previously included in the utility's rates by another governmental entity prior to
13 the Commission's regulation of the utility, provide documentation that shows the percentage
14 or amount of regulatory assessment fees that were previously included in the utility's rates,
15 such as a copy of an order, ordinance, rate calculation, or other available information that can
16 be used to determine and verify the percentage of regulatory assessment fees that were
17 previously included in the utility's rates.

18 (e) The utility's DEP Public Water System identification number and Wastewater
19 Treatment Plant Operating Permit number;

20 (f) The affirmation required by Section 367.081(4)(c), F.S., including the rate of return on
21 equity that the utility is affirming it will not exceed with this rate adjustment;

22 (g) A copy of the notice to customers required by subsection (6); and,

23 (h) If applicable, a statement that the utility requests an exception to the 45 day effective
24 date provided by Section 367.081(4)(b), F.S., to allow combined or simultaneously filed price
25 index and pass through rate adjustments to be implemented together as one rate adjustment

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1 pursuant to Section 367.081(4)(e), F.S., with an effective date 60 days after the official filing
2 date of the utility's notice of intention to increase rates through a price index rate adjustment
3 filed pursuant to Section 367.081(4)(a) and Rule 25-30.420(2), F.A.C.

4 (3) The recurring annual or amortized annual amount ~~Prior to an adjustment in rates~~
5 ~~because of an increase or decrease in ad valorem taxes the~~ new expense or incremental change
6 utility shall be calculated as follows ~~file with the Commission:~~

7 (a) The change in a ~~A~~ frequently recurring specified expense, such as purchased power,
8 ~~copy of the ad valorem tax bills which increased or decreased~~ shall be calculated as an annual
9 ~~and copies of the previous three years' bills; if copies have been submitted previously, a~~
10 ~~schedule showing the tax total, broken down by month for the most recent 12-month period or~~
11 for the 12-month test year if combined or simultaneously filed with a price index rate
12 adjustment. The calculation shall reflect the following information: ~~only is acceptable; and~~

13 1. All charges or fees included in the total specified expense, such as the purchased water
14 or wastewater base facility charge, gallonage charge, any applicable billing or service fees,
15 and taxes, even if some of the rates or fees did not change;

16 2. The actual or annualized charges for the specified expense. If the rates or charges for the
17 specified expense changed during the 12-month period or test year, the actual charges should
18 be annualized to reflect the charges that would have resulted if the prior rates or charges had
19 been in effect the entire 12 months;

20 3. The annualized charges that would have resulted if the new rates had been in effect the
21 entire 12 months;

22 4. The difference between the charges at the prior and new rates; and

23 5. If the utility's most recent rate proceeding included adjustments for excessive
24 unaccounted for water (EUW) or excessive inflow and infiltration (I&I), the calculation of an
25 increase or decrease in purchased water or wastewater utility service or purchased electric

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1 power shall also include the same percentage EUW or I&I adjustments. If the utility has taken
2 steps to reduce EUW or I&I since its most recent rate proceeding, the utility may, but is not
3 required to, provide additional information to demonstrate that the EUW or I&I percentages
4 have been reduced. Any proposed revision to the EUW or I&I percentages should be
5 calculated as referenced in subsection (4);

6 (b) The change in aA specified expense calculation of the amount of the ad valorem taxes
7 related to that occurs on an annual basis, such as ad valorem taxes, shall be calculated as an
8 annual total based on a comparison of the prior expense and new expense. If applicable, the
9 calculation of the increase or decrease portion of the water or wastewater plant not used and
10 useful in ad valorem taxes shall only include the following additional adjustments: in
11 providing utility service.

12 1. If any ad valorem tax bills reflect a single assessment for combined water and
13 wastewater property, the calculation shall also include the utility's calculation of the
14 equivalent residential connection ratio of water and wastewater customers used to allocate the
15 combined tax assessment between the utility's water and wastewater rates; and

16 2. If the utility's last rate proceeding included adjustments for non-used and useful plant,
17 the calculation shall also include an adjustment to remove the portion of the ad valorem taxes
18 related to the water or wastewater plant that is not used and useful in providing utility service;

19 (c) The change in a specified expense that occurs less than annually, such as NPDES
20 permit program fees, shall be calculated as an annual amortized amount based on a
21 comparison of the prior and new expense. The expense shall be amortized as a non-recurring
22 expense in accordance with Rule 25-30.433(8), F.A.C., and the calculation shall include an
23 explanation if the expense that is amortized for a period other than five years.

24 (4) ~~Prior to an adjustment in rates because of an increase or decrease in Tthe pass through~~
25 ~~costs of changes water quality or wastewater quality testing required by the Department of~~
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1 ~~Environmental Protection (DEP), or because of an increase or decrease in purchased water or~~
2 ~~wastewater utility service or purchased electric power shall be adjusted for EUW or I&I~~
3 ~~consistent with adjustments approved by the fees charged by DEP in connection with the~~
4 ~~National Pollutant Discharge Elimination System Program, the utility shall file with the~~
5 ~~Commission in the utility's most recent rate proceeding, if applicable. If the utility has taken~~
6 ~~steps to reduce the EUW and I&I percentages since its most recent rate proceeding, the utility~~
7 ~~may, but is not required, to provide the following information to demonstrate that the EUW~~
8 ~~and I&I percentages have been reduced and that the previously approved EUW and I&I~~
9 ~~percentages should either be reduced or eliminated from the pass through rate adjustment~~
10 ~~calculation:~~

11 (a) ~~A description~~ copy of any steps taken by the utility to reduce the EUW or I&I since the
12 utility's last rate proceeding invoice for testing; and,

13 (b) ~~A schedule showing the updated c~~Calculation of EUW or I&I broken down by month
14 for the most recent 12-month period or test year including: ~~amortized amount.~~

15 1. The gallons of water or wastewater treatment purchased from the governmental
16 authority or regulated utility that has increased or decreased its rates. If wastewater treatment
17 service is not based on a metered flow, describe how the wastewater flows are determined and
18 include the number of units by which the service is measured;

19 2. If the utility purchases water or wastewater service from more than one governmental
20 authority or regulated utility, include the gallons of water or wastewater treatment purchased
21 from any other governmental authority or regulated utility not reflected in subparagraph
22 (4)(b)1. above. If wastewater treatment service is not based on a metered flow, describe how
23 the wastewater flows are determined and include the number of units by which the service is
24 measured;

25 3. The gallons of water pumped or wastewater treated by the utility, if applicable;

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- 1 4. The gallons of water or wastewater service sold by the utility;
2 5. The total unaccounted for water or inflow and infiltration; and
3 6. A statement explaining the EUW or I&I if the total water available for sale or total
4 wastewater treatment purchased is still in excess of 110 percent of the water or wastewater
5 service sold.

6 (5) The amount administratively approved for a pass through rate adjustment ~~In addition to~~
7 ~~subsections (1), (2), (3) and (4) above, the utility shall not exceed the actual cost incurred.~~
8 Foregone pass through decreases shall not be used to adjust a pass through increase below the
9 actual cost incurred. also file:

10 ~~(a) A schedule of proposed rates which will pass the increased or decreased costs on to the~~
11 ~~customers in a fair and nondiscriminatory manner and on the basis of current customers, and a~~
12 ~~calculation showing how the rates were determined;~~

13 ~~(b) A statement, by class of customer and meter size, setting out by month the gallons of~~
14 ~~water and units of wastewater service sold by the utility for the most recent 12-month period.~~
15 ~~This statement shall not be required in filings for the pass-through of increased regulatory~~
16 ~~assessment fees or ad-valorem taxes;~~

17 ~~(c) The affirmation reflecting the authorized rate of return on equity required by Section~~
18 ~~367.081(4)(c), F.S.;~~

19 ~~(d) A copy of the notice to customers required by subsection (7) of this rule;~~

20 ~~(e) Revised tariff sheets reflecting the increased rates;~~

21 ~~(f) The rate of return on equity that the utility is affirming it will not exceed pursuant to~~
22 ~~Section 367.081(4)(c), F.S.; and~~

23 ~~(g) The utility's DEP Public Water System identification number and Wastewater~~
24 ~~Treatment Plant Operating Permit number;~~

25 (6) The utility shall provide each customer with written notice of the administratively

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1 approved rate adjustment, including the effective date and an explanation of the reasons for
2 the increase or decrease, prior to the time each customer will begin consumption at the
3 adjusted rates. If the pass through rate adjustment is combined or simultaneously filed with a
4 price index rate adjustment, the utility may provide the information for both rate adjustments
5 in a combined customer notice ~~amount authorized for pass through rate adjustments shall not~~
6 ~~exceed the actual cost incurred and shall not exceed the incremental increase or decrease for~~
7 ~~the 12 month period. Foregone pass through decreases shall not be used to adjust a pass~~
8 ~~through increase below the actual cost incurred.~~

9 (7) ~~In order for the Commission to determine whether a utility which had adjusted its rates~~
10 ~~pursuant to Section 367.081(4)(b), F.S., has thereby exceeded the range of its last authorized~~
11 ~~rate of return, the Commission may require a utility to file the information required in Rule~~
12 ~~25-30.437, F.A.C., for the test year specified.~~

13 (8) ~~Prior to the time a customer begins consumption at the adjusted rates, the utility shall~~
14 ~~notify each customer of the increase authorized and explain the reasons for the increase.~~

15 (9) ~~The utility shall file an original and five copies of the verified notice and supporting~~
16 ~~documents with the Commission Clerk. The rates shall become effective 45 days after the~~
17 ~~official date of filing. The official date of filing for the verified notice to the Commission of~~
18 ~~adjustment in rates shall be at least 45 days before the new rates are implemented.~~

19 *Rulemaking Authority 350.127(2), 367.081, 367.121(1)(c), (f) FS. Law Implemented*
20 *367.081(4), 367.121(1)(c), (g) FS. History—New 6-10-75, Amended 4-5-79, 4-5-81, 10-21-82,*
21 *Formerly 25-10.179, Amended 11-10-86, 6-5-91, 4-18-99, _____.*

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1 25-30.455 Staff Assistance in Rate Cases.

2 (1) Water and wastewater utilities whose total gross annual operating revenues are
3 \$275,000 or less for water service or \$275,000 or less for wastewater service, or \$550,000 or
4 less on a combined basis, may petition the Commission for staff assistance in rate applications
5 by submitting a completed staff assisted rate case application. ~~If a utility that chooses to utilize~~
6 ~~the staff assistance option employs outside experts to assist in developing information for staff~~
7 ~~or to assist in evaluating staff's schedules and conclusions, the~~ Reasonable and prudent rate
8 case expense shall ~~will~~ be eligible for recovery ~~recoverable~~ through the rates developed by
9 staff. Recovery of attorney fees and outside consultant fees related to the rate case shall be
10 determined based on the requirements set forth in Section 367.0814(3), F.S. A utility that
11 chooses not to exercise the option of staff assistance may file for a rate increase under the
12 provisions of Rule 25-30.443, F.A.C.

13 (2) The appropriate application form, Commission Form PSC/AFD 2-W (11/86) (Rev.
14 06/14), entitled "Application for a Staff Assisted Rate Case," is incorporated into this rule by
15 reference and is available at: <http://www.flrules.org/Gateway/reference.asp?No=Ref-04415>.
16 The form may also be obtained from the Commission's Division of Accounting and Finance,
17 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

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

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

23 (a) If the Commission has received four or more applications in the previous 30 days; or, if
24 the Commission has 20 or more docketed staff assisted rate cases in active status on the date
25 the application is received, the Commission will deny initial evaluation of an application for
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existing law.

1 staff assistance and close the docket. When an application is denied under the provisions of
2 this paragraph, the Commission will notify the applicant of the date on which the application
3 may be resubmitted.

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

6 (5) Upon making its final determination of eligibility, the Commission will notify the
7 applicant in writing as to whether the application is officially accepted or denied. If the
8 application is accepted, a staff assisted rate case will be initiated. If the application is denied,
9 the notification of application denial will state the deficiencies in the application with
10 reference to the criteria set out in subsection (7) of this rule.

11 (6) The official date of filing will be 30 days after the date of the written notification to the
12 applicant of the Commission's official acceptance of the application.

13 (7) In determining whether to grant or deny the application, the Commission will consider
14 the following criteria:

15 (a) Whether the applicant qualifies for staff assistance pursuant to subsection (1) of this
16 rule;

17 (b) Whether the applicant's books and records are organized consistent with Rule 25-
18 30.110, F.A.C., so as to allow Commission personnel to verify costs and other relevant factors
19 within the 30-day time frame set out in this rule;

20 (c) Whether the applicant has filed annual reports;

21 (d) Whether the applicant has paid applicable regulatory assessment fees;

22 (e) Whether the applicant has at least one year of experience in utility operation;

23 (f) Whether the applicant has filed additional relevant information in support of eligibility,
24 together with reasons why the information should be considered; and

25 (g) Whether the utility was granted a rate case increase within the 2-year period prior to
CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from
existing law.

1 the receipt of the application under review.

2 (8) The Commission will deny the application if the utility does not remit the filing fee, as
3 provided by paragraph 25-30.020(2)(f), F.A.C., within 30 days after official acceptance.

4 (9) An aggrieved applicant may request reconsideration of the application denial, which
5 will be decided by the full Commission.

6 (10) A substantially affected person may file a petition to protest the Commission's
7 proposed agency action in a staff assisted rate case within 21 days of issuance of the Notice of
8 Proposed Agency Action Order, as set forth in Rule 28-106.111, F.A.C.

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

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

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

16 (b) Sponsor a witness to support source documentation provided to the Commission staff
17 in its preparation of the staff audit, the staff engineering and accounting report and the staff
18 proposed agency action recommendation in the case;

19 (c) Include in its testimony the necessary factual information to support its position on any
20 issue that it chooses to take a position different than that contained in the Commission's
21 Proposed Agency Action Order; and

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

23 (13) Failure to comply with the dates established in the Order Establishing Procedure, or to
24 timely file a request for extension of time for good cause shown, may result in dismissal of the
25 staff assisted rate case and closure of the docket.

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- 1 (14) In the event of a protest of the Commission's Proposed Agency Action Order in a
2 staff assisted rate case, the Commission staff shall:
- 3 (a) File prefiled direct testimony to explain its analysis in the staff proposed agency action
4 recommendation. In the event the staff wishes to alter its position on any issue, it shall provide
5 factual testimony to support its changed position;
- 6 (b) Meet all other requirements of the Order Establishing Procedure; and
- 7 (c) Provide to the utility materials to assist the utility in the preparation of its testimony
8 and exhibits. This material shall consist of an example of testimony filed by a utility in another
9 case, an example of testimony that would support the Proposed Agency Action Order in this
10 case, an example of an exhibit filed in another case, and examples of prehearing statements
11 and briefs filed in other cases.

12 *Rulemaking Authority 350.127(2), 367.0814, 367.121 FS. Law Implemented 367.0814 FS.*
13 *History—New 12-8-80, Formerly 25-10.180, Amended 11-10-86, 8-26-91, 11-30-93, 1-31-00,*
14 *12-16-08, 8-10-14, _____.*

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State of Florida



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-

DATE: November 9, 2016
TO: Adria Harper, Senior Attorney, Office of the General Counsel
FROM: C. Donald Rome, Jr., Public Utility Analyst II, Division of Economics *CDR*
RE: Statement of Estimated Regulatory Costs (SERC) for Proposed Amendments to Rules 25-30.425 and 25-30.455, Florida Administrative Code (F.A.C.).

During the 2016 session, the Florida Legislature enacted House Bill 491 which was incorporated into Chapter 2016-226, Laws of Florida. Among other things, the legislation modified two subsections of the Florida Statutes (F.S.): Subsection 367.081(4) and Subsection 367.0814(3), F.S. These laws became effective on July 1, 2016. To implement the new laws, staff is recommending revisions to Rule 25-30.425, F.A.C., Pass Through Rate Adjustment, and Rule 25-30.455, F.A.C., Staff Assistance in Rate Cases. Staff is recommending these rule changes so that Commission rules will continue to be consistent with the requirements of the empowering statutes as revised during the 2016 legislative session. Therefore, any economic impacts that might be incurred by affected entities would be a result of statutory changes promulgated under subsections 367.081(4) and 367.0814(3), F.S., and not caused by staff's recommended changes to Commission rules. Key changes that are discussed in the attached SERC are summarized below.

Staff's draft amendments to Rule 25-30.425, F.A.C., are being recommended to implement the new provisions of subsection 367.081(4), F.S. Prior to the 2016 legislative action, water and wastewater utilities regulated by the Commission were limited to passing through the following specified expense items without the requirement of a Commission rate proceeding: (a) purchased water or wastewater service, (b) costs of electric power, (c) ad valorem taxes, (d) Commission Regulatory Assessment Fees, (e) Department of Environmental Protection (DEP) fees for the National Pollutant Discharge Elimination System (NPDES) Program, and (f) water quality or wastewater quality testing required by DEP.¹ The 2016 legislation modified subsection 367.081(4), F.S., to expand the types of specified expense items that are eligible for pass-through treatment: (a) fees charged for wastewater biosolids disposal, (b) costs incurred for a tank inspection required by DEP or a local governmental authority, (c) treatment plant operator and water distribution system license fees required by DEP or a local governmental authority, (d) water or wastewater operating permit fees charged by DEP or a local governmental authority, and (e) consumptive or water use permit fees charged by a water management district.²

¹ Florida House Bill Analysis and Fiscal Impact Statement, April 15, 2016; page 5.

² Id., p. 10.

Staff's recommended revisions to subsections (2), (3), and (4) of Rule 25-30.425, F.A.C., provide clarification to prospective applicants regarding the documentation required for staff to evaluate an applicant's submission for recovery of pass-through costs. Staff believes that placing this additional clarification in the rule will help to reduce the number of data requests that would be necessary during the pass-through application process and, therefore, assist in streamlining the process for both staff and applicants. Staff recommends additional amendments to subsection 25-30.425(2), F.A.C., to enable applicants to file concurrent pass-through and price index applications more efficiently.

Staff's draft amendments to subsection (1) of Rule 25-30.455, F.A.C., are being recommended to implement the new provisions of subsection 367.0814(3), F.S. The new statutory language prohibits the Commission from approving a utility's expenses associated with services of outside experts in a staff assisted rate case proceeding unless another party has intervened in the case. However, subsection 367.0814(3), F.S., provides two exceptions where a utility's recovery of rate case expense may be authorized by the Commission as follows: (a) if the fees are incurred to provide consulting or legal services to the utility after the initial Commission staff report is issued to customers and the utility, or (b) if the fees are incurred after any protest or appeal of the Commission's decision by a party other than the utility.³

The attached SERC addresses the considerations required pursuant to Section 120.541, F.S. A workshop to solicit input on the recommended rules was conducted by Commission staff on November 4, 2016. Several comments that either were received during the workshop or were otherwise provided during the rulemaking process were incorporated into the draft rules to provide additional clarification. No regulatory alternatives were submitted pursuant to paragraph 120.541(1)(a), F.S. None of the impact/cost criteria established in paragraph 120.541(2)(a), F.S., will be exceeded as a result of the recommended revisions.

cc: (Draper, Daniel, Shafer, Golden, Cibula, SERC file)

³ Id., p. 11.

FLORIDA PUBLIC SERVICE COMMISSION
STATEMENT OF ESTIMATED REGULATORY COSTS
Rules 25-30.425 and 25-30.455, F.A.C.

1. Will the proposed rule have an adverse impact on small business?
[120.541(1)(b), F.S.] (See Section E., below, for definition of small business.)

Yes No

For clarification, please see comments in Sections A(3) and E(1), below.

2. Is the proposed rule likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in this state within 1 year after implementation of the rule? [120.541(1)(b), F.S.]

Yes No

If the answer to either question above is "yes", a Statement of Estimated Regulatory Costs (SERC) must be prepared. The SERC shall include an economic analysis showing:

A. Whether the rule directly or indirectly:

(1) Is likely to have an adverse impact on any of the following in excess of \$1 million in the aggregate within 5 years after implementation of the rule?
[120.541(2)(a)1, F.S.]

Economic growth Yes No

Private-sector job creation or employment Yes No

Private-sector investment Yes No

(2) Is likely to have an adverse impact on any of the following in excess of \$1 million in the aggregate within 5 years after implementation of the rule?
[120.541(2)(a)2, F.S.]

Business competitiveness (including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets) Yes No

Productivity Yes No

Innovation Yes No

(3) Is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule? [120.541(2)(a)3, F.S.]

Yes

No

Economic Analysis:

A summary of the recommended rule revisions is included in the attached memorandum to Counsel. Specific elements of the associated economic analysis are discussed below in Sections B through F of this SERC.

During the 2016 session, the Florida Legislature enacted House Bill 491 which was incorporated into Chapter 2016-226, Laws of Florida. Among other things, the legislation modified two subsections of the Florida Statutes (F.S.): Subsection 367.081(4) and Subsection 367.0814(3), F.S. These laws took effect on July 1, 2016.

To implement the new laws, staff is recommending revisions to Rules 25-30.425 and 25-30.455, Florida Administrative Code (F.A.C.). Staff is recommending these rule changes so that agency rules will continue to be consistent with the requirements of empowering statutes as revised during the 2016 legislative session.

Therefore, any economic impacts that might be incurred by affected entities would be a result of statutory changes promulgated under subsections 367.081(4) and 367.0814(3), F.S., and not caused by staff's recommended changes to Commission rules. Staff believes that none of the impact/cost criteria established in paragraph 120.541(2)(a), F.S., will be exceeded as a result of the recommended rule revisions.

B. A good faith estimate of: [120.541(2)(b), F.S.]

(1) The number of individuals and entities likely to be required to comply with the rule.

The amendments to Rule 25-30.425, F.A.C., would affect 145 investor-owned water and wastewater utilities that serve approximately 175,000 Florida customers. The amendments to Rule 25-30.455, F.A.C., would affect the 116 investor-owned water and wastewater utilities that fall below the revenue thresholds stated in subsection (1) of the rule; these utilities serve approximately 30,000 Florida customers. Utilities which come under the jurisdiction of the Commission in the future also would be required to comply.

(2) A general description of the types of individuals likely to be affected by the rule.

The 145 investor-owned water and wastewater utilities are located in 37 counties.

C. A good faith estimate of: [120.541(2)(c), F.S.]

(1) The cost to the Commission to implement and enforce the rule.

- None. To be done with the current workload and existing staff.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

(2) The cost to any other state and local government entity to implement and enforce the rule.

- None. The rule will only affect the Commission.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

(3) Any anticipated effect on state or local revenues.

- None
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

D. A good faith estimate of the transactional costs likely to be incurred by individuals and entities (including local government entities) required to comply with the requirements of the rule. "Transactional costs" include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used, procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring or reporting, and any other costs necessary to comply with the rule. [120.541(2)(d), F.S.]

- None. The rule will only affect the Commission
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

Staff's suggested amendments to Rules 25-30.425 and 25-30.455, F.A.C., are being recommended to implement the new provisions of subsections 367.081(4) and 367.0814(3), F.S., respectively. As noted in Section A above, any economic

impacts that might be incurred by affected entities [e.g., utilities, customers] would be a result of statutory changes promulgated under subsections 367.081(4) and 367.0814(3), F.S., and not caused by staff's recommended changes to Commission rules. Key elements of staff's recommended rule revisions are discussed below.

(1) Recommended amendments to Rule 25-30.425, F.A.C.

As summarized in the attached memorandum to Counsel, statutory changes to subsection 367.081(4), F.S., added five additional specified expense items for which water and wastewater utilities regulated by the Commission can use the referenced rule's pass-through provisions without the requirement for a rate proceeding. Staff's suggested clarifications to the rule should assist applicants regarding the documentation required for staff to evaluate submissions for recovery of pass-through costs. Staff believes this should help to reduce the number of data requests that would be necessary during the pass-through application process, thereby streamlining the process for both staff and applicants. Staff is recommending additional amendments to subsection 25-30.425(2), F.A.C., to enable applicants to file concurrent pass-through and price index applications more efficiently.

Regulated utilities should benefit from the recommended rule revisions associated with the statutory changes that expanded the types of expenses which are eligible for recovery through a pass-through adjustment. Utilities will have more opportunities to avoid the time and expenses associated with full rate case proceedings and should be able to begin recovering the additional expenses in a more timely manner, thereby reducing potential revenue losses for under-recovery of prudent expenses. Utility ratepayers also should benefit from being able to receive smaller incremental rate increases that address specific expense charges that would otherwise require recovery through a full rate case proceeding at a higher cost and potentially higher rate increase.

Staff anticipates that additional transactional costs, if any, to affected entities would be de minimis, particularly when compared to the costs that would otherwise be incurred to recover those same expenses in a full rate proceeding. In addition, as noted in Section A above, any economic impacts that might be incurred by affected entities would be a result of statutory changes promulgated under subsection 367.081(4), F.S., and not caused by staff's recommended changes to Commission rules.

(2) Recommended amendments to Rule 25-30.455, F.A.C.

Staff's suggested changes to subsection (1) of the referenced rule are being recommended to implement the new provisions of subsection 367.0814(3), F.S. The new statutory language prohibits the Commission from approving a utility's expenses associated with services of outside experts in a staff assisted rate case unless another party has intervened in the case.

It is possible that the new statutory requirements and the associated prospective rule revisions potentially may result in additional transactional costs to utilities.

The potential impact would be to reduce the amount of rate case expense that utilities may recover by disallowing recovery of fees for attorneys or outside consultants who are engaged for the purpose of preparing and filing a staff assisted rate case. Henceforth, utilities would only be allowed to recover attorney or consultants' fees that are incurred for advisory work that is performed after the Staff Report is issued. The Staff Report is a preliminary recommendation issued in staff assisted rate cases that serves to advise the utility and its customers about the expected level of increase in that particular rate case.

Although not specifically prohibited in the statute, the amended statutory language also has the effect of disallowing recovery of any attorney or consultants' fees incurred for other work related to the rate case that occurs before the Staff Report is issued, such as assisting in the preparation of responses to Commission staff data requests. For example, it is not uncommon for a utility to request that the contractual plant operator assist with answering Commission engineering staff's data requests that are issued early in the rate case. The contractual plant operator will typically charge additional fees for this type of work, as it is not part of the operator's regularly scheduled contractual duties. Under the new statutes and amended rules, those fees would no longer be eligible to be recovered through rate case expense because the outside consultant fees would be incurred by the utility for work performed before the Staff Report is issued. However, as noted in Section A above, any economic impacts that might be incurred by affected entities would be a result of statutory changes promulgated under subsection 367.0814(3), F.S., and not caused by staff's recommended changes to Commission rules.

Utility ratepayers potentially may benefit from the rule revisions being recommended to implement the statutory changes. Benefits may accrue from limiting the type of rate case expense that may be recovered in a staff assisted rate case, thereby resulting in less of a rate increase than would otherwise be necessary.

E. An analysis of the impact on small businesses, and small counties and small cities:
[120.541(2)(e), F.S.]

(1) "Small business" is defined by Section 288.703, F.S., as an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.

- No adverse impact on small business. *[See clarification below.]*
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

While it is difficult to estimate the number of affected entities that would meet the definition of "Small Business" as defined in Section 288.703, F.S., it is reasonable to assume that many of the affected entities would meet the statutory definition and, therefore, potentially could incur additional transactional costs as discussed in Section D, above. However, as noted in Section A above, any economic impacts that might be incurred by affected entities would be a result of statutory changes promulgated under subsections 367.081(4) and 367.0814(3), F.S., and not caused by staff's recommended changes to Commission rules.

(2) A "Small City" is defined by Section 120.52, F.S., as any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census. A "small county" is defined by Section 120.52, F.S., as any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

- No impact on small cities or small counties
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

F. Any additional information that the Commission determines may be useful.
[120.541(2)(f), F.S.]

- None.

Additional Information:

A workshop to solicit input on the recommended rules was conducted by Commission staff on November 4, 2016. Several comments that either were received during the workshop or were otherwise provided during the rulemaking process were incorporated into the draft rules to provide additional clarification.

G. A description of any regulatory alternatives submitted and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule. [120.541(2)(g), F.S.]

- No regulatory alternatives were submitted.
- A regulatory alternative was received from
 - Adopted in its entirety.
 - Rejected. Describe what alternative was rejected and provide a statement of the reason for rejecting that alternative.