

STATE OF FLORIDA



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2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FL 32399-0850

Public Service Commission

December 12, 2016

John MacIver
Rules Ombudsman in
The Executive Office of the Governor
John.maciver@eog.myflorida.com

SENT VIA E-MAIL

RECEIVED FPSC
2016 DEC 13 PM 2:57
COMMISSION
CLERK

Re: Docket No. 160223-WS; Rules 25-30.425 and 25-30.455, F.A.C

Dear Mr. MacIver:

The Florida Public Service Commission proposed the above-listed rules at their regular agenda conference on December 6, 2016. Pursuant to Section 120.54(3)(b)2.b.(I), Florida Statutes, enclosed is a copy of the Florida Administrative Register (FAR) notice of the proposed rules, which was published in the December 12th edition of the FAR. Also enclosed is a copy of the statement of estimated regulatory costs (SERC). The SERC concluded that the proposed rule amendments will not have an adverse effect on small business. Pursuant to your instructions, we have filled out and included a copy of the OFARR rulemaking notification form.

If there are any questions with respect to these rules, please contact me at (850) 413-6082 or aharper@psc.state.fl.us.

Sincerely,

A handwritten signature in cursive script that reads "Adria E. Harper".

Adria E. Harper
Senior Attorney

Enclosures

cc: Office of the Commission Clerk

Office of Fiscal Accountability and Regulatory Reform
Rulemaking Notification

(Executive Order 11-211 requires agencies must submit all rulemaking notices to OFARR at least 1 week prior to publication)

To: John MacIver, Director

Submitted By: [Adria E. Harper, Senior Attorney]
[Florida Public Service Commission]
[850-413-6082]

Re: Rulemaking Notification for:

Rule Number	Rule Title
25-30.425	Pass Through Rate Adjustment
25-30.455	Staff Assistance in Rate Cases

List EACH rule singly. Add lines as needed.

Date: [Date request sent to OFARR] N/A Date of anticipated publication: N/A

Does this rule qualify for Rules Ombudsman review in accordance with section 120.54(3)(b), F.S.?

Yes No

Please complete this form when submitting rulemaking notification to the Office of Fiscal Accountability and Regulatory Reform (OFARR) pursuant to Executive Order 11-211. **If any information or documents are missing, the notification will be returned without review. OFARR will indicate what is missing, and the completed notification must be resubmitted.**

1. Proposed Rulemaking Activity:

Notice of Development of Rulemaking – Attach the proposed Notice. If no text is available, give a detailed explanation of the rulemaking, including why it is necessary.

Notice of Proposed Rule – Attach the proposed Notice, “Is a SERC Required” Checklist, and SERC (if required), all materials incorporated by reference, and all forms referenced or required by the rule.

Notice of Emergency Rule – Attach the proposed Notice. Explain fully why emergency rulemaking is appropriate.

Notice of Change – Attach the proposed Notice. Be sure the text is coded correctly according to Rule 1B-30.003(5)(f), F.A.C. Explain why a change is required. Attach any correspondence from JAPC or the public. If no documents exist, summarize any public comment the agency has received or public hearings/workshops the agency has held.

Notice of Withdrawal – Attach the proposed Notice. Explain why it is necessary to withdraw the rulemaking. Include any JAPC correspondence.

Other – Attach the proposed Notice. Include detailed information about the rulemaking.

Notices should be coded according to Rule 1B-30.003(5)(f), F.A.C.

Notice of Proposed Rule

PUBLIC SERVICE COMMISSION

RULE NOS.:RULE TITLES:

25-30.425 Pass Through Rate Adjustment

25-30.455 Staff Assistance in Rate Cases

PURPOSE AND EFFECT: To amend the rules to implement amendments to sections 367.081 and 367.0814, F.S., from the 2016 Legislative Session and update and clarify the rules.

Docket No. 160223-WS

SUMMARY: The rule amendments to Rule 25-30.425, F.A.C., implement amendments made to sections 367.081 and 367.0814, F.S., during the 2016 legislative session. The rule amendments to Rule 25-30.425 (2), F.A.C., clarify the documentation that utilities must submit for recovery of pass-through costs. The amendments to subsection 25-30.425(2), F.A.C., specify the documentation required for the filing of concurrent pass-through and price index applications. The amendments to Rule 25-30.455, F.A.C., prohibit the Commission from approving a utility's expenses associated with outside experts in staff assisted rate cases under certain circumstances consistent with section 367.0814, F.S.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has been prepared by the Agency.

The SERC examined the factors required by Section 120.541(2), F.S., and concluded that the proposed rules are not likely to have an adverse impact on the factors listed therein, and that there is no anticipated effect on state or local revenues and no cost to the Public Service Commission, or any other state and local government entity to implement and enforce the rule.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: based upon the information contained in the SERC.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 120.54; 350.127(2), (3); 367.121(1)(c), (f) F.S.

LAW IMPLEMENTED: 367.081(4), 367.0814; 367.121(1)(c), (g), F.S.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Adria Harper, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850)413-6082, aharper@psc.state.fl.us

THE FULL TEXT OF THE PROPOSED RULE IS:

25-30.425 Pass Through Rate Adjustment.

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

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

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

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

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

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

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

(e) Regulatory Assessment Fees imposed ~~A statement setting out by~~ the Commission; ~~month the gallons of water pumped or wastewater treated by the utility filing the verified notice.~~

(f) If the total Wwater or wastewater quality testing required by the Department of Environmental Protection (DEP); available for sale is in excess of 110% of the water sold, a statement explaining the unaccounted for water.

(g) Wastewater biosolids disposal fees;

(h) Tank inspection required by the DEP or a local governmental authority;

(i) Treatment plant operator and water distribution system operator license fees required by the DEP or a local governmental authority;

(j) Water or wastewater operating permit fees charged by the DEP or a local governmental authority; or

(k) Consumptive or water use permit fees charged by a water management district.

(2) Prior to an adjustment in rates pursuant to Section 367.081(4)(b), F.S., because of an increase or decrease in the charge for electric power the utility shall file its verified notice and supporting documents with the Commission's Division of Accounting and Finance at least 45 days prior to the effective date of its pass through rate adjustment, or at least 60 days prior to the effective date of its combined or simultaneously filed price index and pass through rate adjustments if the utility requests an exception to the 45 day effective date, as referenced in paragraph (2)(h), to allow the price index and pass through rate adjustments to be implemented as one rate adjustment pursuant to Section 367.081(4)(e), F.S. Each verified notice of a pass through rate adjustment shall include the following supporting documents. If the same information or supporting document is required for both the price index and pass through rate adjustments, such as revised tariff sheets, annualized revenue calculations, return on equity affirmations, and customer notices, the applicant may file a combined supporting document to be used for both applications:

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

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

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

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

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

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

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

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

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

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

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

(c) A copy of statement outlining the current invoice, proof of payment, or other documentation that demonstrates that measures taken by the specified expense has been adjusted or is a new requirement. If the specified expense is an existing expense that was not previously included in the utility's rates, also provide a statement confirming that the specified expense has never been included in the utility's rates; utility to conserve electricity.

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

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

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

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

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

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

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

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

(h) If applicable, a statement that the utility requests an exception to the 45 day effective date provided by Section 367.081(4)(b), F.S., to allow combined or simultaneously filed price index and pass through rate adjustments to be implemented together as one rate adjustment pursuant to Section 367.081(4)(e), F.S., with an effective date 60 days after the official filing date of the utility's notice of intention to increase rates through a price index rate adjustment filed pursuant to Section 367.081(4)(a) and Rule 25-30.420(2), F.A.C.

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

(a) The change in a frequently recurring specified expense, such as purchased power, copy of the ad valorem tax bills which increased or decreased shall be calculated as an annual and copies of the previous three years' bills; if copies have been submitted previously, a schedule showing the tax total, broken down by month for the most

recent 12-month period or for the 12-month test year if combined or simultaneously filed with a price index rate adjustment. The calculation shall reflect the following information: only is acceptable; and

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

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

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

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

5. If the utility's most recent rate proceeding included adjustments for excessive unaccounted for water (EUW) or excessive inflow and infiltration (I&I), the calculation of an increase or decrease in purchased water or wastewater utility service or purchased electric power shall also include the same percentage EUW or I&I adjustments. If the utility has taken steps to reduce EUW or I&I since its most recent rate proceeding, the utility may, but is not required to, provide additional information to demonstrate that the EUW or I&I percentages have been reduced. Any proposed revision to the EUW or I&I percentages should be calculated as referenced in subsection (4);

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

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

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

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

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

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

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

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

2. If the utility purchases water or wastewater service from more than one governmental authority or regulated utility, include the gallons of water or wastewater treatment purchased from any other governmental authority or

regulated utility not reflected in subparagraph (4)(b)1. above. If wastewater treatment service is not based on a metered flow, describe how the wastewater flows are determined and include the number of units by which the service is measured;

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

4. The gallons of water or wastewater service sold by the utility;

5. The total unaccounted for water or inflow and infiltration; and

6. A statement explaining the EUW or I&I if the total water available for sale or total wastewater treatment purchased is still in excess of 110 percent of the water or wastewater service sold.

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

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

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

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

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

(e) Revised tariff sheets reflecting the increased rates;

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

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

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

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

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

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

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

25-30.455 Staff Assistance in Rate Cases.

(1) Water and wastewater utilities whose total gross annual operating revenues are \$275,000 or less for water service or \$275,000 or less for wastewater service, or \$550,000 or less on a combined basis, may petition the Commission for staff assistance in rate applications by submitting a completed staff assisted rate case application. If a utility that chooses to utilize the staff assistance option employs outside experts to assist in developing information for staff or to assist in evaluating staff's schedules and conclusions, the Reasonable and prudent rate case expense shall will be eligible for recovery recoverable through the rates developed by staff. Recovery of attorney fees and outside consultant fees related to the rate case shall be determined based on the requirements set forth in Section

367.0814(3), F.S. A utility that chooses not to exercise the option of staff assistance may file for a rate increase under the provisions of Rule 25-30.443, F.A.C.

(2) through (14) No change.

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

NAME OF PERSON ORIGINATING PROPOSED RULE: Martha Golden.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Public Service Commission.

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 6, 2016

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: Volume 42, Number 183, September 20, 2016.

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.