

FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. UNDOCKETED

PROPOSED AMENDMENT OF RULES
25-30.130 AND 25-30.355,
FLORIDA ADMINISTRATIVE CODE.

_____ /

PROCEEDINGS: DEVELOPMENT OF RULEMAKING
WORKSHOP

COMMISSION STAFF
PARTICIPATING: KATHRYN G.W. COWDERY
LAURA KING
ROBERT GRAVES
DON ROME
RHONDA HICKS

DATE: Tuesday, February 28, 2017

TIME: Commenced at 1:31 p.m.
Concluded at 1:56 p.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, CRR, RPR
Official FPSC Reporter
(850) 413-6734

1 APPEARANCES:

2 J.R. KELLY, Office of Public Counsel

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P R O C E E D I N G S

MS. COWDERY: Good morning (sic). Pursuant to notice, this time and place has been set for an undocketed staff rule development workshop to take input from interested persons on the amendment of Rules 25-30.130 and 25-30.355 relating to water and wastewater utility customer complaints. I'm Kathryn Cowdery with the Office of General Counsel. Also here on behalf of staff are Laura King, Robert Graves, Rhonda Hicks, and Don Rome.

This rule development addresses the customer complaint rules for water and wastewater as well as for gas and utility industries. This particular staff rule development workshop addresses the water and wastewater customer complaint rules. The draft rules are amended for use of plain language, to update and clarify customer complaint recordkeeping and response requirements, to amend for consistency among all regulated industries as appropriate, and to delete requirements that are obsolete and duplicative of requirements found in other rules.

There are sign-in sheets at the back of the table, at the back of the room on the table, and we ask everyone to sign the sheet so we have a

1 record of who is in attendance today. Copies of the
2 Commission's notice of development of rulemaking was
3 sent out on February 13th, 2017. Those are also
4 located on the back table. They have been posted on
5 the Commission's website in the conferences and
6 meeting agendas, notice of staff workshops, notice
7 section. The draft rules attached to that notice
8 are the ones we will be discussing at this workshop.
9 Each time you speak, please identify yourself. And
10 the first time you speak, please identify who you
11 are representing for the benefit of the court
12 reporter and other workshop participants.

13 Do we have anybody who is on the call-in
14 line? If so, let me know.

15 (No response.)

16 It does not appear we have at this time
17 anyone on the call-in line.

18 We'll start with Rule 25-30.355,
19 complaints. The draft rule deletes the Section (1)
20 requirement that a utility make a full and prompt
21 acknowledgment and investigation of all customer
22 complaints and requires also a full and prompt
23 response to all customer requests. The phrase "full
24 and prompt acknowledgment and investigation" is
25 replaced by language in the draft subsection (2).

1 This language is more objective and gives a specific
2 standard for compliance and for regulation. That
3 language is: "No later than the next working day
4 after the date the utility receives a customer
5 complaint, the utility shall inform the customer
6 that the utility has received the customer's
7 complaint. Within 15 working days of the utility's
8 receipt of the complaint, the utility shall
9 investigate the complaint and give the customer a
10 verbal or written response."

11 We're thinking also of adding some
12 language along these lines -- this is not in the
13 notice -- "These requirements apply to all
14 complaints not being processed under Rule 25-22.032,
15 ***Florida Administrative Code.***" The reason for adding
16 this is to avoid any confusion there might be in
17 reading these two rule sections together.
18 25-22.302 is the Commission rule that addresses
19 complaints that have been filed with the Florida
20 Public Service Commission, and there is a
21 requirement in that rule that any documentation
22 surrounding those complaints be held for two years.

23 The -- this particular requirement would
24 be the -- that the requirement is that they be kept
25 for five years and that these particular rule

1 requirements would apply for the rule -- the
2 complaints filed directly with the utility. We're
3 essentially keeping the definition of complaint to
4 be the same, just doing some wordsmithing to it.

5 In addition, we have the section
6 concerning responding to emergency calls that we're
7 adding to this rule, which is, "Each utility shall
8 have a procedure for receiving and promptly
9 responding to emergency calls 24 hours a day.
10 Reports of water and wastewater main breaks or
11 conditions caused by utility-owned facilities
12 wherein property damage or personal injury is
13 reasonably foreseeable shall be considered
14 emergencies."

15 The reason we're adding this particular
16 language is to be consistent with gas and electric
17 rules. The water and wastewater industry currently
18 is required by rule at least annually to give the
19 customers a -- the name -- the phone number for
20 making after-hours calls, but there's nothing in the
21 rules right now to allow a response to emergency
22 calls.

23 Do we have any comments on the complaints
24 rule, 25-30.355, any of this language, any of the
25 draft amendments?

1 **MR. KELLY:** Yes, ma'am. Good afternoon. This
2 is J.R. Kelly with the Office of Public Counsel. Very,
3 very briefly, number one, we feel that -- or we would
4 like to ask you to consider language in your definition
5 of complaint where it says, "Complaint means an
6 objection made," and we would ask to include the words
7 "in oral, written, or electronic format" to clarify that
8 it's -- that they don't have to be specifically in
9 writing or they don't have to be signed if someone was
10 to send in an email.

11 I am specifically not speaking to Twitter
12 or tweets or any other form of media. I'm talking
13 about something where the consumer is affirmatively
14 reaching out to communicate with the utility either
15 orally, written, or electronically.

16 Another comment consistent with what was
17 discussed in an earlier workshop with respect to
18 electric and gas, you might want to consider
19 defining complaint so that utilities, if they're --
20 for example, if someone was working out in the field
21 and someone just came up and made a comment to them,
22 they didn't like filing a deposit, they didn't like
23 something like that, that that may not be considered
24 a complaint. And I don't -- I'm not looking to
25 create an onerous burden on the water and wastewater

1 utility industry, so maybe a better definition of
2 complaint or the -- what was the word we were
3 talking about this morning? -- maybe defining
4 something, maybe a complaint versus an inquiry.

5 **MS. COWDERY:** Uh-huh.

6 **MR. KELLY:** Something along those regards.
7 And I'll commit to you guys to try to look and see if I
8 can come up with something, maybe in my past life at the
9 Department of Agriculture and Consumer Services or
10 something, that could help there.

11 And along those regards, I know there have
12 been some concerns about whether it's a request
13 versus a complaint if someone calls and says,
14 "There's a pipe busted. Water is pouring out. Can
15 you come take a look at it?" Whether or not that
16 would be a concerned customer notifying or informing
17 the utility versus a complaint. How should, you
18 know, how should that be handled? And, again, maybe
19 if we could come up with a good definition of
20 complaint, maybe -- hopefully those would take care
21 of themselves.

22 I think that is it with -- oh, another
23 comment that was made this morning and in an earlier
24 workshop, and I think it might pertain to number
25 (2), is if the utility attempts to reach out to the

1 customer but they're -- and the use of the word
2 "inform," where it says, "A utility shall inform the
3 customer that their complaint has been received." I
4 know there's -- could be a concern about whether a
5 consumer has given a telephone number or, you know,
6 maybe they just can't be reached, maybe they don't
7 have a telephone, maybe their voice mailbox is full,
8 you know. That if the company legitimately reaches
9 out and tries to notify a consumer and they can't
10 get ahold of them, you know, I don't think they
11 should be held in a violation of the rule for that.

12 And I did have one question going back to
13 the -- I apologize, give me one second here -- the
14 clarification between the rule you had referenced
15 earlier. I think it's 25-22.032.

16 **MS. COWDERY:** Yes, sir.

17 **MR. KELLY:** It hit me just a few minutes ago
18 when you were talking about the differences -- let me
19 ask a question. If a customer was to file a complaint
20 with the Commission against Kelly Water Utility and you
21 took that complaint and you sent it to the company
22 and -- so it goes through, I don't know, five, six
23 months, you know, its regular -- or a month, whatever it
24 is, regular process of trying to get that dispute
25 resolved, two questions.

1 One, I understand under 25-22.032 that the
2 Commission only retains the documentation for two
3 years.

4 **MS. COWDERY:** That is correct, I believe.

5 **MS. HICKS:** The complaint too.

6 **MR. KELLY:** The complaint?

7 **MS. COWDERY:** Right.

8 **MR. KELLY:** Oh, okay. Because this morning
9 you mentioned something about documentation versus
10 complaint. I got a little confused.

11 **MS. COWDERY:** Okay. Yeah. That's in the
12 25-30. -- our other rule we're looking at.

13 **MR. KELLY:** Right. And I know it says -- and
14 I forgot to bring a copy, but I know it does say in
15 there the documentation shall be retained for two years.

16 **MS. COWDERY:** Right. And that's as opposed to
17 the record of complaint, which would contain -- like, if
18 we asked for a record of all complaints that you have
19 received, you know, in the last year. That record of
20 complaint is to be kept for five years. And that would
21 include all complaints, everything that meets the
22 definition of a complaint.

23 **MR. KELLY:** Of a complaint.

24 **MS. COWDERY:** It has to meet that definition
25 where --

1 **MR. KELLY:** So here's where I'm getting
2 confused. So does the Commission keep the complaint and
3 all that information, but they -- for five years, but
4 they don't need to keep the documentation but for two
5 years? Is that what --

6 **MS. COWDERY:** The Commission, I believe, only
7 keeps the complaint for -- we'll have maybe Rhonda Hicks
8 address that, if you want to come up.

9 **MR. KELLY:** I'm sorry.

10 **MS. COWDERY:** No, that's a good question.

11 **MS. HICKS:** Hello. The Commission keeps
12 complaints for two years. We're required to keep them
13 two years.

14 What I think the difference is, is when
15 you say, "a record," you're saying, "Okay. I need
16 to know" -- you're talking about numbers, not really
17 so much details. When we ask you for how many
18 complaints you've received over five years, the
19 record of all complaints that you've received, I
20 don't think that that includes details.

21 And so the documentation, to me, in my
22 opinion, includes all of the follow-up and
23 supporting documents that you may have received.

24 So, in my opinion, what happens is, say,
25 for example, we ask you -- we ask the company for

1 four years of complaints, four years of complaints,
2 they may not -- they may only have two years of
3 documentation supporting those complaints, but they
4 may have a listing of all the complaints they've
5 received.

6 **MR. KELLY:** Okay. Of course, that will change
7 over to this rule because they'll have to keep it for
8 five years now.

9 **MS. HICKS:** No, not for 032, not for the
10 complaint rule.

11 **MR. KELLY:** Well, and that's the
12 clarification. Thank you.

13 **MS. COWDERY:** Right. Right.

14 **MR. KELLY:** That was my second clarification
15 because I understand -- it seems to me maybe there's an
16 inconsistency here, and I'm trying to think this out
17 loud as I'm saying this. It seems to me that if you
18 have -- if John Doe files a complaint against Kelly
19 Utility with the Commission, the documentation only has
20 to be kept for two years. If you wanted to go back and
21 look at the backup documentation, it's only --

22 **MS. HICKS:** Correct.

23 **MR. KELLY:** But if John Doe files that exact
24 same complaint first with Kelly Utilities, under this
25 rule proposal, you're going to have a separate -- you're

1 going to have a different standard of recordkeeping.
2 Because Kelly Utilities, me, if I'm Kelly Utilities, I'm
3 going to have to keep all that documentation and record
4 evidence and information for five years.

5 **MS. COWDERY:** I think what the intent is, if
6 we move over to the record of complaint document that's
7 on page 5 of the notice --

8 **MR. KELLY:** Right.

9 **MS. COWDERY:** -- 25-30.130 -- well, it's the
10 new -- it's the new second --

11 **MR. KELLY:** Right.

12 **MS. COWDERY:** -- sentence to Section (1). You
13 keep the record that shows the name and address of the
14 complainant, the nature of the complaint, the date
15 received, the result of investigation, how the complaint
16 was resolved, and the date of resolution. There's not
17 necessarily any additional backup documentation that
18 occurs when a complaint ends up being unresolved and
19 comes to the Commission.

20 Then we might look at it in more detail
21 and say, "Well, we want to see where's all the
22 documentation that shows your -- you know, that you
23 fixed the pipe or that, you know, there's a manifest
24 somewhere about materials" or whatever would be
25 asked for. That would be the distinction.

1 **MR. KELLY:** Okay. So the utility only
2 just -- they could keep a spreadsheet, if you will --

3 **MS. COWDERY:** Exactly.

4 **MR. KELLY:** -- of all this information.

5 **MS. COWDERY:** Exactly.

6 **MR. KELLY:** The documentation backing up any
7 of this would only be kept for two years.

8 **MS. HICKS:** Right.

9 **MS. COWDERY:** If it goes to the Commission.
10 If it goes to the Commission. Now this is a minimum
11 too.

12 **MR. KELLY:** So -- I got you. So what -- got
13 you. I understand. Thank you for that.

14 So what if -- so what if a consumer files
15 a complaint directly with the utility? How long
16 does the utility have to keep any and all
17 documentation for that? They can destroy it the
18 next day after it's, quote, resolved, disposed of,
19 whatever, finalized, closed?

20 **MS. COWDERY:** That would be up to the utility
21 and their internal, you know, internal practices.

22 **MR. KELLY:** Okay.

23 **MS. COWDERY:** You know, I mean, they've got
24 reasons, I believe, to keep records of this also. But
25 for our purposes --

1 **MR. KELLY:** Okay.

2 **MS. COWDERY:** -- you know, if somebody comes
3 in later and comes and files a complaint because
4 something has been going on for a year or two, it's
5 never been resolved, we're going to ask for that
6 information.

7 **MR. KELLY:** Right.

8 **MS. COWDERY:** And you would think that the
9 utility would be holding onto it. At that point, we
10 would need it. That's how we're doing it right now.
11 That's the draft.

12 **MR. KELLY:** Got you. Okay. No, I understand.
13 No, I appreciate it. I was trying to think it out loud.

14 **MS. COWDERY:** No, that's good.

15 **MR. KELLY:** Because I -- I got you. Okay.

16 **MS. COWDERY:** Now one other point I wanted to
17 raise on the complaint rule, 25-30.355, is we are
18 specifically deleting the requirement that utilities
19 respond fully and promptly to customer requests. And
20 the reason for this is that the complaint rule is not
21 the appropriate place to address the customer requests
22 which deal with initiation of service, continuance of
23 service, discontinuation of service, refusal of service,
24 that all those areas are covered in other rules more
25 specifically. You know, 25-30.310(2), they all --

1 25-30.250, 25-30.320, 25-30.266 all address the
2 requirement for water and wastewater utilities to
3 respond quickly to these various service incidents. So
4 that's why that section has been taken out in Section
5 (1).

6 I think we've covered some of the record
7 of complaints rule.

8 **MR. KELLY:** And I just had one comment to
9 share about the record of complaints --

10 **MS. COWDERY:** Uh-huh.

11 **MR. KELLY:** -- and that is in the first --
12 under sub (1), where it says, "A utility shall keep a
13 record of all complaints received." And we would
14 suggest that where -- it would be added where, "A
15 utility shall keep a record of all complaints received
16 and its responses to the customers for each complaint
17 received," so we -- so there is a record of how, when,
18 you know, they do respond to the customer.

19 **MS. COWDERY:** Uh-huh. Okay. And that might
20 be something that we would put in what the record shall
21 show, something like that. But, yes, that information
22 is good input.

23 And I think you understand why we're
24 taking out the requirements that the complaints be
25 signed, written complaints, that that information --

1 that is obsolete. It predates electronic
2 recordkeeping. It would be unusual, I think, for a
3 signed, written complaint to be, for instance,
4 mailed to a utility, but that would still be covered
5 under our current rule.

6 The draft subsection, as we were
7 previously discussing, for subsection (2) of this
8 rule requires each utility to maintain its record
9 for a minimum of five years. Utilities might have a
10 reason to keep it longer than that. But water and
11 wastewater utilities are currently required, under
12 Rule 25-30.110, to keep a record of customer service
13 complaints for a minimum of three years. This
14 requirement in the recordkeeping rule comes from the
15 National Association of Regulatory Utility
16 Commissioners' guidelines, *Regulations to Govern the*
17 *Preservation of Records of Electric, Gas and Water*
18 *Utilities* from 1985.

19 Changing that retention time to five years
20 is consistent with current Commission regulatory
21 practice, rules, and statutes. For instance, the
22 Commission is required, in every water or wastewater
23 rate case proceeding, to consider quality of
24 service. Commission rules require that water and
25 wastewater utilities' rate case applications and

1 applications for authority to transfer an existing
2 water utility must include a copy of all customer
3 complaints that the utility has received regarding
4 DEP secondary water quality standards during the
5 past five years.

6 Section 367.082 requires the Commission to
7 consider the extent to which the utility provides
8 water service that meets secondary water quality
9 standards as established by DEP.

10 Reading all of these statutory and rule
11 provisions together, in addition, looking at the
12 2007 NARUC guidelines for record retention, which is
13 for six years, led staff to conclude that a
14 five-year retention period was a reasonable
15 retention period.

16 So if we receive any post-workshop
17 comments from utilities, we'd be interested in any
18 input they have as to how long they are currently
19 keeping this type of record.

20 Also, to be clear, that -- let's see. I think
21 we've already covered that, the rest of Section (2).
22 We're also adding the requirement that the record of
23 complaints be provided to the Commission staff upon
24 Commission staff's request. This requirement puts all
25 water and wastewater utilities on notice that there may

1 be times when the Commission staff requests the record
2 of complaints and assures that the record is kept in
3 such a manner and format that it could easily be
4 provided to the Commission staff, if requested.

5 Are there any other questions or comments on
6 these draft amendments?

7 The transcript of the workshop will be posted
8 on the Commission's website by March 10th, 2017. We
9 would encourage anybody to file post-workshop comments.
10 We would ask that you please file those by March 24th,
11 2017.

12 As part of this rulemaking, staff will prepare
13 a statement of estimated regulatory costs consistent
14 with Sections 120.543(b) and 120.541(2). As part of the
15 post-workshop comments, we would appreciate any input
16 that the industry may have on whether you believe that
17 these rules are likely to have an adverse impact on any
18 of the matters listed in Section 120.541(2).

19 Thank you very much for your participation.
20 This workshop is adjourned.

21 (The hearing ended at 1:56 p.m.)
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1 STATE OF FLORIDA)
2 COUNTY OF LEON) : CERTIFICATE OF REPORTER

3
4 I, LINDA BOLES, CRR, RPR, Official Commission
5 Reporter, do hereby certify that the foregoing
6 proceeding was heard at the time and place herein
7 stated.

8 IT IS FURTHER CERTIFIED that I
9 stenographically reported the said proceedings; that the
10 same has been transcribed under my direct supervision;
11 and that this transcript constitutes a true
12 transcription of my notes of said proceedings.

13 I FURTHER CERTIFY that I am not a relative,
14 employee, attorney, or counsel of any of the parties,
15 nor am I a relative or employee of any of the parties'
16 attorney or counsel connected with the action, nor am I
17 financially interested in the action.

18 DATED THIS 7th day of March, 2017.

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LINDA BOLES, CRR, RPR
Official FPSC Hearings Reporter
Office of Commission Clerk
(850) 413-6734