

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: March 13, 2017
TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk
FROM: Adria E. Harper, Senior Attorney, Office of the General Counsel *aet*
RE: Docket No. 160246-WS

Please place the accompanying documents in Docket No. 160246-WS

RECEIVED - FPSC
2017 MAR 13 PM 3:47
COMMISSION
CLERK

Julie Phillips

From: Adria Harper
Sent: Monday, March 13, 2017 11:02 AM
To: Julie Phillips
Subject: FW: Public Service Commission's proposed Rules 25-30.444 and 25-30.4445, F.A.C.

Adria E. Harper
Senior Attorney
Florida Public Service Commission
AHarper@psc.state.fl.us
(850) 413-6082

Please note: Florida has very broad public records laws. Many written communications to or from the Florida Public Service Commission may be considered public records, which must be made available to anyone upon request. Your e-mail communications may therefore be subject to public disclosure.

From: Reform, Reg [<mailto:Reg.Reform@eog.myflorida.com>]
Sent: Monday, March 13, 2017 11:01 AM
To: Adria Harper
Subject: RE: Public Service Commission's proposed Rules 25-30.444 and 25-30.4445, F.A.C.

My pleasure. It was also just brought to my attention my information needs to be updated on 411.com, which I am in the process of doing so others may find me. ☺. Thanks, - Alexa

From: Adria Harper [<mailto:AHarper@psc.state.fl.us>]
Sent: Monday, March 13, 2017 10:37 AM
To: Reform, Reg <Reg.Reform@eog.myflorida.com>
Cc: Phillips, Alexandra <Alexandra.Phillips@eog.myflorida.com>
Subject: RE: Public Service Commission's proposed Rules 25-30.444 and 25-30.4445, F.A.C.

Great! Thank you for your help.

Adria

Adria E. Harper
Senior Attorney
Florida Public Service Commission
AHarper@psc.state.fl.us
(850) 413-6082

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From: Reform, Reg [<mailto:Reg.Reform@eog.myflorida.com>]
Sent: Monday, March 13, 2017 10:31 AM
To: Adria Harper

Cc: Phillips, Alexandra

Subject: FW: Public Service Commission's proposed Rules 25-30.444 and 25-30.4445, F.A.C.

Good morning Adria,

John graciously passed along the Director reigns end of the year. Thank you for sending this. Hope all is well.

This email serves as confirmation that the Office of Fiscal Accountability and Regulatory Reform has received your Rulemaking Notification.

Thank you in advance for your cooperation, and as always, please feel free to contact the office with any questions.

Regards,

Alexandra Phillips
Director, Office of Fiscal Accountability and Regulatory Reform
Office of Governor Rick Scott
The Capitol, Suite 209
Tallahassee, Florida 32399-0001
(850) 717-9315

GOVERNOR RICK SCOTT

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ONE BILLION IN TAX CUTS IN 2 YEARS

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From: Maclver, John

Sent: Friday, March 10, 2017 10:19 AM

To: Phillips, Alexandra <Alexandra.Phillips@eog.myflorida.com>

Subject: FW: Public Service Commission's proposed Rules 25-30.444 and 25-30.4445, F.A.C.

From: Adria Harper [<mailto:AHarper@psc.state.fl.us>]

Sent: Friday, March 10, 2017 10:17 AM

To: Maclver, John

Cc: Carlotta Stauffer ; Julie Phillips

Subject: Public Service Commission's proposed Rules 25-30.444 and 25-30.4445, F.A.C.

Dear Mr. Maclver:

Please see the attached correspondence regarding the Commission's proposed Rules 25-30.444 and 25-30.4445, F.A.C. Please confirm receipt via return email.

Please feel free to contact me further.

Thank you,
Adria

Adria E. Harper
Senior Attorney
Florida Public Service Commission
AHarper@psc.state.fl.us
(850) 413-6082

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STATE OF FLORIDA



OFFICE OF THE GENERAL COUNSEL
KEITH C. HETRICK
GENERAL COUNSEL
(850) 413-6199

Public Service Commission

March 10, 2017

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

SENT VIA E-MAIL

Re: Docket No. 160246-WS, Rules 25-30.444 and 25-30.4445, F.A.C.
Dear Mr. MacIver:

The Florida Public Service Commission proposed the above-listed rules at their regular agenda conference on March 7, 2017. The Commission has determined that these rules will affect small businesses. Accordingly, 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 March 9, 2017, edition of the FAR. Also enclosed is a copy of the statement of estimated regulatory costs (SERC). The SERC concluded that the proposed rules 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 this/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

To: John MacIver, Director

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

Re: Rulemaking Notification for:

Rule Number	Rule Title
Rules 25-30.444, F.A.C.	Utility Reserve Fund
Rule 25-30.4445, F.A.C.	Notice of Application for Utility Reserve Fund

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.**

I. 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.

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)

2. Is this rulemaking included in the agency's Annual Regulatory Plan (ARP)? Yes No

3. For each rule:

If the rule decreases regulation, explain in detail how it alleviates unnecessary, disproportionate, or adverse effects to business. You should address all relevant considerations, including: restriction on entry into a profession; effect on availability of services to public; effect on job retention; restriction on employment seekers; imposition of burdensome costs; cost-effectiveness vs. economic impact of rule.

If the rule increases regulation, explain in detail what statute or statutes are being implemented and why the rule is necessary to implement the statutory language.

Rule Number	Detailed Explanation
Rule 25-30.444, F.A.C.,	The rule does not decrease or increase regulation.
Rule 25-30.4445, F.A.C.	The rule does not decrease or increase regulation.

List EACH rule singly. Add lines as needed.

4. Has the agency received any public comment about this rulemaking, since the last rulemaking notification?
 NO YES

If yes, please summarize the comment and the agency's position regarding the comment (i.e. has made or intends to make changes based on the comment, disagrees with the comment, etc.) and attach any documents.

5. Has the agency received any lower cost regulatory alternatives (LCRA)? NO YES

If yes, describe in detail what action the agency took in response to the LCRA.

6. Has the agency received any comment from JAPC, since the last rulemaking notification? NO YES

If yes, please summarize the comment and attach any documents.

Notice of Proposed Rule

PUBLIC SERVICE COMMISSION

RULE NOS.:RULE TITLES:

25-30.444 Utility Reserve Fund

25-30.4445 Notice of Application for Utility Reserve Fund

PURPOSE AND EFFECT: To implement rules for requests for water/wastewater utility reserve funds pursuant to Section 367.081, F.S.

Docket No. 160246-WS

SUMMARY: Pursuant to 2016 legislation, Rule 25-30.444, F.A.C., implements a utility reserve fund. Subsection (1) sets forth the projects eligible for the utility reserve fund. Subsection (2) sets forth the filing requirements in an application for a utility reserve fund, including the requirements for a capital improvement plan. Subsection (3) provides reporting requirements for the utilities so the Commission can track the monies collected for the utility reserve fund. Subsection (4) lists the information that a utility must provide to the Commission in order to receive Commission authorization for disbursement of the reserve fund monies. Subsection (5) sets forth the filing requirements to request a modification of the reserve fund.

Subsection (6) of the rule provides the conditions under which the Commission will determine the final disposition of a utility reserve fund.

Rule 25-30.4445, F.A.C., provides the noticing requirements for the application for a utility reserve fund, including applications filed as stand-alone applications or applications filed in conjunction with another rate case proceeding.

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 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 are not due to a Commission-initiated rulemaking effort. The SERC concluded that the rules will not likely directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in Florida within one year after implementation. The SERC concluded that the rules 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. The rules 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 Section 120.541(1)(a), F.S. None of the impact/cost criteria established in Section 120.541(2)(a), F.S., will be exceeded as a result of the new rules.

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: 350.127(2), F.S., 367.081(2)(c), F.S., 367.121, FS.

LAW IMPLEMENTED: 367.081, F.S., 367.091, FS.

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:

25-30.444 Utility Reserve Fund

(1) PROJECT ELIGIBILITY. The following considerations shall be applied in determining whether a future

infrastructure repair or replacement project is eligible for advance funding through a utility reserve fund and whether a utility reserve fund is the most appropriate methodology to address the requested project.

(a) The following projects shall be eligible for a utility reserve fund:

1. Projects to repair or replace existing utility infrastructure that is nearing the end of its useful life or is detrimental to water quality or reliability of service that is recorded in the National Association of Regulatory Utility Commissioners' Uniform System of Accounts (NARUC USOA) water utility plant account numbers 304, 305, 306, 307, 308, 309, 310, 311, 320, 330, 331, 333, 334, 335, 336, and 339, and wastewater utility plant account numbers 354, 355, 360, 361, 362, 363, 364, 365, 366, 367, 370, 371, 374, 375, 380, 381, 382, and 389;

2. Future expenditures related to land or land rights recorded in NARUC USOA water utility plant account number 303 or wastewater utility plant account number 353 if the expenditure is necessary to the successful completion of an eligible repair or replacement project;

3. Upgrades or enhancements of existing facilities if it can be demonstrated that the upgrade or enhancement is necessary to comply with federal, state, or local regulatory requirements, or provides a more cost-effective or more reliable alternative than an identical replacement, and that the upgrade or enhancement is not designed solely to address future customer growth;

4. Repair projects that may be expensed rather than capitalized, as prescribed by Rule 25-30.140(1)(g)(3), F.A.C., if it can be demonstrated that the repair expense is not already reflected in the utility's current rates as an annual or amortized annual expense, or that the annual repair and maintenance expense allowance reflected in the utility's current rates is insufficient to cover the projected costs of the proposed repair project; or

5. If a project includes both the repair or replacement of existing infrastructure and the expansion or improvement of facilities to meet future customer growth, the portion of the project that is related to the repair and replacement of existing infrastructure is eligible if those costs can be identified and segregated from the portion of the project related to the expansion or improvements designed to meet future customer growth.

(b) The following projects shall not be eligible for a utility reserve fund:

1. Projects to repair or replace general plant that is not directly associated with the physical operation of the utility's water or wastewater systems that are recorded in NARUC USOA water utility plant account numbers 340, 341, 342, 343, 344, 345, 346, 347, and 348, and wastewater utility plant account numbers 390, 391, 392, 393, 394, 395, 396, 397, and 398;

2. Expenditures related to NARUC USOA water utility plant accounts 301 and 302, and wastewater utility plant accounts 351 and 352, which cover organization and franchise related expenditures;

3. Expenditures related to land or land rights recorded in NARUC USOA water utility plant account number 303 or wastewater utility plant account number 353 if the expenditure is necessary solely to meet future customer growth; or

4. Capital improvement projects to expand existing facilities or construct new facilities solely to meet future customer growth.

(c) When evaluating whether the utility's request to create a utility reserve fund is the most appropriate methodology to address the utility's eligible future infrastructure repair and replacement projects, the following additional factors will be considered:

1. Whether the anticipated completion date of the project allows sufficient time to accumulate the funds necessary to fund the project;

2. Whether the anticipated completion date is within 24 months of the end of the historic test year used in a jointly filed rate application, if applicable, thereby making the project eligible for consideration as a pro forma project in the rate proceeding pursuant to Section 367.081(2)(a)2., F.S.;

3. Whether the contributions-in-aid-of-construction that will result from the utility reserve fund will cause the utility to exceed the service availability policy guidelines provided in Rule 25-30.580, F.A.C.;

4. Whether any of the eligible projects included in the utility reserve fund will result in the complete elimination of either the water or wastewater treatment process;

5. Whether it has been more than seven years since the utility's last rate case, if the request is filed as a stand-alone application or in conjunction with a limited proceeding; or

6. Whether the total increase resulting from implementation of the utility reserve fund surcharge will exceed the utility's annual revenues for the most recent 12-month period or test year by more than 30 percent.

(2) UTILITY RESERVE FUND FILING REQUIREMENTS. Each applicant that requests approval to create a utility reserve fund shall provide the following information to the Commission. The request may be filed as a stand-alone application or in conjunction with an application for rate increase filed pursuant to Sections 367.081(2)(a), 367.0814, or 367.0822, F.S. If the request is filed in conjunction with an application for rate increase that also requires the applicant's general information, paragraphs (2)(a), (b), and (c) may be omitted from the utility reserve fund portion of the joint application. A utility that qualifies for staff assistance as provided by Rule 25-30.455(1), F.A.C., may also request assistance with the utility reserve fund process.

(a) The utility's name as it appears on the utility's certificate, address, telephone number, and, if available, email address and fax number.

(b) The name(s), address(es), and telephone number(s) of the person(s) that should be contacted regarding this application.

(c) The address within the service area where the application is available for customer inspection during the time the rate application is pending.

(d) A statement of the reason(s) why the utility is requesting approval of a utility reserve fund.

(e) A capital improvement plan that includes: a general description of the age and condition of the utility's facilities; a description of all infrastructure repair or replacement projects that the utility anticipates will be necessary within the next five years, at a minimum, even if some projects will not be included in the utility reserve fund; and the following information for each infrastructure repair or replacement project that the utility requests be included in the utility reserve fund:

1. A description of each plant asset that will be repaired or replaced, including the NARUC USOA account number for each asset;

2. The date each asset was originally placed into service or an estimate of the age of the plant asset(s) as reflected in the utility's depreciation records if the original service date is unknown;

3. A detailed description of the reason(s) each repair or replacement project is necessary to maintain or improve the quality or reliability of the water or wastewater service, including whether any asset will be replaced prior to the end of its average service life as provided by Rule 25-30.140, F.A.C.;

4. If the repair or replacement project is required by a governmental or regulatory agency, include a copy of the rule, regulation, order, or other regulatory directive that requires the repair or replacement;

5. The projected cost to repair or replace each asset, and documentation that supports the utility's calculation of the projected cost. The utility shall make all reasonable efforts to obtain at least three comparative cost estimates for each requested project. Acceptable forms of projected cost documentation are: an estimate by a professional engineer or other person knowledgeable in design and construction of water and wastewater plants; a bid from a vendor or service provider that includes a description of all work to be completed and an itemized list of all costs associated with the project; vendor information regarding the purchase price of plant components that will be purchased directly by the utility and labor estimates for work that will be performed on the project by a utility employee or contractual service provider, along with a statement that confirms that the employee's or contractual service provider's work on the project is not included in their normal duties; or other information that shows a detailed and verifiable estimate of the projected cost. If the utility is unable to obtain three cost estimates for each project, the utility shall provide a statement explaining what steps the utility took to obtain the estimates, why the utility was unable to obtain three estimates, and any responses received from any contractors solicited.

6. Detailed specifications for each asset that can be used to verify the projected repair or replacement cost, such as type, size, quantity, or quality of the materials used to complete the repair or replacement of the asset. If the type, size, quantity, or quality of the components used to make the repair or replacement will be materially different than the plant asset(s) being repaired or replaced, describe the specific differences and why the change is either necessary or provides a better resolution for the repair or replacement;

7. If the repair or replacement will change the design of the system, include a statement explaining how the design of the system will change and why the change is either necessary or will provide a better resolution for the repair or replacement;

8. A description of any alternatives to the proposed infrastructure repair or replacement project that the utility considered, such as new technologies or interconnection with another utility system, and why the proposed project was determined to be the most cost-effective option or will provide a better resolution for the repair or replacement;

9. If the infrastructure that is being replaced was subject to a non-used and useful adjustment in the utility's last rate proceeding, include a statement explaining whether the utility considered reducing the size of the replacement infrastructure to better match the utility's capacity needs and the results of that analysis;

10. A description of any expense increases or decreases that the utility anticipates will occur following completion of the infrastructure repair or replacement project; and

11. The projected timeline and anticipated completion date for the repair or replacement project, including a detailed description of any target dates and significant milestones if the project will be completed in multiple phases. If the repair or replacement project is required by a governmental or regulatory agency, include any specific deadlines that have been imposed by that agency, and describe any penalties that will be incurred by the utility if the deadlines are not met.

(f) A description of any other funding sources that may be used for the project, including a breakdown of the estimated project costs that will be funded with the utility reserve fund, utility investment, and each available external funding source, such as a bank loan, government loan, or government grant, as applicable.

(g) A schedule showing the calculation of the annualized revenues for the most recent 12-month period using the rates in effect at the time the utility files its application for approval to create a utility reserve fund, broken down by customer class and meter size. This schedule may be omitted from the utility reserve fund portion of the application if filed in conjunction with an application for a rate proceeding that also requires an annualized revenue calculation.

(h) A schedule showing the calculation of the proposed utility reserve fund surcharge based on the number of bills by customer class and meter size for the most recent 12-month period, or test year if filed in conjunction with an application for a rate proceeding.

(i) Revised tariff sheets incorporating the utility reserve fund surcharge into the tariff. The utility shall show the utility reserve fund surcharge as a separate charge in its tariff and on its customer bills.

(j) A statement indicating whether the applicant will secure the utility reserve fund through an interest-bearing escrow account or an irrevocable letter of credit. If the utility's request to create a utility reserve account is approved by the Commission, the utility will be required to provide documentation showing that the escrow account has been established or the irrevocable letter of credit has been obtained prior to implementation of the utility reserve fund surcharge.

(k) A description of the procedures that the utility will implement to segregate the monies collected from the utility reserve fund surcharge on the utility's books and records. Separate accounting records must be maintained to record all transactions associated with the collection, deposit, and use of monies designated for the utility reserve fund. A separate bank account may be used to segregate the utility reserve fund monies that are secured through an irrevocable letter of credit but is not required.

(l) A statement signed by an officer of the utility that the utility will comply with the noticing requirements in Rule 25-30.4445, F.A.C., if the request is filed as a stand-alone application, Rule 25-22.0407, F.A.C., if the request is filed in conjunction with an application for a rate increase filed pursuant to Sections 367.081(2)(a) or 367.0814, F.S., or Rule 25-30.446, F.A.C., if the request is filed in conjunction with a limited proceeding filed pursuant to Section 367.0822, F.S.

(m) An Asset Management Plan prepared by the Florida Rural Water Association may be provided in lieu of a capital improvement plan in paragraph (2)(e).

(3) REPORTING REQUIREMENTS. Any utility that receives approval from or is required by the Commission to create a utility reserve fund must keep an accurate and detailed account of all monies and report to the Commission all monies it receives from the utility reserve fund surcharge. The reporting requirement shall begin when the utility's reserve fund surcharge tariff becomes effective. The utility must file periodic reports as follows:

(a) The utility shall file a report with the Commission Clerk's office no later than the 20th of every month indicating the monthly and total amount of money deposited into, and monthly and total amount of disbursements made from the utility reserve fund as of the end of the preceding month. If the utility bills its customers less frequently than once a month, this reporting requirement may be modified to match the utility's normal billing frequency. A copy of a bank statement that separately identifies the utility reserve fund deposits and disbursements may serve as the monthly report.

(b) At least once every six months, the utility shall also report the status of all eligible projects included in the

utility reserve fund for which work was performed during the last six months including the actual start date, the estimated or actual completion date, the costs incurred during the last six months, and the total cost for any projects completed during the last six months.

(c) The reports shall continue as long as the utility reserve fund is in effect and until all funds have been disbursed either to pay for completed eligible projects or as refunds to customers.

(d) A request for disbursement from the utility reserve fund escrow account or authorization to use funds secured by an irrevocable letter of credit may be filed in conjunction with the utility's monthly or quarterly reports.

(e) The utility shall also separately identify the utility reserve fund in its annual report filed with the Commission each year pursuant to Rule 25-30.110, F.A.C.

(f) The utility shall file an updated capital improvement plan with the Commission at least once every three years for as long as the utility reserve fund remains active.

(4) DISBURSEMENT OF FUNDS. A utility requesting disbursement of funds from an escrow account or authorization to use funds secured by an irrevocable letter of credit shall file the following information and supporting documentation:

(a) A statement explaining why the disbursement is needed, including a description of the completed project, or if a partial disbursement of funds is necessary prior to completion of the full project, a description of the completed phase of the project, purchase of materials, payments to contractors or vendors, or construction draws, as applicable;

(b) The date the project or phase of the project was completed and the replacement asset(s) was placed in service, as applicable;

(c) Documentation supporting the amount of the requested disbursement. Acceptable forms of documentation are: invoices, receipts, contractor application and request for payment forms, loan documents, documents showing proof of payment, and other information that shows detailed and verifiable project costs and payments;

(d) Documentation showing that the completed work was inspected or approved by the governmental or regulatory authority that required the repair or replacement project, if applicable; and

(e) Other documentation that demonstrates the project was completed, such as photographs of the completed work, may be submitted but is not required.

(f) A utility may request the disbursement of funds from a utility reserve fund to assist with making an emergency repair or replacement that is critical to the operation of the utility facilities and resulted from events that were out of the utility's control, such as weather related damage, accidents, or defective parts. The utility's request for an emergency disbursement must include the following information:

1. The information required in paragraphs (4)(a) through (e) above;

2. A description of any future funding sources that may be available to assist the utility with the emergency repair or replacement costs, such as government assistance for weather damage, insurance benefits, or manufacturer warranties for defective parts;

3. A statement explaining how the utility will reimburse the utility reserve fund for the emergency disbursement through future funding sources, such as, government assistance, insurance benefits, manufacturer warranties, bank loans, or utility investment. If no funding sources will be available for reimbursement of the utility reserve fund, the utility shall either provide a statement describing how the utility reserve fund project(s) or timeline may be modified to address the project funding needs without modifying the amount of the utility reserve fund surcharge, or provide the information required in subsection (5) below to request a modification of the utility reserve fund surcharge.

(5) UTILITY RESERVE FUND MODIFICATIONS. A utility that must undertake a project that was not anticipated when the utility reserve fund was created or that must make significant modifications to a previously approved project may request a modification of the utility reserve fund at any time following creation of the fund or in the utility's next rate proceeding by filing the following information:

(a) A statement describing why the new project or modification of a previously approved project is necessary, and whether the utility is requesting a change in the utility reserve fund surcharge or only acknowledgement of the project modifications. If the new project or project modification is required by a governmental or regulatory agency, include a copy of the rule, regulation, order, or other regulatory directive that requires the new project or project modification; and

(b) The information required in paragraphs (2)(e) or (m), and (f), (g), (h), and (i) if the utility is requesting a change in the utility reserve fund surcharge. Also, if the utility reserve fund is secured through an irrevocable letter

of credit, the utility shall provide an updated irrevocable letter of credit prior to implementation of the utility reserve fund surcharge increase.

(6) FINAL DISPOSITION OF UTILITY RESERVE FUND.

(a) The utility reserve fund surcharge shall be discontinued after all approved eligible project(s) have been completed, sufficient funds have been collected in the utility reserve fund to cover the cost of the approved eligible project(s), and the final disbursement has been made from the utility reserve fund. During the utility's next rate proceeding, the utility's rate base, capital structure, operating expenses, and rates shall be adjusted as needed to reflect the completed projects. The amount of the new plant assets that are funded through a utility reserve fund shall be offset with an equal addition to contributions-in-aid-of-construction.

(b) Any monies that remain in the utility reserve fund following the last disbursement for the completed eligible project(s) shall be refunded to the customers with interest in accordance with Rule 25-30.360, F.A.C.

(c) All monies collected and held in the utility reserve fund should remain with the utility regardless of any changes in utility ownership. If a utility's ownership changes through a transfer or abandonment, the Commission shall determine whether the utility reserve fund should be continued as follows:

1. In the event that the utility's ownership changes through a transfer as provided in Rule 25-30.037, F.A.C., the transfer agreement shall include provisions that state: that the utility reserve fund shall remain with the utility following the close of the sale; that the seller shall provide copies of all documents related to the utility reserve fund to the buyer, including the approved capital improvement plan, financial records, and status reports; whether the buyer requests to continue the utility reserve fund following the transfer; and whether the buyer will assume responsibility for the escrow account or obtain an irrevocable letter of credit to secure the utility reserve fund. If the buyer does not request to continue the utility reserve fund or does not provide sufficient documentation to guarantee the continued security of the utility reserve fund and compliance with the provisions set forth in this rule, all monies held in the utility reserve fund shall be refunded to the customers with interest in accordance with Rule 25-30.360, F.A.C., and the utility reserve fund surcharge and utility reserve fund shall be discontinued. However, if the transfer of ownership is requested pursuant to Rule 25-30.037(5), F.A.C., and will result in the transfer of ownership to an exempt entity other than a governmental utility, the buyer shall not be required to obtain an escrow account or an irrevocable letter of credit.

2. In the event that the utility is abandoned as provided in Rule 25-30.090, F.A.C., all monies held in the utility reserve fund and all documents related to the utility reserve fund shall remain with the utility and be turned over to the court-appointed receiver. If the utility remains under Commission jurisdiction following the abandonment, the court-appointed receiver shall be responsible for managing the utility reserve fund in accordance with this rule and all applicable Commission Orders.

(d) If the utility fails to follow through with the eligible project(s) covered by the utility reserve fund or comply with the security, fund maintenance, or reporting requirements set forth in this rule, the Commission shall initiate a review of the utility reserve fund and surcharge to determine whether the utility reserve fund and surcharge should be discontinued and whether all monies in the reserve fund should be refunded to the customers with interest in accordance with Rule 25-30.360, F.A.C.

Rulemaking Authority 350.127(2), 367.081(2)(c), 367.121 FS. Law Implemented 367.081(2)(c) FS. History—New

25-30.4445 Notice of Application for Utility Reserve Fund.

(1) This rule applies to all petitions to create a utility reserve fund filed by a water or wastewater utility that are filed as a stand-alone application. Petitions that are filed in conjunction with another rate proceeding filed pursuant to Sections 367.081(2)(a), 367.0814, or 367.0822, F.S., shall comply with the noticing requirements set forth in Rule 25-22.0407 or 25-30.446, F.A.C., as applicable.

(2) Upon filing a petition to create a utility reserve fund, the utility shall mail a copy of the petition to the chief executive officer of the governing body of each municipality and county within the service areas included in the rate request. Each copy of the petition shall be accompanied by a statement that a copy of the utility reserve fund minimum filing requirements (MFRs) set forth in Rule 25-30.444, F.A.C., when accepted by the Commission, can be obtained from the petitioner upon request.

(3) Within 30 days after the official date of the filing established by the Commission, the utility shall place a copy of the petition and MFRs at its official headquarters and at all business offices it has in the service areas

included in the request. Such copies shall be available for public inspection during the utility's regular business hours. If the utility does not have a business office in a service area included in its petition, the utility shall make other arrangements to provide public access to the petition and MFRs. Acceptable public access options are: placing a copy of the petition and MFRs at the main county library, the local community center, or other appropriate location which is within or most convenient to the service area and which is willing to accept and provide public access to the copies; providing customers with information about how to access the petition and MFRs in the utility's docket file on the Commission's Web site; or providing a printed or electronic copy of the petition and MFRs to any customer who requests access to a copy.

(4)(a) Within 50 days after the official date of filing established by the Commission, the utility shall provide, in writing, an initial customer notice to all customers within the service areas included in the utility reserve fund request and to all persons in the same service areas who have filed a written request for service or who have been provided a written estimate for service within the 12 calendar months prior to the month the request is filed. If a utility that qualifies for staff assistance under Rule 25-30.455(1), F.A.C., requests assistance with the utility reserve fund process and a customer meeting is scheduled, the initial customer notice may be combined with the customer meeting notice and provided in accordance with subsection (5) instead of 50 days after the official filing date established by the Commission.

(b) The initial customer notice must be approved by Commission staff prior to distribution and shall include the following:

1. The date the notice is to be issued;
2. A statement that the utility has filed a utility reserve fund request with the Commission and a statement of the general reasons for the request;
3. A statement of the location(s) where a copy of the petition and MFRs are available for public inspection and the hours and days when inspection may be made, or instructions on how to obtain a copy if the utility has made alternate public access arrangements as referenced in subsection (3) above;
4. A comparison of current utility reserve fund surcharge, if applicable, and the proposed new utility reserve fund surcharge;
5. The utility's address, telephone number, and business hours;
6. A statement that written comments regarding utility service or the proposed utility reserve fund rates and charges should be addressed to the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and that such comments should identify the docket number assigned to the proceeding;
7. A statement that complaints regarding service may be made to the Commission's Office of Consumer Assistance and Outreach at the following toll-free number: 1(800) 342-3552; and
8. The docket number assigned by the Commission's Office of Commission Clerk.

(c) The initial customer notice shall be mailed to the out-of-town address of all customers who have provided the utility with an out-of-town address.

(5) No less than 14 days and no more than 30 days prior to the date of a customer meeting conducted by the Commission staff, the utility shall provide written notice of the date, time, location, and purpose of the customer meeting to all customers within the service areas designated by the Commission staff. The notice must be approved by Commission staff prior to distribution. The notice shall be mailed to the out-of-town address of all customers who have provided the utility with an out-of-town address.

(6) If a proposed agency action order issued in the case is protested and any hearings are subsequently held, the utility shall give notice no less than 14 days and no more than 30 days prior to the date of each hearing held in or near a utility service area included in the utility reserve fund request. No less than 14 days and no more than 30 days prior to the hearing, the utility shall have published in a newspaper of general circulation in the area in which such hearing is to be held a display advertisement stating the date, time, location, and purpose of the hearing. These notices must be approved by Commission staff prior to publication.

(7) After the Commission issues an order granting or denying a utility reserve fund request, the utility shall notify its customers of the order and any revised rates. The customer notification must first be approved by Commission staff and shall be distributed no later than with the first bill containing any revised rates.

Rulemaking Authority 350.127(2), 367.081(2)(c), 367.121 FS, Law Implemented 367.081(2)(c), 367.091, FS, History-New

NAME OF PERSON ORIGINATING PROPOSED RULE: Cheryl Bulecza-Banks

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 07, 2017

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: Volume 42, Number 187, September 26, 2016, and Volume 42, Number 233, December 2, 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: February 22, 2017
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 New Rules 25-30.444 and 25-30.4445, 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 created new paragraph 367.081(2)(c), Florida Statutes (F.S.). These laws became effective on July 1, 2016. To implement the new laws, staff is recommending two new rules: Rule 25-30.444, F.A.C., Utility Reserve Fund, and Rule 25-30.4445, F.A.C., Notice of Application for Utility Reserve Fund. Staff is recommending these new rules 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 paragraph 367.081(2)(c), F.S., and not due to a Commission-initiated rulemaking effort. Key provisions of the new rules that are discussed in the attached SERC are summarized below.

Staff is recommending Rule 25-30.444, F.A.C., to address the legislative requirement that the Commission's rules to implement paragraph 367.081(2)(c), F.S., must include: (a) provisions related to the expenses for which the fund may be used, (b) segregation of the reserve fund accounts, (c) requirements for the utility to maintain a capital improvement plan, and (d) requirements for Commission authorization prior to disbursements from the fund.¹ Recommended Rule 25-30.444, F.A.C., is comprised of six subsections.

Subsection 25-30.444(1), F.A.C., lists the considerations that shall be applied in determining whether or not a future infrastructure repair and replacement project is eligible for advance funding through a reserve fund. Subsection 25-30.444(2), F.A.C., delineates the information that must be provided by utilities in conjunction with an application to create a reserve fund. Subsection 25-30.444(3), F.A.C., establishes the reporting requirements with which utilities must comply to keep an accurate and detailed account of all monies received from the reserve fund surcharge. Subsection 25-30.444(4), F.A.C., details the information that a utility must provide when it seeks a disbursement of reserve fund monies from an escrow account or an authorization to use reserve fund monies secured by an irrevocable letter of credit. Subsection 25-30.444(5), F.A.C., provides a mechanism for utilities to accommodate: (a) new projects, (b) significant

¹ Florida House Bill Analysis and Fiscal Impact Statement, April 15, 2016; page 10.

modifications to existing projects, and (c) changes to reserve fund surcharges, if contingencies arise that were not anticipated when the reserve fund was created. Subsection 25-30.444(6), F.A.C., specifies the conditions under which the final disposition of a utility reserve fund shall be accomplished.

Staff is recommending Rule 25-30.4445, F.A.C., to specify the noticing requirements for requests made by a utility to create a reserve fund that are filed as a stand-alone application (*i.e.*, not as part of a rate case proceeding). The requirements contained in recommended Rule 25-30.4445, F.A.C., are consistent with the requirements of Commission Rule 25-30.446, F.A.C., pertaining to applications for limited proceeding rate increases.

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 December 16, 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 rules.

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

FLORIDA PUBLIC SERVICE COMMISSION
STATEMENT OF ESTIMATED REGULATORY COSTS
Rules 25-30.444 and 25-30.4445, 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 created new paragraph 367.081(2)(c), Florida Statutes (F.S.). These laws took effect on July 1, 2016. To implement the new laws, staff is recommending two new rules: Rules 25-30.444 and 25-30.4445, Florida Administrative Code (F.A.C.). Staff is recommending these new rules so that agency 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 paragraph 367.081(2)(c), F.S., and not due to a Commission-initiated rulemaking effort. 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 rules.

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.

Recommended Rules 25-30.444 and 25-30.4445, F.A.C., would affect 145 investor-owned water and wastewater utilities that serve approximately 175,000 Florida customers. Utilities which come under the jurisdiction of the Commission in the future also would be required to comply. It is not anticipated that all utilities under the Commission's jurisdiction will establish reserve funds; however, the number of prospective reserve funds is difficult to estimate.

(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.

The evaluation of utilities' requests to establish reserve funds will require additional efforts on the part of Commission staff in the Division of Accounting and Finance, Division of Economics, Division of Engineering, and the Office of General Counsel. The Division of Consumer Assistance and Outreach also would be affected if a customer meeting is necessary. The Commission also may authorize creation of a utility reserve fund upon its own motion. Potential increased review costs that would be incurred by the agency are difficult to estimate; however, any such costs are expected to be de minimis in comparison to the work that is typically performed during a rate proceeding.

The long-term nature of the utility reserve funds potentially may result in additional administrative costs associated with staff's monitoring of the reserve fund; these costs are not typically incurred in most rate proceedings. Again, however, staff does not expect these costs to be significant in comparison with the costs associated with a typical rate proceeding.

Paragraph 367.081(2)(c), F.S., does not provide for the Commission to assess a fee to process a utility's request to establish a reserve fund. Therefore, the recommended new rules do not include an application fee to help defray costs associated with Commission staff's evaluation of the application.

(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.

Draft Rules 25-30.444 and 25-30.4445, F.A.C., are being recommended to implement the new provisions of paragraph 367.081(2)(c), F.S. 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 paragraph 367.081(2)(c), F.S., and not due to a Commission-initiated rulemaking effort. Key elements of draft Rules 25-30.444 and 25-30.4445, F.A.C., are discussed below.

(1) Background

Prior to the passage of the 2016 legislation, utilities could not begin recovering costs incurred for repairing or replacing infrastructure until after the work was completed and supporting documentation was provided in association with a rate filing, such as a rate case or limited proceeding. This traditional ratemaking approach has been problematic for some utilities that have difficulty covering project costs due to limited cash reserves, limited availability of owner or investor funding, or difficulty obtaining reasonably priced bank financing.

Utilities that lack adequate funding will often delay necessary infrastructure repair or replacement projects. Deferred maintenance of critical infrastructure components can in turn lead to increased service interruptions, increased safety issues, and a general decline in quality of service. A lack of adequate funding may also diminish a utility's ability to obtain competitive bids and hire contractors to work on the needed projects due to concerns over the utility's ability to make full payment when the work is completed. Replacement of a utility's infrastructure system, or even portions of a system, can be quite expensive and result in significant rate increases to customers. Deferred maintenance, high cost financing, and the inability to obtain competitive bids all serve to increase the overall project costs and contribute to even higher rate increases.

Pursuant to paragraph 367.081(2)(c), F.S., utilities now have the option of requesting Commission approval to create a utility reserve fund to begin accumulating funds in advance to pay for specific, planned future repairs or replacements of existing infrastructure that is nearing the end of its useful life or

is detrimental to water quality or reliability of service. A reserve fund may also be created by the Commission on its own motion. A utility's reserve fund will be funded by a portion of the water and/or wastewater service charges billed to the utility's customers. To ensure that the funds will be available for the specified projects when needed, and also to protect the customers who are paying the funds in advance of when those funds will be used, the utility reserve fund will be secured through an escrow account or a letter of credit obtained by the utility.

(2) Potential Benefits to Affected Entities

The new reserve fund option is expected to help utilities maintain or improve the quality and reliability of service to customers by helping utilities address upcoming necessary repairs or replacements more quickly and efficiently. This is particularly beneficial to utilities that have limited cash resources or difficulty obtaining outside financing. Depending on the extent of the repairs or replacements, some utilities may be able to cover the full cost of some projects with monies from the reserve fund and partially offset the cost of some other projects, thereby reducing the amount of outside financing or owner investment that is needed to complete the projects. The availability of the reserve fund also may improve utilities' ability to obtain outside financing and possibly even lower cost financing. These factors may help to reduce the overall cost of the projects, thus reducing the impact of the associated rate increase to utility customers.

Utility ratepayers potentially may benefit from the new statutes and recommended rules from the consistent maintenance or possible improvement in the utility's quality and reliability of service. This is anticipated to result from utilities' improved ability to address necessary infrastructure repair or replacement projects in a more timely and efficient manner through the use of a utility reserve fund. Ratepayers also potentially may benefit from the suggested language included in subparagraph 25-30.444 (1)(c)6., F.A.C., which states that the Commission shall consider whether the utility reserve fund surcharge will exceed the utility's annual revenues for the most recent 12-month period or test year by more than 30 percent. This recommended provision potentially might help to mitigate rate increases to customers in comparison to larger increases through traditional rate case proceedings resulting from deferred maintenance by utilities.

The recommended rules potentially may benefit contractors that are hired by utilities to perform repair and replacement work. Having reserve funds available potentially may create additional work opportunities for contractors resulting from utilities' proactive planning for future repairs; contractors also may benefit from receiving more timely payments for work performed.

State and local government entities that have environmental regulatory authority over water and/or wastewater utilities potentially may benefit from a reduction in regulatory work related to enforcement actions that become necessary when poorly maintained utilities fall out of compliance with government regulations. Local governments that may become court-appointed receivers and owners of abandoned utilities may benefit from a possible reduction in: (a) the number of

utilities abandoned due to financial and environmental compliance issues, and (b) the enforcement work associated with receivership or ownership of those utilities.

(3) Potential Additional Transactional Costs to Affected Entities

(a) General Discussion

Taking advantage of the new recommended rules is optional to utilities except in cases where the Commission acts on its own motion to require the creation of a utility reserve fund (possibly during the context of a traditional rate proceeding). Staff does not anticipate that all 145 regulated utilities will want or need to create a utility reserve fund. For utilities that do ultimately create a reserve fund, additional transactional costs potentially may be incurred; these costs are discussed below.

A utility that does not already have a capital improvement plan may incur additional costs associated with hiring an outside engineering consultant to help determine the utility's necessary future repair or replacement projects and develop a capital improvement plan. Also, a utility may incur additional transactional costs associated with the maintenance of the utility reserve fund after it is approved, such as costs associated with establishing an escrow account, filing reports on the status of the escrow account, and filing the necessary documentation to request disbursements from the escrow account to pay for completed projects. Utilities that qualify to secure the utility reserve fund through a letter of credit are expected to incur some additional transactional costs associated with segregation of the reserve fund surcharges from revenues received, filing regular reports, and obtaining approval to use the collected funds for completed projects.

Staff does not anticipate that additional transactional costs, if any, would be significant in comparison to the costs that would otherwise be incurred if the utility requested approval of those same projects under the traditional approach in a rate case proceeding. Further, it is possible that additional transactional costs may be offset by cost savings resulting from a decrease in the amount or cost of outside financing obtained to pay for the projects, or a reduction in project costs resulting from the utility's ability to address certain repair and replacement projects before the need becomes critical and possibly more expensive. Additional benefits that potentially could offset additional transactional costs are discussed in Section D(2) above.

Ratepayers are not expected to incur additional costs as a result of the recommended new rules other than a possible increase in rates that would have otherwise occurred as part of a regular rate proceeding. As discussed in Section D(2) above, use of a reserve fund potentially could mitigate rate increases to customers in comparison to larger rate increases resulting from traditional rate case proceedings.

(b) Specific Comments by Affected Entities

During the course of this rulemaking initiative, affected entities expressed comments regarding potential additional transactional costs which generally can be categorized into three major subject areas. These items are discussed below.

1. As discussed in paragraph D(3)(a) above, utilities potentially may incur additional transactional costs associated with the compilation of the capital improvement plans required pursuant to paragraph 367.081(2)(c), F.S. Recommended Rule 25-30.444(2)(e), F.A.C., contains staff's suggested listing of the basic capital improvement plan information needed to determine whether a project is appropriate to be covered by a reserve fund and to calculate the proper surcharge billed to customers. Affected entities expressed differing opinions regarding whether or not capital improvement plans also should include information pertaining to projects in addition to those directly associated with the specific request to establish or modify the reserve fund.

In response to suggestions by several participants at a rule development workshop conducted by staff on December 16, 2016, staff amended the draft language of Rule 25-30.444(2)(e), F.A.C., to provide additional clarification regarding the appropriate content of capital improvement plans. Staff believes that the recommended rule language provides a reasonable balance that encourages utilities to plan for future infrastructure repairs or replacements without creating an overly burdensome process where utilities would have to provide information that is not essential for staff to evaluate utilities' applications. Draft Rule 25-30.444(2)(m), F.A.C., also would allow utilities to submit an Asset Management Plan prepared by the Florida Rural Water Association in lieu of a capital improvement plan.

2. As discussed in paragraph D(3)(a) above, utilities potentially may incur additional transactional costs associated with the maintenance of the utility reserve fund after it is established. Among other things, paragraph 367.081(2)(c), F.S., requires the Commission's rules to address the implementation, management and use of the fund, and the segregation of reserve account funds. Recommended Rule 25-30.444(3), F.A.C., sets forth the reporting requirements that utilities with reserve funds must follow. Affected entities opined that the proposed frequency of reporting was excessive, particularly for longer term projects for which less frequent reporting, at least initially, may be sufficient.

In response to suggestions by several participants at the December 2016 rule development workshop, staff amended the draft language of Rule 25-30.444(3)(b), F.A.C., to require semi-annual rather than quarterly project status reporting. The recommended rule language is intended to establish reasonable checks and balances and an appropriate means of accounting for the monies received from the reserve fund surcharges. Staff believes that the reporting requirements included in the recommended rules are necessary because utility customers would be paying for planned repair and replacement projects in advance, before the infrastructure has been determined to be "used and useful."

3. Staff is recommending new Rule 25-30.4445, F.A.C., pertaining to noticing requirements for utilities that file a request for a reserve fund as a stand-alone application rather than as part of a rate case or a limited proceeding. Affected entities expressed concerns with the potential noticing costs that would be associated with recommended Rule 25-30.4445, F.A.C. Possible alternative suggestions included: (a) making the process simpler similar to that used for indexes and pass-throughs, and (b) placing the responsibility for doing the noticing on Commission staff rather than the utility.

Staff modeled the noticing requirements in recommended Rule 25-30.4445, F.A.C., after the noticing requirements in Rule 25-30.446, F.A.C., pertaining to applications for limited proceeding rate increases. Noticing requirements for limited proceedings are less detailed than noticing requirements required for general rate case proceedings filed pursuant to Rule 25-22.0407, F.A.C. Staff believes that the proposed noticing requirements in the new rules are reasonable and necessary because unlike simple indexes and pass-throughs for which the resultant rate increases to customers typically are small, rate increases associated with reserve funds are likely to be larger (although less than those typical of general rate case proceedings) and customers should be notified. Staff also notes that the infrastructure repairs and replacements for which reserve fund surcharges would be collected may be related to addressing water quality issues; therefore, customers should receive notice of the potential reserve fund surcharge to provide customers with an opportunity to express complaints, if any, regarding utility water quality.

In response to suggestions by several participants at the December 2016 rule development workshop, staff made several modifications to the draft language of Rule 25-30.4445, F.A.C. Staff attempted to address the concerns associated with potential noticing costs while maintaining assurance that customers would receive adequate notification of utilities' reserve fund applications. Staff deleted language which would have required utilities that file petitions for the creation of a reserve fund to publish a notice of application in a newspaper of general circulation in the service areas included in the utility reserve fund petition. Staff also added language to allow additional options for utilities to provide public access to reserve fund petitions and their associated MFRs (minimum filing requirements).

Staff has further endeavored to mitigate the cost impacts of noticing for smaller utilities. Recommended Rule 25-30.4445(4)(a), F.A.C., provides that if a utility that qualifies for staff assistance as provided by Rule 25-30.455(1), F.A.C., requests assistance with the utility reserve fund process and a customer meeting will be held for this proceeding, the initial customer notice may be deferred and combined with the required customer meeting notice. Staff also works with utilities that qualify for assistance to develop the wording of customer notices.

Staff recommends that utilities rather than Commission staff be responsible for conducting the noticing required for the establishment of a reserve fund. This is consistent with Commission noticing requirements for other rate-related proceedings. Staff also notes that utilities are more familiar with their service area(s) and have a better idea than staff regarding whom to notice.

**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 realize benefits and/or incur additional transactional costs as discussed in Section D, above.

As discussed in Section D(3) above, staff does not anticipate that additional transactional costs, if any, would be significant in comparison to the costs that would otherwise be incurred if the utility requested approval of those same projects under the traditional approach, such as requesting approval of pro forma projects in a rate proceeding. Further, it is possible that additional transactional costs may be offset by cost savings resulting from a decrease in the amount or cost of outside financing obtained to pay for the projects, or a reduction in project costs resulting from the utility's ability to address certain repair and replacement projects before the need becomes critical and possibly more expensive. Additional benefits that potentially could offset additional transactional costs are discussed in Section D(2) above.

(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 December 16, 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.

During the December 2016 workshop, affected entities initiated several topics of discussion that were conceptual in nature and pertained to the purpose and operation of prospective utility reserve funds. These discussion topics generally can be categorized into three major subject areas and are discussed below.

(1) "Emergency" Reserve Funds

Several stakeholders suggested that prospective utility reserve funds should be structured so as to be flexible enough to accommodate emergency projects that are not included in a utility's required capital improvement plan when unforeseen circumstances arise and funds are needed to pay for emergency work. The stakeholders represented that the emergency fund concept was discussed during the state Water Study Committee meetings during 2012. The findings ultimately voted on by the Water Study Committee formed the basis for the 2016 statutory language contained in paragraph 367.081(2)(c), F.S.

Other stakeholders opined that the language in paragraph 367.081(2)(c), F.S., enacted during the 2016 legislative session did not provide for the establishment of an emergency fund from which disbursements could be made for sudden unexpected projects. These stakeholders represented that while the emergency fund topic was discussed by the Water Study Committee, the final proposal voted out of the Committee did not specifically reference emergency funds. Staff

believes that because paragraph 367.081(2)(c), F.S., is silent regarding the concept of emergency funds, prospective utility reserve funds should not serve as a savings account or rainy day fund for unplanned repairs in general.

However, in response to suggestions by several participants at the December 2016 rule development workshop, staff made several modifications to the draft language of subsection 25-30.444(4), F.A.C., that would allow reserve fund disbursements for certain emergency repairs under specific circumstances. Staff added recommended paragraph 25-30.444(4)(f), F.A.C., to assist utilities with making an emergency repair or replacement that is critical to the operation of the utility facilities, and which resulted from events that were outside the utility's control, such as weather-related damage, accidents, or defective parts. Other than in the foregoing specific circumstances, staff believes that utility reserve funds should not function as general savings accounts for all unplanned repairs that are not included in a utility's capital improvement plan.

Staff also notes that recommended subsection 25-30.444(5), F.A.C., affords utilities the opportunity to modify utility reserve funds if the need should arise. The draft language in subsection (5) of the recommended rule provides the flexibility for a utility to modify its reserve fund at any time following creation of the fund or in the utility's next rate proceeding, either to accommodate significant modifications to a previously approved project or to undertake a different project that was not anticipated when the utility reserve fund was created. The utility has the option of requesting Commission approval for a change to its reserve fund surcharge or only the Commission's acknowledgment of the project modifications without a change to the surcharge.

(2) Matching of the Timing of Fund Collections and Disbursements

Rule workshop participants discussed the possibility of having flexible surcharge collection rates and flexible reserve fund disbursement provisions to allow for the matching of fund inflows and outflows when money is needed to pay for construction draws for work in progress. Staff confirmed that draft paragraphs 25-30.444(4)(a) and (c), F.A.C., were intended to address periodic construction draws; thus, staff added clarifying language to the draft rules.

(3) Funds of Utilities that are Transferred to Governmental Entities

Several stakeholders suggested that draft subsection 25-30.444(6), F.A.C., should contain special provisions to address the potential disposition of reserve fund monies when a utility is transferred to a governmental entity. One stakeholder suggested that the reserve funds remain with the customers and should be treated similarly to any customer deposits the utility has on hand at the time of the transfer (*i.e.*, refunded to the customers). Staff and other workshop participants observed that the transfer of a utility to a governmental entity occurs as a matter of right pursuant to paragraph 367.071(4)(a), F.S. Therefore, staff believes that the Commission's statutory authority is limited in this regard and the Commission does not have the authority to determine how the governmental entity potentially would administer the reserve fund.

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.