

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

NOTICE OF DEVELOPMENT OF RULEMAKING

ALL INTERESTED PERSONS

UNDOCKETED

IN RE: RULE 25-30.455, STAFF ASSISTANCE IN RATE CASES,
RULE 25-30.456, STAFF ASSISTANCE IN ALTERNATIVE RATE SETTING, AND
RULE 25-30.457 LIMITED ALTERNATIVE RATE INCREASE


ISSUED: February 2, 2018

NOTICE is hereby given pursuant to Section 120.54, Florida Statutes, that the Florida Public Service Commission staff has initiated rulemaking to amend Rule 25-30.455, Staff Assistance in Rate Cases, Rule 25-30.456, Staff Assistance in Alternative Rate Setting, and Rule 25-30.457, Limited Alternative Rate Increase, Florida Administrative Code, to update the price index and gross annual threshold level used in staff assisted rate cases for water and wastewater utilities pursuant to Section 367.0814(1), F.S.

The attached Notice of Development of Rulemaking appeared in the February 1, 2018 edition of the Florida Administrative Register. If requested in writing and not deemed unnecessary by the agency head, a rule development workshop will be scheduled and noticed in the next available Florida Administrative Register. Written requests for a rule development workshop must be submitted by February 19, 2018, to Adria Harper c/o Commission Clerk, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850. If you have any questions, please contact Ms. Harper at (850) 413-6082 or aharper@psc.state.fl.us. A copy of the preliminary draft rules is attached.

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By DIRECTION of the Florida Public Service Commission this 2nd day of February,
2018.

By: 

Hong Wang
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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Notice of Development of Rulemaking

PUBLIC SERVICE COMMISSION

RULE NOS.: RULE TITLES:

25-30.455 Staff Assistance in Rate Cases

25-30.456 Staff Assistance in Alternative Rate Setting

25-30.457 Limited Alternative Rate Increase

PURPOSE AND EFFECT: To update the price index and gross annual threshold level used in staff assisted rate cases for water and wastewater utilities pursuant to Section 367.0814(1), F.S., which requires the index updates every five years.

Undocketed

SUBJECT AREA TO BE ADDRESSED: The modification of the price index and gross annual threshold levels for staff assisted rate cases for water and wastewater utilities.

RULEMAKING AUTHORITY: 350.127(2), 367.0814, 367.121 FS.

LAW IMPLEMENTED: 367.0814 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE REGISTER.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Adria E. Harper, Florida Public Service Commission, Office of the General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850)413-6082, aharper@psc.state.fl.us.

1 **25-30.455 Staff Assistance in Rate Cases.**

2 (1) Water and wastewater utilities whose total gross annual operating revenues are
3 \$300,000 ~~\$275,000~~ or less for water service or \$300,000 ~~\$275,000~~ or less for wastewater
4 service, or \$600,000 ~~\$550,000~~ or less on a combined basis, may petition the Commission for
5 staff assistance in rate applications by submitting a completed staff assisted rate case
6 application. Reasonable and prudent rate case expense shall be eligible for recovery through
7 the rates developed by staff. Recovery of attorney fees and outside consultant fees related to
8 the rate case shall be determined based on the requirements set forth in Section 367.0814(3),
9 F.S. A utility that chooses not to exercise the option of staff assistance may file for a rate
10 increase under the provisions of Rule 25-30.443, F.A.C.

11 (2) The appropriate application form, Commission Form PSC/AFD 2-W (11/86) (Rev.
12 06/14), entitled "Application for a Staff Assisted Rate Case," is incorporated into this rule by
13 reference and is available at: <http://www.flrules.org/Gateway/reference.asp?No=Ref-04415>.
14 The form may also be obtained from the Commission's Division of Accounting and Finance,
15 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

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

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

21 (a) If the Commission has received four or more applications in the previous 30 days; or, if
22 the Commission has 20 or more docketed staff assisted rate cases in active status on the date
23 the application is received, the Commission will deny initial evaluation of an application for
24 staff assistance and close the docket. When an application is denied under the provisions of
25 this paragraph, the Commission will notify the applicant of the date on which the application
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1 | may be resubmitted.

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

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

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

11 | (7) In determining whether to grant or deny the application, the Commission will consider
12 | the following criteria:

13 | (a) Whether the applicant qualifies for staff assistance pursuant to subsection (1) of this
14 | rule;

15 | (b) Whether the applicant's books and records are organized consistent with Rule 25-
16 | 30.110, F.A.C., so as to allow Commission personnel to verify costs and other relevant factors
17 | within the 30-day time frame set out in this rule;

18 | (c) Whether the applicant has filed annual reports;

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

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

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

23 | (g) Whether the utility was granted a rate case increase within the 2-year period prior to
24 | the receipt of the application under review.

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

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

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

7 (11) A petition to protest the Commission's proposed agency action shall conform to Rule
8 28-106.201, F.A.C.

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

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

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

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

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

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

24 (14) In the event of a protest of the Commission's Proposed Agency Action Order in a
25 staff assisted rate case, the Commission staff shall:

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1 (a) File prefiled direct testimony to explain its analysis in the staff proposed agency action
2 recommendation. In the event the staff wishes to alter its position on any issue, it shall provide
3 factual testimony to support its changed position;

4 (b) Meet all other requirements of the Order Establishing Procedure; and,

5 (c) Provide to the utility materials to assist the utility in the preparation of its testimony
6 and exhibits. This material shall consist of an example of testimony filed by a utility in another
7 case, an example of testimony that would support the Proposed Agency Action Order in this
8 case, an example of an exhibit filed in another case, and examples of prehearing statements
9 and briefs filed in other cases.

10 *Rulemaking Authority 350.127(2), 367.0814, 367.121 FS. Law Implemented 367.0814 FS.*

11 *History—New 12-8-80, Formerly 25-10.180, Amended 11-10-86, 8-26-91, 11-30-93, 1-31-00,*

12 *12-16-08, 8-10-14, 2-19-17,_____.*

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1 **25-30.456 Staff Assistance in Alternative Rate Setting.**

2 (1) As an alternative to a staff assisted rate case as described in Rule 25-30.455, F.A.C.,
3 water and wastewater utilities whose total gross annual operating revenues are \$300,000
4 ~~\$275,000~~ or less for water service or \$300,000 ~~\$275,000~~ or less for wastewater service, or
5 \$550,000 or less on a combined basis, may petition the Commission for staff assistance in
6 alternative rate setting by submitting a completed staff assisted application for alternative rate
7 setting.

8 (2) The appropriate application form, Commission Form PSC/AFD 25 (11/93) (Rev.
9 06/14), entitled “Application for Staff Assistance for Alternative Rate Setting,” is incorporated
10 into this rule by reference and is available at:

11 <http://www.flrules.org/Gateway/reference.asp?No=Ref-04414>. The form may also be obtained
12 from the Commission’s Division of Accounting and Finance, 2540 Shumard Oak Boulevard,
13 Tallahassee, Florida 32399-0850.

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

17 (4) Within 30 days of receipt of the completed application, the Commission will evaluate
18 the application and determine the applicant’s eligibility for staff assistance.

19 (a) If the Commission has received four or more alternative rate setting applications in the
20 previous 30 days; or, if the Commission has 20 or more docketed staff assisted rate cases in
21 active status on the date the application is received, the Commission will deny initial
22 evaluation of an application for staff assistance and close the docket. When an application is
23 denied under the provisions of this paragraph, the Commission will notify the applicant of the
24 date on which the application may be resubmitted.

25 (b) Determinations of eligibility will be conditional, pending an examination of the
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1 condition of the applicant's books and records.

2 (5) Upon making its final determination of eligibility, the Commission will notify the
3 applicant in writing as to whether the application is officially accepted or denied. If the
4 application is accepted, staff assistance in alternative rate setting will be initiated. If the
5 application is denied, the notification of application denial will state the deficiencies in the
6 application with reference to the criteria set out in subsection (7) of this rule.

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

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

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

13 (b) Whether the applicant's books and records are organized consistent with Rule 25-
14 30.110, F.A.C., so as to allow Commission personnel to verify costs and other relevant factors
15 within the 30-day time frame set out in this rule;

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

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

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

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

21 (g) Whether the utility was granted a rate case increase within the 2-year period prior to
22 the receipt of the application under review.

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

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

2 (10) The Commission will, for the purposes of determining the amount of rate increase, if
3 any, compare the operation and maintenance expenses (O & M) of the utility to test year
4 operating revenues. The Commission will consider an allowance for return on working capital
5 using the one-eighth of O & M formula approach.

6 (11) The Commission will limit the maximum increase in operating revenues to 50 percent
7 of test year operating revenues.

8 (12) The Commission will vote on a proposed agency action recommendation establishing
9 rates no later than 90 days from the official filing date as established in subsection (6) of this
10 rule.

11 (13) A substantially affected person may file a petition to protest the Commission's
12 Proposed Agency Action Order regarding a staff assisted alternative rate setting application
13 within 21 days of issuance of the Notice of Proposed Agency Action Order as set forth in Rule
14 28-106.111, F.A.C.

15 (14) A petition to protest the Commission's proposed agency action shall conform to Rule
16 28-106.201, F.A.C.

17 (15) In the event of protest of the Proposed Agency Action Order by a substantially
18 affected person, the rates established in the Proposed Agency Action Order may be
19 implemented on a temporary basis, subject to refund with interest in accordance with Rule 25-
20 30.360, F.A.C. At that time, the utility may elect to pursue rates set pursuant to the rate base
21 determination provisions of Rule 25-30.455, F.A.C.

22 (16) In the event of a protest, the maximum increase established in subsection (11) of this
23 rule shall no longer apply.

24 (17) In the event of a protest of the Commission's Proposed Agency Action Order in a
25 staff assisted alternative rate setting application, the utility shall:

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

4 (b) Sponsor a witness to support source documentation provided to the Commission staff
5 in its preparation of the staff engineering and accounting analysis and the staff proposed
6 agency action recommendation in the case;

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

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

11 (18) Failure to comply with the dates established in the Order Establishing Procedure, or to
12 timely file a request for extension of time for good cause shown, may result in dismissal of the
13 staff assisted alternative rate setting application and closure of the docket.

14 (19) In the event of protest of the Commission's Proposed Agency Action Order in a staff
15 assisted alternative rate setting application, the Commission staff shall:

16 (a) File prefiled direct testimony to explain its analysis in the proposed agency action
17 recommendation. In the event the staff wishes to alter its position on any issue, it shall provide
18 factual testimony to support its changed position;

19 (b) Meet all other requirements of the Order Establishing Procedure; and

20 (c) Provide to the utility materials to assist the utility in the preparation of its testimony
21 and exhibits. This material shall consist of an example of testimony filed by a utility in another
22 case, a sample of testimony that would support the Proposed Agency Action Order in this
23 case, an example of an exhibit filed in another case, and examples of prehearing statements
24 and briefs filed in other cases.

25 *Rulemaking Authority 350.127(2), 367.0814, 367.121 FS. Law Implemented 367.0814 FS.*

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1 *History—New 11-30-93, Amended 1-31-00, 12-16-08, 8-10-14, _____.*

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1 **25-30.457 Limited Alternative Rate Increase.**

2 (1) As an alternative to a staff assisted rate case as described in Rule 25-30.455, F.A.C., or
3 to staff assistance in alternative rate setting as described in Rule 25-30.456, F.A.C., water
4 utilities whose total gross annual operating revenues are \$300,000 ~~\$275,000~~ or less for water
5 service and wastewater utilities whose total gross annual operating revenues are \$300,000
6 ~~\$275,000~~ or less for wastewater service may petition the Commission for a limited alternative
7 rate increase of up to 20 percent applied to metered or flat recurring rates of all classes of
8 service by filing with the Office of Commission Clerk the information required by subsections
9 (7), (8) and (9) of this rule.

10 (2) Within 30 days of receipt of the completed petition, the Commission will evaluate the
11 petition and determine the petitioner's eligibility for a limited alternative rate increase.

12 (3) The Commission will notify the petitioner in writing as to whether the petition is
13 accepted or denied. If the petition is accepted, staff assistance in alternative rate setting will be
14 initiated. If the petition is denied, the notification of petition denial will state the deficiencies
15 in the petition with reference to the criteria set out in subsection (5) of this rule.

16 (4) The official date of filing will be 30 days after the date of the written notification to the
17 petitioner of the Commission's acceptance of the petition.

18 (5) In determining whether to grant or deny the petition, the Commission will consider the
19 following criteria:

20 (a) Whether the petitioner qualifies for staff assistance pursuant to subsection (1) of this
21 rule;

22 (b) Whether the petitioners' books and records are organized consistent with Rule 25-
23 30.110, F.A.C, so as to allow Commission personnel to verify costs and other relevant factors
24 within the 30-day time frame set out in this rule;

25 (c) Whether the petitioner has filed annual reports;

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- 1 (d) Whether the petitioner has paid applicable regulatory assessment fees;
- 2 (e) Whether the petitioner has at least one year of experience in utility operation;
- 3 (f) Whether the petitioner has filed additional relevant information in support of eligibility
4 together with reasons why the information should be considered;
- 5 (g) Whether the utility was granted a rate case increase within the 2-year period prior to
6 the receipt of the petition under review;
- 7 (h) Whether a final order in a rate proceeding that established the utility's rate base, capital
8 structure, annual operating expenses and revenues has been issued for the utility within the 7-
9 year period prior to the receipt of the petition under review.
- 10 (6) The Commission will deny the petition if the petitioner does not remit the filing fee, as
11 provided by paragraph 25-30.020(2)(f), F.A.C., within 30 days after official acceptance of the
12 petition.
- 13 (7) Each petitioner for limited alternative rate increase shall provide the following general
14 information to the Commission:
- 15 (a) The name of the utility as it appears on the utility's certificate and the address of the
16 utility's principal place of business; and
- 17 (b) The type of business organization under which the utility's operations are conducted:
- 18 1. If the petitioner is a corporation, the date of incorporation and the names and addresses
19 of all persons who own five percent or more of the petitioner's stock; or
- 20 2. If the petitioner is not a corporation, the names and addresses of the owners of the
21 business.
- 22 (8) The petitioner shall provide a schedule showing:
- 23 (a) Annualized revenues by customer class and meter size for the most recent 12-month
24 period using the rates in effect at the time the utility files its petition; and
- 25 (b) Current and proposed rates for all classes of customers.

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1 (9) The petitioner shall provide a statement that the figures and calculations upon which
2 the change in rates is based are accurate and that the change will not cause the utility to exceed
3 its last authorized rate of return on equity.

4 (10) A financial or engineering audit of the utility's financial or engineering books and
5 records shall not be required in conjunction with the petition under review.

6 (11) The petition will be approved, denied, or approved with modifications within 90 days
7 from the official filing date as established in subsection (4) of this rule.

8 (12) Any revenue increase granted under the provisions of this rule shall be held subject to
9 refund with interest in accordance with Rule 25-30.360, F.A.C., for a period of 15 months
10 after the filing of the utility's annual report required by Rule 25-30.110, F.A.C., for the year
11 the adjustment in rates was implemented.

12 (13) To insure overearnings will not occur due to the implementation of this rate increase,
13 the Commission will conduct an earnings review of the utility's annual report to determine
14 any potential overearnings for the year the adjustment in rates was implemented.

15 (14) If, within 15 months after the filing of a utility's annual report the Commission finds
16 that the utility exceeded the range of its last authorized rate of return on equity after an
17 adjustment in rates, as authorized by this rule, was implemented within the year for which the
18 report was filed, such overearnings, up to the amount held subject to refund, with interest,
19 shall be disposed of for the benefit of the customers.

20 (15) In the event of a protest of the Proposed Agency Action Order pursuant to Rule 28-
21 106.111, F.A.C., by a substantially affected person other than the utility, unless the Proposed
22 Agency Action Order proposes a rate reduction, the utility may implement the rates
23 established in the Proposed Agency Action Order on a temporary basis subject to refund with
24 interest in accordance with Rule 25-30.360, F.A.C., upon the utility filing a staff assisted rate
25 case application pursuant to Rule 25-30.455, F.A.C., within 21 days of the date the protest is
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1 | filed.

2 | (16) In the event of a protest, the limit on the maximum increase provided in subsection
3 | (1) of this rule shall no longer apply.

4 | (17) If the utility fails to file a staff assisted rate case application within 21 days in the
5 | event of a protest, the petition for a limited alternative rate increase will be deemed
6 | withdrawn.

7 | *Rulemaking Authority 350.127(2), 367.0814, 367.121 FS. Law Implemented 367.0814 FS.*
8 | *History—New 3-15-05, Amended 12-16-08, 8-10-14, _____.*

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