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 14, 2018

TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk

FROM: Kathryn G.W. Cowdery, Senior Attorney, Office of the General Counsel

RE: Proposed Amendment of Rule 25-30.433, F.A.C., Rate Case Proceedings, Docket No. 20180029-WS

Please file the attached documents in the above referenced docket. Thank you.

January 10, 2018

Ms. Kathryn Cowdery
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Proposed Adoption of 25-30.433, Florida Administrative Code - Rate Case Proceedings Rule

Dear Ms. Cowdery,

In response to the Staff Workshop held on December 14, 2017 for the above mentioned proposed rule adoption and Notice of Development Rulemaking related to Rate Case Proceedings, I offer the following comments.

I am currently the Vice President of Investor Owned Utilities for the following utilities, hereafter referenced as "**Collective Utilities**" regulated by the Florida Public Service Commission:

Black Bear Waterworks, Inc.
Brendenwood Waterworks, Inc.
Brevard Waterworks, Inc.
Country Walk Utilities, Inc.
Harbor Waterworks, Inc.
HC Waterworks, Inc.
Jumper Creek Utility Company
Lake Idlewild Utility Company
Lakeside Waterworks, Inc.
LP Waterworks, Inc.
Merritt Island Utility Company
North Charlotte Waterworks, Inc.
Pine Harbour Waterworks, Inc.
Raintree Waterworks, Inc.
Seminole Waterworks, Inc.
Sunny Hills Utility Company
The Woods Utility Company

Response to the Office of Public Counsel

Rate Case Proceeding – Rule Proposal
January 10, 2018

On January 5, 2018, the Office of Public Counsel (OPC) submitted its Comments concerning the above reference rule. I offer the following specific comments concerning OPC's comments.

1) OPC states that "rate case" and "rate case proceedings" should include both Grandfather Certificate Proceedings and Original Certificate Proceeding with Existing Rates. This is incorrect. These two specific types of proceedings are not and have never been considered "rate case proceedings" by the Commission. The quality of service has not been previously considered in these types of "Certificate Cases". The Commission typically approves the existing rates of such utilities unless there is a concern or finding of potential overearnings. Typically, utilities that apply for either a Grandfather Certificate under Section 367.171, Florida Statutes, or for an Original in Existence Certificate have non-compensatory rates and are typically earning far below a reasonable rate of return. Additionally, in these instances, these utilities have not had a rate of return on equity established by the Commission. The Commission typically does not establish rate base and or audit the operating expenses of these utilities during these Certificate Dockets. Finally, the Commission historically has not allow a utility to file an actual rate case and/or rate case proceeding without first obtaining an actual approved certificate from the Commission. Certificate Cases are jurisdictionally under different Florida Statutes than rate case Florida Statutes. Even if the Commission were to analyze the quality of service in these Certificate Cases, it is unclear what actions it may take since the return on equity is not established and there is no opportunity to increase rates to recover remedial plant in service that may be required to rectify any non-compliance operational issues. All parties have historically considered (a) File and Suspend rate proceedings, (b) PAA rate cases, (c) Staff Assisted Rate Cases (SARC), and (c) Limited Proceedings as "Rate Cases" and/or "Rate Case Proceedings." It would be unprecedented to now consider any Certificate Case as a "rate case." Pursuant to Section 367.081, F.S., the Commission **shall**, either upon request or upon its own motion, fix rates which are just, reasonable, compensatory. If OPC believes that both Grandfather Certificate and Original in Existence Certificate cases are rate case proceedings, then the Commission should be required to establish compensatory rates in both types of cases, which it has historically not done in the past.

2) Although it may be "unclear" as to when the 5-year period begins for consideration, it has been abundantly clear that when a utility files for a rate case or rate case proceeding that it only has the preceding 5-year data and information to file at the time it submits its information. Historically, either this information is filed at the time of filing for file and suspend or PAA rate cases, or it is subsequently requested through a Staff Data Request shortly thereafter. Obviously, the utility can only file actual information that it has in its procession and the DEP and DOH only can supply information in its procession. However, the Commission has historically considered and allowed additional information obtained during the processing of the rate case proceeding up until either the date of the agenda for PAA cases or close of the hearings (record) for file and suspend formal rate cases.

3) Concerning customer "testimony" during rate cases. Actual "testimony" of customers is typically supplied under oath at formal hearings during a file and suspend rate cases. In these instances the customers are sworn in and agree and confirm that their comments are true and accurate under penalty of law. In PAA rate cases, SARCs, and limited proceedings – customer "comments" are offered at customer meetings and through written comments filed in the docket file without being formally sworn in and supplied under oath. In addition, utilities have always had the opportunity to supply comments in rebuttal to either customer comments or customer testimony. Additional information to address customers' concerns and/or complaints must be considered by the Commission in determining the quality of service. Typically, the utility has addressed or is in the process of addressing customer concerns. This would include both the capital costs, as well as operational costs of viable options to address concerns. Quite often, if the utility is in compliance with primary and secondary standards and the customers are still not aesthetically satisfied with the quality of the product, the utility will present options with the corresponding costs and impact on rates to the customers. Aesthetics can include a variety of items such as pressure, chlorine, taste, odor and color, as well as the secondary drinking water standards as specified in the DEP rules contained in Chapters 62-550 and 62-555, F.A.C. U.S. Environmental Protection Agency (EPA) National Secondary Drinking Water Regulations set non-mandatory Secondary Maximum Contaminant Levels (SMCLs) for constituents based on aesthetic considerations, such as taste, color, and odor. EPA and DEP do not enforce these SMCLs. Such constituents are not considered to present a risk to human health at or below the SMCL. However, the impact on customer rates should be considered in determining remedial options to address customer concerns.

4) Concerning paragraph two (2), and OPC's comment number five (5), it should be stated that although consent orders, violations, sanitary surveys, inspections, and boil water notices have been and should be "considered" in the evaluation of quality of service; these in and of themselves should not be the only consideration. It should be noted that typically Consent Orders are an "agreement" between a utility and the Department of Environmental Protection (DEP) to address operational issues and/or violations such as specific exceedances of standards. Consent Orders should not be considered an indication of poor quality of service *unless* the utility is not taking agreed upon actions to address the specific circumstances. There are three specific instances where the Collective Utilities are currently working with the DEP on potential consent orders to address quality of service. In these instances, DEP has stated that it is required to issue consent orders but is cooperating and working with the utilities to establish the appropriate remedial actions and timelines to install the necessary treatment and bring it online. In these specific instances the Collective Utilities are working cooperatively with the DEP to formalize agreed upon language and appropriate timelines.

   As for boil water notices, most boil water notices are *precautionary advisories* issued as a result of main or line breaks. If the main breaks or the resultant shut-down results in a loss of pressure to the system below 20 psi, Florida regulators (FDEP)

require issuance of a precautionary boil water notice (PBWN) to the affected customers because of a remote possibility that depressurization of the system could result in contamination. Lifting the advisory usually requires collection of two sets of bacteria samples on two consecutive days once system pressure is restored. The laboratory test requires at least 24 hours to complete this process. Therefore, these advisories are normally in effect for three days, and sometimes longer if the laboratory is not open, for instance over a weekend or holiday. The verbiage in the mandatory PBWN is dictated by the regulations and can give the impression that contamination of the water system has occurred. However, in almost every case, tests come back clear demonstrating that there never was any contamination of the system. The notices are required and are issued out of an abundance of caution to protect susceptible persons from a remote possibility of contamination.

5) In reference to paragraph eleven (11) and OPC comment number seven (7), Collective Utilities do not agree that the precedential requirement of Section 367.1213, Florida Statutes should be expanded beyond its statutory limitations. OPC's comments appear to be a solution in search of a problem that doesn't exist. Section 367.1213, F.S. is quite clear that the requirement of ownership is limited to "the land upon which treatment facilities are located." This statutory requirement cannot be procedurally expanded by the Commission through rulemaking without specific statutory authority to do so. It is quite common that utilities do not and cannot own land where water distribution or wastewater collection lines are located. There are circumstances where a utility may have a recorded easement to such properties or right of way allowances, but this is not always the case, especially for older utilities which have subsequently been acquired and/or abandoned. This expanded requirement would be unprecedented and would require extraordinary financial costs to utilities which would ultimately be passed onto the ratepayers.

Thank you for your consideration, and if you have any questions, please do not hesitate to contact me at (727) 848-8292, ext. 245, or via e-mail at trendell@uswatercorp.net.

Sincerely,

Troy Rendell
Vice President
Investor Owned Utilities

friedman & friedman PA
ATTORNEYS AT LAW

January 7, 2018
Vis e-mail only: kcowdery@psc.state.fl.us

Kathryn Cowdery, Esquire
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

RE: Undocketed; Amendments to Rule 25-30.433, F.A.C
Our File No. 30057.87

Dear Kathryn:

Utilities, Inc. of Florida is compelled to respond to OPC's comments submitted in connection with the recent workshop on amendments to Rule 25-30.433, F.A.C. The Staff's proposed revised language in new (11) is grammatical in nature and not substantive. With regard to new (11), OPC is suggesting a substantial change to require a utility in a rate case to provide proof of right of use and access to include not just the treatment facilities, but also transmission, distribution and collection lines and facilities.

First, I am unaware that there has been any problem that would compel or justify a change from the status quo. "If it ain't broke, don't fix it." Further, to require a utility to obtain the documentation OPC is suggesting would be monumental for a utility the size of UIF and would result in substantial additional rate case expense. As you know, utility transmission, distribution and collection systems (and lift stations) are located in public rights of way, recorded and implied easements, plats and by prescription. To provide the type of documentation OPC is suggesting for every foot of transmission, distribution and collection systems is unnecessary, and UIF requests OPC's suggestions not be included in any amendment.

Should you or other Staff have any questions, please do not hesitate to give me a call.

Very truly yours,

/s/ Martin S. Friedman

MARTIN S. FRIEDMAN
For the Firm

MSF/
cc: John Hoy (via e-mail)
Patrick Flynn (via e-mail)
Eric Sayler, Esquire (via e-mail)
Andrew Maurey (via email)
Troy Rendell (via email)