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STATE OF FLORIDA



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

Public Service Commission

February 14, 2019

Mr. Chris Bailey
Rules Ombudsman in
The Executive Office of the Governor
Reg.Reform@eog.myflorida.com

SENT VIA E-MAIL

Re: Docket No. 20180141-WS, Rule 25-30.4575 Operating Ratio Methodology, F.A.C.

Dear Mr. Bailey:

The Florida Public Service Commission proposed the above-listed rule at their regular agenda conference on February 5, 2019. The Commission has determined that this rule 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 rule, which was published in the February 7, 2019, edition of the FAR. Also enclosed is a copy of the statement of estimated regulatory costs (SERC). The SERC concluded that the proposed rule amendments will not have an adverse effect on small business. Pursuant to your instructions, we have filled out and included a copy of the OFARR rulemaking notification form.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Adria E. Harper".

Adria E. Harper
Senior Attorney

Enclosures
cc: Office of the Commission Clerk

RECEIVED-FPSC
2019 FEB 14 PM 3:51
COMMISSION
CLERK

Notice of Proposed Rule

PUBLIC SERVICE COMMISSION

RULE NO: RULE TITLE:

25-30.4575 Operating Ratio Methodology

PURPOSE AND EFFECT: To codify the Commission's use of the operating ratio methodology for water and wastewater utilities in staff assisted rate cases.

Docket No. 20180141-WS

SUMMARY: The operating ratio methodology assists the small water and wastewater utilities in staff assisted rate cases by substituting operation and maintenance expenses for rate base in calculating the amount of return component of revenue requirement. The operating ratio methodology will only be used for those utilities whose rate base is no greater than 125 percent of operation and maintenance expenses and will only be used for utilities that continue to qualify for a staff assisted rate case. The operating ratio methodology allows eligible utilities to receive margin of 12 percent of the utility's operation and maintenance expenses. Eligible utilities will not receive more than a \$15,000 margin.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION: The agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has been prepared by the agency. The SERC examined the factors required by subsection 120.541(2), FS, and concluded that the rule will not have an adverse impact on economic growth, business competitiveness, or small business and that there would likely be transactional cost savings to the individual and entities, including government entities, required to comply with the rule

The agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: based on 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: 367.0814(9) FS.

LAW IMPLEMENTED: 367.0814(9) 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:

25-30.4575 Operating Ratio Methodology.

(1) Under the operating ratio methodology, instead of calculating the utility's revenue requirement based on a rate of return on the utility's rate base, the revenue requirement includes the utility's operating expenses plus a margin of 12 percent of the utility's operation and maintenance expenses. For utilities that are resellers, purchased water and purchased wastewater expenses will be removed from operation and maintenance expense before the 12 percent margin is applied. The operating ratio adjustment shall be no more than \$15,000.

(2) In rate cases processed under Rule 25-30.455, F.A.C., the Commission will use the operating ratio methodology to establish the utility's revenue requirement when:

(a) The utility's rate base is no greater than 125% of operation and maintenance expenses; and

(b) The use of the operating ratio methodology does not change the utility's qualification for a staff assisted rate case under subsection 25-30.455(1), F.A.C.

Rulemaking Authority 367.0814(9) FS. Law Implemented 367.0814(9) FS. History- New

NAME OF PERSON ORIGINATING PROPOSED RULE: Cissy Galloway

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 5, 2019.

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: Volume 43, Number
229, November 29, 2017.

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: November 15, 2018

TO: Adria E. Harper, Senior Attorney, Office of the General Counsel

FROM: Sevini K. Guffey, Public Utility Analyst II, Division of Economics *S.K.G.*

RE: Statement of Estimated Regulatory Costs for Proposed Adoption of Rule 25-30.4575, Florida Administrative Code (F.A.C.), Operating Ratio Methodology

The operating ratio methodology is an alternative to the traditional calculation of revenue requirement for smaller water and wastewater utilities and was first implemented by the Commission in 1996. The purpose of the proposed new Rule 25-30.4575, F.A.C., is to codify the Commission practice of using the operating ratio methodology when determining the revenue requirement in staff assisted rate cases for water and wastewater utilities.

Subsection (1) of Rule 25-30.4575, F.A.C., provides that the operating ratio methodology calculates the water and water utility's revenue requirement based on the utilities' operating expenses plus a margin of 12 percent of the utilities' operation and maintenance expenses and the operating ratio adjustment shall be capped at \$15,000. For utilities that are resellers, their purchased water and wastewater expenses will be removed from the operation and maintenance expense before the 12 percent margin is applied.

Subsection (2) of Rule 25-30.4575, F.A.C., provides that the operating ratio methodology may only be used for utilities whose rate base is no greater than 125 percent of operation and maintenance expenses and when the use of the operating ratio methodology would not change the utility's eligibility for a staff assisted rate case under Rule 25-30.455(1), F.A.C.

Although the new rule applies to 132 investor-owned water and wastewater utilities, not all will qualify for the operating ratio methodology due to the rate base criteria contained in the proposed rule. A workshop to solicit input on the recommended rule was conducted by Commission staff on December 14, 2017. Several comments were received during the workshop from the Office of the Public Counsel (OPC) and a representative of U.S. Water Services Corporation (U.S. Water). Post-workshop written comments were received from OPC and U.S. Water.

At the October 30, 2018 Agenda Conference, OPC asked the Commission to defer the item so that OPC and staff could further discuss a potential compromise on rule language. The Commission deferred the item. On November 8, 2018, staff held an informal meeting on the rule, which included OPC, U.S. Water, Jeff Small with OCBOA Consulting, LLC, and Mike Smallridge.

The attached Statement of Estimated Regulatory Costs (SERC) addresses the considerations required pursuant to Section 120.541, Florida Statutes (F.S.). No regulatory alternatives were submitted pursuant to Paragraph 120.541(1)(a), F.S. None of the impacts/cost criteria established in Paragraph 120.541(2)(a), F.S. will be exceeded as a result of the recommended revisions.

cc: SERC File

FLORIDA PUBLIC SERVICE COMMISSION
STATEMENT OF ESTIMATED REGULATORY COSTS
Chapter 25-30.4575, 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

If the answer to Question 1 is "yes", see comments in Section E.

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 new rule is included in the attached memorandum to Counsel. Staff believes that none of the impacts/cost criteria established in Paragraph 120.541(2)(a), F.S. will be exceeded as a result of the proposed new rule. The proposed new rule is not imposing any new regulatory requirements, only codifying existing Commission practice of using a variation of the rate of return methodology in determining that revenue requirement for staff assisted rate cases.

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.

Potentially affected entities include 132 investor-owned water and wastewater utilities that serve approximately 177,256 customers in Florida. Water and wastewater utilities which come under the jurisdiction of the Commission in the future also may be affected by the new rule.

(2) A general description of the types of individuals likely to be affected by the rule.

The 132 investor-owned water and wastewater utilities and customers of those utilities are likely to be affected by this rule.

C. A good faith estimate of: [120.541(2)(c), F.S.]

(1) The cost to the Commission to implement and enforce the rule.

None. To be done with the current workload and existing staff.

Minimal. Provide a brief explanation.

Other. Provide an explanation for estimate and methodology used.

(2) The cost to any other state and local government entity to implement and enforce the rule.

- None. The rule will only affect the Commission.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

(3) Any anticipated effect on state or local revenues.

- None.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

D. A good faith estimate of the transactional costs likely to be incurred by individuals and entities (including local government entities) required to comply with the requirements of the rule. "Transactional costs" include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used, procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring or reporting, and any other costs necessary to comply with the rule.
[120.541(2)(d), F.S.]

- None. The rule will only affect the Commission.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

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.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

(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:

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.

To: Chris Bailey, Director

Submitted By: [Adria Harper, Senior Attorney]
[Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850]
[850) 413-6082]

Re: Rulemaking Notification for:

Rule Number	Rule Title
25-30.4575, F.A.C.	Operating Ratio Methodology

List EACH rule singly. Add lines as needed.

Date: [Date request sent to OFARR] Date of anticipated publication: _____

Does this rule qualify for Rules Ombudsman review in accordance with section 120.54(3)(b), F.S.?
 Yes No

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

1. Proposed Rulemaking Activity:

- Notice of Development of Rulemaking – Attach the proposed Notice. If no text is available, give a detailed explanation of the rulemaking, including why it is necessary.
- Notice of Proposed Rule – Attach the proposed Notice, “Is a SERC Required” Checklist, and SERC (if required), all materials incorporated by reference, and all forms referenced or required by the rule.
- Notice of Emergency Rule – Attach the proposed Notice. Explain fully why emergency rulemaking is appropriate.
- Notice of Change – Attach the proposed Notice. Be sure the text is coded correctly according to Rule 1B-30.003(5)(f), F.A.C. Explain why a change is required. Attach any correspondence from JAPC or the public. If no documents exist, summarize any public comment the agency has received or public hearings/workshops the agency has held.
- Notice of Withdrawal – Attach the proposed Notice. Explain why it is necessary to withdraw the rulemaking. Include any JAPC correspondence.
- Other – Attach the proposed Notice. Include detailed information about the rulemaking.

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

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

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
N/A	

List EACH rule singly. Add lines as needed.

4. Has the agency received any public comment about this rulemaking, since the last rulemaking notification? N/A

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)? N/A

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? N/A

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

Julie Phillips

From: Adria Harper
Sent: Thursday, February 14, 2019 3:41 PM
To: Reg.Reform@eog.myflorida.com
Cc: Julie Phillips
Subject: Public Service Commission New Rule 25-30.4575, Operating Ratio Methodology
Attachments: EOG Rule Ombudsman Ltr 2-14-19.pdf

Good afternoon,

Please accept the attached letter and corresponding rule documents for the Public Service Commission's Rule Proposal for Rule 25-30.4575, F.A.C. If you could please confirm receipt of this correspondence, I would appreciate it.

Thank you in advance for your attention to this matter,
Adria

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.