

STATE OF FLORIDA

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

Public Service Commission

April 26, 2019

Kenneth J. Plante, Coordinator
Joint Administrative Procedures Committee
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, FL 32399-1400

Re: Docket : 20190095-WS, Petition for declaratory statement by Office of Public Counsel regarding Rules 25-30.350 and 25-30-360, F.A.C.

Dear Mr. Plante:

The Florida Public Service Commission received a Petition for Declaratory Statement from Office of Public Counsel on April 18, 2019. A copy of the petition is enclosed. A notice was published in the Florida Administrative Register on April 23, 2018.

Sincerely,

Adria E. Harper
Senior Attorney

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2019 APR 26 AM 9:48
COMMISSION
CLERK

Enclosures

Cc: Office of Commission Clerk

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Office of Public Counsel for /
Declaratory Statement Regarding Rules 25-30.350 and / Docket No. _____
25-30.360, Florida Administrative Code /
_____/ Filed: April 18, 2019
/

PETITION FOR DECLARATORY STATEMENT

Pursuant to Section 120.565, Florida Statutes and Rule 28-105.002, Florida Administrative Code, the Office of Public Counsel (“OPC” or “Citizens”), by and through undersigned counsel, on behalf of the Citizens of the State of Florida, hereby petitions the Florida Public Service Commission (“Commission” or “PSC”) to issue a declaratory statement recognizing that utility wastewater overbilling refunds should be calculated pursuant to Florida Rule of Administrative Procedure 25-30.350 and distributed in accordance with Florida Rule of Administrative Procedure 25-30.360. The declaratory statement sought by OPC is necessitated by a lack of any previous order interpreting or applying the overbilling portion of the rule since its inception. OPC needs to know how, going forward, the Commission will construe Rules 25-30.350 and 25-30.360, Florida Administrative Code, together, to establish the time period for which customers may be eligible to receive refunds for overbilled amounts.

INTRODUCTION

1. OPC was created by the Florida Legislature to provide legal representation for the Citizens of the State of Florida in proceedings before the Commission. *See* § 350.0611, Fla. Stat. (2018). OPC’s offices are located at 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400.

2. Any pleading, motion, notice, order, or other document required to be served upon the Petitioner or filed by any party to this proceedings should be served upon the following individuals:

J.R. Kelly, Public Counsel
Public Counsel

A. Mireille Fall-Fry,
Associate Public Counsel
Florida Bar No. 758841
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
FALL-FRY.MIREILLE@LEG.STATE.FL.US
(850)488-9330

DECLARATORY STATEMENT REQUESTED

3. Based on the description of circumstances, provisions of law, established Commission precedent, and analysis set forth in this Petition, OPC respectfully requests the Commission to issue an order declaring:

Whenever a water or wastewater customer is overbilled, Rule 25-30.350, Florida Administrative Code, requires the utility to refund the overcharge starting from the date the overbilling commenced and proscribes the method for calculating the refund. Rule 25-30.360, Florida Administrative Code, provides the method for distribution of any refund. Neither Rule 25-30.350 nor Rule 25-30.360 allows the Commission discretion to choose a timeframe shorter than when the overbilling commenced, to the extent it is determinable.

SUBSTANTIAL IMPACT ON OPC UNDER THE PARTICULAR SET OF CIRCUMSTANCES DESCRIBED HEREIN

4. OPC represents all citizens of the State of Florida. Every customer in the state has a right to know whether they are entitled to receive a full refund in the event of any overbilling.

Section 350.0611, Fla. Stat., requires OPC to provide legal representation for the people of the state in proceedings before the Commission. The statute specifically enumerates the OPC's duties to include petitioning the Commission to urge any position it deems to be in the public interest. § 350.0611(1), Fla. Stat. (2018). The duty to represent the people of the state includes the duty to advocate on Citizens' behalf to obtain properly calculated refunds when they have been overbilled. Going forward, a failure by the Commission to follow the rules in the Administrative Code that govern the agency would impair OPC's ability to represent the Citizens of the State in any proceeding or action before the Commission fully, efficiently and effectively, in derogation of OPC's duties under Section 350.0611, Florida Statutes. Furthermore, providing OPC with the requested declaration can help avoid costly administrative litigation. *See 1000 Friends of Fla., Inc. v. State*, 760 So. 2d 154, 157 (Fla. 1st DCA 2000) ("A party who obtains a statement of the agency's position may avoid costly administrative litigation by selecting the proper course of action in advance.").

Specifically, the Commission's failure to fully enforce the mandatory provisions of Rule 25-30.350, F.A.C., would be contrary to law and would irreparably harm every utility customer in the state who is ever overbilled due to the actions of the utility company.

RELEVANT STATUTES, RULES, AND ORDERS

5. The following statutes, rules, and orders are relevant to the disposition of OPC's Petition:
- a. Statutes: § 367.081, § 367.091, and § 367.161, Fla. Stat. (2018).
 - b. Agency Rules: Rule 25-30.350, Fla. Admin. Code; Rule 25-30.360, Fla. Admin. Code.
 - c. Orders: Order No. PSC-2018-0444-PAA-SU, (PAA Order).

DEFINITIONS AND DESCRIPTION OF GENERAL PROCEDURES

6. In this section, OPC will define and differentiate certain terms as they are used within this Petition.

a. *Overbilling* is any billing of a water or wastewater customer in excess of the Commission's approved tariff for the amount of water or wastewater that the customer actually consumed, whether that amount is a result of an incorrect charge or an incorrect meter reading.

ANALYSIS OF RELEVANT STATUTES AND RULES

In the section that follows, OPC will discuss the application of these statutes and rules to the instant Petition.

7. Rule 25-30.350, Florida Administrative Code, states, in relevant part:

In the event of an overbilling, the utility shall refund the overcharge to the customer based on available records. If the commencement date of the overbilling cannot be determined, then an estimate of the overbilling shall be made based on the customer's past consumption.

8. Prior to its amendment in 2013, Rule 25-30.350 addressed only backbilling for undercharged accounts. *See In re: Revision to Rule 25-30.335, Customer Billing, Revision to Rule 25-30.350, Backbilling, Adoption of Rule 25-30.351, Unauthorized Use, F.A.C., Order No. PSC-13-0242-FOF-WS, 13 FPSC 6:23 (F.P.S.C. Jun. 3, 2013).*

9. The Commission has not yet issued an order interpreting or applying the rule as revised.

10. The plain language of Rule 25-30.350, Florida Administrative Code, does not provide discretion to choose or limit time periods for which some overbilling must be refunded. There is no discretion written into the rule to limit the time period, to the extent the time period is identifiable.

11. Rule 25-30.360, Florida Administrative Code, states, in part:

With the exception of deposit refunds, all refunds ordered by the Commission shall be made in accordance with the provisions of this Rule, unless otherwise ordered by the Commission. . . . Where the refund is the result of a specific rate change, including interim rate increases, and the refund can be computed on a per customer basis, that will be the basis of the refund. Where the refund is not related to specific rate changes, such as a refund for overearnings, the refund shall be made to customers of record as of a date specified by the Commission. In such case, refunds shall be made on the basis of usage. Per customer refund refers to a refund to every customer receiving service during the refund period. Customer of record refund refers to a refund to every customer receiving service as of a date specified by the Commission.

12. The two rules should be read together, in harmony, because each rule has a distinct purpose and only when they are construed together can they achieve the full purpose intended by the Commission. Rule 25-30.350 is used to determine the overbilled amount. *See* Rule 25-20.350, Fla. Admin. Code (“In the event of an overbilling. . . .[i]f the commencement date of the overbilling cannot be determined. . .”). Rule 25-30.360 is used to determine the body of customers eligible for refunds and the procedure to disburse those refunds. *See* Rule 25-30.360 (“ . . . the refund shall be made to customers of record as of a date specified by the Commission.”). In short, Rule 25-30.350 is the substantive rule to determine the overbilled amount and Rule 25-30.360 is a procedural rule that outlines the process to follow subsequent to the calculation.

13. Every customer in the state is entitled to know whether they would receive a full refund for the entire time they were overbilled in the event overbilling is discovered.

CONCLUSION

Based on the plain language of Rule 25-30.350, Florida Administrative Code, as amended in 2013, the Commission should ensure that every overbilled customer is eligible to receive a refund for the entire period they have been overbilled to the extent the commencement

date of the overbilling can be determined, or for an estimate of the overbilling based on the customer's past consumption if the commencement date cannot be determined. Going forward, the plain language of Rule 25-30.350 should be invoked in every case involving an overbilling issue.

DECLARATORY STATEMENT SOUGHT FROM THE COMMISSION

WHEREFORE, OPC requests that the Commission issue a declaratory statement recognizing that overbilling refunds should be calculated pursuant to Rule 25-30.350 and disbursed pursuant to Rule 25-30.360.

J.R. KELLY,
Public Counsel

/s/ A. Mireille Fall-Fry
A. Mireille Fall-Fry
Associate Public Counsel
Florida Bar No. 758841
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400

Attorneys for the Citizens
of the State of Florida

NOTICE OF DECLARATORY STATEMENT

PUBLIC SERVICE COMMISSION

NOTICE IS HEREBY GIVEN that the Florida Public Service Commission has received a petition for a Declaratory Statement pursuant to Section 120.565, F.S., from the Office of Public Counsel on April 18, 2019.

The petition asks the Florida Public Service Commission to declare pursuant to Sections 367.081, 367.091 and 367.161, F.S., Rules 25-30.350 and 25-30.360, F.A.C., and Order No. PSC-2018-0444-PAA-SU, that overbilling refunds should be calculated pursuant to Rule 25-30.350, F.A.C, and disbursed pursuant to Rule 25-30.360, F.A.C. Docket No. 20190095-WS.

A copy of the petition may be obtained by contacting: Adam Teitzman, Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, clerk@psc.state.fl.us, (850)413-6770.

Please refer all comments to: Adria E. Harper, c/o Adam Teitzman, Office of Commission Clerk. Ms. Harper's contact information is aharper@psc.state.fl.us, (850)413-6082.

Except for good cause shown, motions to intervene pursuant to Rule 28-105.0027, F.A.C., or petitions for administrative hearing must be filed within 21 days after publication of this notice.