

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: May 16, 2019
TO: Adam J. Teitzman, Commission Clerk, Office of Commission Clerk
FROM: Kathryn G. W. Cowdery, Office of the General Counsel *KW*
RE: Docket No. 20190000-OT

Please file the attached materials in the docket file listed above.

Thank you.

Attachment

RECEIVED-FPSC
2019 MAY 16 AM 10:06
COMMISSION
CLERK

May 15, 2019

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

Re: Rule 25-30.457, Florida Administrative Code, Limited Alternative Rate Increase Workshop

Dear Ms. Cowdery,

In reference to the Staff Workshop to be held on May 15, 2019 concerning Rule 25-30.457, Florida Administrative Code (F.A.C.) - Limited Alternative Rate Increase (LARI), I offer the following comments for consideration.

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.
Gator Waterworks, 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

General Comments on Rule 25-30.457, F.A.C.

Rule 25-30.457, F.A.C., was adopted on March 15, 2005. The Rule was amended in 2008, 2014, and 2018. Under provisions of this Rule, the Commission previously approved such petitions twice in the following Orders:

<u>Order No.</u>	<u>Issued</u>	<u>Utility</u>
PSC-06-0822-PAA-WU	October 6, 2006	Pinecrest Ranches, Inc.
PSC-06-0444-PAA-WU	May 22, 2006	Brendenwood Water System, Inc.

Recently, the FPSC again approved increases under the provisions of this rule in the following Orders:

<u>Order No.</u>	<u>Issued</u>	<u>Utility</u>
PSC-2019-0141-PAA-WS	April 22, 2019	LP Waterworks, Inc.
PSC-2019-0142-PAA-WU	April 22, 2019	Lake Idlewild Utility Company
PSC-2019-0145-PAA-WS	April 23, 2019	Jumper Creek Utility Company

I personally had the privilege of bringing forth the FPSC staff recommendation on the adoption of the LARI Rule for consideration by the Commission. In its recommendation (**Document 05793, filed May 2, 2004**), staff provided the following information:

Providing small utilities with another method to obtain rates that are closer to compensatory levels may help to mitigate "rate shock," lower rate case expense, and reduce the Commission's labor. Staff believes the result will be less costly regulation.

Staff provided further explanation in that: "(Commission staff will follow its current practice of conducting an earnings review of each annual report.)" **emphasis added**

Thus, once a utility files its petition for a LARI, the FPSC staff utilizes the most recent Annual Report for surveillance purposes. For its analysis, the staff utilizes the utility's last rate case (SARC) to make any FPSC ordered adjustments to the utility's Annual Report. This is consistently applied during the annual surveillance. This is also utilized to analyze a utility's LARI increase in order to determine (1) whether the utility should be granted a LARI increase; and (2) the appropriate percentage of increase.

A utility may request up to a twenty percent (20%) increase but the FPSC staff may also recommend either (a) no increase be granted; or (b) a lesser amount (percentage) of increase. The LARI was intended to mirror the index increases but allow for a slightly larger amount of increase.

The recommendation also stated:

A rule development workshop was held in Orlando on February 12, 2004. Catherine Walker of the St. Johns River Water Management District and **Stephen Reilly of the Office of Public Counsel (OPC)** participated and later submitted comments. (emphasis added)

The OPC originally had several initial concerns with the rule as first proposed. The most significant being the original proposed rule specifically excluded a customer meeting. Staff's recommendation addressed OPC initial concerns as follows:

Staff has also revised the recommended rule to accommodate several of OPC's concerns including requiring a copy of the utility's petition to be placed in its business office and including the information about its availability in the customer notice that is sent after the issuance of a PAA order granting the rate increase. (emphasis added)

Continued:

OPC also proposed adding the requirement for a customer meeting conducted by staff and a customer notice sent after the Commission officially accepts the utility's application but at least 21 days prior to the meeting. Staff believes such a requirement will defeat the purpose of the rule to provide a procedure for small utilities to obtain a minimal rate increase in a manner that is faster and less costly to the Commission and the utilities.

In a subsequent recommendation (**Document 07423, filed July 8, 2004**), staff made further revisions to the proposed rule to further address the OPC's concerns. Specifically the recommendation stated:

Staff also revised Rule 25-30.457 and added a new rule to accommodate several of OPC's concerns. The changes to Rule 25-30.457 include requiring a copy of the utility's petition to be placed in its business office; requiring the petitioner to have filed all annual reports required by Commission rule instead of only the report for the historical test year; and modifying the requirement that there must have been a final order in a rate proceeding issued for the utility within the seven-year period prior to the application to specify that the order must have established the utility's rate base, capital structure, annual operating expenses and revenues. In addition, Rule 25-30.458 was added to respond to OPC's concern that no customer meeting would be held. Commission staff will conduct a customer meeting prior to filing a recommendation on the limited alternative rate increase. Rule 25-30.458 thus requires the utility to send a customer notice prior to the meeting as well as another notice after the issuance of a PAA order granting the rate increase. (emphasis added)

The Commission approved staff's recommendation at the July 20, 2004 Agenda Conference with a modification that the customer meeting is required to be conducted no less than 21 days prior to Commission action on the application. (**Document 07890, filed July 20, 2004**)

However, after the approval the Joint Administrative Procedures Committee (JAPC) provided comments on suggested revisions to the proposed rule. These comments were subsequently addressed in staff's recommendation (**Document 00167, filed January 6, 2005**). In its recommendation, staff stated:

After the rule was proposed, a staff attorney for the Joint Administrative Procedures Committee (JAPC) submitted comments on the following subsections of the rule. **Commission staff worked with the JAPC attorney and the Office of Public Counsel (OPC) to draft changes to the proposed rule to resolve the concerns that were raised.** A copy of the rule as proposed by the Commission is attached, with the changes staff recommends shown in type-and-strike format. (emphasis added)

OPC Concerns

At the April 2, 2019 Agenda Conference, the OPC stated that it had concerns with the LARI Rule as currently written. As I understand it, OPC's primary concern relates to whether the filing requirements contained in the rule are extensive enough and whether the existing rule tends to be "automatic" in that if a utility meets all the filing requirements, the twenty percent (20%) increase is automatic. The Collective Utilities disagree. Although the rule was intended to somewhat mirror the index increase, the filing requirements contained in the rule were included with purpose. As stated previously, the staff is required to continue to analyze and follow the same provisions as a surveillance analysis. Thus, the staff conducts further analysis utilizing the utility's Annual Reports and past Commission orders (SARC & LIMP). This analysis provides for a basis of determining whether a utility is entitled to an increase, and if so, how much of an increase. The Commission has complete discretion to either deny the request, or modify the increase amount to a lesser amount based upon the Commission staff's analysis of the utility's earnings. Also during this process the staff retains the authority to issue further staff requests for information. These requests may include, but not be limited to, a listing of anticipated capital plant improvements, replacements, and/or repairs; known and measurable changes in operating expenses, etc.

Collective Utilities Concerns

The period of time a LARI increase is held subject to refund can be significantly long. The increase is held subject to refund for a period of 15 months after the filing of its annual report for the year the adjustment in rates were implemented. So if an increase is placed into service early in any given year, the annual report is due March 31st of the following year, but there is also an automatic one month extension upon request. So an annual report may not be filed until April of the following year. Potentially, a year may already have passed, then adding an additional fifteen months would be over two years (27 months).

There is concern on two issues. The first being security and the other is reporting requirements. Each will be addressed separately.

Security

In neither of these two previous orders referenced above (Pinecrest & Brendenwood) were the utilities required to provide security or provide monthly reporting of increased revenue. Again, the LARI was intended to mirror the index increases.

Index increases rarely are required to be placed under a form of security. Often times, it is difficult for small Class C water and/or wastewater utilities to obtain appropriate security. The majority of Class C utilities are not subsidiaries of larger corporations but are more like the traditional "Mom & Pop" owned utilities. Therefore, it is impossible to obtain a corporate guarantee. Likewise it may also be difficult to secure the increase under a personal guarantee due to the financial situation of the owners or majority shareholders. Fortunately, for the Collective Utilities referenced above, the majority owner does possess the financial wherewithal to provide for personal guarantees for any LARI increase. But this may not be the case for the remaining Class C utilities. For index increases, the FPSC may require security for more "troubled" utilities which are found to have inadequate service or record-keeping. (see below)

Index increases have specific language in the Florida Statutes addressing security. Specifically, Section 367.081(4)(d), Florida Statutes states:

(d) If, within 15 months after the filing of a utility's annual report required by s. 367.121, the commission finds that the utility exceeded the range of its last authorized rate of return on equity after an adjustment in rates as authorized by this subsection was implemented within the year for which the report was filed or was implemented in the preceding year, the commission may order the utility to refund, with interest, the difference to the ratepayers and adjust rates accordingly. **This provision shall not be construed to require a bond or corporate undertaking not otherwise required.**
(Emphasis added)

In addition, the FPSC rules also addresses this issue. Specifically, Rule 25-30.420(4), Florida Administrative Code states:

(4) Upon a finding of good cause, the Commission may require that a rate increase pursuant to Section 367.081(4)(a), F.S., be implemented under a bond or corporate undertaking in the same manner as interim rates. For purposes of this subsection, "good cause" shall include:

- (a) Inadequate service by the utility;
- (b) Inadequate record-keeping by the utility such that the Commission is unable to determine whether the utility is entitled to implement the rate increase or decrease under this rule.

Reporting

Reporting requirements are addressed in Rule 25-30.360(6), F.A.C., which requires the utility to file reports with the Office of Commission Clerk no later than the 20th of every month indicating the monthly and total amount of money subject to refund at the end of the preceding month. The report filed must also indicate the status of the security being used to guarantee repayment of any potential refund. Again, this was not contemplated in the LARI rule and is not required for index increases.

Index increases are also held subject to refund but are not required to provide monthly reporting. Theoretically, this was done for two reasons. The first is the amount of months both these type of increases are held. Both the Index and LARI increases are held for 15 months after the Annual Report is filed after the year the increases are implemented. Again, this may be over a two year period. This length of reporting is burdensome on any utility, large or small. The second reason no reporting is required is that it is unknown what amount, if any, of a refund may be required. The subsequent surveillance review is in order to determine whether a utility exceeded the top range of its allowed return on equity. Therefore, if a refund is determined to be required it may be a significantly less amount than the actual increase granted. Keep in mind that during the LARI process, the FPSC staff has already conducted a thorough evaluation and analysis to determine whether a utility should have a LARI increase, and what percentage should be approved. In doing so, the FPSC has already conducted one analysis of appropriate revenues and increase.

Suggested language revision to address security and reporting:

For security, the Collective Utilities proposes the same language be inserted into the LARI rule as Rule 25-30.420(4), F.A.C. This would allow the Commission to make a determination as to whether appropriate security is required in the event of "good cause."

For reporting requirements, the Utilities propose either quarterly or monthly reporting of total service revenues. These service revenue amounts would be more easily reported. The current requirements are more burdensome due to the requirement of having to calculate the monthly and total amount of money subject to refund as of the end of the preceding month. Monthly calculations of the difference of previous rates and increased rates would have to be completed for each customer. This may be required for over two years in some instances.

The reporting requirements of Rule 25.360(6), F.A. C. is more relevant for both interim increases in approved in a rate case, and overearning investigations. These type of proceedings are more limited in time nature and collections. This reporting is during the pendency of the specific dockets and are shorter in time periods.

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.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Trendell". The signature is fluid and cursive, with a large initial "T" and "R".

Troy Rendell
Vice President
Investor Owned Utilities