

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-**

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**DATE:** June 20, 2019  
**TO:** Adam J. Teitzman, Commission Clerk, Office of Commission Clerk  
**FROM:** Kathryn G. W. Cowdery, Office of the General Counsel  
**RE:** Docket No. 20190000-OT

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

Thank you.

Attachment

COMMISSION  
CLERK

2019 JUN 20 AM 9:57

RECEIVED-FPSC

## **Kathryn Cowdery**

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**From:** David, Tad <DAVID.TAD@leg.state.fl.us>  
**Sent:** Friday, June 14, 2019 2:53 PM  
**To:** Kathryn Cowdery  
**Cc:** JR Kelly; Fall-Fry.Mireille; Price, Jena  
**Subject:** 20190000 LARI (25-30.457) Rule-development  
**Attachments:** 25-30.457 OPC proposal - CLEAN (6-14-19).doc; 25-30.457 OPC proposal - tracked (6-14-19).doc; 25-30.457 OPC proposal - legislative format (6-14-2019).pdf

**Importance:** High

Kathryn,

I was not certain who on the PSC staff needed to receive this information, so I will simply let you forward it as you deem appropriate.

Attached you will find three versions of rule 25-30.457, F.A.C. with OPC's proposed revisions. One is a 'clean' copy showing the rule as it would appear if all of OPC's suggestions were adopted. The second version is formatted in MS Word Track Changes showing the suggested revisions. The third version is a PDF showing OPC's suggested revisions in black and white legislative format in case any staff are more comfortable with that format.

We have attempted to capture the intent and clarify the language of the rule based upon our meetings with PSC staff and utility representatives. I intend to send copies of these attachments to Troy and Marty under separate cover today.

Next week I will send copies of rules 25-30.455 and 25-30.456, F.A.C. with proposed revisions we believe are necessary to ensure the three rules conform and avoid conflicts between any provisions.

Please do not hesitate to contact me with any questions or concerns.

Thank you

TAD

P.S. – I will be out of the office and unavailable from June 22<sup>nd</sup> - 29<sup>th</sup>.

Thomas A. (Tad) David  
Associate Public Counsel  
Office of Public Counsel  
850-717-0337  
[David.tad@leg.state.fl.us](mailto:David.tad@leg.state.fl.us)

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

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

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

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

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

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

(6) To be eligible for Commission consideration, the petition must demonstrate the following criteria:

(a) The petitioner qualifies for staff assistance pursuant to subsection (1) of this rule;

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

(c) The petitioner has filed all annual reports with the Commission since the utility was last granted a rate case increase;

(d) The petitioner has paid all applicable regulatory assessment fees;

(e) The petitioner has at least one year of experience in utility operation;

(f)

The utility has not been granted a rate case increase within the 2-year period prior to the receipt of the petition under review;

(g) A final order in a rate proceeding that established the utility's rate base, capital structure, annual operating expenses and revenues has been issued for the utility within the 7-year period prior to the receipt of the petition under review;

(h) The petitioner can provide information sufficient to justify the rate increase requested.

(7) The petitioner must provide information as requested and determined to be necessary to the consideration of the petition. The petitioner may file additional information not requested by the Commission if such information is accompanied by an explanation of the reason(s) the information is necessary to the consideration of the petition.

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

(9) Each petitioner for limited alternative rate increase must provide the following general information to the Commission:

(a) The name of the utility as it appears on the utility's certificate and the address of the utility's principal place of business; and,

(b) The type of business organization under which the utility's operations are conducted:

1. If the petitioner is a corporation, the date of incorporation and the names and addresses of all persons who own five percent or more of the petitioner's stock; or

2. If the petitioner is not a corporation, the names and addresses of the owners of the business.

(10) The Petitioner must provide a schedule showing:

(a) Annualized revenues by customer class and meter size for the most recent 12-month period using the rates in effect at the time the utility files its petition;

(b) Current and proposed rates for all classes of customers; and,

(c) The extent to which petitioner's costs have increased or some other objective basis for the requested rate increase.

(11) The petitioner must provide a statement that the figures and calculations upon which the change in rates is based are accurate, that the change will not cause the utility to exceed its last authorized rate of return on equity, and include the projected rate of return on equity that would result if the petition is granted.

(12) A financial or engineering audit of the utility's financial or engineering books and records may not be required in conjunction with the petition under review unless the Commission deems such information necessary to the consideration of the

petition.

(13) Any revenue increase granted under the provisions of this rule shall be subject to refund with interest in accordance with rule 25-30.360, F.A.C., if the utility is determined to be overearning due to the implementation of this rate increase.

(14) The utility's annual report must contain a detailed explanation as to how the utility spent, is spending, or intends to spend the additional funds generated by a rate increase approved under this rule.

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

(16) If, within 15 months after the filing of a utility's annual report 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 rule, was implemented within the year for which the report was filed, such overearnings, up to the amount subject to refund, with interest, must be returned to the customers within 12 months, unless the Commission approves a separate, specific plan for the funds to otherwise be expended for the direct benefit of the customers.

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

(18) In the event of a protest, the limit on the maximum increase provided in subsection (1) of this rule will no longer apply, and the resulting proceeding will be governed by s. 367.081, F.S. and the law applicable thereto.

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

*Rulemaking Authority 350.127(2), 367.0814, 367.121 FS. Law Implemented 367.0814 FS. History—New 3-15-05, Amended 12-16-08, 8-10-14, 7-1-18.*

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

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

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

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

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

(6) To be eligible for Commission consideration, in determining whether to grant or deny the petition must demonstrate, the Commission will consider the following criteria:

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

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

(c) Whether the petitioner has filed all annual reports with the Commission since the utility was last granted a rate case increase;

(d) Whether the petitioner has paid all applicable regulatory assessment fees;

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

(f) Whether the petitioner has filed additional relevant information in support of eligibility together with reasons why the information should be considered;

(g) Whether the utility has not been granted a rate case increase within the 2-year period prior to the receipt of the petition under review;

(hg) Whether a final order in a rate proceeding that established the utility's rate base, capital structure, annual operating expenses and revenues has been issued for the utility within the 7-year period prior to the receipt of the petition under review;

(h) The petitioner can provide information sufficient to justify the rate increase requested.

(7) The petitioner must provide information as requested and determined to be necessary to the consideration of the petition. The petitioner may file additional information not requested by the Commission if such information is accompanied by an explanation of the reason(s) the information is necessary to the consideration of the petition.

(86) The Commission will deny the petition if the petitioner does not remit the filing fee, as provided by paragraph 25-30.020(2)(f), F.A.C., within 30 days after official acceptance of the petition.

(97) Each petitioner for limited alternative rate increase shall ~~must~~ provide the following general information to the Commission:

(a) The name of the utility as it appears on the utility's certificate and the address of the utility's principal place of business; and,

(b) The type of business organization under which the utility's operations are conducted:

1. If the petitioner is a corporation, the date of incorporation and the names and addresses of all persons who own five percent or more of the petitioner's stock; or

2. If the petitioner is not a corporation, the names and addresses of the owners of the business.

(108) The Petitioner shall ~~must~~ provide a schedule showing:

(a) Annualized revenues by customer class and meter size for the most recent 12-month period using the rates in effect at the time the utility files its petition; and,

(b) Current and proposed rates for all classes of customers; and,

(c) The extent to which petitioner's costs have increased or some other objective basis for the requested rate increase.

~~(119)~~ The petitioner ~~shall~~must provide a statement that the figures and calculations upon which the change in rates is based are accurate, ~~and that the change will not cause the utility to exceed its last authorized rate of return on equity, and include the projected rate of return on equity that would result if the petition is granted.~~

~~(1240)~~ A financial or engineering audit of the utility's financial or engineering books and records ~~shall~~may not be required in conjunction with the petition under review unless the Commission deems such information necessary to the consideration of the petition.

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

~~(1342)~~ Any revenue increase granted under the provisions of this rule shall be ~~held~~ subject to refund with interest in accordance with rule 25-30.360, F.A.C., if the utility is determined to be overearning due to the implementation of this rate increase for a period of 15 months after the filing of the utility's annual report required by rule 25-30.110, F.A.C., for the year the adjustment in rates was implemented.

~~(14)~~ The utility's annual report must contain a detailed explanation as to how the utility spent, is spending, or intends to spend the additional funds generated by a rate increase approved under this rule.

~~(1543)~~ To insure overearnings will not occur due to the implementation of this rate increase, the Commission will conduct an earnings review of the utility's annual report to determine any potential overearnings for the year the adjustment in rates was implemented.

~~(1644)~~ If, within 15 months after the filing of a utility's annual report 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 rule, was implemented within the year for which the report was filed, such overearnings, up to the amount ~~held~~ subject to refund, with interest, ~~shall~~must be disposed of ~~for the benefit of returned to the customers within 12 months, unless the Commission approves a separate, specific plan for the funds to otherwise be expended for the direct benefit of the customers.~~

~~(1745)~~ In the event of a protest of the Proposed Agency Action Order pursuant to rule 28-106.111, F.A.C., by a substantially affected person other than the utility, unless the Proposed Agency Action Order proposes a rate reduction, the utility may implement the rates established in the Proposed Agency Action Order on a temporary basis subject to refund with interest in accordance with rule 25-30.360, F.A.C., upon the utility filing a staff assisted rate case application pursuant to rule 25-30.455, F.A.C., within 21 days of the date the protest is filed.

~~(1846)~~ In the event of a protest, the limit on the maximum increase provided in subsection (1) of this rule ~~shall~~will no longer apply, and the resulting proceeding will be governed by s. 367.081, F.S. and the law applicable thereto.

~~(1947)~~ If the utility fails to file a staff assisted rate case application within 21 days in the event of a protest, the petition for a limited alternative rate increase will be deemed withdrawn.

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(e) ~~Whether~~ The petitioner has at least one year of experience in utility operation;

(f) ~~Whether the petitioner has filed additional relevant information in support of eligibility together with reasons why the information should be considered;~~

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*Rulemaking Authority 350.127(2), 367.0814, 367.121 FS. Law Implemented 367.0814 FS. History--New 3-15-05, Amended 12-16-08, 8-10-14, 7-1-18.*



## **Kathryn Cowdery**

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**From:** Troy Rendell <trendell@uswatercorp.net>  
**Sent:** Tuesday, June 18, 2019 2:22 PM  
**To:** Kathryn Cowdery  
**Cc:** Andrew Maurey  
**Subject:** LARI Rule  
**Attachments:** Responses to the Office of Public Counsel Proposed Revisions.docx

Good afternoon Kathryn,

I wanted to send you my response to OPC's proposed changes to the LARI rule. I've talked to Tadd and we plan to have a conference call with J.R. Kelly sometime this week to discuss further.

I wasn't sure who else at the PSC I should send this too.

Thanks.

Troy Rendell  
U.S. Water Services Corporation



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New Port Richey, FL 34652  
(Office) 727-848-8292 x245  
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Responses to the Office of Public Counsel Proposed Revisions to Rule 25-30.457, Florida Administrative Code

- I) It is unclear of the necessity of changing all “shall” to “must.”
- II) Paragraph 6: For the proposed revision/addition to Paragraph 6, it is not clear how a petition can “demonstrate” the proposed revisions to subparagraphs a through h. A petition can “state” or “show” that annual reports are filed, RAFs are paid, etc. It would then be the FPSC staff’s responsibility to verify the accuracy of these statements.
- III) Subparagraph 6(b): It is unclear of the necessity of adding “with the Commission since the utility was last granted a rate case increase.” The word “all” annual reports is clear without this added language.
- IV) Subparagraph 6(f): It is unclear why OPC would like to delete this provision. As previously discussed, this gives the petitioner the opportunity of providing other relevant information in support of its request. This should not be made mandatory and should not be deleted. This provision should assist in OPC’s concerns by allowing additional information to be provided.
- V) Subparagraph 6(g): This proposed revision is confusing. Does this mean that a utility *cannot* file for a LARI *if they have had* a SARC in the last two years? Or does it mean that a utility cannot file for a LARI, unless they have had a SARC within the past two years?
- VI) New proposed subparagraph 6(h): This appears to be a restatement of the suggested deleted subparagraph 6(f), but in a different phrasing. It is unclear what is the meaning of the phrase, “sufficient to justify the rate increase requested.” It is also unclear what information would be required to “justify” a rate increase. The statement states that the utility can provide information. As previously stated in my comments provided at the workshop, the main information that is utilized by the FPSC to determine whether an increase should be granted, and how much is contained in the Annual Reports filed with the FPSC, as well as the most recent SARC Order.
- VII) New proposed Paragraph 7: The first sentence appears to be an attempt to codify the already established authority of the FPSC to request additional information (i.e. Staff Data Request) already afforded through Section 367.121, Florida Statutes. No other rules related to rate cases, limited proceedings, or SARCs have provisions that restate the FPSC’s statutory powers. The second sentence appears to be a rewording of the proposed deleted Subparagraph 6(f), which is already contained in the existing rule.
- VIII) New proposed Subparagraph 10(c): Again, the information being referred to is already obtainable through the FPSC staff’s review of the annual reports, and through its power to request additional information on any known and measurable changes that either have occurred or are expected to occur. In addition, the petitioner may also provide information concerning upcoming capital projects (new plant, repairs, and/or replacements).
- IX) New proposed Paragraph 11: OPC proposes that the petitioner provide a “projected rate of return on equity that would result if the petition is granted.” There are numerous variables that would be required with this hypothetical projection. They would include, but not be limited to, unknown increases in operation expenses,

unknown repairs and/or replacements, decreased customer consumption due to the increase, increase/decrease of customers, etc. The original premise of this rule, which OPC previously agreed, was to make the process easier, less complicated, and less expensive. This requirement would be burdensome on the majority of Class C utilities.

- X) Proposed Revised Paragraph 13: Comments were previously provided at the workshop regarding the issue of revenues held subject to refund and security. OPC agreed to incorporate these suggestions, which has not been done at this time. OPC proposes to remove the time limitation on the revenues subject to refund thereby leaving this open ended through perpetuity. No other rule or procedure at the FPSC holds revenues subject to refund with no ending date. This places financial uncertainty on the day to day utility operations and is unnecessary. This LARI rule in most aspect was to be similar to the index statute and rule. This proposed language would place more stringent requirement on utilities that is not contemplated in Section 367, Florida Statutes or anywhere else in Rule 25-30, Florida Administrative Code. This would have a chilling effect on utilities' consideration of utilizing this rule and would most likely force utilities to file for Staff Assisted Rate Cases in lieu of this efficient and less costly proceeding. This may have the unintended result of higher rates to customers, and more costly processing on the FPSC.
- XI) Proposed New Paragraph 14: I strongly do not agree with this proposed language. This new proposed requirement is not contained in any other FPSC rule, including rate proceedings, limited proceedings, SARCs, indexes, etc. If an increase is granted, the utility and the FPSC staff have already demonstrated that the utility requires these additional revenues to cover Operating Expenses and to have the opportunity to earn its authorized rate of return. It is not possible to track each dollar granted through a LARI. Those funds once collected are co-mingled in all revenues and all dollars are utilized to cover operating expenses, invest in utility plant, make unforeseen repairs and/or replacements. It is impossible to track each dollar spent back to the source of those funds. This is a requirement that cannot be met by any utility unless each dollar is tracked. This is an extremely burdensome requirement, especially for Class C utilities, in light that it is not required for any other water and/or wastewater utility. Again, this LARI process was intended to make the process easier and less burdensome, not the opposite.

In addition, the following language should be added to any revisions made to this rule.

(##) Upon a finding of good cause, the Commission may require that any revenue increase granted under the provisions of this rule, 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.

(##) The company shall provide quarterly reports indicating the total monthly and total accrued amount of revenues as of the end of the preceding quarter. The report shall also indicate the status of whatever security is being used to guarantee repayment of the money.