

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:** July 8, 2019  
**TO:** Adam J. Teitzman, Commission Clerk, Office of Commission Clerk  
**FROM:** Samantha Cibula, Office of the General Counsel *SMC*  
**RE:** Docket No. 19980561-WS

---

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

Thank you.

Attachment

RECEIVED-FPSC  
2019 JUL -8 AM 8:17  
COMMISSION  
CLERK

STATE OF FLORIDA

Commissioners:  
JOE GARCIA, CHAIRMAN  
J. TERRY DEASON  
SUSAN F. CLARK  
JULIA L. JOHNSON  
E. LEON JACOBS, JR.



DIVISION OF APPEALS  
DAVID SMITH  
DIRECTOR  
(850) 413-6245

## Public Service Commission

March 10, 1999

Mr. John Rosner  
Staff Attorney  
Joint Administrative Procedures Committee  
Room 120, Holland Building  
Tallahassee, Florida 32399-1300

Re: Rule 25-30.420--Establishment of Price Index, Adjustment of Rates; Requirement of Bond; Filings After Adjustment; Notice to Customers.

Dear Mr. Rosner:

On February 16, 1999, the Commission voted to adopt several changes to Rule 25-30.420 as it was proposed in the June 12, 1998, issue of the Florida Administrative Weekly (FAW). The Notice of Change was published in the FAW on March 5, 1999. I believe the changes satisfactorily address the concerns you identified in your letter dated July 23, 1998, with the exception of your concern about subsection (4) of the rule. As to that subsection, the Commission believes the statute implemented clearly directs it to adopt that language, and it has decided not to change it.

First, the law the Commission is implementing with this rule is section 367.081(4)(a), Florida Statutes, governing price index rate increases or decreases for water and wastewater utilities. In relevant part, it directs the Commission as follows:

The rules shall provide that, upon a finding of good cause, including inadequate service, the commission may order a utility to refrain from implementing a rate increase hereunder unless implemented under a bond or corporate undertaking in the same manner as interim rates may be implemented under s. 367.082.

Rule 25-30.420(4) was adopted in 1981 to comply with the Legislature's direction. The rule

Mr. John Rosner  
March 10, 1999

provides:

- (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.

As used in section (4), "may" simply means "is authorized", which the Commission clearly is by the language of the statute. Indeed, the implemented statute directs the Commission to adopt precisely this language. Moreover, were the Commission to adopt any other language in this rule, I believe it would be modifying or contravening the specific provision of law implemented, contrary to section 120.52(8)(c), Florida Statutes.

Your second criticism of this rule was that the term "good cause" is capable of numerous and inconsistent interpretations, and that the examples of good cause that are included in the rule "do not supply sufficient criteria to apprise the reader of the factors to be considered by the Commission" in making its determination under the rule. The Commission disagrees with your assessment.

"Good cause" is a concept that is well-recognized in the law and a term that appears more than 350 times throughout the Florida Administrative Code--both with and without further elaboration. It means if there is a legitimate reason. This rule states two circumstances that constitute good cause, one of which is specifically required by section 367.081(4)(a). The other is "[i]nadequate 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." I do not believe there is anything vague or unclear about either of these provisions, nor has the Commission found or been presented with any other circumstances asserted to constitute good cause.

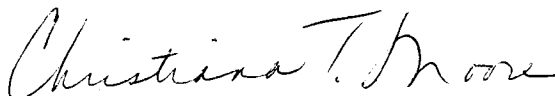
In addition, I believe your conclusion, stated in your November 13, 1998, letter, that the term "good cause" is "subject to varying interpretations by the Commission personnel tasked with administering the program", is based upon a misunderstanding of Commission procedures and its staff's authority. Whether good cause exists is not a determination that can be made by staff. Such a decision must be made by the Commission itself, which is a collegial body appointed by the Governor and which is an arm of the legislative branch. The Commission makes its decisions and exercises its statutorily granted discretion in a public meeting based on the law and the case-specific facts before it, after affording notice and an opportunity to be heard to all substantially affected persons.

Mr. John Rosner  
March 10, 1999

Finally, as I stated earlier in this letter, Rule 25-30.420(4) has been in existence unchanged for 18 years. To date, there has not been a dispute about its meaning or application. Moreover, it has passed review by your committee without objection no fewer than four times between 1981 and 1991.

If you have any questions, please do not hesitate to call me.

Sincerely,



Christiana T. Moore  
Associate General Counsel

CTM/

cc: Chairman Joe Garcia  
William D. Talbott  
Robert Vandiver

STATE OF FLORIDA

Commissioners:  
JULIA L. JOHNSON, CHAIRMAN  
J. TERRY DEASON  
SUSAN F. CLARK  
JOE GARCIA  
E. LEON JACOBS, JR.



DIVISION OF APPEALS  
DAVID SMITH  
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**Public Service Commission**

February 5, 1999

Mr. John Rosner  
Staff Attorney  
Joint Administrative Procedures Committee  
Room 120, Holland Building  
Tallahassee, Florida 32399-1300

**Re: Public Service Commission Rules 25-30.420 and .425**

Dear Mr. Rosner:

This letter is written to respond to your letter of February 4, 1999, about the expiration of the period for filing the above rules for adoption. Pursuant to paragraph 120.54(3)(e), F.S., the period has been extended by publication of a notice of public hearing in the January 22, 1999, Florida Administrative Weekly, a copy of which is enclosed.

Please do not hesitate to call me if you have questions.

Sincerely yours,

A handwritten signature in cursive script that reads "Christiana T. Moore".

Christiana T. Moore  
Associate General Counsel

CTM/

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**DOCKET** [REDACTED] **980946 TL**  
**RULE TITLE:** [REDACTED] **RULE NO.:**

Establishment of Price Index. Adjustment of Rates: Requirement of Bond; Filings After Adjustment; Notice to Customers 25-30.420  
Pass-Through Rate Adjustment 25-30.425

The **Public Service Commission** notifies all interested persons that the above rules will be considered at the agenda conference scheduled to be held at the following time and place:

**DATE AND TIME:** February 16, 1999, 9:30 a.m.

**PLACE:** Florida Public Service Commission, Room 148, The Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, FL

**PURPOSE AND EFFECT:** To consider the record of the rulemaking proceedings and the proposed rule and to adopt, reject, or modify the proposed rules.

The person to be contacted regarding the rule is Christiana T. Moore, (850)413-6098.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of Records and Reporting, (850)413-6770, at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1(800)955-8771 (TDD).

**NOTICE IS HEREBY GIVEN** that the February 15, 1999, staff workshop regarding the petitions filed by BellSouth Telecommunications, Inc., in **DOCKETS NOS. 980946-TL, 980947-TL, 980948-TL, 981011-TL, 981012-TL and 981250-TL**, has been rescheduled. The workshop has been rescheduled as set forth below:

**DATE AND TIME:** February 19, 1999, 9:30 a.m.

**PLACE:** Room 148, Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, FL

For additional information, contact Beth Keating, Will Cox, Clintina Watts, or June McKinney, Division of Legal Services, at the above address or telephone, (850)413-6199.

**EXECUTIVE OFFICE OF THE GOVERNOR**

The **Executive Office of the Governor** announces a public meeting of the Florida Geographic Information Board (GIB) to which all persons are invited:

**DATE AND TIME:** January 29, 1999, 10:00 a.m. or as soon thereafter as possible and will continue until complete

**PLACE:** EATZ Café, 4055 Esplanade Way, Tallahassee, FL

**PURPOSE:** A regularly scheduled meeting of the GIB.

A copy of the agenda may be obtained by writing: Florida Geographic Information Board, 4050 Esplanade Way, Building 4030, Suite 180, Tallahassee, Florida 32399-0950 or at the GIB's Website (<http://als.dms.state.fl.us>).

**REGIONAL PLANNING COUNCILS**

The **North Central Florida Local Emergency Planning Committee** announces the following meetings to which all persons are invited:

**MEETING:** Communications Task Force for the Safety Street Work Group

**DATE AND TIME:** February 2, 1999, 1:15 p.m.

**PURPOSE:** To coordinate presentation to the public of risk management programs under Section 112(r) of the Clean Air Act.

**MEETING:** Communications Task Force for the Safety Street Work Group

**DATE AND TIME:** February 9, 1999, 1:15 p.m.

**PURPOSE:** To coordinate presentation to the public of risk management programs under Section 112(r) of the Clean Air Act.

**MEETING:** Communications Task Force for the Safety Street Work Group

**DATE AND TIME:** February 16, 1999, 1:15 p.m.

**PURPOSE:** To coordinate presentation to the public of risk management programs under Section 112(r) of the Clean Air Act.

**MEETING:** Technical Issues Task Force of the Safety Street Work Group

**DATE AND TIME:** February 16, 1999, 2:30 p.m.

**PURPOSE:** To coordinate technical issues regarding risk management programs under Section 112(r) of the Clean Air Act.

Any persons deciding to appeal any decision of the Committee with respect to any matter considered at the meeting may need to ensure that a verbatim record of the proceedings is made, which includes the testimony and evidence upon which the appeal is to be based.

**PLACE FOR ALL MEETINGS:** North Central Florida Regional Planning Council, 2009 N. W. 67 Place, Gainesville, Florida.

A copy of the agenda may be obtained by contacting: Charles F. Justice, Executive Director, North Central Florida Regional Planning Council, 2009 N. W. 67 Place, Suite A, Gainesville, FL 32653.

Persons with disabilities who need assistance may contact us at (352)955-2200, at least two business days in advance to make appropriate arrangements.

TONI JENNINGS  
President



Senator Walter "Skip" Campbell, Chairman  
Representative Bill Posey, Vice Chairman  
Senator Ginny Brown-Waite  
Senator Lisa Carlton  
Representative O. R. "Rick" Minton, Jr.  
Representative Adam H. Putnam

JOHN THRASHER  
Speaker



THE FLORIDA LEGISLATURE  
**JOINT ADMINISTRATIVE  
PROCEDURES COMMITTEE**

CARROLL WEBB, EXECUTIVE DIRECTOR  
AND GENERAL COUNSEL  
Room 120, Holland Building  
Tallahassee, Florida 32399-1300  
Telephone (850) 488-9110

February 4, 1999

Ms. Christiana T. Moore  
Associate General Counsel  
Division of Appeals  
Public Service Commission  
Capital Circle Office Center  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

RECEIVED  
99 FEB -5 PM 3:25  
FLORIDA PUBLIC SERVICE COM. DIVISION OF APPEALS

**Re: Public Service Commission Rules 25-30.420 and .425**

Dear Chris:

According to my calculations, the period in which to file the rules for adoption expired on January 25, 1998. Therefore, a notice of withdrawal should be published as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "John Rosner".

John Rosner  
Staff Attorney

#116063  
JR: CW S: ATTY\25-30.JR



TONI JENNINGS  
President



RECEIVED

99 JAN -7 PM 2:00

FLORIDA PUBLIC SERVICE COMM.  
DIVISION OF APPEALS

THE FLORIDA LEGISLATURE  
**JOINT ADMINISTRATIVE  
PROCEDURES COMMITTEE**

JOHN THRASHER  
Speaker



Senator Walter "Skip" Campbell, Chairman  
Representative Bill Posey, Vice Chairman  
Senator Ginny Brown-Waite  
Senator Lisa Carlton  
Representative O. R. "Rick" Minton, Jr.  
Representative Adam H. Putnam

CARROLL WEBB, EXECUTIVE DIRECTOR  
AND GENERAL COUNSEL  
Room 120, Holland Building  
Tallahassee, Florida 32399-1300  
Telephone (850) 488-9110

January 5, 1999

Ms. Christiana T. Moore  
Associate General Counsel  
Division of Appeals  
Public Service Commission  
Capital Circle Office Center  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

**Re: Public Service Commission Rules 25-30.420 and .425**

Dear Chris:

According to my records, the above-styled rules were noticed in the Florida Administrative Weekly on June 12, 1998. Notices of continuation of public hearing were published on July 24, 1998 and November 25, 1998. The public hearing was scheduled for December 11, 1998. This extended the 90-day period in which to file the rules for adoption to January 25, 1998.

In a letter to you dated July 23, 1998, I identified several objectionable matters. Any notice of change addressing such matters must be published prior to January 25, 1998. If the time frame is not met, the rules must be withdrawn.

Please call me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "John Rosner".

John Rosner  
Staff Attorney



TONI JENNINGS  
President



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FLORIDA PUBLIC SERVICE COMMISSION  
DIVISION OF APPEALS

THE FLORIDA LEGISLATURE  
**JOINT ADMINISTRATIVE  
PROCEDURES COMMITTEE**

DANIEL WEBSTER  
Speaker



Representative Jerrold Burroughs, Chairman  
Senator Charles Williams, Vice Chairman  
Senator Ginny Brown-Waite  
Senator Fred R. Dudley  
Representative Adam H. Putnam  
Representative Jamey Westbrook

CARROLL WEBB, EXECUTIVE DIRECTOR  
AND GENERAL COUNSEL  
Room 120, Holland Building  
Tallahassee, Florida 32399-1300  
Telephone (850) 488-9110

November 13, 1998

Ms. Christiana T. Moore  
Associate General Counsel  
Division of Appeals  
Public Service Commission  
Capital Circle Office Center  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

**Re: Public Service Commission Rule 25-30.420(4)**

Dear Ms. Moore:

This is in response to your request that I clarify my position regarding rule 25-30.420(4). The rule provides that upon a finding of good cause, the Commission may require that a rate increase be implemented under a bond as described. The rule provides that good cause includes inadequate service and inadequate record-keeping. No further language is disclosed to apprise the reader of the meaning of good cause. We have extensively discussed the usage of the term "may" in the rule. I presume no further clarification is necessary with regard to that matter.

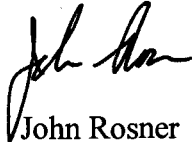
In my letter of July 23, 1998, I observed that "good cause" is a term subject to varying interpretations by the Commission personnel tasked with administering the program. This could give rise to a situation where similarly situated entities are inconsistently regulated. See, e.g., Martin Memorial Hospital Association v. Department of Health and Rehabilitative Services, 584 So. 2d 39 (Fla. 4th DCA 1991) (agency action is improper which yields inconsistent results based upon similar facts, without reasonable explanation).

Presumably, "good cause" may be found in instances other than the two listed above. The use of the term "includes" leads to this conclusion. In a telephone call, we had discussed your inquiring

Ms. Moore  
November 13, 1998  
Page 2

whether the Commission recognized other circumstances, in addition to those identified, as good cause. You have not yet informed me of the results of such inquiry. If the Commission recognizes circumstances which comprise "good cause" as justifying the imposition of a bond, the rule should be amended to include such circumstances. In any event, if the Commission intends to allow itself discretion in determining unlisted instances of "good cause," the rule should be amended to include standards and criteria to apprise the reader of what the Commission considers to be "good cause."

Sincerely,



John Rosner  
Staff Attorney

#116063  
JR:CW S:\ATTY\25-30.JR

TONI JENNINGS  
President

DANIEL WEBSTER  
Speaker



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FLORIDA PUBLIC SERVICE COMM.  
DIVISION OF APPEALS

THE FLORIDA LEGISLATURE  
**JOINT ADMINISTRATIVE  
PROCEDURES COMMITTEE**



Representative Jerrold Burroughs, Chairman  
Senator Charles Williams, Vice Chairman  
Senator Ginny Brown-Waite  
Senator Fred R. Dudley  
Representative Adam H. Putnam  
Representative Jamey Westbrook

CARROLL WEBB, EXECUTIVE DIRECTOR  
AND GENERAL COUNSEL  
Room 120, Holland Building  
Tallahassee, Florida 32399-1300  
Telephone (850) 488-9110

October 28, 1998

Ms. Christiana T. Moore  
Associate General Counsel  
Division of Appeals  
Public Service Commission  
Capital Circle Office Center  
2540 Shumard Oak Blvd  
Tallahassee, Florida 32399-0850

**Re: Public Service Commission Rule 25-30.420**

Dear Ms. Moore:

Thank you for your response to my letter of July 23, 1998. I have carefully reviewed your letter, its attachments, and considered your position. It is clear that in practice the Commission considers various data in establishing the price index. However, neither the remarks in your letter nor the attachments cure the defects in the rule as previously described. Therefore, I respectfully adhere to my previous comments.

While it is laudable that the Commission details its decision-making process by order, the language in the rule remains vague, subject to inconsistent interpretation, and accords unbridled discretion to the agency in the process. The actual operation of the Commission is not at issue; rather, it is the language of the rule.

There is no doubt that §367.081(4)(a), F.S., authorizes the Commission to promulgate rules determining the procedure for establishing price increases or decreases for major categories of operating costs incurred by utilities as described in the statute. However, the statute does not authorize the Commission to promulgate rules whereby it may or may not take actions based upon no supporting criteria or standards. Nor does the statute authorize the Commission to

Ms. Moore  
October 27, 1998  
Page 2

employ in its rules vague terms which are undefined and are capable of inconsistent interpretation and application. The provisions of the Administrative Procedure Act were specifically designed to require agencies to provide as much information as possible to apprise the affected public of how the agency operates and more specifically, to disclose the criteria to be applied by the agency in its decisional processes. The language of the rules under consideration defeats that end.

In your letter, you cite to Cortes v. State, Board of Regents, 655 So. 2d 132, 137 (Fla. 1st DCA 1995) for the proposition that “[a] rule is not invalid because it fails to extinguish the discretion a statute confers.” The full text of the quote is as follows:

An administrative agency must have some discretion when a regulatory statute is in need of construction in its implementation... [citation omitted] An administrative rule by which an agency exercises such discretion, or which fails to extinguish the discretion a statute confers, is not invalid on that account.

The language of rule 25-30.420 which is at issue is not objectionable because it fails to extinguish the discretion conferred by §367.081(4)(a), F.S. Rather, it is objectionable because it confers unlimited discretion to the Commission to take or not take the actions described therein. The key language in the quote above is that an agency must have some discretion. The rule, in contrast, confers unbridled discretion.

I also note that in Cortes, the court declared the rule under consideration therein invalid because it engendered standardless discretion. The court held as follows:

An administrative rule which creates discretion not articulated in the statute it implements must specify the basis on which the discretion is to be exercised. Otherwise the ‘lack of ... standards ... for the exercise of discretion vested under the ... rule renders it incapable of understanding ... and incapable of application in a manner susceptible of review.’ Staten v. Couch, 507 So.2d 702 (Fla. 1st DCA 1987). Because a reviewing ‘court shall not substitute its judgment for that of the agency on an issue of discretion,’ Sec. 120.68(12), Fla. Stat. (1993), an agency rule that confers standardless discretion insulates agency action from judicial scrutiny. By statute, a rule or part of a rule which ‘fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency,’ Sec. 120.52(8)(d), Fla. Stat. (1993), is invalid. (e.s.)

655 So.2d 132, at 138.



Ms. Moore  
October 27, 1998  
Page 3

With regard to the term "good cause," you state as follows:

While it may be that the term is capable of numerous and inconsistent interpretations as you stated in your letter, that has not been our experience. If the Commission were to determine that good cause includes something besides what is stated in the rule, it would do so in a noticed public hearing, providing any person the opportunity to be heard. I do not believe the law requires more.

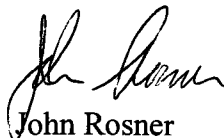
I believe the foregoing statement is a direct contradiction of the statutory mandate in §120.54(1), F.S., that agency statements of policy be promulgated as rules. In my judgment, application of the foregoing practice subjects the Commission to challenge under §120.56(4) for non-rule policy as well as award of attorney fees and costs under §120.595(4).

In my nine years of practice with this Committee, I have observed the Committee consistently vote objections to rules which conferred unbridled discretion upon agencies or which contained vague terms. Representations by agency attorneys that the agency in its daily operations was not exercising unbridled discretion or acting by whim or caprice have been unpersuasive. It is the language of the rule which is at issue. The language creates the potential or the opportunity for the exercise of unbridled discretion. What this Committee is required by Chapter 120, F.S., to prevent is the opportunity for the exercise of unbridled discretion created by the language of administrative rules.

With regard to the application, please provide me with a copy of this document as soon as possible. Inasmuch as this form is a rule, it is subject to the time constraints set forth in §120.54(3), F.S. With regard to your statement that the language under consideration is not new, please refer to §120.545(1), F.S.

I am available at your convenience to discuss the foregoing comments

Sincerely,



John Rosner  
Staff Attorney

STATE OF FLORIDA

Commissioners:  
JULIA L. JOHNSON, CHAIRMAN  
J. TERRY DEASON  
SUSAN F. CLARK  
JOE GARCIA  
E. LEON JACOBS, JR.



DIVISION OF APPEALS  
DAVID SMITH  
DIRECTOR  
(850) 413-6245

## Public Service Commission

October 21, 1998

Mr. John Rosner  
Staff Attorney  
Joint Administrative Procedures Committee  
Room 120, Holland Building  
Tallahassee, Florida 32399-1300

Re: Rule 25-30.420

Dear Mr. Rosner:

This letter is in response to your comments about the Commission's proposed amendments to Rule 25-30.420, governing price index rate increases for water and wastewater utilities. Before addressing each of your comments, however, I believe some background information may be helpful to you.

At the beginning of each year since 1981, the Commission has established a price index increase or decrease for major categories of operating costs for water and wastewater utilities as required by section 367.081(4)(a), Florida Statutes. Pursuant to this statute, the Commission establishes the price index by order. The process by which this is accomplished involves Commission staff research and preparation of a recommendation for consideration and action by the Commissioners. The Commissioners consider the staff recommendation at a public meeting ("agenda conference"), and any interested person may address the Commission at that meeting. The Commission's action at that meeting is not final; rather, it is "proposed agency action." After the "Proposed Agency Action Order" issues, any substantially affected person may protest the decision within fourteen days. If the order is protested, the Commission will conduct a formal hearing pursuant to sections 120.569 and 120.57, Florida Statutes. Thus, both prior to the Commission's decision and issuance of the proposed agency action order, and again thereafter, regulated parties have the opportunity to be heard by the Commission.

**Law Implemented:** Section 367.121(1)(c) and (g) will be added, however, (1)(i) is not implemented by this rule.

**25-30.420(1):** The application will be incorporated by reference.

**25-30.420(1)(b):** I have attached a copy of the staff recommendation and the Commission's most recent order establishing the index. As you can see, the Commission considers various data. Subsection (1)(b) of the rule addresses the data the Commission will or may consider. The rule currently provides what the Commission "may" consider. This provision was intended to notify utilities that the Commission's standard practice is to use cost statistics compiled by government agencies (thus the change from "may" to "will"), but that it is authorized ("may") to consider other data in establishing the index. As you can also see from the recommendation and the proposed letter attached to it, which was incorporated in the order, the Commission strives to adopt an accurate and reliable price index, and encourages utilities to apply for the increase. Adjustments to rates to keep current with rising costs in this manner benefit the utility, the Commission, and the ratepayers by reducing the number of rate cases and the opportunity for "rate shock." Once again, the Commission considers the data and makes its decision in a public meeting where the regulated parties may freely participate, and its orders are proposed action that parties may protest and receive a hearing.

**25-30.420(3):** This section provides:

The Commission, upon its own motion, may implement an increase or decrease in the rates of a utility based upon the application of the index indices established pursuant to subsection (1) and as authorized by section 367.081(4)(a), F. S. The Commission may require a utility to file any of the information required in subsection (2).

This provision is included merely as information to the utilities. The discretion is specifically conferred by the second sentence of the statute which is cited in the rule. A rule is not invalid because it fails to extinguish the discretion a statute confers. Cortes v. State, Bd. of Regents, 655 So. 2d 132, 137 (Fla. 1st DCA 1995).

In addition, should the Commission decide to implement an increase or decrease on its own motion, as provided in the statute and this rule, it would do so after a noticed public hearing in which it would determine whether there was cause to do so upon its own motion. Circumstances have not arisen to cause the Commission to take such action, and before being stated in a rule, "criteria" should first be developed based on experience in individual cases.

The alternative to the language as it is now stated is simply to delete it, although to do so would not change the Commission's authority, and would leave regulated parties with less information while having no substantive impact on them.



Mr. John Rosner  
October 21, 1998  
Page 3

**25-30.420(4):** This section of the rule provides:

(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~~ of 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.

As used in section (4), "may" simply means "is authorized", which the Commission clearly is by the language of the statute. Indeed, the implemented statute directs the Commission to adopt precisely this language:

The rules shall provide that, upon a finding of good cause, including inadequate service, the commission may order a utility to refrain from implementing a rate increase hereunder unless implemented under a bond or corporate undertaking in the same manner as interim rates may be implemented under s. 367.082.

Section 367.081(4)(a), Florida Statutes.

As to the term "good cause", it means if there is a legitimate reason. The rule states two legitimate reasons. While it may be that the term is capable of numerous and inconsistent interpretations as you stated in your letter, that has not been our experience. If the Commission were to determine that good cause includes something besides what is stated in the rule, it would do so in a noticed public hearing, providing any person the opportunity to be heard. I do not believe the law requires more.

Finally, except for the application form, none of the provisions you have commented on are new. To my knowledge, they have been a part of Rule 25-30.420 since it was first adopted. To

Mr. John Rosner  
October 21, 1998  
Page 4

date, there has not been a dispute about the meaning or application of any of the terms or provisions you have written about.

Sincerely,



Christiana T. Moore  
Associate General Counsel

CTM/

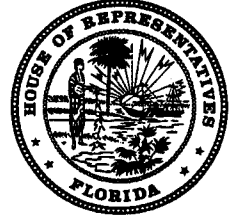
cc: Without attachments:  
Chairman Johnson  
Commissioner Clark  
Commissioner Deason  
Commissioner Garcia  
Commissioner Jacobs  
Bill Talbott  
Mary Bane  
Rob Vandiver  
Chuck Hill  
Greg Shafer  
Bob Casey

TONI JENNINGS  
President



Representative Jerrold Burroughs, Chairman  
Senator Charles Williams, Vice Chairman  
Senator Ginny Brown-Waite  
Senator Fred R. Dudley  
Representative Adam H. Putnam  
Representative Jamey Westbrook

7/23/98  
DANIEL WEBSTER  
Speaker



CARROLL WEBB, EXECUTIVE DIRECTOR  
AND GENERAL COUNSEL  
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THE FLORIDA LEGISLATURE  
**JOINT ADMINISTRATIVE  
PROCEDURES COMMITTEE**

July 23, 1998

Ms. Christiana T. Moore  
Associate General Counsel  
Public Service Commission  
Division of Appeals  
Capital Circle Office Center  
2540 Shumard Oak Blvd  
Tallahassee, Florida 32399-0850

**Re: Public Service Commission Rules 25-30.420 and 25-30.425**

Dear Chris:

I have completed a review of the proposed amendments to rules 25-30.420 and 25-30.425 and prepared the following comments for your consideration and response.

**25-30.420**

(1): The application should be incorporated by reference pursuant to §120.55(1)(a)4., F.S., and rule 1S-1.005, F.A.C.

(1)(b): The rule provides that the Commission "may" consider certain data provided by utility companies in establishing the price index. However, no criteria are disclosed to apprise the reader of whether or not such data will be taken into consideration under any circumstances. This renders the rule objectionable pursuant to §120.52(8)(d), F.S., (rule is invalid exercise of delegated legislative authority where it is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency). The rule should be amended accordingly.

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- (3): The rule provides in two instances that the Commission "may" take certain actions as described. However, no criteria are disclosed to apprise the reader of whether or not the Commission will take such actions under any circumstances. This renders the rule objectionable as described above.
- (4): The term "good cause" is capable of numerous and inconsistent interpretations. Although two examples of what constitutes "good cause" are provided, they do not supply sufficient criteria to apprise the reader of the factors to be considered by the Commission in determining whether or not to order a utility to refrain from implementing a rate increase unless implemented under a bond or corporate undertaking. Likewise, the rule provides that the Commission "may" require that a rate increase be implemented as described. However, no criteria are disclosed to apprise the reader of whether or not the Commission will impose such requirement under any circumstances. This renders the rule objectionable as described above. The rule should be amended accordingly.

Should not §367.121(1)(c), (i) and (g), F.S., appear as law implemented?

I am available to discuss the foregoing comments at your convenience.

Sincerely,



John Rosner  
Staff Attorney