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: September 25, 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

980561

STATE OF FLORIDA

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

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.

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

Christiana T. Moore
Associate General Counsel

CTM/

cc: Chairman Joe Garcia
William D. Talbott
Robert Vandiver

Rec'd 7/25/98

TONI JENNINGS
President

DANIEL WEBSTER
Speaker

THE FLORIDA LEGISLATURE

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

CARROLL WEBB, EXECUTIVE DIRECTOR
AND GENERAL COUNSEL
Room 120, Holland Building
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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.

(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? ok

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

Sincerely,

John Rosner
Staff Attorney

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