

STATE OF FLORIDA

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

Public Service Commission

April 6, 2023

Alexandra Hansli, Director
Rules Ombudsman in
The Executive Office of the Governor
Reg.Reform@eog.myflorida.com

SENT VIA E-MAIL

Re: Docket No. 20230025-WS; Proposed amendment of Rules 25-30.455, 25-30.456, and 25-30.457, F.A.C., related to staff assisted ratemaking for water and wastewater utilities

Dear Ms. Hansli:

The Florida Public Service Commission proposed the above-listed rules at their regular agenda conference on April 4, 2023. The Commission has determined that these rules will affect small businesses. Accordingly, pursuant to Section 120.54(3)(b)2.b.(I), Florida Statutes, enclosed is a copy of the Florida Administrative Register (FAR) notice of the proposed rules, which was published in the April 6, 2023, edition of the FAR (Vol. 49, Number 67). Also enclosed is a copy of the statement of estimated regulatory costs (SERC). The SERC concluded that the proposed rule amendments will not have an adverse effect on small business. Pursuant to your instructions, we have filled out and included a copy of the OFARR rulemaking notification form.

Please contact me at Susan.Sapoznikoff@psc.state.fl.us or 850-413-6630 if you have any questions regarding these rules.

Sincerely,

/s/ Susan Sapoznikoff
Susan Sapoznikoff
Senior Attorney

Enclosures: FAR NOPR
SERC
OFARR Rulemaking Notification Form

cc: Office of the Commission Clerk

Notice of Proposed Rule

PUBLIC SERVICE COMMISSION

SELECT A TYPE: Amendment

RULE NO: RULE TITLE:

25-30.455: Staff Assistance in Rate Cases

25-30.456: Staff Assistance in Alternative Rate Setting

25-30.457: Limited Alternative Rate Increase

PURPOSE AND EFFECT: To update and clarify the rules, and to reflect the adjustment to the gross annual revenue level required by section 367.814(1), Florida Statutes.

Docket No. 20230025-WS

SUMMARY: The proposed amendments to Rules 25-30.455, 25-30.456, and 25-30.457 F.A.C., will increase the gross annual revenue limit that determines eligibility for water and wastewater utilities to receive staff assistance from \$300,000 or less, to \$335,000 or less, per system. Additionally, the proposed amendments to Rules 25-30.455, and 25-30.456, F.A.C., will increase the total gross annual operating revenue threshold from \$600,000 or less, to \$670,000 or less, on a combined basis.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION: The agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has been prepared by the agency. The SERC examined the factors required by Section 120.541(2), FS, and concluded that the rule amendments will not have an adverse impact on economic growth, business competitiveness, or small business and that there would likely be transactional cost savings to the individual and entities, including government entities, required to comply with the rule.

The agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs based upon the information contained in the SERC.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 350.127(2), 367.0814, 367.121 F.S.

LAW IMPLEMENTED: 367.0814 F.S.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Susan Sapoznikoff, Florida Public Service Commission, Office of the General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850) 413-6630, Susan.Sapoznikoff@psc.state.fl.us.

THE FULL TEXT OF THE PROPOSED RULES:

25-30.455 Staff Assistance in Rate Cases.

(1) Water and wastewater utilities whose total gross annual operating revenues are ~~\$335,000~~ ~~\$300,000~~ or less for water service or ~~\$335,000~~ ~~\$300,000~~ or less for wastewater service, or ~~\$670,000~~ ~~\$600,000~~ or less on a combined basis, may file with the Office of Commission Clerk an application for staff assistance in rate applications by submitting a completed staff assisted rate case application. Reasonable and prudent rate case expense is eligible for recovery through the rates developed by staff. Recovery of attorney fees and outside consultant fees related to the rate case is determined based on the requirements set forth in Section 367.0814(3), F.S. To be eligible for staff assistance under this rule:

(a) through (c) No change.

(2) through (13) No change.

Rulemaking Authority 350.127(2), 367.0814, 367.121 FS. Law Implemented 367.0814 FS. History--New 12-8-80, Formerly 25-10.180, Amended 11-10-86, 8-26-91, 11-30-93, 1-31-00, 12-16-08, 8-10-14, 2-19-17, 7-1-18, 12-8-21,

_____.

25-30.456 Staff Assistance in Alternative Rate Setting.

(1) As an alternative to a staff assisted rate case as described in Rule 25-30.455, F.A.C., water and wastewater utilities whose total gross annual operating revenues are ~~\$335,000~~ ~~\$300,000~~ or less for water service or ~~\$335,000~~ ~~\$300,000~~ or less for wastewater service, or ~~\$670,000~~ ~~\$600,000~~ or less on a combined basis, may file with the Office of Commission Clerk an application for staff assistance in alternative rate setting by submitting a completed staff assisted application for alternative rate setting. To be eligible for staff assistance under this rule:

- (a) through (c) No change.
- (2) through (18) No change.

Rulemaking Authority 350.127(2), 367.0814, 367.121 FS. Law Implemented 367.0814 FS. History—New 11-30-93, Amended 1-31-00, 12-16-08, 8-10-14, 7-1-18, 12-8-21, _____.

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 ~~\$335,000~~ ~~\$300,000~~ or less for water service and wastewater utilities whose total gross annual operating revenues are ~~\$335,000~~ ~~\$300,000~~ or less for wastewater service may file with the Office of Commission Clerk an application for a limited alternative rate increase of up to 20 percent applied to metered or flat recurring rates of all classes of service.

- (2) through (10) No change.

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, 6-2-20, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Curt Mouring

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Public Service Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 4, 2023

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: Volume 49, Number 13; January 20, 2023.



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: February 24, 2023

TO: Susan Sapoznikoff, Senior Attorney, Office of the General Counsel

FROM: Sevini K. Guffey, Public Utility Analyst III, Division of Economics *SKG*

RE: Statement of Estimated Regulatory Costs for Proposed Amendment of Rules 25-30.455, 25-30.456, and 25-30.457, Florida Administrative Code (F.A.C.)

Rules 25-30.455, 25-30.456, and 25-30.457, F.A.C., applicable to water and wastewater utilities, are being amended to increase the upper threshold for eligibility for staff assistance in rate case applications. Specifically, the recommended revisions update adjustments to the gross annual revenue level required by Section 367.0814(1), Florida Statutes (F.S.). The referenced statute requires that the gross annual revenue threshold level be adjusted on July 1, 2013, and every five years thereafter, based on the most recent cumulative five years of the price index established by the Commission pursuant to Section 367.081(4)(a), F.S.

Rule 25-30.455, F.A.C., Staff Assistance in Rate Cases, defines the eligibility requirements for a water or wastewater utility to qualify for a Staff Assisted Rate Case (SARC). The recommended rule revisions increase the upper threshold of total gross annual operating revenues from \$300,000 to \$335,000 or less for water or wastewater utilities, or from \$600,000 to \$670,000 or less on a combined basis.

Rule 25-30.456, F.A.C., Staff Assistance in Alternative Rate Setting, defines the eligibility requirements for a water or wastewater utility to qualify for staff assistance in alternative rate setting. The alternative rate setting process is less detailed than that conducted for a SARC and limits the maximum increase in operating revenues to 50 percent of test year operating revenues. The recommended rule revisions increase the upper threshold of total gross annual operating revenues from \$300,000 to \$335,000 or less for water or wastewater utilities, or from \$600,000 to \$670,000 or less on a combined basis.

Rule 25-30.457, F.A.C., Limited Alternative Rate Increase, allows for a limited alternative procedure to a SARC. This procedure is less detailed than that conducted for a SARC and may allow for a limited alternative rate increase of up to 20 percent applied to metered or flat recurring rates of all classes of service. The recommended rule revisions increase the upper threshold of total gross annual operating revenues from \$300,000 to \$335,000 or less for water or wastewater utilities, or from \$600,000 to \$670,000 or less on a combined basis.

The utilities affected by the recommended rule revisions potentially may achieve cost savings as a result of lower rate case expenses. No workshop was requested in conjunction with the

recommended rule revisions. No regulatory alternatives were submitted pursuant to Section 120.541(2)(g), F.S. None of the impact/cost criteria established in Sections 120.541(2)(a), (c), (d), and (e), F.S., will be exceeded as a result of the recommended revisions.

cc: SERC file

FLORIDA PUBLIC SERVICE COMMISSION
STATEMENT OF ESTIMATED REGULATORY COSTS
Rule 25-30.455, F.A.C., Staff Assistance in Rate Cases; Rule 25-30.456, F.A.C., Staff Assistance in Alternative Rate Setting; and Rule 25-30.457, F.A.C., Limited Alternative Rate Increase.

1. Will the proposed rule have an adverse impact on small business? [120.541(1)(b), F.S.] (See Section E., below, for definition of small business.)

Yes

No

If the answer to Question 1 is “yes”, see comments in Section E.

2. Is the proposed rule likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in this state within 1 year after implementation of the rule? [120.541(1)(b), F.S.]

Yes

No

If the answer to either question above is “yes”, a Statement of Estimated Regulatory Costs (SERC) must be prepared. The SERC shall include an economic analysis showing:

A. Whether the rule directly or indirectly:

(1) Is likely to have an adverse impact on any of the following in excess of \$1 million in the aggregate within 5 years after implementation of the rule? [120.541(2)(a)1, F.S.]

Economic growth Yes No

Private-sector job creation or employment Yes No

Private-sector investment Yes No

(2) Is likely to have an adverse impact on any of the following in excess of \$1 million in the aggregate within 5 years after implementation of the rule? [120.541(2)(a)2, F.S.]

Business competitiveness (including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets) Yes No

Productivity Yes No

Innovation Yes No

(3) Is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule? [120.541(2)(a)3, F.S.]

Yes

No

Economic Analysis: Rules 25-30.455, 25-30.456, and 25-30.457, F.A.C., applicable to water and wastewater utilities, are being amended to increase the upper threshold for eligibility for staff assistance in rate case applications. The recommended revisions would benefit the qualifying utilities. There are no anticipated new costs to the utilities as a result of the recommended rule revisions.

B. A good faith estimate of: [120.541(2)(b), F.S.]

(1) The number of individuals and entities likely to be required to comply with the rule.

The amended rule will apply to approximately 83 water utilities and 58 wastewater utilities that qualify for staff assisted rate cases.

(2) A general description of the types of individuals likely to be affected by the rule.

The affected individuals would be the customers of the above stated utilities.

C. A good faith estimate of: [120.541(2)(c), F.S.]

(1) The cost to the Commission to implement and enforce the rule.

None. To be done with the current workload and existing staff.

Minimal. Provide a brief explanation.

Other. Provide an explanation for estimate and methodology used.

(2) The cost to any other state and local government entity to implement and enforce the rule.

None. The rule will only affect the Commission.

Minimal. Provide a brief explanation.

Other. Provide an explanation for estimate and methodology used.

(3) Any anticipated effect on state or local revenues.

- None.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

D. A good faith estimate of the transactional costs likely to be incurred by individuals and entities (including local government entities) required to comply with the requirements of the rule. "Transactional costs" include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used, procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring or reporting, and any other costs necessary to comply with the rule. [120.541(2)(d), F.S.]

- None. The rule will only affect the Commission.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

E. An analysis of the impact on small businesses, and small counties and small cities: [120.541(2)(e), F.S.]

(1) "Small business" is defined by Section 288.703, F.S., as an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.

- No adverse impact on small business.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

(2) A "Small City" is defined by Section 120.52, F.S., as any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial

census. A “small county” is defined by Section 120.52, F.S., as any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

- No impact on small cities or small counties.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

F. Any additional information that the Commission determines may be useful.
[120.541(2)(f), F.S.]

- None.

Additional Information:

G. A description of any regulatory alternatives submitted and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule. [120.541(2)(g), F.S.]

- No regulatory alternatives were submitted.
- A regulatory alternative was received from
 - Adopted in its entirety.
 - Rejected. Describe what alternative was rejected and provide a statement of the reason for rejecting that alternative.

Office of Fiscal Accountability and Regulatory Reform

Rulemaking Notification Form

(Exec. Order 11-211 requires agencies to submit all rulemaking notices to OFARR at least 1 week prior to publication)

To: **Andrew B. King, Director**

Submitted By: **Name, Title:**

Susan Sapoznikoff, Senior Attorney

Agency, Board:

Florida Public Service Commission

Phone Number:

850-413-6630

Rulemaking Notification for:

**Rule
Number(s):**

25-30.455, 25-30.456, and 25-30.457, F.A.C.

Rule Summary:

Rule 25-30.455, Florida Administrative Code (F.A.C.) addresses the requirements and procedures for water and wastewater utilities to petition the Florida Public Service Commission (Commission) for staff assistance in rate cases. Rule 25-30.456, F.A.C., addresses the requirements and procedures for water and wastewater utilities to petition the Commission for staff assistance in alternative rate setting. Rule 25-30.457, F.A.C., addresses the requirements and procedures for water and wastewater utilities to obtain staff assistance for a limited alternative rate increase.

Rules 25-30.455 and 25-30.456, F.A.C., allow water and wastewater utilities whose total gross annual operating revenues are \$300,000 or less for water service, \$300,000 or less for wastewater service, or \$600,000 or less on a combined basis, to be eligible for staff assistance in rate or alternative rate cases. Rule 25-30.457, F.A.C., currently allows water and wastewater utilities whose total gross annual operating revenues are \$300,000 or less for water service, or \$300,000 or less for wastewater service, to be eligible for staff assistance for a limited rate increase.

**Summary of
proposed changes:**

The proposed amendments are to comply with the statutory mandate in subsection 367.0814(1), F.S., which requires the Commission to adjust the gross annual revenue level on July 1, 2013, and every 5 years thereafter, based on the most recent cumulative 5 years of the price index established by the Commission pursuant to s. 367.081(4)(a).

The proposed amendments increase the gross annual operating revenue eligibility limit from \$300,000 or less to \$335,000 or less, per system type, or from \$600,000 or less to \$670,000 or less, on a combined basis, for utilities seeking staff assistance in rate or alternative rate cases pursuant to rules 25-30.455 and 25-30.456, F.A.C. The proposed amendment to rule 25-30.457, F.A.C., would allow water and wastewater utilities whose total gross annual operating revenues are \$335,000 or less for water service, or \$335,000 or less for wastewater service, to be eligible for staff assistance for a limited rate increase.

- The FAR notice will include more than one rule.
- The FAR notice will include new rules.
- The FAR notice will include amendments to existing rules.

Rulemaking Notification Form

Date: [Date request sent to OFARR] Date of anticipated publication:

Does this rule qualify for Rules Ombudsman review in accordance with section 120.54(3)(b), F.S.? Yes No

Please complete this form when submitting rulemaking notification to the Office of Fiscal Accountability and Regulatory Reform (OFARR) pursuant to Executive Order 11-211 and [Directive](#) published on November 11, 2019. If any information or documents are missing, the notification will be returned without review. OFARR will indicate what is missing, and the completed notification must be resubmitted.

1. Proposed Rulemaking Activity:

- Notice of Development of Rulemaking – Attach the proposed Notice. If no rule text is available, give a detailed explanation of the rulemaking, including why it is necessary.
- Notice of Proposed Rule – Attach the proposed Notice, “Is a SERC Required” Checklist, and SERC (if required), all materials incorporated by reference, and all forms referenced or required by the rule.
- Notice of Emergency Rule – Attach the proposed Notice. Explain fully why emergency rulemaking is appropriate.
- Notice of Change – Attach the proposed Notice. Be sure the text is coded correctly according to Rule 1B-30.003(5)(f), F.A.C. Explain why a change is required. Attach any correspondence from JAPC or the public. If no documents exist, summarize any public comment the agency has received or public hearings/workshops the agency has held.
- Notice of Withdrawal – Attach the proposed Notice. Explain why it is necessary to withdraw the rulemaking. Include any JAPC correspondence.
- Other – Attach the proposed Notice. Include detailed information about the rulemaking.

2. Is this rulemaking included in the agency’s Annual Regulatory Plan? Yes No

3a. Do any of the amendments or new rules:

Increase Fees? Yes No N/A

If yes, list each rule that will increase fees

Increase Regulation? Yes No N/A
(i.e., Additional Licensure, Continuing Education Requirements, etc.)

If yes, list each rule that will increase regulation

3b. For each new rule, the following information is required:

Rule Number: **Rule Title:**

Rulemaking Notification Form

Statute Authorizing Rulemaking:

Statutory language authorizing rulemaking authority:

Statute Mandating Rulemaking:

Statutory language requiring rulemaking:

New rule is due to a Legislative change occurring within the past 24 months: Yes No

Provide chapter law and effective date

List each new rule separately. Use Addendum A to list additional new rules if there will be more than one new rule in the FAR notice.

4. Has the agency received any public comment about this rulemaking since the last rulemaking notification?

Yes No

If yes, please summarize the comment and the agency's position regarding the comment (i.e. has made or intends to make changes based on the comment, disagrees with the comment, etc.) and attach any documents.

5. Has the agency received any comment from JAPC since the last rulemaking notification?

Yes No

If yes, please summarize the comment and attach any documents.

For Notice of Proposed Rules Only

6. Describe the public need for the proposed rule(s)/amendment(s) and an explanation of how the proposed rule will address that need.

The adjustments to the gross annual revenue limits contained in these rule amendments are statutorily required. Moreover, increasing the gross revenue annual revenue limits expands eligibility for staff assistance to the benefit of the water and wastewater utilities. Also see the SERC.

7. Has the agency received, been made aware of, or contemplated/reviewed any lower cost regulatory alternatives (LCRA)?

Yes No

If yes, describe in detail what action the agency took in response to the LCRA. If no, please explain.

Rulemaking Notification Form

8. Summarize qualitative and quantitative *benefits* of the proposed rule(s)/amendment(s). Benefits may include but are not limited to: productivity, efficiency, employment and accessibility, enhancement of health and safety, and protection of the environment.

See the attached SERC.

9. Summarize qualitative and quantitative *costs* of the proposed rule(s)/amendment(s). Costs may include but are not limited to: cost to government in administering the regulation, costs to businesses and professionals in complying with the regulation, adverse effects on the economy, private markets, health, safety and the environment.

See the attached SERC.

10. Does the proposed rule(s) include a sunset provision (not to exceed five years)?

Yes No

If no, please detail why and attach any supplemental documentation.

The proposed rules implement important utility ratemaking statutes requiring adjustment every five years, which would be contrary to a sunset provision.

This form should be used in conjunction with the Rulemaking Notification Form to list additional new rules that will be part of the same FAR notice. Use as many addendums as necessary to list all new rules.

[3b from Rulemaking Notification Form]

For each new rule, the following information is required:

Rule Number: <input type="text"/>	Rule Title: <input type="text"/>
Statute Authorizing Rulemaking: <input type="text"/>	Statutory language authorizing rulemaking authority: <input type="text"/>
Statute Mandating Rulemaking: <input type="text"/>	Statutory language requiring rulemaking: <input type="text"/>
New rule is due to a Legislative change occurring within the past 24 months: Yes <input type="checkbox"/> No <input type="checkbox"/>	Provide chapter law and effective date <input type="text"/>

List each new rule separately.