

STATE OF FLORIDA

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Public Service Commission

November 20, 2012

Mr. Kenneth Plante, Coordinator  
Joint Administrative Procedures Committee  
Room 680, Pepper Building  
111 W. Madison Street  
Tallahassee, FL 32399-1400

Via Hand-Delivery

Re: Section 120.745(5)(d), Florida Statutes, Final Report and Certification of Completion

Dear Mr. Plante:

This letter is the written certification required by subparagraph 120.745(5)(d)6., Florida Statutes (F.S.), verifying the completion by the Florida Public Service Commission of the reviews and reporting required under subsection 120.745(5), F.S., for 2012. The Commission's Final Report of the Compliance Economic Reviews of the Group 1 Rules, prepared pursuant to subsection 120.745(5), F.S., has been published as required by subsection 120.745(5)(d) and section 120.745(7), F.S. A copy of the report is included for your convenience.

Sincerely,

A handwritten signature in blue ink, appearing to be "Ronald A. Brisé", written over a horizontal line.

Ronald A. Brisé  
Chairman

KC  
Enclosure

Cc(w/enc.): Patricia Nelson, Executive Office of the Governor (via hand-delivery)  
Lisa Polak Edgar, Commissioner  
Art Graham, Commissioner  
Eduardo E. Balbis, Commissioner  
Julie I. Brown, Commissioner  
Braulio Baez, Executive Director  
Charles Hill, Deputy Executive Director  
S. Curtis Kiser, General Counsel

**Final Report  
of the  
Compliance Economic Reviews  
for Group 1 Rules**

**Florida Public Service Commission**

**November 20, 2012**

This document is prepared in response to the requirements  
of Section 120.745(5)(d), Florida Statutes

**Section 120.745(5)(d), Florida Statutes, Final Report**

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**Compliance Economic Review  
for  
Rule 25-4.0161, Florida Administrative Code,  
Regulatory Assessment Fees; Telecommunications Companies**

**Florida Public Service Commission**

This document is prepared in response to the requirements  
of Section 120.745, Florida Statutes

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Attachment 1: Survey on Rule 25-4.0161, F.A.C., with attached rule

## **I. EXECUTIVE SUMMARY**

The purpose of this report is to evaluate the economic impacts of Rule 25-4.0161, Florida Administrative Code (F.A.C.), Regulatory Assessment Fees; Telecommunications Companies. The report also analyzes whether or not compliance with the rule is likely to increase regulatory costs and/or transactional costs.

Section 120.745, Florida Statutes (F.S.), became effective in 2011 and requires each agency to complete an enhanced biennial review of all its existing rules and to publish a report by December 1, 2011. The statute requires each agency to identify in its report each of its rules which require a compliance economic review. A compliance economic review is defined as a good faith economic analysis which includes a justification for the rule, a statement of estimated regulatory costs for the 5 year period beginning on July 1, 2011, and an explanation of the methodology used to conduct the analysis. A compliance economic review is required for each rule that the agency does not plan to repeal by December 31, 2012, was effective on or before November 16, 2010, and is considered by the agency to probably have any of the economic impacts described in Section 120.541(2)(a), F.S., for the 5 year period beginning on July 1, 2011.

Pursuant to Section 120.745, F.S., the Florida Public Service Commission (FPSC or Commission) is required to identify and conduct a compliance economic review for rules that the agency believes are likely to have an adverse impact on economic growth, private sector job creation or employment, private sector investment, business competitiveness, productivity and innovation, or are likely to increase regulatory costs, including any transactional costs in excess of \$1 million during the 5 year period beginning on July 1, 2011.

The FPSC completed its enhanced biennial review report on November 22, 2011. Within the report, the FPSC delineated ten rules it determined were subject to a compliance economic review. Pursuant to Section 120.745(2)(h), F.S., the FPSC divided these rules into Group 1, with the accompanying compliance economic review due May 1, 2012, and Group 2, due May 1, 2013. Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies, is one of five rules included in the list of Group 1 rules appearing in the FPSC's enhanced biennial review and is the subject of this compliance economic review.

To conduct the compliance economic review of the rule, the Commission distributed surveys to all local telephone and pay telephone service providers. Forty-seven responses to the survey were received. The survey responses were reviewed to assess the economic impact of the rule. Based upon staff analysis, the Commission expects the total transactional costs associated with compliance with Rule 25-4.0161, F.A.C., for local telephone and pay telephone service providers for the 5 year period beginning on July 1, 2011, to be approximately \$18.8 million. For the past few years, the number of local access lines has significantly decreased due to customers switching from wireline services to wireless services. This trend is expected to continue over the next 5 years. As a result, the estimated 5 year costs represent a significant decrease in costs for local telephone and pay telephone service providers when compared to the previous 5 year period.

With regard to the impact resulting from compliance of Rule 25-4.0161, F.A.C., it was determined that the rule will not adversely affect economic growth, private sector job creation or employment, private sector investment, business competitiveness, productivity, or innovation.



## **II. TECHNICAL METHODOLOGY**

Section 120.745(1)(b)2.c., F.S., requires an explanation of the technical methodology used to conduct the analysis required in Section 120.541(2), F.S., for each agency rule for which a compliance economic review is performed. The FPSC conducted a survey of each of the entities subject to the rule, the purpose of which was to determine the estimated impacts of the rule on the regulated entity, as well as its customers, including small businesses, small counties, and small cities. The FPSC developed and distributed a survey designed to collect data which would reveal the specific impacts of Rule 25-4.0161, F.A.C., for the 5 year period beginning on July 1, 2011. (Attachment 1) The FPSC used routine regulatory communications in conducting this survey.

The next step was to review the information contained in the survey responses. The information provided by regulated utilities was then compared with information the FPSC has in its records in order to determine whether the responses received appeared to be consistent with similar data or information for recent periods or forecasted periods. Rule 25-4.0161, F.A.C., has been in effect for 29 years, and some of the information pertaining to the financial impacts of the rule has already been quantified and in some cases provided to the FPSC. As a part of its review of in-house information, the FPSC examined documents filed by outside parties or developed by the FPSC during its rulemaking proceedings, including any previously performed Statements of Estimated Regulatory Costs.

The final step in the analysis involved aggregating the responses of all of the respondents in order to determine the rule's quantitative and qualitative impacts as required by the statute. In cases where one or more regulated entities did not provide a response to the survey, it became necessary to rely upon other information on file with the FPSC to estimate the rule's impacts on that entity(ies) in order to contribute as much information as possible to the statewide impacts.

## **III. ECONOMIC REVIEW COMPONENTS**

### **A. Rule Justification**

Rule 25-4.0161, F.A.C., became effective on May 18, 1983. When Rule 25-4.0161, F.A.C., was initially implemented, its purpose was to set the percentage of gross operating revenues that each telecommunications utility or company under the Commission's jurisdiction must pay as a regulatory assessment fee (RAF) and to prescribe procedures for such payment. The underlying statutory authority of Rule 25-4.0161, F.A.C., derives from Sections 350.113 and 364.336, F.S. Section 350.113, F.S., grants the Commission authority to collect fees from companies under the Commission's jurisdiction and requires each regulated company to remit these fees to the Commission based upon the company's gross operating revenue. To the extent practicable, these fees are related to the cost of regulating each company. Without the collection of these fees from the regulated companies, the Commission would have to use funds from the General Revenue Fund to perform its statutory obligation to regulate companies under its jurisdiction.

Section 350.113, F.S., also mandates that the Commission deposit the regulatory assessment fees that are collected into the Florida Public Service Regulatory Trust Fund to be used in the operation of the Commission as required by law. Section 364.336, F.S., establishes the criteria for setting regulatory rates and identifies the parameters, in regard to the minimum and maximum fees that the Commission may assess for telecommunications companies under the Commission's jurisdiction. The statute also provides the framework for collection of the fees.

Since Rule 25-4.0161, F.A.C., was originally adopted, it has been amended 11 times.<sup>1</sup> Each amendment was made to either: Set and/or adjust rates; implement statutory and legislative requirements; adopt, incorporate and/or revise RAF forms; or clarify existing rule language. For instance, on October 19, 1986, Rule 25-4.0161, F.A.C., was revised to implement a mandatory minimum annual regulatory assessment fee for all telecommunications companies. The rule was later revised, effective January 1, 1990, to increase the minimum RAF payment and to adopt a new RAF form.

On July 8, 1996, Rule 25-4.0161, F.A.C., was amended to clarify the day on which the regulatory assessment fee and return form must be filed or U.S. postmarked, if the date falls on a Saturday, Sunday, or holiday. The rule amendment also incorporated amendments to Section 364.336, F.S., made by the 1995 Florida Legislature, which granted the Commission authority to authorize by rule annual, rather than semi-annual, filings for small telecommunications companies. Rule 25-4.0161, F.A.C., was also amended on December 7, 2004, October 6, 2005, and April 16, 2007, to: increase RAF rates; set mandatory penalties for telecommunications companies who fail to submit timely RAF payments; and increase the mandatory minimum annual regulatory assessment fee, respectively. Rule 25-4.0161, F.A.C., derives its authority to impose penalties upon companies who fail to submit timely RAF payments from Section 364.285, F.S., which grants the Commission authority to impose a penalty upon any entity under its jurisdiction that fails to comply with the Commission's rules.

The most recent amendment to Rule 25-4.0161, F.A.C., occurred in December 2011. The rule was amended as a result of statutory requirements. Pursuant to the Regulatory Reform Act, which was enacted during the 2011 Legislative Session, Chapter 364, F.S., was amended. This had the effect of reducing the Commission's regulatory authority regarding telecommunications companies. The amendments reduced the Commission's jurisdiction over retail telecommunications and completely deregulated interexchange companies (IXC). As a result of the IXC deregulation, the Commission no longer has jurisdiction over these companies. The statutory amendments also required the Commission to undergo rulemaking to reduce RAFs for telecommunications companies that remained under the Commission's jurisdiction in order to reflect the change in regulatory responsibilities. The statutory amendments became effective on July 1, 2011.

In July 2011, Commission staff opened Docket No. 110224-TP, In Re: Proposed amendment of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees: Telecommunications, to

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<sup>1</sup> Rule 25-4.0161, F.A.C., was amended on the following dates: October 19, 1986; January 1, 1991; December 29, 1991; January 8, 1995; December 26, 1996; July 7, 1996; November 11, 1999; December 7, 2004; October 6, 2005; April 16, 2007; and December 4, 2011.

initiate rulemaking to reduce the RAFs pursuant to Section 364.336(2), F.S., which requires that the reduced fee be applied beginning with payments due in January 2012, for the preceding six-month period. By Order No. PSC-11-0538-FOF-TP, the Commission adopted the amendments to Rule 25-4.0161, F.A.C. The amended rule became effective on December 4, 2011.

Currently, Rule 25-4.0161, F.A.C., sets the percentage of gross operating revenues that all certificated local telephone service providers and pay telephone service providers must pay to the Commission as a RAF.<sup>2</sup> Rule 25-4.0161(1), F.A.C., defines “local telephone service providers” as all incumbent local exchange companies (ILEC),<sup>3</sup> shared tenant service providers (STS),<sup>4</sup> alternative access vendors (AAV),<sup>5</sup> and competitive local exchange companies (CLEC),<sup>6</sup> that hold an active certificate of convenience and necessity that was obtained prior to July 1, 2011, and all telecommunications companies that obtain a certificate of authority after July 1, 2011.<sup>7</sup>

In addition to setting RAF rates, Rule 25-4.0161, F.A.C., also elucidates the processes and notifications requirements for collection of regulatory fees and sets the minimum annual fee amounts that each company must pay. The rule specifies the forms to be used for filing regulatory assessment fees, stipulates when payments are due, and defines how to calculate delinquent fees if regulatory assessments fees are not paid timely. Rule 25-4.0161, F.A.C., further specifies the automatic penalties that must be paid when regulatory assessment fees remain unpaid and identifies the form to be used to request an extension to pay the fees.

Rule 25-4.0161(2)(b), F.A.C., requires that effective January 1, 2012, each local telecommunications company shall pay a RAF in the amount of 0.16 percent of its gross operating revenues derived from intrastate business.<sup>8</sup> The minimum annual assessment fee is \$600 for local telephone service providers and \$100 for pay telephone service providers.<sup>9</sup>

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<sup>2</sup> A Pay Telephone Service provider is a telecommunications company that provides pay telephone services.

<sup>3</sup> A Local Exchange Company is a telecommunications company that provides local telephone service. An incumbent local exchange company or ILEC refers to local telephone service providers that were established prior to the Telecommunications Reform Act of 1996.

<sup>4</sup> Shared Tenant Service providers provide centralized local exchange services to tenants in a building or complex. STS services duplicate or compete with local service provided by existing local exchange service providers. These services are furnished to the building’s tenants through a common switching or billing arrangement by an entity other than the existing local exchange provider.

<sup>5</sup> Alternative Access Vendors provide private line service between an entity and facilities at another location. The private line service is dedicated to point-to-point or point-to-multipoint service for the transmission of any public telecommunications service.

<sup>6</sup> A Competitive Local Exchange Company or CLEC provides local telephone services. A CLEC typically refers to local telephone companies that compete with ILEC providers and were established after the Telecommunications Reform Act of 1996 was enacted.

<sup>7</sup> Pursuant to Section 364.33, F.S., the Commission no longer issues certificates of convenience and necessity. However, existing certificates remain active.

<sup>8</sup> Prior to the amendment of Rule 25-4.0161, F.A.C., all telecommunications companies were required to pay 0.20 percent of their gross operating revenues that were derived from intrastate business.

<sup>9</sup> Prior to the December 4, 2011, rule amendment, the minimum regulatory assessment fee was \$1,000 for ILECs and \$100 for STS. The current minimum assessment fees represent a \$400 decrease for ILECs and a \$500 increase for STS companies. The minimum fee for PATS, AAV, and CLEC remained the same.

Between the interim period of January 1, 2011, through December 31, 2011, Rule 25-4.0161, F.A.C., required each company that paid its RAFs for the period of January 1, 2011, through June 30, 2011, by August 15, 2011, to pay a fee in the amount of 0.16 percent of its gross operating revenues derived from intrastate business during the period of July 1, 2011, through December 31, 2011. Companies that had not paid for the period of January 1, 2011, through December 31, 2011, were required to pay a blended rate of 0.18 percent.

As explained above, Rule 25-4.0161, F.A.C., implements the statutory objectives of Sections 350.113, and 364.336, F.S., for telecommunications companies regulated by the Commission, and has been amended to address the changes sanctioned by the 2011 Regulatory Reform Act. The rule clearly identifies and defines the requirements that all certificated telecommunications companies must follow when calculating and remitting regulatory assessment fees to the Commission.

## B. Statement of Estimated Regulatory Costs

### 1. Entities and Individuals Affected

Rule 25-4.0161, F.A.C., currently applies to a total of 436 telecommunications companies. This total consists of 342 local telephone service providers and 94 pay telephone service providers. The Commission has no knowledge as to whether any of these telecommunications companies will be dissolved or acquired during the 5 year period beginning on July 1, 2011. While the Commission is aware that the potential exists for the number of telecommunications companies under the Commission's jurisdiction to increase during the 5 year period beginning on July 1, 2011, as additional telecommunications companies seek certification to operate in Florida, the Commission, however, does not have any specific information regarding the potential increase of certificated telecommunications companies.

Rule 25-4.0161, F.A.C., directly affects all regulated telecommunications companies that provide local and pay telephone services. Each company that is required to comply with the rule incurs certain regulatory costs. These regulatory costs, which include transactional costs, are often passed on to the company's residential and commercial customers. As a result, the customers of local and pay telephone services providers are also affected by the rule.

### 2. Economic Analysis

#### a. Regulatory Costs

Sections 120.541(2)(a)3., and 120.745, F.S., require a compliance economic review to show whether the rule, directly or indirectly, will have estimated regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within a 5 year period beginning on July 1, 2011. The transactional costs that were reviewed include the regulatory assessment fees paid by the utilities subject to the rule, which were specifically identified

within Rule 25-4.0161, F.A.C., and the administrative expenses incurred by these utilities to process the RAFs.

Forty-seven responses to the FPSC's survey on Rule 25-4.0161, F.A.C., were received.<sup>10</sup> Of the 47 responses only 16 of the responses actually reported the company's transactional costs to comply with Rule 25-4.0161, F.A.C. The remaining 32 responses indicated that the data needed to calculate the company's transactional costs was either unavailable or that the costs were minimal and/or immaterial. The 16 responses that reported costs consisted of responses from 15 local service providers and 1 pay telephone service provider.

### Local Telephone Service Providers

The following discusses the 15 survey responses received from local telephone service providers. As identified by Rule 25-4.0161(1), F.A.C., local telephone service providers are defined as all ILEC, STS, AAV, and CLEC companies that hold either an active certificate of convenience and necessity or a certificate of authority. Although the rules no longer separately identify these companies, for purposes of this analysis the survey results for the local telephone service providers have been separated by company type.

### ILEC

Three ILECs reported their actual and estimated transactional costs to comply with Rule 25-4.0161, F.A.C. NEFCOM estimated that its transactional costs to comply with the rule for the 5 year period beginning on July 1, 2011, will be approximately \$4,000. The company's actual transactional cost of compliance for the period of July 1, 2011, through December 31, 2011, was \$814.

BellSouth Telecommunications, LLC, d/b/a AT&T Florida d/b/a AT&T Southeast (AT&T) collectively reported costs on behalf of six certificated telecommunications entities.<sup>11</sup> AT&T estimated that the cost to comply with Rule 25-4.0161, F.A.C., for all AT&T entities for the 5 year period beginning on July 1, 2011, will be approximately \$40,000. The company indicated that it does not separately track or identify the actual transactional costs incurred to comply with Rule 25-4.0161, F.A.C. However, AT&T estimates its actual transactional cost for the period of July 1, 2011, through December 31, 2011, to be approximately \$4,000.

ITS Telecommunications Systems, Inc. (ITS) reported collectively on behalf of its ILEC and CLEC entities. ITS estimated that the transactional costs that the ILEC will incur to comply with Rule 25-4.0161, F.A.C., for the 5 year period beginning on July 1, 2011, is

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<sup>10</sup> It should be noted that although 47 responses were received the responses are representative of roughly 60 different entities due to the fact that several companies submitted one response on behalf of the parent company and their subsidiaries.

<sup>11</sup> The survey responses that were submitted by AT&T were submitted on behalf of the following certificated companies: AT&T Communications of the Southern States, LLC, d/b/a AT&T; BellSouth Long Distance, Inc., d/b/a AT&T Long Distance; BellSouth Telecommunications, LLC, d/b/a AT&T Florida d/b/a AT&T Southeast (ILEC); BellSouth Telecommunications, LLC, d/b/a AT&T Florida d/b/a AT&T Southeast (CLEC); Centennial Florida Switch Corp.; and TCG South Florida.

\$47.41 per hour. According to ITS, it takes the company less than one hour to complete its RAF form.

### CLEC

Eleven CLECs reported their actual and estimated transactional costs resulting from complying with Rule 25-4.0161, F.A.C. The estimated transactional costs for CLECs to comply with the rule for the 5 year period beginning on July 1, 2011, varied between \$237 and \$15,500. The average estimated costs for the 5 year period were \$3,567. The actual transactional costs reported for the period of July 1, 2011, through December 31, 2011, varied between \$47.41 and \$1,500. The average actual transactions costs were \$514.

### AAV<sup>12</sup>

FPL FiberNet, LLC, (FPL) reported combined estimated and actual transactional costs for both its CLEC and AAV companies. The portion of the transactional costs allocated to each company was undeterminable. FPL estimated that its total transactional costs resulting from complying with Rule 25-4.0161, F.A.C., for the 5 year period beginning on July 1, 2011, for both its CLEC and AAV companies is \$1,000. The company also reported that its actual transactional costs for the period of July 1, 2011, through December 31, 2011, were \$100. TW Telecom of Florida, L.P., reported estimated transactional costs of \$5,000 for the 5 year period beginning on July 1, 2011. The company's actual costs for the period of July 1, 2011 through December 31, 2011 were \$500.

### STS

Transparent Technology Services Corp. (Transparent Technology) is a shared tenant service provider. The company was the only STS that reported estimated and actual transactions costs. Transparent Technology estimated that its total transactional costs for complying with Rule 25-4.0161, F.A.C., for the 5 year period beginning on July 1, 2011, will be \$3,000. The company's actual transactional costs for the period of July 1, 2011, through December 31, 2011, were \$300.

### Pay Telephone Service Provider

Inmate Calling Solutions, LLC, d/b/a ICSolutions (ICSolutions) was the only pay telephone service provider that reported transactional costs. ICSolutions estimated that its total transactional costs resulting from complying with Rule 25-4.0161, F.A.C., for the 5 year period beginning on July 1, 2011, will be \$1,000. The company's actual transactional costs for the period of July 1, 2011, through December 31, 2011, were \$200.

The total estimated transactional costs reported by the companies who responded to the survey, and provided data, to comply with Rule 25-4.0161, F.A.C., for the 5 year period beginning on July 1, 2011, was \$92,237, or \$18,447 per year. The actual transactional costs

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<sup>12</sup> Since AAV and STS companies are now defined as local telephone service providers, all previous AAV and STS rules have been repealed.

for the period of July 1, 2011, through December 31, 2011, were \$11,498. The total amount of regulatory assessment fees paid by these companies for calendar year 2011 was approximately \$2.8 million. Staff estimates that between July 1, 2011, and December 31, 2011, the companies paid approximately \$1.4 million, which represents half of the total 2011 RAF revenues received for the entire year. For the 2011 calendar year all local service providers and pay telephone service providers paid approximately \$5.8 million in regulatory assessment fees.<sup>13</sup>

To estimate the costs of the regulatory assessment fees for all local telephone and pay telephone service providers for the 5 year period beginning on July 1, 2011, the Commission would typically use the gross operating intrastate revenues reported on the 2011 RAF forms by all local telephone and pay telephone service providers and multiply that amount by the current RAF rate; then apply the total for each year during the 5 year period. However, in light of the steady decline in ILEC access lines in recent years using this method to estimate costs without accounting for future anticipated declines would not produce the most reliable projections.<sup>14</sup> The Commission anticipates a 12 to 13 percent decrease in RAF revenue each year during the 5 year period beginning on July 1, 2011. The recent amendments to Rule 25-4.0161, F.A.C., which reduced RAF rates from 0.20 percent to 0.16 percent, effective January 1, 2012, and implemented interim rates for the period between July 1, 2011, and December 31, 2011, should also be taken into account when calculating the estimated total regulatory assessment fees.

During the first year of rule implementation (2012-2013) the estimated RAF revenue is expected to be approximately \$4.7 million. Taking the above considerations into account, the estimated cost of the RAFs for all local telephone and pay telephone service providers for the 5 year period beginning on July 1, 2011, is approximately \$18.7 million. Based on the transactional costs reported and the RAF revenue collected from the companies that submitted responses to the survey and provided data, the transactional costs represent 0.66 percent of the total RAFs collected. For purposes of this analysis the Commission assumed that the transactional costs for the non-reporting telecommunications company is also 0.66 percent of their total RAFs collected. The estimated transactional costs for the 5 year period for all telecommunications companies, is \$123,743. Thus, the estimated total transactional costs associated with compliance with Rule 25-4.0161, F.A.C., for local telephone and pay telephone service providers for the 5 year period beginning on July 1, 2011, are approximately \$18.8 million.

Regulatory costs also include the costs to government agencies to implement and enforce the rule. The cost to the FPSC to implement and enforce Rule 25-4.0161, F.A.C., based on a good faith estimate for the 5 year period beginning on July 1, 2011, is \$284,047, as

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<sup>13</sup> For 2011, the Commission actually collected a total of \$6,466,020 in regulatory assessment fees. However, \$672,947 of the fees were paid by IXCs for the period of January 1, 2011, through June 30, 2011. IXCs were deregulated effective July 1, 2011, and therefore were not required to remit RAF payments after July 1, 2011. Since the rule review only applies to local telephone and pay telephone service providers, the amounts paid by IXCs were deducted for purposes of this review.

<sup>14</sup> According to the Commission's Report on the Status of Competition in the Telecommunications Industry, ILEC access lines decreased by 20 percent in 2010. This decrease is expected to continue in upcoming years due to customers abandoning traditional wireline services.

discussed in section III. 3. (Costs to Governmental Entities) below. Other state and local government agencies are not directly impacted by the rule.

Based on the above analysis, the total regulatory costs associated with the rule including both transactional costs and costs to the agency, are estimated to be approximately \$19.11 million for the 5 year period beginning on July 1, 2011. Thus, our economic analysis indicates the rule directly or indirectly will result in estimated regulatory costs in excess of \$1 million for the 5 year period beginning on July 1, 2011.

b. Economic Growth, Jobs, and Investment

Sections 120.745, and 120.541(2)(a)1., F.S., require each compliance economic review to show whether the rule directly or indirectly is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within a 5 year period beginning on July 1, 2011. The FPSC survey to all telecommunications companies specifically requested information responsive to this requirement for their specific territories. A few companies responded that impact of the rule was unknown or that the company did not have sufficient data to determine the impact. However, the vast majority of the responses indicated that Rule 25-4.0161, F.A.C., will have either minimal or no impact at all on economic growth, private sector job creation or employment, or private sector investment.

Four companies, New Edge Network, Inc. d/b/a EarthLink Business (EarthLink), US Signal Company LLC, FPL FiberNet, LLC, and BullsEye Telecom, Inc., provided more detailed responses regarding the impact they expected Rule 25-4.0161, F.A.C., to have on economic growth, private sector job creation or employment, or private sector investment. EarthLink, stated, "Competitive telecommunications offerings will continue to be critical to economic growth and private sector employment. Therefore, the FPSC's role as a monitor of competition, and the funding that the FPSC receives as a result of the regulatory assessments, has a significant impact."

US Signal Company, LLC, responded that it expects Rule 25-4.0161, F.A.C., to stimulate a more competitive marketplace which will in turn lead to better service, rates, and overall satisfaction for subscribers of telecommunications services. US Signal Company, LLC, also expects the rule to influence the implementation of more efficient technology in the telecommunications industry which will in turn bring about greater cost savings that can be used as new capital to fund market expansions.

FPL FiberNet stated, "We believe that competitive telecommunications prices and ubiquity of broadband services are and will continue to be crucial to economic growth and employment. In this regard, we believe that the FPSC's role as an enabler of competition in telecommunications is important to sustaining economic growth and employment in our State, and the FPSC's ability to play that role is made possible by the regulatory assessment fee."

BullsEye Telecom, Inc., responded that Rule 25-4.0161, F.A.C., impacts small companies because it forces the companies to spend more resources on compliance. As a



result, companies are forced to use resources that could have been used to create more jobs to pay third-party compliance costs.

Based on the survey responses and in light of the recent RAF rate reduction, economic growth, private sector job creation or employment, or private sector investment are not likely to be adversely affected in excess of \$1 million in the aggregate within 5 years beginning on July 1, 2011. However, it should be noted that the amendments to Rule 25-4.0161, F.A.C., did increase the minimum annual RAF payment for STS companies from \$100 to \$600 since the rule now defines STS companies as local telephone service providers.

### c. Business Competitiveness

Subparagraphs 120.541(2)(a)2., and 120.745(1)(b)2., F.S., require each compliance economic review to show whether the rule directly or indirectly is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity or innovation in excess of \$1 million in the aggregate within 5 years beginning on July 1, 2011. The FPSC survey to all telecommunications companies specifically requested information responsive to this requirement for their specific territories. A few companies responded that impact of the rule was unknown or that the company did not have sufficient data to determine the impact. However, the vast majority of the responses indicated that the rule will have either minimal or no impact at all on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity or innovation.

When responding to the survey question regarding the expected impact that Rule 25-4.0161, F.A.C., will have on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity or innovation, both FPL FiberNet and EarthLink referenced their responses to the expected impact that the rule will have on economic growth, private sector job creation or employment, and private sector investment. Both companies share the belief that the FPSC plays an important role in facilitating competition within the telecommunications market. These companies also believe that this role is important because it helps to sustain economic growth and employment.

CenturyLink responded that Rule 25-4.0161, F.A.C., creates a competitive disadvantage for a company that incurs regulatory costs that its competitors do not incur. The company stated that if these regulatory costs are passed along to the company's customers, then those customers will also be at a disadvantage when compared to the competitor's customers. According to BullsEye Telecom, Inc., the mandatory minimum RAF fees are disadvantageous for small companies and should be eliminated to foster competition. US Signal Company, LLC, responded that the RAF rates mandated by Rule 25-4.0161, F.A.C., are competitive with the rates of other states.

Based upon review of the survey responses and other pertinent information available, it appears unlikely that business competitiveness, including the ability of persons doing

business in the state to compete with persons doing business in other states or domestic markets, productivity or innovation, will be adversely affected in excess of \$1 million in the aggregate within 5 years beginning on July 1, 2011.

### 3. Costs to Governmental Entities

Subparagraphs 120.541(2)(c) and 120.745(1)(b)2., F.S., require a compliance economic review to include a good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the rule. In order to provide a good faith estimate of the cost to the agency, the annual number of hours dedicated to implementing and enforcing Rule 25-4.0161, F.A.C., specific to each employee classification, was multiplied by the associated labor rates, and the resulting costs were aggregated across all employee classifications. The total estimated FPSC costs associated with implementing and enforcing the rule over the 5 year period beginning on July 1, 2011, are \$284,047. Other state and local government agencies are not directly impacted by the rule.

### 4. Transactional Costs Incurred by Companies

Subparagraphs 120.541(2)(d) and 120.745(1)(b)2., F.S., require a compliance economic review to include 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 were identified in Section III. B. 2, above. As discussed above, the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule for the 5 year period beginning on July 1, 2011, are estimated to be approximately \$18.8 million.

### 5. Impacts on Small Businesses, Small Counties, and Small Cities

Paragraphs 120.541(2)(e) and 120.745(1)(b)2., F.S., require a compliance economic review to include an analysis of the impact of the rule on small businesses, as defined by Section 288.703, F.S., and on small counties, and small cities, as defined in Section 120.52, F.S. The impact analysis for small businesses must include the basis for the agency's decision not to implement alternatives that would reduce adverse impacts on small businesses.

The vast majority of the local telephone and pay telephone service providers who responded to the FPSC's survey questions regarding the impact that complying with Rule 25-4.0161, F.A.C., will have on small businesses, small counties, and small cities during the 5 year period beginning on July 1, 2011, responded variously that the rule will have either minimal or no impact at all. A few companies indicated that the impact of the rule was unknown or that there was not sufficient data available to determine the impact. However, several companies stated that the impact of complying with the rule was beneficial to small businesses because it allows the businesses to compete in the marketplace; and that the regulatory assessment fees collected by the Commission provide funding that enables the agency to ensure that illegal barriers to competition are not created.

BudgeTel Systems, Inc., stated that it estimates costs in the amount of \$3,000 during the 5 year period beginning on July 1, 2011, for small businesses, small counties, and small cities as a result of complying with Rule 25-4.0161, F.A.C. US Metropolitan Telecom, LLC, estimated a total of \$2,500 for the 5 year period and does not foresee any benefits provided by the rule to small businesses in its area. FPL FiberNet was unable to quantify the costs and benefits that complying with the rule will have on small businesses, small counties, and small cities. However, the company believes that small companies will pass on the costs of the regulatory assessment fees mandated by the rule to their customers.

The estimated 5 year regulatory costs associated with Rule 25-4.0161, F.A.C., as identified in the prior section are \$18.8 million. These regulatory costs are costs that many companies may pass through to their customers, at some point.<sup>15</sup> However, such costs are expected to have minimal impact on small businesses, small counties, and small cities.

#### 6. Additional Information

Paragraphs 120.541(2)(f) and 120.745(1)(b)2., F.S., require a compliance economic review to include any additional information that the agency determines may be useful. No additional useful information has been identified regarding the estimated regulatory costs of Rule 25-4.0161, F.A.C.

#### 7. Alternatives

Paragraphs 120.541(2)(g) and 120.745(1)(b)2., F.S., require a compliance economic review to include a description of any regulatory alternatives submitted under Section 120.541(1)(a), F.S., and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the rule. No regulatory alternatives have been submitted under Section 120.541(1)(a), F.S.

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<sup>15</sup> On the survey, companies were asked if they anticipated having to revise customer rates in the future in order to comply with Rule 25-4.0161, F.A.C. Of the 47 responses that were received, only two companies (BullsEye Telecom, Inc. and BudgeTel Systems, Inc.) indicated that they anticipate possibly having to increase their rates in the future in order to comply with the rule.

COMMISSIONERS:  
RONALD A. BRISÉ, CHAIRMAN  
LISA POLAK EDGAR  
ART GRAHAM  
EDUARDO E. BALBIS  
JULIE I. BROWN

STATE OF FLORIDA



DIVISION OF REGULATORY ANALYSIS  
BETH W. SALAK  
DIRECTOR  
(850) 413-6600

# Public Service Commission

February 24, 2012

To: All Telecommunications Service Providers

Re: Industry survey for legislative review of agency rules in effect on or before November 16, 2010  
Docket No. 110303-OT

To whom this may concern:

Please see attached staff's survey questions. Your timely response to these survey questions regarding Rule 25-4.0161, Florida Administrative Code (F.A.C.) will be used to complete the Commission's Compliance Economic Review required by Sections 120.745 and 120.541, Florida Statutes. All responses should be filed in Docket No. 110303-OT by 5:00 p.m., Wednesday, March 14, 2012, and addressed to:

Judy Harlow  
c/o Ann Cole  
Commission Clerk  
Office of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

If you have any questions, please contact Kiwanis Curry at (850) 413-6662 or [kcurry@psc.state.fl.us](mailto:kcurry@psc.state.fl.us) or Judy Harlow at (850) 413-6842 or [jharlow@psc.state.fl.us](mailto:jharlow@psc.state.fl.us). Thank you for your assistance.

Sincerely,

/s/ Judy Harlow  
Judy Harlow  
Senior Analyst  
Division of Regulatory Analysis

**Rule 25-4.0161, F.A.C. – Survey Questions**

The following survey questions apply to **Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies**. For responding to these questions, please refer to Subsection 120.541(2), F.S., and Subparagraph 120.745(1)(b)2., F.S. “Transactional costs” are defined in Subparagraph 120.541(2)(d), F.S., as:

...direct costs that are readily ascertainable based upon standard business practices, including filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule.

The company’s response data to these survey questions should be provided for the entire rule, unless the response data is available by rule section, in which case we request the response data be provided by rule section. Please present data in annualized format, if possible, and all cost or benefit dollar estimates should be stated in nominal terms.

1. What are the estimated transactional costs resulting from the Company’s compliance of Rule 25-4.0161, F.A.C., for the five year period beginning July 1, 2011?
  - a. What are your actual transactional costs resulting from your Company’s compliance with Rule 25-4.0161, F.A.C., for the period July 1, 2011 through December 31, 2011?
2. What is your estimate of the likely impact, stated in terms of costs and/or benefits, on small businesses (as defined by Section [288.703](#), F.S.) located in the Company’s service territory, resulting from the compliance of Rule 25-4.0161, F.A.C., for the five year period beginning July 1, 2011?
3. What is your estimate of the likely impact, stated in terms of costs and/or benefits, on small counties and small cities (as defined in Section [120.52](#), F.S.) located in the Company’s service territory, resulting from the compliance of 25-4.0161, F.A.C., for the five year period beginning July 1, 2011?
4. What is your estimate of the likely impact, stated in terms of costs and/or benefits, on entities located in the Company’s service territory other than those specifically identified in Questions 2 and 3, resulting from the compliance of 25-4.0161, F.A.C., for the five year period beginning July 1, 2011?
5. What expected impact do you believe Rule 25-4.0161, F.A.C., will have on economic growth, private sector job creation or employment, and private sector investment for the five year period July 1, 2011 in the Company’s service territory?
6. What expected impact do you believe Rule 25-4.0161, F.A.C., will have on business competitiveness, including the ability of persons doing business in the Company’s service territory to compete with persons doing business in states other than Florida or other domestic markets, productivity, and innovation, for the five year period July 1, 2011?

7. What are the benefits to your Company associated with Rule 25-4.0161, F.A.C.?
8. Since the December 4, 2011 rule change has your Company revised customer rates in order to comply with Rule 25-4.0161, F.A.C.? If so, please explain any rate changes that were made.
9. If the Company did revise customer rates after the rule change, what were the specific costs associated with processing and implementing these rate changes?
10. Does the Company anticipate having to revise customer rates in the future in order to comply with Rule 25-4.0161, F.A.C.? If so, please explain any anticipated rate changes for the five year period beginning July 1, 2011.
11. If the company anticipates revising customer rates in order to comply with Rule 25-4.0161, F.A.C., what costs does the company expect to incur to process and implement the rate changes for the five year period beginning July 1, 2011?

**25-4.0161 Regulatory Assessment Fees; Telecommunications Companies.**

(1) For the purposes of this rule and except for pay telephone service providers, all incumbent local exchange companies, shared tenant service providers, alternative access vendors, and competitive local exchange companies that hold an active certificate of public convenience and necessity that was obtained prior to July 1, 2011, and all telecommunications companies that hold an active certificate of authority obtained after July 1, 2011, are defined as local telephone service providers. Companies classified as pay telephone service providers are those companies that hold an active pay telephone certificate of public convenience and necessity that was obtained prior to July 1, 2011, and those companies that hold an active pay telephone certificate of authority obtained after July 1, 2011.

(2)(a) For the interim period January 1, 2011 through December 31, 2011, as applicable and as provided in Sections 350.113 and 364.336, F.S., each company shall remit a fee based upon its gross operating revenue as provided below. Each company that has paid by August 15, 2011, regulatory assessment fees for the period January 1, 2011 through June 30, 2011, shall pay a regulatory assessment fee in the amount of 0.0016 of its gross operating revenues derived from intrastate business during the period July 1, 2011 through December 31, 2011. Each company that has not paid any regulatory assessment fees for the period January 1, 2011 through December 31, 2011, shall pay a regulatory assessment fee in the amount of 0.0018 of its gross operating revenues derived from intrastate business. The minimum regulatory assessment fees provided in paragraph (2)(b) shall apply and shall be filed in accordance with the schedules provided in subsections (3) and (4). For the purpose of determining this fee, each telecommunications company shall deduct from gross operating revenues any amount paid to another telecommunications company for the use of any telecommunications network to provide service to its customers.

(b) Effective January 1, 2012, as applicable and as provided in Sections 350.113 and 364.336, F.S., each company shall remit a fee based upon its gross operating revenue as provided below. This fee shall be referred to as a regulatory assessment fee, and each company shall pay a regulatory assessment fee in the amount of 0.0016 of its gross operating revenues derived from intrastate business. For the purpose of determining this fee, each telecommunications company shall deduct from gross operating revenues any amount paid to another telecommunications company for the use of any telecommunications network to provide service to its customers. Regardless of the gross operating revenue of a company, a minimum annual regulatory assessment fee shall be imposed as follows:

1. Local Telephone Service Provider – \$600; and
2. Pay Telephone Service Provider – \$100.

(3) Telecommunications companies that owed gross regulatory assessment fees of \$10,000 or more for the preceding calendar year shall pay the fee and remit the appropriate form twice a year. The regulatory assessment fee and appropriate form shall be filed no later than July 30 for the preceding period of January 1 through June 30, and no later than January 30 of the following year for the period of July 1 through December 31. Telecommunications companies that owed gross regulatory assessment fees of less than \$10,000 for the preceding calendar year shall pay the fee and remit the appropriate form once a year. The regulatory assessment fee and appropriate form shall be filed no later than January 30 of the subsequent year for the current calendar year operations.

(4) If the due date falls on a Saturday, Sunday, or legal holiday, the due date is extended to the next business day. If the fees are sent by registered mail, the date of the registration is the United States Postal Service's postmark date. If the fees are sent by certified mail and the receipt is postmarked by a postal employee, the date on the receipt is the United States Postal Service's postmark date. The postmarked certified mail receipt is evidence that the fees were delivered. Regulatory assessment fees are considered paid on the date they are postmarked by the United States Postal Service or received and logged in by the Commission's Division of Administration Services in Tallahassee. Fees are considered timely paid if properly addressed, with sufficient postage, and postmarked no later than the due date.

(5) Commission Form PSC/RAD 159 (12/11), entitled "Local Telephone Service Provider Regulatory Assessment Fee Return," is available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-00761>; Form PSC/RAD 160 (12/11), entitled "Interim Local Telephone Service Provider Regulatory Assessment Fee Return," is available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-00762>; Form PSC/RAD 26 (12/11), entitled "Pay Telephone Service Provider Regulatory Assessment Fee Return," is available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-00760>; and Form PSC/RAD 161(12/11), entitled "Interim Pay Telephone Service Provider Regulatory Assessment Fee Return," is available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-00763>. These forms are incorporated into this rule by reference and may also be obtained from the Commission's Division of Administrative Services. The failure of a telecommunications company to receive a return form shall not excuse the company from its obligation to timely remit the regulatory assessment fees.

(6) Each telecommunications company shall have up to and including the due date in which to submit the applicable form and:

- (a) Remit the total amount of its fee, or
- (b) Remit an amount which the company estimates is its full fee.

(7) Where the company remits less than its full fee, the remainder of the full fee shall be due on or before the 30th day from the due date and shall, where the amount remitted was less than 90 percent of the total regulatory assessment fee, include interest as provided by paragraph (9)(b) of this rule.

(8) A company may request either a 15-day or a 30-day extension of its due date for payment of regulatory assessment fees or for filing its return form by submitting to the Division of Administrative Services Commission Form PSC/ADM 124 (12/11) entitled "Regulatory Assessment Fee Extension Request," which is incorporated into this rule by reference and is available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-00764>. This form may also be obtained from the Commission's Division of Administrative Services.

(a) The request for extension must be received by the Division of Administrative Services at least two weeks before the due date.

(b) The request for extension will not be granted if the company has any unpaid regulatory assessment fees, penalties, or interest due from a prior period.

(c) Where a telecommunications company receives an extension of its due date pursuant to this rule, the telecommunications company shall remit a charge as set out in Section 350.113(5), F.S., in addition to the regulatory assessment fees.

(9) The delinquency of any amount due to the Commission from the telecommunications company pursuant to the provisions of Section 350.113, F.S., and this rule, begins with the first calendar day after any date established as the due date either by operation of this rule or by an extension pursuant to this rule.

- (a) A penalty, as set out in Section 350.113, F.S., shall apply to any such delinquent amounts.
- (b) Interest at the rate of 12 percent per annum shall apply to any such delinquent amounts.

(10) The Division of Administrative Services shall send by certified mail a regulatory assessment fee delinquency notice to any company that fails to file a regulatory assessment fee return and that fails to pay the regulatory assessment fee by the date specified in subsection (3), unless the company has met the requirements of subsections (7) and (8).

(11) If a company fails to pay the regulatory assessment fee within 20 days after receiving a delinquency notice, the Division of Administrative Services, in cooperation with the Division of Regulatory Analysis and the Office of General Counsel, will establish a docket and administratively issue a Notice of Proposed Agency Action Order Imposing Penalties and Collection Costs, and Requiring Payment of Delinquent Regulatory Assessment Fees, or Cancelling Certificates for Violation of Rule 25-4.0161, F.A.C., and Section 364.336, F.S. The company must pay the past due regulatory assessment fees, the penalty and interest for late payment as provided in Section 350.113, F.S., and as stated in subsection (9) above, and must also pay the applicable penalty stated in subsection (12) for failure to file the regulatory assessment fee return.

(12) Pursuant to Section 364.285, F.S., the Commission has the authority to impose a penalty or cancel a certificate if a company refuses to comply with Commission rules, orders, or Florida Statutes. The penalty, which will include collection costs, for failure to file the regulatory assessment fee return by the date stated in the delinquency notice shall be as follows:

- (a) First violation – \$500;
- (b) Second violation – \$1,000;
- (c) Third violation – \$2,000.

Failure of the company to pay the full amount due and stated in the Notice of Proposed Agency Action will result in the cancellation of the company's certificate.

(13) For a company's fourth failure to pay the regulatory assessment fee after being sent a delinquency notice, Commission staff shall file a recommendation to the Commission for further action.

(14) A company that reapplies for a Certificate of Authority must pay all prior unpaid regulatory assessment fees, plus the penalty and interest defined in subsection (9), and any prior unpaid penalty assessed in accordance with subsection (11).

*Rulemaking Authority 350.127(2) FS. Law Implemented 350.113, 364.285, 364.336 FS. History—New 5-18-83, Formerly 25-4.161, Amended 10-19-86, 1-1-91, 12-29-91, 1-8-95, 12-26-95, 7-7-96, 11-11-99, 12-7-04, 10-6-05, 4-16-07, 12-4-11.*



## **Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies**

### **Lower cost regulatory alternatives received by agency**

No lower cost regulatory alternatives were received by the Commission pursuant to paragraph 120.745(5)(c), F.S., for Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

### **Explanation for rejecting lower regulatory cost alternatives**

Because no lower cost regulatory alternatives were received by the Commission, no lower cost regulatory alternatives were rejected.

### **Rule 25-4.0161, F.A.C., Justification Statement**

The Commission intends to retain Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies, without amendment, and has no immediate plans to amend or repeal this rule. The compliance economic review for this rule contains a detailed rule justification section. See pages 5-8 above. As stated therein, this rule has been amended eleven times since its adoption in 1986 for purposes of setting and/or adjusting rates; implementing statutory and legislative requirements; incorporating and/or revising regulatory assessment fee forms; or clarifying language. The rule was recently amended, effective December 2011, in order to conform it to legislative changes to Chapter 364, Florida Statutes (2011). As a result of this rulemaking, the Commission reduced the regulatory assessment fees required to be paid by telecommunications companies. The rule clearly identifies and defines the requirements that all certificated telecommunications companies must follow when calculating and remitting regulatory assessment fees to the Commission. Rule 25-4.0161, F.A.C., implements the statutory objectives of Sections 350.113 and 364.336, Florida Statutes. See pages 5-8 above.

As part of the compliance economic review of this rule, the Commission conducted a survey of each of the entities subject to the rule, the purpose of which was to determine the estimated impacts of the rule on the regulated entities and their customers, small businesses, small counties, and small cities. See pages 16-18 above. The compliance economic review found that Rule 25-4.0161, F.A.C., will not adversely affect economic growth, private sector job creation or employment, private sector investment, business competitiveness, productivity, or innovation. See pages 13-14 above. The review notes that several companies' survey responses state that the rule is beneficial to small businesses because it allows them to compete in the marketplace, and that the regulatory assessment fees provide funding that enables the Commission to ensure that illegal barriers to competition are not created. See page 14 above.

**Compliance Economic Review  
for  
Rule 25-6.0436, Florida Administrative Code,  
Depreciation**

**Florida Public Service Commission**

This document is prepared in response to the requirements  
of Section 120.745, Florida Statutes

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Attachment 1: Survey on Rule 25-6.0436, F.A.C., with attached rule

## I. EXECUTIVE SUMMARY

Section 120.745, Florida Statutes (F.S.), became effective in 2011 and requires each agency to complete an enhanced biennial review of all of its existing rules and publish a report by December 1, 2011. The statute requires each agency to identify in its report each of its rules which require a compliance economic review. A compliance economic review is defined as a good faith economic analysis which includes a justification for the rule, a statement of estimated regulatory costs for the 5 year period beginning on July 1, 2011, and an explanation of the methodology used to conduct the analysis. A compliance economic review is required for each rule that the agency does not plan to repeal by December 31, 2012, was effective on or before November 16, 2010, and is considered by the agency to probably have any of the economic impacts described in Subparagraph 120.541(2)(a), F.S., for the 5 year period beginning on July 1, 2011.

The Florida Public Service Commission (FPSC or Commission) completed its enhanced biennial review report on November 22, 2011. Within the report, the FPSC delineated ten rules it determined were subject to a compliance economic review. Pursuant to Subparagraph 120.745(2)(h), F.S., the FPSC divided these rules into Group 1, with the accompanying compliance economic review due May 1, 2012, and Group 2, due May 1, 2013. Rule 25-6.0436, F.A.C., Depreciation (the rule), is one of five rules included in the list of Group 1 rules appearing in the FPSC's enhanced biennial review and is the subject of this compliance economic review. The purpose of the rule is to provide a process for the setting of adequate, fair, and reasonable depreciation rates and charges as set forth in Section 350.115, F.S.

The FPSC prepared and distributed rule impact surveys to each of the electric IOUs operating in the state in order to collect relevant information to complete the required economic analysis for the rule. The electric IOUs are Florida Power & Light Company (FPL), Progress Energy Florida, Inc. (PEF), Gulf Power Company (Gulf), Tampa Electric Company (TECO), and Florida Public Utilities Company (FPUC).

Based on the survey responses, our analysis indicates that the regulatory costs associated with Rule 25-6.0436, F.A.C., is expected to be in the range of \$1.47 million to \$1.70 million for the 5 year period beginning on July 1, 2011. The primary benefit of the rule is that it achieves the statutory objectives, including the setting of adequate, fair, and reasonable depreciation rates and charges as set forth in Section 350.115, F.S. Our analysis indicates that the rule will not have an adverse impact on economic growth, private sector employment, private sector investment, business competitiveness, innovation, or productivity during the 5 year period. Small businesses, small counties, and small cities are likely to be positively impacted by the rule during the 5 year period. No regulatory alternative proposals to the rule have been received to date.

## II. TECHNICAL METHODOLOGY

Section 120.745(1)(b)2.c., F.S., requires an explanation of the technical methodology used to conduct the analysis required in Section 120.541(2), F.S., for each agency rule for which a compliance economic review is performed. The FPSC conducted a survey of the five investor-owned electric utilities (IOU) subject to Rule 25-6.0436, F.A.C., using routine regulatory communications. The purpose of the survey was to determine the expected impacts of the rule on each electric IOU and its customers, including small businesses, small counties, and small cities. Each electric IOU which must comply with the rule holds the best information regarding the expected future impacts of the rule on their operations and their customers who purchase the electric IOU's services and products. Thus, the analysis required the design of a survey instrument to collect data revealing the specific impacts of the rule for the 5 year period beginning on July 1, 2011, including the transactional costs. The survey instrument for the rule with attached rule language is included as Attachment 1.

The electric IOU's survey responses were aggregated in order to determine the rule's quantitative and qualitative impacts as required by the statute. Performing this step is dependent upon receiving reasonably complete responses from the utilities subject to the rule. The responses considered collectively provide a general cross-industry perspective of the impact of the rule.

## III. Compliance Economic Review Components

### A. Rule Justification

Subparagraph 120.745(1)(b)1.; F.S., requires each compliance economic review to include a justification for the rule which summarizes the rule's benefits. Rule 25-6.0436, F.A.C., became effective November 11, 1982. The rule has been amended five times since its inception to clarify, simplify, allow utilities to better plan for depreciation adjustments, and address changing administrative requirements. The rule includes the following:

- Definitions of depreciation-related terms.
- Prohibition against utilities initiating or changing depreciation rates or reallocating depreciation reserves without prior Commission approval.
- Required maintenance of depreciation rates and accumulated depreciation reserves by utilities in conformity with the Uniform System of Accounts (USOA) for Public Utilities and Licensees as found in the Code of Federal Regulations, as specified in subsection 25-6.014(1), F.A.C.
- Comprehensive list of items to be included in depreciation studies by utilities.
- Required use whole life and remaining life methods for all depreciation rates by utilities.
- Required filing of a study by utilities for each category of depreciable property for FPSC review at least once every four years unless otherwise required by the FPSC.
- Various reporting requirements in conjunction with utilities' filing of annual reports pursuant to Rule 25-6.135, F.A.C.
- Various administrative requirements pertaining to utilities' filing of depreciation studies, maintenance of books and records, and depreciation reporting.
- Various requirements and methods regarding establishing appropriate reserve amounts.

- Requirement that the FPSC approve capital recovery schedules to correct calculated deficiencies prior to the date of retirement of major installations under certain conditions demonstrated by the utility.
- Requirement that the FPSC approve a special capital recovery schedule when an installation is designed for a specific purpose for a limited duration.

The rule implements Section 350.115, F.S., Paragraph 366.04(2)(f), F.S., and Subsection 366.06(1), F.S. Section 350.115, F.S., states that the FPSC may prescribe by rule uniform systems and classifications of accounts for each type of regulated company and approve or establish adequate, fair, and reasonable depreciation rates and charges. Subsection 366.04(2)(f), F.S., confers upon the FPSC the jurisdiction to prescribe and require the filing of periodic reports and other data as may be reasonably available and as necessary to exercise the FPSC's statutory jurisdiction. Section 366.06(1), F.S., requires the FPSC to keep a current record of the net investment of each public utility company in such property which value, as determined by the FPSC, shall be used for ratemaking purposes. Such net investment shall be money honestly and prudently invested by the company in property used and useful in serving the public, less accrued depreciation, and shall not include goodwill or going-concern value or franchise value in excess of the money paid for the property.

The primary benefit of the rule is that it achieves the objective of the statutes, including the establishment of a process for the setting of adequate, fair, and reasonable depreciation rates and charges as set forth in Section 350.115, F.S. It also achieves the objectives set forth in Section 366.04(2)(f), F.S., by requiring the reports needed for the FPSC to monitor and enforce its rules and it achieves the objectives of Subsection 366.06(1), F.S., thereby allowing the FPSC to keep a current record of the net investment of utilities for ratemaking purposes. An additional benefit of the rule, as noted by FPL, is that it facilitates the reduction in rate volatility resulting from consistent practices employed in preparing, submitting, and authorizing depreciation parameters through a well defined process.

## B. Statement of Estimated Regulatory Costs

Paragraph 120.745(1)(b)2., F.S., requires a compliance economic review to include a statement of estimated regulatory costs as discussed in Subsection 120.541(2), F.S., for the 5 year period beginning on July 1, 2011. The statement of estimated regulatory costs for this compliance economic review of Rule 25-6.0436, F.A.C., consists of Items 1 – 7 below.

### 1. Entities and Individuals Affected

Paragraph 120.541(2)(b), F.S., requires a good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule. Five electric IOUs are subject to the rule, including Florida Power & Light Company (FPL), Progress Energy Florida, Inc. (PEF), Gulf Power Company (GULF), Tampa Electric Company (TECO), and Florida Public Utilities Company (FPUC). The announced merger of Progress Energy with Duke Energy is under review by the Federal Energy Regulatory Commission (FERC) at this time, but the merger, if approved, will not change the number of electric IOUs operating in Florida. The FPSC has no knowledge of whether any of the four other electric IOUs operating in Florida will be the subject of an acquisition or merger during the 5 year

period beginning on July 1, 2011. The rule indirectly affects every electric utility customer residing or doing business in the service territories of the electric IOUs because the rule establishes the depreciation parameters used to determine the recovery of utility investment in base rates.

2. Economic Analysis

a. Regulatory Costs

Pursuant to Subparagraphs 120.745(1)(b)2.b., F.S., and 120.541(2)(a)3., F.S., an economic analysis shall show whether the rule, directly or indirectly, will have estimated regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within the 5 year time period beginning on July 1, 2011. Regulatory costs identified in Subsection 120.541(2), include a good faith estimate of the transactional costs, or the direct costs to comply with rule, and a good faith estimate of the cost to the agency, or any other state and local government entities, of implementing and enforcing the rule.

Table 1 displays the information provided by the utilities in response to survey questions asking for the transactional costs of the rule (Table 1). Electric IOU depreciation studies may be performed in-house, by an outside consultant, or a combination, and each utility has its own unique approach. Florida Public Utilities Company (FPUC) did not provide a response to the survey, so its costs associated with its compliance with the rule are not included in Table 1. However, FPUC's overall impact on the transactional costs of the rule is not expected to be very significant since FPUC is the only non-generating electric IOU in the state and it is the smallest electric IOU in terms of plant-in-service. As shown in Table 1, the transactional costs of the rule are estimated to range between \$0.96 million to \$1.19 million for the 5 year period beginning on July 1, 2011.

<b>Table 1</b>	
<b>Estimated 5 Year Transactional Costs of Rule 25-6.0436, F.A.C.</b>	
<u>Company</u>	<u>Estimated 5 Year Costs of Compliance</u>
FPL	\$425,000 to \$550,000
PEF	\$200,000 to \$300,000
TECO	\$90,000
Gulf	\$245,000
FPUC	No Response
State Total	\$0.96 million to \$1.19 million

Regulatory costs include not only transactional costs but also a good faith estimate of the costs to the agency to implement and enforce the rule. The cost to the FPSC to implement and enforce the rule based on a good faith estimate of the costs to be incurred for the 5 year period beginning on July 1, 2011, is \$508,428, as discussed in III.3 (Costs to Governmental Entities) below. Other state and local government agencies are not impacted by the rule.

Based on the above analysis, the total estimated regulatory costs associated with the rule including both estimated transactional costs to the electric IOUs and estimated costs to the FPSC, range from \$1.47 million to \$1.70 million for the 5 year period beginning on July 1, 2011. This economic analysis shows the rule directly or indirectly is estimated to result in regulatory costs, including the transactional costs, in excess of \$1 million in the aggregate within 5 years beginning on July 1, 2011.

#### b. Economic Growth, Jobs, and Investment

Pursuant to Section 120.745 and Subparagraph 120.541(2)(a)1., F.S., each compliance economic review shall include an economic analysis showing whether the rule directly or indirectly is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within 5 years beginning on July 1, 2011.

The electric IOU's survey responses to the question regarding adverse impacts of the rule were varied, including: (1) strict compliance with the rule should have no substantial direct impact on economic growth, private sector job creation or employment, or private sector investment [FPL], (2) the rule's impact cannot be determined by the utility [PEF, Gulf], and (3) the rule's impact is unknown [TECO].

Assessing the adverse impacts implies a weighing of the costs and the benefits of the rule. As discussed in III.B.2.a., the regulatory costs range from \$1.47 million to \$1.70 million over the 5 year period. These costs are passed on to ratepayers through the utilities' base rates. The primary benefit of the rule is that it establishes a framework for the FPSC to set adequate, fair, and reasonable depreciation rates and charges by providing specific regulatory guidance to utilities regarding depreciation practices.

According to FPL, the rule also provides a means of achieving a lower likelihood of rate volatility through "consistent and routine practices employed in preparing, submitting, and authorizing depreciation parameters through a well defined process." This perspective is echoed by TECO, which states that the rule is beneficial because it "provides an orderly process for accounting for depreciation reserves and for seeking changes in depreciation rates." Gulf states that compliance with the rule "ensures that the amount of depreciation expense to charge a customer in a given period is done over the useful life of the asset. This meets the intent of the matching principles of FERC and Generally Accepted Accounting Principles." These benefits outweigh the relatively small amount of cost which is recovered from customers served by the state's largest electric IOUs. Fair, reasonable, and stable utility rates support, rather than hinder, economic growth, employment, and investment. In conclusion, there is no known adverse impact on economic growth, private sector job creation or employment, or private sector investment associated with the rule.

#### c. Business Competitiveness

Pursuant to Subparagraphs 120.745(1)(b)2. and 120.541(2)(a)2., F.S., each compliance economic review shall include an economic analysis showing whether the rule directly or indirectly is likely to have an adverse impact on business competitiveness, including the ability of persons doing



business in the state to compete with persons doing business in other states or domestic markets, productivity or innovation in excess of \$1 million in the aggregate within 5 years beginning on July 1, 2011.

The electric IOUs' survey responses to the question regarding adverse impacts of the rule were varied, including: (1) the rule is not expected to directly impact business competitiveness [FPL], (2) the rule's impact cannot be determined by the utility [PEF, Gulf], and (3) the rule's impact is unknown [TECO].

Assessing the adverse impacts implies a weighing of the costs and the benefits of the rule. As discussed in III.B.2.a., the regulatory costs range from \$1.47 million to \$1.70 million over the 5 year period. The primary benefit of the rule is that it establishes a framework for the FPSC to set adequate, fair, and reasonable depreciation rates and charges by providing specific regulatory guidance to utilities regarding depreciation practices. Other benefits are described in III.B.2.b. These benefits outweigh the relatively small amount of cost which is recovered from customers served by the state's largest electric IOUs. Fair, reasonable, and stable utility rates support, rather than hinder, business competitiveness, productivity, and innovation. Thus, there is no known adverse impact on business competitiveness, productivity, or innovation associated with the rule.

### 3. Costs to Governmental Entities

Subparagraphs 120.745(1)(b)2. and 120.541(2)(c), F.S., require a compliance economic review to include a good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the rule, and any anticipated effect on state or local revenues. The cost to the FPSC to implement and enforce the rule is based on a good faith estimate of the costs to be incurred for 5 year period. In order to provide a good faith estimate of the rule's cost to the agency, the estimated annual number of hours dedicated to implementing and enforcing the rule for each employee class was multiplied by each class's labor rate, and the resulting costs were aggregated for all employee classifications. The estimated cost to the FPSC to implement and enforce the rule for the 5 year period beginning on July 1, 2011, is \$508,428. Other state and local government agencies are not impacted by the rule. Thus, the cost to the state for the 5 year period beginning on July 1, 2011, necessary to achieve the benefits of the rule identified in III.A., above, including the establishment of a process for the setting of adequate, fair, and reasonable electric IOU depreciation rates and charges as set forth in Section 350.115, F.S., is estimated to be \$508,428.

### 4. Transactional Costs Incurred by Companies

Subparagraphs 120.745(1)(b)2., and 120.541(2)(d), F.S., require a compliance economic review to include 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 of the rule were identified in Section III.B.2, above. The transactional costs incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule are estimated to be \$0.96 million to \$1.19 million for the 5 year period beginning on July 1, 2011.

5. Impacts on Small Businesses, Small Counties, and Small Cities

Subparagraphs 120.745(1)(b)2., and 120.541(2)(e), F.S., require an analysis of the impact of the rule on small businesses as defined by Section 288.703, F.S., and an analysis of the impact of the rule on small counties and small cities as defined in Section 120.52, F.S. The impact analysis for small businesses must include the basis for the agency's decision not to implement alternatives that would reduce adverse impacts on small businesses.

The electric IOU's survey responses to the question regarding impacts of the rule on small businesses, small counties, and small cities include: (1) the rule has only a modest impact on costs and/or benefits to small businesses, small counties, and small cities [FPL], and (2) the rule's impact cannot be determined by the utility [PEF, Gulf, TECO].

The estimated 5 year regulatory costs associated with the rule (\$1.47 million to \$1.70 million) are costs which will likely be passed through to the ratepayers of the electric IOUs. The costs to small businesses, small counties, and small cities provide for fair and stable electric rates and charges which, in turn, support growth, employment, and investment. In general, small businesses can typically expect to locate and maintain a presence in areas with fair and stable electric rates and charges. Conversely, volatile utility rates resulting from inconsistent processes for establishing depreciation rates and charges can be a deterrent to businesses and their customers, and can have negative impacts on growth, employment, and investment. Considering the estimated cost and benefits above, it is likely the rule will have a positive impact on small businesses, small counties, and small cities during the 5 year period beginning on July 1, 2011.

6. Additional Information

Subparagraphs 120.745(1)(b), and 120.541(2)(f), F.S., require a compliance economic review to include any additional information that the agency determines may be useful. No additional useful information has been identified regarding the estimated regulatory costs of Rule 25-6.0436, F.A.C.

7. Alternatives

Subparagraphs 120.745(1)(b), and 120.541(2)(g), F.S., require a compliance economic review to include a description of any regulatory alternatives submitted under Paragraph 120.541(1)(a), F.S., and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the rule. None of the companies responding to the Commission's survey offered any regulatory alternatives pursuant to Paragraph 120.541(1)(a), F.S.

Attachments: Survey of Rule 25-6.0436, F.A.C., with attached rule

COMMISSIONERS:  
RONALD A. BRISÉ, CHAIRMAN  
LISA POLAK EDGAR  
ART GRAHAM  
EDUARDO E. BALBIS  
JULIE I. BROWN

STATE OF FLORIDA



DIVISION OF REGULATORY ANALYSIS  
BETH W. SALAK  
DIRECTOR  
(850) 413-6600

## Public Service Commission

February 24, 2012

To: Investor-Owned Electric Utilities

Re: Industry survey for legislative review of agency rules in effect on or before November 16, 2010  
Docket No. 110303-OT

To whom this may concern:

Please see attached staff's survey questions. Your timely response to these survey questions regarding Rules 25-17.0021, 25-22.032, and 25-6.0436, Florida Administrative Code (F.A.C.), will be used to complete the Commission's Compliance Economic Review required by Sections 120.745 and 120.541, Florida Statutes. All responses should be filed in Docket No. 110303-OT by 5:00 p.m., Wednesday, March 14, 2012, and addressed to:

Judy Harlow  
c/o Ann Cole  
Commission Clerk  
Office of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

If you have questions regarding the survey for Rule 25-17.0021, F.A.C., please contact Stephen Garl at 850-413-6676 or [sgarl@psc.state.fl.us](mailto:sgarl@psc.state.fl.us) or Judy Harlow at 850-413-6842 or [jharlow@psc.state.fl.us](mailto:jharlow@psc.state.fl.us). If you have questions regarding the survey for Rule 25-22.032, F.A.C., please contact Jessica Miller at 850-413-6546 or [jemiller@psc.state.fl.us](mailto:jemiller@psc.state.fl.us) or Laura King at (850) 413-6588 or [lking@psc.state.fl.us](mailto:lking@psc.state.fl.us). If you have any questions regarding the survey for Rule 25-6.0436, F.A.C., please contact Bill McNulty at 850-413-6848 or [bmcnulty@psc.state.fl.us](mailto:bmcnulty@psc.state.fl.us). Thank you for your assistance.

Sincerely,  
/s/ Judy Harlow  
Judy Harlow  
Senior Analyst  
Division of Regulatory Analysis

**Rule 25-6.0436, F.A.C. – Survey Questions**

The following survey questions apply to **Rule 25-6.0436, F.A.C. – Depreciation**. For purposes of responding to these questions, please refer to Subsection 120.541(2), F.S., and Subparagraph 120.745(1)(b)2, F.S. “Transactional costs” are defined in Subparagraph 120.541(2)(d), F.S., as:

...direct costs that are readily ascertainable based upon standard business practices, including filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule.

The Company’s response data to these survey questions should be provided for the entire rule, unless the response data is available by rule section, in which case we request the response data be provided by rule section. Please present data in annualized format, if possible, and all cost or benefit dollar estimates should be stated in nominal terms.

- 1a. What are the Company’s estimated transactional costs resulting from the Company’s compliance with Rule 25-6.0436, F.A.C., for the five year period beginning July 1, 2011?
- 1b. What are the Company’s estimated recurring annual costs to maintain property records and to perform depreciation-related activities (including tracking additions, retirements, and adjustments, and determining associated reserves) for the FPSC jurisdiction?
- 1c. Is the quadrennial depreciation study prepared in-house or by an outside consultant?
- 1d. If the answer to 1c. is “outside consultant,” please respond to the following questions:
  - a. What was the cost of the most recent study prepared by an outside consultant, and on what date was the consultant paid for their services?
  - b. What is the utility’s estimated cost to provide the necessary information required for the outside consultant to prepare a study, and when were these costs incurred?
  - c. Will an outside consultant be used to prepare the next study? If yes, what is the estimated cost to prepare the next study?
- 1e. If the answer to 1c. is “in-house,” please respond to the following questions.
  - a. What was the utility’s cost to prepare the most recent depreciation study, and over what time period were such costs incurred?
  - b. What is the utility’s estimated cost to prepare the next depreciation study?

2. What is the Company's estimate of the likely impact, stated in terms of costs and/or benefits, on small businesses (as defined by Section [288.703](#), F.S.) located in the Company's service territory, resulting from the implementation of 25-6.0436, F.A.C., for the five year period beginning July 1, 2011?
3. What is the Company's estimate of the likely impact, stated in terms of costs and/or benefits, on small counties and small cities (as defined in Section [120.52](#), F.S.) located in the Company's service territory, resulting from the implementation of 25-6.0436, F.A.C., for the five year period beginning July 1, 2011?
4. What is the Company's estimate of the likely impact, stated in terms of costs and/or benefits, on entities located in the Company's service territory other than those specifically identified in Questions 2 and 3, resulting from the implementation of 25-6.0436, F.A.C., for the five year period beginning July 1, 2011?
5. What does the Company believe is the expected impact of Rule 25-6.0436, F.A.C., on economic growth, private sector job creation or employment, and private sector investment for the five year period beginning July 1, 2011 in the Company's service territory?
6. What does the Company believe is the expected impact of Rule 25-6.0436, F.A.C., on business competitiveness, including the ability of persons doing business in the Company's service territory to compete with persons doing business in states other than Florida or other domestic markets, productivity, and innovation, for the five year period beginning July 1, 2011?
7. What does the Company believe are the benefits associated with Rule 25-6.0436, F.A.C.?

**25-6.0436 Depreciation.**

(1) For the purposes of this part, the following definitions shall apply:

(a) Category or Category of Depreciable Plant – A grouping of plant for which a depreciation rate is prescribed. At a minimum it should include each plant account prescribed in subsection 25-6.014(1), F.A.C.

(b) Embedded Vintage – A vintage of plant in service as of the date of study or implementation of proposed rates.

(c) Mortality Data – Historical data by study category showing plant balances, additions, adjustments and retirements, used in analyses for life indications or calculations of realized life. Preferably, this is aged data in accord with the following:

1. The number of plant items or equivalent units (usually expressed in dollars) added each calendar year.

2. The number of plant items retired (usually expressed in dollars) each year and the distribution by years of placing of such retirements.

3. The net increase or decrease resulting from purchases, sales or adjustments and the distribution by years of placing of such amounts.

4. The number that remains in service (usually expressed in dollars) at the end of each year and the distribution by years of placing of such amounts.

(d) Net Book Value – The book cost of an asset or group of assets minus the accumulated depreciation or amortization reserve associated with those assets.

(e) Remaining Life Method – The method of calculating a depreciation rate based on the unrecovered plant balance, less average future net salvage and the average remaining life. The formula for calculating a Remaining Life Rate is:

$$\text{Remaining Life Rate} = \frac{100\% - \text{Reserve \%} - \text{Average Future Net Salvage \%}}{\text{Average Remaining Life in Years}}$$

(f) Reserve (Accumulated Depreciation) – The amount of depreciation/amortization expense, salvage, cost of removal, adjustments, transfers, and reclassifications accumulated to date.

(g) Reserve Data – Historical data by study category showing reserve balances, debits and credits such as booked depreciation, expense, salvage and cost of removal and adjustments to the reserve utilized in monitoring reserve activity and position.

(h) Reserve Deficiency – An inadequacy in the reserve of a category as evidenced by a comparison of that reserve indicated as necessary under current projections of life and salvage with that reserve historically accrued. The latter figure may be available from the utility's records or may require retrospective calculation.

(i) Reserve Surplus – An excess in the reserve of a category as evidenced by a comparison of that reserve indicated as necessary under current projections of life and salvage with that reserve historically accrued. The latter figure may be available from the utility's records or may require retrospective calculation.

(j) Salvage Data – Historical data by study category showing bookings of retirements, gross salvage and cost of removal used in analysis of trends in gross salvage and cost of removal or for calculations of realized salvage.

(k) Theoretical Reserve or Prospective Theoretical Reserve – A calculated reserve based on components of the proposed rate using the formula:

$$\text{Theoretical Reserve} = \text{Book Investment} - \text{Future Accruals} - \text{Future Net Salvage}$$

(l) Vintage – The year of placement of a group of plant items or investment under study.

(m) Whole Life Method – The method of calculating a depreciation rate based on the Whole Life (Average Service Life) and the Average Net Salvage. Both life and salvage components are the estimated or calculated composite of realized experience and expected activity. The formula is:

$$\text{Whole Life Rate} = \frac{100\% - \text{Average Net Salvage \%}}{\text{Average Service Life in Years}}$$

(2)(a) No utility shall change any existing depreciation rate or initiate any new depreciation rate without prior Commission approval.

(b) No utility shall reallocate accumulated depreciation reserves among any primary accounts and sub-accounts without prior Commission approval.

(c) When plant investment is booked as a transfer from a regulated utility depreciable account to another or from a regulated company to an affiliate, an appropriate reserve amount shall also be booked as a transfer. When plant investment is sold from one regulated utility to an affiliate, an appropriate associated reserve amount shall also be determined to calculate the net book value of the utility investment being sold. Appropriate methods for determining the appropriate reserve amount associated with plant transferred or sold are as follows:

1. Where vintage reserves are not maintained, synthesization using the currently prescribed curve shape may be required. The same reserve percent associated with the original placement vintage of the related investment shall then be used in determining the appropriate amount of reserve to transfer.

2. Where the original placement vintage of the investment being transferred is unknown, the reserve percent applicable to the account in which the investment being transferred resides may be assumed as appropriate for determining the reserve amount to transfer.

3. Where the age of the investment being transferred is known and a history of the prescribed depreciation rates is known, a reserve can be determined by multiplying the age times the investment times the applicable depreciation rate(s).

4. The Commission shall consider any additional methods submitted by the utilities for determining the appropriate reserve amounts to transfer.

(3)(a) Each utility shall maintain depreciation rates and accumulated depreciation reserves in accounts or subaccounts as prescribed by subsection 25-6.014(1), F.A.C. Utilities may maintain further sub-categorization.

(b) Upon establishing a new account or subaccount classification, each utility shall request Commission approval of a depreciation rate for the new plant category.

(4) A utility filing a depreciation study, regardless if a change in rates is being requested or not, shall submit to the Office of Commission Clerk six copies of the information required by paragraphs (6)(a) through (f) and (h) of this rule and at least three copies of the information required by paragraph (6)(g).

(5) Upon Commission approval by order establishing an effective date, the utility shall reflect on its books and records the implementation of the proposed rates, subject to adjustment when final depreciation rates are approved.

(6) A depreciation study shall include:

(a) A comparison of current and proposed depreciation rates and components for each category of depreciable plant. Current rates shall be identified as to the effective date and proposed rates as to the proposed effective date.

(b) A comparison of annual depreciation expense as of the proposed effective date, resulting from current rates with those produced by the proposed rates for each category of depreciable plant. The plant balances may involve estimates. Submitted data including plant and reserve balances or company planning involving estimates shall be brought to the effective date of the proposed rates.

(c) Each recovery and amortization schedule currently in effect should be included with any new filing showing total amount amortized, effective date, length of schedule, annual amount amortized and reason for the schedule.

(d) A comparison of the accumulated book reserve to the prospective theoretical reserve based on proposed rates and components for each category of depreciable plant to which depreciation rates are to be applied.

(e) A general narrative describing the service environment of the applicant company and the factors, e.g., growth, technology, physical conditions, necessitating a revision in rates.

(f) An explanation and justification for each study category of depreciable plant defining the specific factors that justify the life and salvage components and rates being proposed. Each explanation and justification shall include substantiating factors utilized by the utility in the design of depreciation rates for the specific category, e.g., company planning, growth, technology, physical conditions, trends. The explanation and justification shall discuss any proposed transfers of reserve between categories or accounts intended to correct deficient or surplus reserve balances. It should also state any statistical or mathematical methods of analysis or calculation used in design of the category rate.

(g) The filing shall contain all calculations, analysis and numerical basic data used in the design of the depreciation rate for each category of depreciable plant. Numerical data shall include plant activity (gross additions, adjustments, retirements, and plant balance at end of year) as well as reserve activity (retirements, accruals for depreciation expense, salvage, cost of removal, adjustments, transfers and reclassifications and reserve balance at end of year) for each year of activity from the date of the last submitted study to the date of the present study. To the degree possible, data involving retirements should be aged.

(h) The mortality and salvage data used by the company in the depreciation rate design must agree with activity booked by the utility. Unusual transactions not included in life or salvage studies, e.g., sales or extraordinary retirements, must be specifically enumerated and explained.

(7)(a) Utilities shall provide calculations of depreciation rates using both the whole life method and the remaining life method. The use of these methods is required for all depreciable categories. Utilities may submit additional studies or methods for consideration by the Commission.

(b) The possibility of corrective reserve transfers shall be investigated by the Commission prior to changing depreciation rates.

(8)(a) Each company shall file a study for each category of depreciable property for Commission review at least once every four years from the submission date of the previous study unless otherwise required by the Commission.

(b) A utility proposing an effective date of the beginning of its fiscal year shall submit its depreciation study no later than the mid-point of that fiscal year.

(c) A utility proposing an effective date coinciding with the expected date of additional revenues initiated through a rate case proceeding shall submit its depreciation study no later than the filing date of its Minimum Filing Requirements.

(9) As part of the filing of the annual report pursuant to Rule 25-6.135, F.A.C., each utility shall include an annual status report. The report shall include booked plant activity (plant balance at the beginning of the year, additions, adjustments, transfers, reclassifications, retirements and plant balance at year end) and reserve activity (reserve balance at the beginning of the year, retirements, accruals, salvage, cost of removal, adjustments, transfers, reclassifications and reserve balance at end of year) for each category of investment for which a depreciation rate, amortization, or capital recovery schedule has been approved. The report shall indicate for each category that:

(a) There has been no change of plans or utility experience requiring a revision of rates, amortization or capital recovery schedules; or

(b) There has been a change requiring a revision of rates, amortization or capital recovery schedules.

(10) For any category where current conditions indicate a need for revision of depreciation rates, amortization or capital recovery schedules and no revision is sought, the report shall explain why no revision is requested.

(a) Prior to the date of retirement of major installations, the Commission shall approve capital recovery schedules to correct associated calculated deficiencies where a utility demonstrates that (1) replacement of an installation or group of installations is prudent and (2) the associated investment will not be recovered by the time of retirement through the normal depreciation process.

(b) The Commission shall approve a special capital recovery schedule when an installation is designed for a specific purpose or for a limited duration.

(c) Associated plant and reserve activity, balances and the annual capital recovery schedule expense must be maintained as subsidiary records.

*Specific Authority 350.127(2), 366.05(1) FS. Law Implemented 350.115, 366.04(2)(f), 366.06(1) FS. History--New 11-11-82, Amended 1-6-85, Formerly 25-6.436, Amended 4-27-88, 12-12-91, 12-11-00, 5-29-08.*



## **Rule 25-6.0436, F.A.C., Depreciation**

### **Lower cost regulatory alternatives received by agency**

No lower cost regulatory alternatives were received by the Commission pursuant to paragraph 120.745(5)(c), F.S., for Rule 25-6.0436, F.A.C., Depreciation.

### **Explanation for rejecting lower regulatory cost alternatives**

Because no lower cost regulatory alternatives were received by the Commission, no lower cost regulatory alternatives were rejected.

### **Rule 25-6.0436, F.A.C., Justification Statement**

The compliance economic review for Rule 25-6.0436, F.A.C., Depreciation, contains a detailed rule justification section which supports retention of this rule without amendment. See pages 25-26 above. As set forth therein, Rule 25-6.0436 has been amended five times since its adoption in 1982. The compliance economic review found that the rule achieves the statutory objectives of section 350.114, F.S., including the setting of adequate, fair, and reasonable depreciation rates and charges. The rule also achieves the objectives of section 366.04(2)(f), F.S., by requiring reports needed for the Commission to monitor and enforce its rules, and it achieves the objectives of subsection 366.06(1), F.S., by allowing the Commission to keep a current record of the net investment of utilities for ratemaking purposes.

As part of the compliance economic review, the Commission surveyed the five investor-owned electric utilities subject to this rule. See pages 32-33 above. Each of the four responding utilities identified its compliance costs associated with this rule, which are limited to the preparation of a single depreciation study during the 5-year period beginning July 1, 2011. See Table 1, page 27 above. Benefits of the rule which were identified by the utilities include facilitating the reduction in rate volatility resulting from consistent practices employed in preparing, submitting, and authorizing depreciation parameters through a well defined process. The economic analysis indicates that the rule will not have an adverse impact on economic growth, private sector employment, private sector investment, business competitiveness, innovation, or productivity for the five-year period beginning on July 1, 2011. Small businesses, small counties, and small cities are likely to be positively impacted by the rule during this 5-year period because small businesses can typically expect to locate and maintain a presence in areas with fair and stable electric rates and charges, which this rule promotes. See page 30 above.

**Compliance Economic Review  
for  
Rule 25-7.0131, Florida Administrative Code,  
Regulatory Assessment Fees; Gas Utilities, Gas Municipals,  
and Gas Districts**

**Florida Public Service Commission**

This document is prepared in response to the requirements  
of Section 120.745, Florida Statutes

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    - 6. Additional Information
    - 7. Regulatory Alternatives

Attachment 1: Survey on Rule 25-7.0131, F.A.C., with attached rule

## I. EXECUTIVE SUMMARY

Section 120.745, Florida Statutes (F.S.), became effective in 2011 and requires each agency to complete an enhanced biennial review of all its existing rules and publish a report by December 1, 2011. The statute requires each agency to identify in its report each of its rules which require a compliance economic review. A compliance economic review is defined as a good faith economic analysis which includes a justification for the rule, a statement of estimated regulatory costs for the 5 year period beginning on July 1, 2011, and an explanation of the methodology used to conduct the analysis. A compliance economic review is required for each entire rule that the agency does not plan to repeal by December 31, 2012, was effective on or before November 16, 2010, and is considered by the agency to probably have any of the economic impacts described in Subparagraph 120.541(2)(a), F.S., for the 5 year period beginning on July 1, 2011.

The Florida Public Service Commission (FPSC or Commission) completed its enhanced biennial review report on November 22, 2011. Within the report, the FPSC delineated ten rules it determined were subject to a compliance economic review. Pursuant to Subparagraph 120.745(2)(h), F.S., the FPSC divided these rules into Group 1, with the accompanying compliance economic review due May 1, 2012, and Group 2, due May 1, 2013. Rule 25-7.0131, F.A.C., Regulatory Assessment Fees; Gas Utilities, Gas Municipals, and Gas Districts (the rule), is one of five rules which were included in the list of Group 1 rules appearing in the FPSC's enhanced biennial review and is the subject of this compliance economic review. The purpose of the rule is to provide for the collection of funds needed to regulate the provision of natural gas to Florida customers.

The FPSC prepared and distributed rule impact surveys to each of the natural gas regulated entities operating in the state, including seven natural gas investor-owned utilities (gas utilities), twenty-eight gas municipal utilities (gas municipals), and four gas districts subject to FPSC jurisdiction. The purpose of the survey was to collect relevant information to complete the required economic analysis. Based on the survey responses and 2011 fee data, our analysis indicates that the regulatory costs associated with the rule are expected to be approximately \$14.63 million for the 5 year period beginning on July 1, 2011. The primary benefit of Rule 25-7.0131, F.A.C., is that it achieves the objective of the statutes, including the collection of funds necessary for the regulation of gas utilities' rates, service, and safety and the regulation of gas municipals' and gas districts' safety. Our analysis indicates that the rule will not have an adverse impact on economic growth, private sector employment, private sector investment, business competitiveness, innovation, or productivity during the 5 year period beginning on July 1, 2011. Small businesses, small counties, and small cities are likely to be positively impacted by the rule during the 5 year period. No regulatory alternative proposals to the rule have been received to date.

## II. TECHNICAL METHODOLOGY

Section 120.745(1)(b)2.c, F.S., requires an explanation of the technical methodology used to conduct the analysis required in Section 120.541(2), F.S., for each agency rule for which a compliance economic review is performed. The FPSC conducted a survey of each of the entities subject to the rule. The purpose of the survey was to determine the expected impacts of the rule on the regulated entity, as well as its customers, including small businesses, small counties, and small cities. Each of the regulated entities who must comply with the rule holds the best information regarding the expected future impacts of the rule on their operations and their customers who purchase their services and products.

In that regard, the methodology for conducting the analysis required in Section 120.541(2), F.S., first required the development and distribution of an effective survey instrument. The survey instrument was designed to collect data which would reveal the specific impacts of the rule for the 5 year period beginning on July 1, 2011. The survey instrument for the rule with attached rule language is included as Attachment 1.

The next step was to review the information contained in the survey responses. The information provided by regulated utilities was then compared with information the FPSC has in its records or otherwise available to it, in order to determine whether the responses received appeared to be consistent with similar data or information for recent periods or forecasted periods. The rule has been in effect for 29 years, and some of the information pertaining to the financial impacts of the rule has already been quantified and in some cases provided to the FPSC.

The final step in the analysis involved aggregating the responses of all the respondents in order to determine the rule's quantitative and qualitative impacts as required by the statute. In cases where one or more regulated entities did not provide a response to the survey, it became necessary to rely upon otherwise available information to estimate the rule's impact(s) on that regulated entity(ies) in order to contribute as much information as possible to the rule's impact.

## III. COMPLIANCE ECONOMIC REVIEW COMPONENTS

### A. Rule Justification

Subparagraph 120.745(1)(b), F.S., requires that compliance economic reviews include a justification for the rule which summarizes the rule's benefits. Rule 25-7.0131, F.A.C., requires investor-owned gas utilities to complete FPSC Form PSC/ECR 67 (01/99), entitled "Investor-Owned Natural Gas Utility Regulatory Assessment Fee Return." Municipal and gas districts are required to complete FPSC form PSC/ECR 71 (01/96), entitled "Gas Municipal and Gas District Regulatory Assessment Fee Return." The rule also provides for:

1. Regulatory assessment fees based on a percentage of gross operating revenues from intrastate business, excluding sales for resale between public utilities, including a minimum annual fee assessment.

2. Semi-annual regulatory assessment fee due dates (January 30 and July 30).
3. Allowances for payment extensions for good cause, in accordance with Section 350.113, F.S.
4. Mandatory charges for payment extensions.
5. Mandatory penalties applied to delinquent amounts in accordance with Section 350.113, F.S.
6. Mandatory interest applied to delinquent amounts at a rate of 12 percent per year.

Rule 25-7.0131, F.A.C., which became effective on May 18, 1983, implements Sections 366.14, and 350.113, F.S. Currently, Section 366.14, F.S., states that each public utility (investor-owned gas utility) that supplies natural gas shall pay a fee to the FPSC not greater than 0.5 percent of its gross operating revenues derived from intrastate business, excluding sales for resale between public utilities and gas municipals. This section also states that each gas municipal or gas district shall pay a fee to the FPSC not greater than 0.25 percent of its gross operating revenues derived from intrastate business, excluding sale for resale between public utilities and gas municipals. Section 350.113, F.S., states that all regulatory assessment fees collected by the FPSC must be credited to the Florida Public Service Regulatory Trust Fund to be used in the operation of the Commission as authorized by the Legislature. The fees must be related to the cost of regulating the type of company from which the fee is collected.

As originally implemented, the rule sets the regulatory assessment fee and other terms for gas utilities only. It was amended on October 19, 1986, to include a mandatory annual payment from gas utilities of \$25. The rule was amended again on April 25, 1990, to increase the fee to gas utilities from 0.125 percent to 0.375 percent of gross operating revenues from intrastate business and to establish a fee to municipal and gas districts for safety regulation of 0.1919 percent of revenue. The 1990 amendment also required submission of regulatory fee forms. A third amendment to the rule became effective on July 7, 1996. The rule was amended to clarify administrative matters, such as due dates falling on holidays and weekends being extended to the next business day. The current version of the rule became effective on January 1, 1999. This fourth amendment to the rule increased the regulatory assessment fee for gas utilities from 0.375 percent of gross operating revenue from intrastate business to 0.5 percent of such revenue. The original rule, as well as each rule amendment, have been reflective of the limits imposed by the statutory provisions. For example, the current version of the rule sets the fee for municipal and gas districts at 0.1919 percent of revenue, which is below the limit specified in Section 366.14, F.S., of 0.25 percent of revenue.

The FPSC has broad jurisdiction over all investor-owned gas utilities operating in the state, including the regulation of rates and service, as identified in Section 366.04, F.S., as well as safety, as identified in Section 368.05, F.S. In addition, the FPSC has jurisdiction over all gas municipals and gas districts operating in the state with respect to their compliance with rules and regulations governing gas safety standards established by the FPSC, as identified in Section 368.05, F.S. The primary benefit of the rule is that it provides for the funding necessary to achieve the broad regulatory objectives of the statutes. The regulatory objectives include the regulation of gas utilities' rates, service, and safety and the regulation of gas municipals' and gas districts' safety. The rule implements the specific statutory requirements set forth in Sections 366.14, and 350.113, F.S., in order to achieve the broader statutory objectives of Sections 366.04, and 368.05, F.S.

## B. Statement of Estimated Regulatory Costs

Subparagraph 120.745(1)(b)2., F.S., requires a compliance economic review to include a statement of estimated regulatory costs as discussed in Subsection 120.541(2), F.S., for the 5 year period beginning on July 1, 2011. The statement of estimated regulatory costs for this compliance economic review of Rule 25-7.0131, F.A.C., consists of Items 1 – 7 below.

### 1. Entities and Individuals Affected

Paragraph 120.541(2)(b), F.S., requires a good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule. Currently, seven gas utilities, twenty-eight gas municipals, and four gas districts are subject to FPSC jurisdiction in 2012. The FPSC has no knowledge of whether any of these entities will be dissolved or acquired during the 5 year period beginning on July 1, 2011. While there may be other regulated entities which may come into existence during that time period based on growth or other factors, the FPSC has no specific information regarding any potential new regulated entities. The rule indirectly affects natural gas service customers residing or doing business in the service territories of the regulated entities through the recovery of the rule's regulatory costs in gas service rates and charges.

### 2. Economic Analysis

#### a. Regulatory Costs

Subparagraph 120.745(1)(b)2.b., and Subparagraph 120.541(2)(a)3., F.S., require an economic analysis to show whether the rule, directly or indirectly, will have estimated regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate for the 5 year time period beginning on July 1, 2011. Regulatory costs identified in Subsection 120.541(2), F.S., include a good faith estimate of the transactional costs, or the direct costs to comply with rule, and a good faith estimate of the cost to the agency, or any other state and local government entities, of implementing and enforcing the rule.

Two types of transactional costs associated with the rule were reviewed. The first type of cost specifically identified in the rule is the regulatory assessment fee. The second type of cost is the administrative expense associated with the fee, typically the cost to prepare and file the fee twice per year.

## Gas Utilities

Three of the seven gas utilities responded to the FPSC survey, including Peoples Gas, Florida City Gas, and St. Joe Natural Gas Company.

Only Peoples Gas provided a 5 year estimated regulatory assessment fee amount. Peoples Gas provided a 5 year regulatory assessment fee amount that is consistent with the current level of regulatory assessment fees remitted to the FPSC by that company. Peoples Gas' 2011 regulatory assessment fee remittance was \$1.7 million, and Peoples Gas' estimated 5 year regulatory assessment fee amount reported in its survey response was \$8.4 million, approximately five times the 2011 fee remittance.

We considered whether Peoples Gas's method of estimating regulatory assessment fee remittance for the 5 year period is reasonable and whether that method should be used to determine the remittances of the other utilities. Four of the seven gas utilities offer bundled natural gas (the commodity) and natural gas transportation to their customers, and three of the seven gas utilities sell only natural gas transportation to their customers. The price of natural gas has exhibited a high degree of volatility during the past 12 years, and during the past several years, natural gas prices have been declining. Predicting such prices has proven to be very difficult and will likely continue to be difficult in the coming years. Given such high volatility, the assumption that natural gas prices will reflect current gas prices appears reasonable. This assumption is consistent with the forecast of natural gas prices for 2011 through 2016 for the South Atlantic Region appearing in the Energy Information Administration's (EIA) Annual Energy Outlook 2012 Early Release (AEO-2012 ER). In addition, very modest growth in natural gas consumption is forecasted through 2016 for the South Atlantic region, according to the EIA's AEO-2012 ER. Thus, it is reasonable to expect that the amount of regulatory assessment fees collected by the FPSC from gas utilities, gas municipals, and gas districts during the 5 year period beginning on July 1, 2011, under the rule should be five times the 2011 regulatory assessment fees. In order to estimate the regulatory assessment fee remittances for all utilities other than Peoples Gas for the 5 year period beginning on July 1, 2011, the FPSC utilized each utilities' regulatory assessment fee amounts for the most recent year available (CY 2011) and applied such fee amounts to all years in the 5 year period. The estimated fee and administrative expense amounts appear in Table 1, below.

The administrative fee amounts reported are relatively small or immaterial. Peoples Gas's administrative expense is 0.12 percent of the regulatory fee amount. For purposes of this analysis, the FPSC assumed each non-reporting utility's administrative expense is 0.12 percent of the regulatory fee amount, or a minimum of \$250, whichever is higher.

As shown in Table 1, the total transactional costs for gas utilities associated with the rule for the 5 year period beginning on July 1, 2011, is approximately \$12.30 million.



**Table 1**

**Gas Utility 5 Year Transactional Costs - Rule 25-7.0131, F.A.C.**

<u>Gas Utility</u>	<u>Regulatory Assessment Fee</u>	U or F *	<u>Administrative Expense</u>	U or F *	<u>Total Transactional Costs</u>
Peoples Gas	\$8,400,000	U	\$10,000	U	\$8,410,000
Florida City Gas	\$1,875,685	F	\$805	U	\$1,876,490
FPUC	\$1,545,780	F	\$1,855	F	\$1,547,635
Chesapeake (Florida)	\$376,757	F	\$452	F	\$377,209
St. Joe Natural Gas	\$54,581	F	Immaterial	U	\$54,581
FPUC (Indiantown)	\$15,330	F	\$250	F	\$15,580
Sebring Natural Gas	\$14,545	F	\$250	F	\$14,795
<b>Total, Gas Utilities</b>	<b>\$12,282,678</b>	<b>F</b>	<b>\$13,612</b>	<b>F</b>	<b>\$12,296,290</b>

\* U = utility estimated; F = FPSC estimated

Gas Municipals and Gas Districts

Two gas municipals and one gas district responded to the FPSC survey. Energy Services of Pensacola reported expected regulatory assessment fees of \$60,000 to \$65,000 annually and administrative costs of \$1,800 to \$2,000 annually. The City of Leesburg did not report the level of expected regulatory assessment fees, but stated that it expected to incur no additional costs other than the regulatory assessment fee. Okaloosa Gas District reported 5 year administrative costs of \$1,455.

The total gas municipal and gas district regulatory assessment fees remitted in 2011 according to FPSC records was \$451,925. Applying the assumption for these gas entities that future revenue will mirror current revenue, the total regulatory assessment fee amount for such entities is \$2.26 million. Estimated administrative costs are based on the assumption that the administrative costs for non-reporting gas municipals and districts is similar to the median cost reported by gas municipals and gas districts (\$291/year). The expected total 5 year administrative costs for all such regulated entities is \$53,150. Thus, the total transaction costs for the gas municipals and gas districts for the 5 year period is expected to be approximately \$2.31 million.

Based on the above, the expected total transactional costs associated with compliance with the rule for gas utilities, gas municipals, and gas districts is approximately \$14.61 million for the 5 year period beginning on July 1, 2011.

The cost to the FPSC to implement and enforce the rule based on a good faith estimate for the 5 year period beginning on July 1, 2011, is \$19,698, as discussed in III.3 (Costs to Governmental Entities) below. Other state and local government agencies are not impacted by the rule.

Based on the above analysis, the total regulatory costs associated with the rule including both transactional costs and costs to the agency, is expected to be approximately \$14.63 million for the 5 year period beginning on July 1, 2011. Thus, our economic analysis indicates the rule directly or indirectly is likely to result in regulatory costs in excess of \$1 million for the 5 year period beginning on July 1, 2011.

#### b. Economic Growth, Jobs, and Investment

Section 120.745 and Subparagraph 120.541(2)(a)1., F.S., requires each compliance economic review to include an economic analysis showing whether the rule directly or indirectly is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within 5 years beginning on July 1, 2011. The FPSC survey of gas utilities, municipals, and gas districts requested information responsive to this requirement for the rule for the 5 year period beginning on July 1, 2011, for their specific service territories.

Gas utilities responded variously regarding the rule's impact on economic growth, private sector job creation or employment, and private sector investment: the rule will have an unknown impact (Peoples Gas); the rule will have minimal impact (Florida City Gas); or the rule will have negative impact (St. Joe Natural Gas Company, Inc.). Gas municipals responded that the rule will have either an unknown impact (Energy Services of Pensacola) or the rule will have no impact (Leesburg Natural Gas Department). Okaloosa Gas District responded that if the rule causes money to flow out of the service area, it would have a negative impact on growth and employment equal to the annual assessment amount.

Assessing the adverse impacts implies a weighing of the costs and the benefits of the rule. As discussed in III.B.2.a, the 5 year regulatory cost associated with the rule (\$14.63 million) are costs which are passed through to the ratepayers of the gas utilities, gas municipal utilities, and gas districts. The primary benefit of Rule 25-7.0131, F.A.C., is that it achieves the statutory objectives, including the collection of funds necessary for the regulation of gas utilities' rates, service, and safety and the regulation of gas municipal utilities' and gas districts' safety.

None of the utilities responding to the FPSC survey (Question 5) regarding the impacts of the rule included any discussion which identified the ways the rule may actually support economic growth, private sector job creation or employment, and private sector investment. However, Okaloosa Gas District reported elsewhere in its survey response (Question 7) that one of the benefits of the rule is that it ensures compliance with pipeline safety laws, thereby providing a safe environment for Florida citizens. In general, employers typically expect to locate and maintain a presence in areas with

a stable regulatory environment for utilities to operate. Many employers require safe natural gas transportation service to support their businesses. Conversely, uncertain utility rates, service, and safety can be a deterrent to businesses, and can be expected to have negative impacts on growth, employment, and investment.

The economic benefits of stable and accurate rates, adequate service, and enforcement of safety standards are not easily quantified. The rule provides the FPSC with the financial resources to regulate the rates, service, and safety for gas utilities as well as the safety of gas municipals and gas districts. Considering the cost and benefits identified above, the benefits of the rule outweigh the cost of the rule. Fair and reasonable utility rates and safe gas distribution service support, rather than hinder, economic growth, employment, and investment. In conclusion, there are no known adverse impacts on economic growth, private sector job creation or employment, or private sector investment associated with the rule.

### c. Business Competitiveness

Subparagraphs 120.745(1)(b)2., and 120.541(2)(a)2., F.S., require each compliance economic review to include an economic analysis showing whether the rule directly or indirectly is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate over the 5 year period beginning on July 1, 2011. The FPSC survey of gas utilities, gas municipals, and gas districts requested information responsive to this requirement for the rule for the 5 year period beginning on July 1, 2011, for their specific service territories.

Gas utilities responded variously regarding the rule's impact on business competitiveness, productivity, and innovation: the rule will have an unknown impact (Peoples Gas), the rule will have minimal impact (Florida City Gas), or the rule will have no impact (St. Joe Natural Gas Company, Inc.). Gas municipals responded that the rule will have either an unknown impact (Energy Services of Pensacola) or the rule will have no impact (Leesburg Natural Gas Department). Okaloosa Gas District responded that the rule would cause a decrease in competitiveness if other states do not have regulatory assessment fees (Okaloosa Gas District).

Considering the impact of the rule on business competitiveness relative to other states, the National Association of Regulatory Utility Commissioners indicates that no state-to-state comparison of gas regulatory assessment fees has been conducted. Many states other than Florida assess regulatory fees to the regulated industries under their jurisdiction, but the details of the funding methods vary. For many states, the regulatory fee is a single rate or percentage assessed across all regulated industries, including electric, gas, telecommunications, water and wastewater, etc. Of course, this often can and does result in cross subsidies from one industry to another in the support of commission operations. Some commissions' operations are funded by the states' general revenue funds rather than specified commission trust funds. However, all states must support their commission operations through regulatory assessment fees, taxes, or other sources of revenue generated from the public.

In contrast to many states, Florida has established industry specific regulatory assessment fees in order to closely match the actual cost of regulating the industry. The larger question to be addressed is whether Florida's gas regulatory assessment fees, relative to the fees and/or taxes assessed by other states, are expected to reduce business competitiveness in Florida. Florida's regulatory assessment fees are 0.5 percent of gross operating revenue for investor-owned gas utilities and 0.1919 percent of gross operating revenue for gas municipals and gas districts. Other states must also collect fees to support their gas regulatory operations. Given these considerations and the critical importance of gas regulation to businesses operating in Florida, it is unlikely that the rule will directly or indirectly have an adverse impact on business competitiveness, productivity, or innovation in excess of \$1 million in the aggregate over the 5 year period beginning on July 1, 2011.

### 3. Costs to Governmental Entities

Subparagraphs 120.745(1)(b)2., and 120.541(2)(c), F.S., require a compliance economic review to include a good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the rule, and any anticipated effect on state or local revenues. In order to provide a good faith estimate of the rule's cost to the agency, the estimated annual number of hours dedicated to implementing and enforcing the rule for each employee class was multiplied by each class's labor rate, and the resulting costs were aggregated for all employee classifications. Based on this analysis, the estimated cost to the FPSC to implement and enforce the rule is \$19,698 for the 5 year period beginning on July 1, 2011. Other state and local government agencies are not impacted by the rule.

The FPSC's estimated costs allow for the collection of funds which are used by the agency to achieve the benefits of the rule identified in III.A., above. These benefits include the regulation of rates, service, and safety of investor-owned natural gas utilities as well as the safety of gas municipals and gas district as set forth in Sections 366.14, and 368.05, F.S.

### 4. Transactional Costs Incurred by Companies

Subparagraphs 120.745(1)(b)2., and Subparagraph 120.541(2)(d), F.S., require a compliance economic review to include 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 rule. Estimated transactional costs associated with the rule were identified in Section III.B.2., above. The transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the rule, is estimated to be \$14.61 million for the 5 year time period beginning on July 1, 2011.

### 5. Impacts on Small Businesses, Small Counties, and Small Cities

Subparagraphs 120.745(1)(b)2., and 120.541(2)(e), F.S., require a compliance economic review to include an analysis of the impact of the rule on small businesses as defined by Section 288.703, F.S., and an analysis of the impact on small counties and small cities as defined in Section 120.52, F.S. The impact analysis for small businesses must include the basis for the agency's decision not to implement alternatives that would reduce adverse impacts on small businesses.

Gas utilities responding to the FPSC survey questions regarding small business, small county, and small city impacts of the rule for the 5 year period beginning 2011, stated that they did not know what the impact on such entities will be (Peoples Gas), that the impact will be minimal (Florida City Gas), or that the impact will be the regulatory assessment fee itself (St. Joe Natural Gas Company). Gas municipals and gas districts responding to the FPSC survey questions stated that they did not know what the impact will be (Energy Services of Pensacola), that the rule will have no impact (City of Leesburg), or that the impact will be the regulatory assessment fee itself (Okaloosa Gas District).

The 5 year regulatory cost associated with the rule identified in the prior section (\$14.63 million) are costs which will be passed through, at some point in time, to the ratepayers of the gas utilities, gas municipals, and gas districts. The state regulatory costs to small businesses, small counties, and small cities support fair and reasonable gas rates and charges and safe and adequate gas service which, in turn, support growth, employment, and investment. In general, small businesses can typically expect to locate and maintain a presence in areas with fair and reasonable gas rates and charges and safe and adequate gas service. Conversely, unregulated gas rates and service can be expected to be a deterrent to businesses, and could have negative impacts to growth, employment, and investment. Considering the cost and benefits above, Rule 25-7.0131, F.A.C., is likely to have a positive impact on small businesses, small counties, and small cities during the 5 year period beginning on July 1, 2011.

#### 6. Additional Information

Subparagraphs 120.745(1)(b)2., and 120.541(2)(f), F.S., require a compliance economic review to include any additional information that the agency determines may be useful. No additional useful information has been identified regarding the estimated regulatory costs of Rule 25-7.0131, F.A.C.

#### 7. Alternatives

Subparagraphs 120.745(1)(b)2., and 120.541(2)(g), F.S., require a compliance economic review to include a description of any regulatory alternatives submitted under Paragraph 120.541(1)(a), F.S., and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the rule. None of the companies that responded to the Commission's survey offered any regulatory alternatives pursuant to Paragraph 120.541(1)(a), F.S.

Attachments: Survey on Rule 25-7.0131, F.A.C., with attached rule

COMMISSIONERS:  
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DIVISION OF ECONOMIC REGULATION  
(850) 413-6900

## Public Service Commission

February 24, 2012

To: Florida Gas Municipals and Special Gas Districts

Re: Docket No. 110303-OT - Industry survey for legislative review of agency rules in effect on or before November 16, 2010

To Whom It May Concern:

Please see attached Staff's survey questions. Your timely response to these survey questions regarding Rule 25-7.0131, F.A.C. – Regulatory Assessment Fees; Gas Utilities, Gas Municipals, and Gas Districts will be used to complete the Commission's Compliance Economic Review required by Sections 120.745 and 120.541, Florida Statutes. All responses should be filed in Docket No. 110303-OT by 5:00 p.m., Wednesday, March 14, 2012, and addressed to:

Bill McNulty  
c/o Ann Cole  
Commission Clerk  
Office of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

If you have any questions, please contact me at 850-413-6848 or [bmcnulty@psc.state.fl.us](mailto:bmcnulty@psc.state.fl.us). Thank you for your assistance.

Sincerely,

/s/ Bill McNulty  
Bill McNulty  
Economic Analyst  
Division of Economic Regulation

**FPSC Survey Questions re: Compliance Economic Review**  
**Gas Municipals and Gas Districts**

Date Questions Issued: February 24, 2012

Date Responses Due to Commission Clerk: March 14, 2012

FPSC Contact: Bill McNulty, [bmcnulty@psc.state.fl.us](mailto:bmcnulty@psc.state.fl.us), 850-413-6848

**Rule 25-7.0131, F.A.C. - Survey Questions**

The following survey questions apply to Rule 25-7.0131, F.A.C. – Regulatory Assessment Fees; Gas Utilities, Gas Municipals, and Gas Districts. For purposes of responding to these questions, please refer to Subsection 120.541(2), F.S., and Subparagraph 120.745(1)(b)2, F.S. “Transactional costs” are defined in Subparagraph 120.541(2)(d), F.S., as:

...direct costs that are readily ascertainable based upon standard business practices, including filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule.

The Gas Municipal’s or Gas District’s response data to these survey questions should be provided for the entire rule, unless the response data is available by rule section, in which case we request the response data be provided by rule section. Please present data in annualized format, if possible, and all cost or benefit dollar estimates should be stated in nominal terms.

1. What are the Gas Municipal’s or Gas District’s estimated transactional costs resulting from the Gas Municipal’s or Gas District’s compliance with Rule 25-7.0131, F.A.C., for the five year period beginning July 1, 2011? Please identify regulatory assessment fees separately from all other transactional costs required to comply with the rule.
2. What is the Gas Municipal’s or Gas District’s estimate of the likely impact, stated in terms of costs and/or benefits, on small businesses (as defined by s. 288.703) located in the Gas Municipal’s or Gas District’s service territory, resulting from the implementation of Rule 25-7.0131, F.A.C., for the five year period beginning on July 1, 2011?
3. What is the Gas Municipal’s or Gas District’s estimate of the likely impact, stated in terms of costs and/or benefits, on small counties and small cities (as defined in s. 120.52) located in the Gas Municipal’s or Gas District’s service territory, resulting from the implementation of Rule 25-7.0131, F.A.C., for the five year period beginning July 1, 2011?
4. What is the Gas Municipal’s or Gas District’s estimate of the likely impact, stated in terms of costs and/or benefits, on entities located in the Gas Municipal’s or Gas District’s service territory other than those specifically identified in Questions 2 and 3, resulting from the implementation of Rule 25-7.0131, F.A.C., for the five year period beginning July 1, 2011?
5. What does the Gas Municipal or Gas District believe is the expected impact of Rule 25-7.0131, F.A.C., on economic growth, private sector job creation or employment, and private

sector investment for the five year period beginning July 1, 2011 in the Gas Municipal's or Gas District's service territory?

6. What does the Gas Municipal or Gas District believe is the expected impact of Rule 25-7.0131, F.A.C., on business competitiveness, including the ability of persons doing business in the Gas Municipal's or Gas District's service territory to compete with persons doing business in states other than Florida or other domestic markets, productivity, and innovation, for the five year period beginning July 1, 2011?
7. What does the Gas Municipal or Gas District believe are the benefits of Rule 25-7.0131, F.A.C.?



**25-7.0131 Regulatory Assessment Fees; Gas Utilities, Gas Municipals, and Gas Districts.**

(1) As applicable and as provided in Sections 350.113 and 366.14, F.S., each gas utility, municipal, or gas district shall remit a fee based upon its gross operating revenue. This fee shall be referred to as a regulatory assessment fee. Regardless of the gross operating revenue of a Gas Municipal or Gas District, a minimum annual regulatory assessment fee of \$25 shall be imposed.

(a) Each investor-owned gas utility shall pay a regulatory assessment fee in the amount of .005 of its gross operating revenue derived from intrastate business, excluding sales for resale between public utilities, municipal gas utilities, and gas districts or any combination thereof.

(b) Each municipal or gas district shall pay a regulatory assessment fee in the amount of 0.001919 of its gross operating revenue derived from intrastate business, excluding sales for resale between public utilities, municipal gas utilities, and gas district or any combination thereof.

(2) Regulatory assessment fees are due each January 30 for the preceding period or any part of the period from July 1 until December 31, and on July 30 for the preceding period or any part of the period from January 1 until June 30.

(3) If the due date falls on a Saturday, Sunday, or a legal holiday, the due date is extended to the next business day. If the fees are sent by registered mail, the date of the registration is the United States Postal Service's postmark date. If the fees are sent by certified mail and the receipt is postmarked by a postal employee, the date and the receipt is the United States Postal Service's postmark date. The postmarked certified mail receipt is evidence that the fees were delivered. Regulatory assessment fees are considered paid on the date they are postmarked by the United States Postal Service or received and logged in by the Commission's Division of Administrative Services in Tallahassee. Fees are considered timely paid if properly addressed, with sufficient postage and postmarked no later than the due date.

(4) Commission Form PSC/ECR 67 (01/99), entitled "Investor-Owned Natural Gas Utility Regulatory Assessment Fee Return" and Form PSC/ECR 71 (07/96), entitled "Gas Municipal or Gas District Regulatory Assessment Fee Return" are incorporated into this rule by reference and may be obtained from the Commission's Division of Administrative Services. The failure of a utility to receive a return form shall not excuse the utility from its obligation to timely remit the regulatory assessment fees.

(5) Each utility, municipal, and gas district shall have up to and including the due date in which to:

(a) Remit the total amount of its fee or

(b) Remit an amount which the utility, municipal, or gas district estimates is its full fee.

(6) Where the utility, municipal, or gas district remits less than its full fee, the remainder of the full fee shall be due on or before the 30th day from the due date and shall, where the amount remitted was less than 90 percent of the total regulatory assessment fee, include interest as provided by paragraph (8)(b) of this rule.

(7) A utility, municipal, or gas district may request from the Division of Administrative Services a 30-day extension of its due date for payment of regulatory assessment fees or for filing its return form.

(a) The request for extension must be written and accompanied by a statement of good cause.

(b) The request for extension must be received by the Division of Administrative Services at least two weeks before the due date.

(c) Where a utility, municipal, or gas district receives an extension of its due date pursuant to this rule, then the utility, municipal, or gas district shall remit a charge in addition to the regulatory assessment fee, as set out in Section 350.113, F.S.

(8) The delinquency of any amount due to the Commission from the utility, municipal, or gas district pursuant to the provisions of Section 350.113, F.S., and this rule, begins with the first calendar day after any date established as the due date either by operation of this rule or by an extension pursuant to this rule.

(a) A penalty, as set out in Section 350.113, F.S., shall apply to any such delinquent amounts.

(b) Interest at the rate of 12 percent per annum shall apply to any such delinquent amounts.

*Specific Authority 350.127(2), 366.14 FS. Law Implemented 350.113, 366.14 FS. History—New 5-18-83, Formerly 25-7.131, Amended 10-19-86, 4-25-90, 7-7-96, 1-1-99.*

**Rule 25-7.0131, F.A.C., Regulatory Assessment Fees; Gas Utilities,  
Gas Municipals, and Gas Districts**

**Lower cost regulatory alternatives received by agency**

No lower cost regulatory alternatives were received by the Commission pursuant to paragraph 120.745(5)(c), F.S., for Rule 25-7.0131, F.A.C., Regulatory Assessment Fees; Gas Utilities, Gas Municipals, and Gas Districts.

**Explanation for rejecting lower regulatory cost alternatives**

Because no lower cost regulatory alternatives were received by the Commission, no lower cost regulatory alternatives were rejected.

**Rule 25-7.0131, F.A.C., Justification Statement**

The compliance economic review for Rule 25-7.0131, F.A.C., Regulatory Assessment Fees; Gas Utilities, Gas Municipals, and Gas Districts, contains a detailed rule justification section which supports retention of the rule without amendment. See pages 41-42 above. As set forth therein, the purpose of Rule 25-7.0131, F.A.C., is to provide for the collection of funds needed to regulate the provision of natural gas to Florida customers. The review concludes that the rule achieves its statutory objective of allowing for the collection of funds necessary for the regulation of gas utilities' rates, service, and safety and the regulation of gas municipals' and gas districts' safety. See pages 46-48 above.

The compliance economic review notes that the economic benefits of stable and accurate rates, adequate service, and enforcement of safety standards are not easily quantified. The economic analysis indicates that Rule 25-7.0131, F.A.C., will not have an adverse impact on economic growth, private sector employment, private sector investment, business competitiveness, innovation, or productivity during the 5-year period beginning on July 1, 2011. Rule 25-7.0131, F.A.C., provides the Commission with the financial resources to regulate the rates, service, and safety for gas utilities as well as the safety of gas municipals and gas districts. Fair and reasonable utility rates and safe gas distribution service support, rather than hinder, economic growth, employment, and investment. See pages 46-47 above. Small businesses, small counties, and small cities are likely to be positively impacted by the rule during the 5-year period. In general, small businesses can typically expect to locate and maintain a presence in areas with fair and reasonable gas rates and safe and adequate gas service. See pages 48-49 above. In addition, the review states that Rule 25-7.0131, F.A.C., ensures compliance with pipeline safety laws, thereby providing a safe environment for Florida citizens. See page 46 above.

**Compliance Economic Review  
for  
Rule 25-17.0021, Florida Administrative Code,  
Goals for Electric Utilities**

**Florida Public Service Commission**

This document is prepared in response to the requirements of  
Section 120.745, Florida Statutes

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Attachment 1: Survey on Rule 25-17.0021, F.A.C., with attached rule

## **I. EXECUTIVE SUMMARY**

Pursuant to Section 120.745, Florida Statutes (F.S.), the Florida Public Service Commission (FPSC or Commission) is required to identify and conduct a compliance economic review for rules that the agency believes are likely to have an adverse impact on economic growth, private sector job creation or employment, private sector investment, business competitiveness, productivity and innovation, or are likely to increase regulatory costs, including any transactional costs in excess of \$1 million during the 5 year period beginning on July 1, 2011.

Section 120.745, F.S., became effective in 2011 and requires each agency to complete an enhanced biennial review of all its existing rules and publish a report by December 1, 2011. The statute requires each agency to identify in its report each of its rules which require a compliance economic review. A compliance economic review is defined as a good faith economic analysis which includes a justification for the rule, a statement of estimated regulatory costs for the 5 year period beginning on July 1, 2011, and an explanation of the methodology used to conduct the analysis. A compliance economic review is required for each entire rule that the agency does not plan to repeal by December 31, 2012, was effective on or before November 16, 2010, and is considered by the agency to probably have any of the economic impacts described in Section 120.541(2)(a), F.S., for the 5 year period beginning on July 1, 2011.

The FPSC completed its enhanced biennial review report on November 22, 2011. Within the report, the FPSC delineated ten rules it determined were subject to a compliance economic review. Pursuant to Section 120.745(2)(h), F.S., the FPSC divided these rules into Group 1, with the accompanying compliance economic review due May 1, 2012, and Group 2, due May 1, 2013. Rule 25-17.0021, Florida Administrative Code (F.A.C.), is one of five rules included in the list of Group 1 rules appearing in the FPSC's enhanced biennial review and is the subject of this compliance economic review. Rule 25-17.0021, F.A.C., implements Sections 366.81, and 366.82(1)-(5), F.S., of the Florida Energy Efficiency and Conservation Act (FEECA) and Section 366.051, F.S.

The purpose of this report is to evaluate the economic impacts of Rule 25-17.0021, F.A.C., Goals for Electric Utilities. The report also analyzes whether or not compliance with the rule is likely to increase regulatory costs and/or transactional costs.

The Commission conducted the compliance economic review for Rule 25-17.0021, F.A.C., by distributing surveys to the seven electric utilities subject to FEECA. These utilities are the five Florida investor-owned utilities (IOUs) and the two largest municipal utilities: Florida Power & Light Company (FPL); Progress Energy Florida, Inc. (PEF); Tampa Electric Company (TECO); Gulf Power Company (Gulf); Florida Public Utilities Company (FPUC); Orlando Utilities Commission (OUC); and JEA in Jacksonville.

Utility responses to the surveys showed that the IOUs' estimated costs associated with compliance with Rule 25-17.0021, F.A.C., total over \$2 billion for the 5 year period beginning on July 1, 2011. Several utilities commented that the rule implements the specific provisions of FEECA. Therefore, the utilities would take many of the same actions to comply with the

FEECA statutes in the absence of the rule. Utility comments also indicated that the rule was beneficial in that it provides uniform procedures for compliance with the statute. IOU demand-side management (DSM) related costs that are found to be reasonable and prudent by the FPSC are recovered from ratepayers through a cost-recovery clause. Potential rate increases, however, must be compared to the costs the utility would have otherwise incurred to provide additional energy and generating capacity. Since 1980, the demand savings from DSM programs have deferred the need for over 45 typical 150 MW combustion turbine generating units, while the energy savings have reduced Florida's consumption of fossil fuels.

In addition, all responses indicated that the utilities did not capture, track, or analyze economic impacts to third parties. The IOUs, therefore, were unable to estimate impacts to economic growth, job creation, investment, business competitiveness, small businesses, small counties, and small cities resulting from compliance with the rule.

## **II. TECHNICAL METHODOLOGY**

Section 120.745(1)(b)2.c., F.S., requires an explanation of the technical methodology used to conduct the analysis required in Section 120.541(2), F.S., for each agency rule for which a compliance economic review is performed. The FPSC conducted a survey of each of the utilities subject to the rule. A copy of the survey with the rule is included as Attachment 1. The purpose of the survey was to determine the estimated impacts of the rule on the regulated utilities and customers, including small businesses, small counties, and small cities.

The methodology for conducting the analysis required in Section 120.541(2), F.S., required the development and distribution of a survey designed to collect data on the specific impacts of the rule for the 5 year period beginning on July 1, 2011. The FPSC used routine regulatory communications in conducting this survey.

The next step was to review the information contained in the survey responses. The information provided by regulated utilities was then compared with information the FPSC has in its records, in order to determine whether the responses received appeared to be consistent with similar data or information for recent periods or forecasted periods. Rule 25-17.0021, F.A.C., has been in effect since 1980, and some of the information pertaining to the financial impacts of the rule has already been quantified and in some cases provided to the FPSC. As a part of its review of in-house information, the FPSC examined documents filed by outside parties or developed by the FPSC during its rulemaking proceedings, including any previously performed Statements of Estimated Regulatory Costs. The FPSC also reviewed the DSM-related costs recovered by the IOUs through the Energy Conservation Cost Recovery (ECCR) clause.

The final step in the analysis involved aggregating the responses of all of the respondents in order to determine the rule's quantitative and qualitative impacts as required by the statute. In cases where one or more regulated entities did not provide a response to the survey, it became necessary to rely upon other information on file with the FPSC to estimate the rule's impacts on that entity(ies) in order to contribute as much information as possible to the statewide impacts.

## **III. ECONOMIC REVIEW COMPONENTS**

### **A. Rule Justification**

Rule 25-17.0021, F.A.C., implements Sections 366.81, and 366.82(1)-(5), F.S., of FEECA, which was enacted in 1980, and Section 366.051, F.S. FEECA places emphasis on reducing the growth rates of weather-sensitive peak demand, reducing and controlling the growth rates of electricity consumption, and reducing the consumption of expensive resources such as petroleum fuels. Section 366.82, F.S., of FEECA requires the FPSC to establish goals and gives the FPSC authority to require utilities subject to FEECA to propose DSM plans and programs designed to meet the goals.

In 1980, the Commission adopted rules requiring all electric utilities to implement cost-effective DSM programs to meet the requirements of the newly enacted FEECA statute. In June 1993, the Commission revised Rule 25-17.0021, F.A.C., requiring the establishment of numeric DSM goals for residential and commercial/industrial summer and winter demand in megawatts (MW), and annual energy savings in giga-watt hours (GWh), over a ten-year period. These rules now apply to the seven Florida electric utilities subject to FEECA. The rules also require annual reporting, allowing the Commission to more closely monitor and evaluate the DSM activities of the FEECA utilities. Pursuant to Rule 25-17.0021(2), F.A.C., the Commission sets DSM goals for each utility at least once every five years.

Section 366.82(3), F.S., requires the Commission to “evaluate the full technical potential of all available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy systems.” As a part of the goal-setting process, the utilities perform a technical potential study to identify feasible DSM measures and estimate the savings that could be achieved from a technical point of view, i.e., without limitations on cost, availability of materials, or acceptability by customers. This pool of measures is then screened by the utility for those measures that have economic potential, i.e., materials for implementation can be obtained, trained craftsmen are available for installations, and the measures are not cost prohibitive. A final screening is then performed by the utility to identify measures that have achievable potential, i.e., measures that would be accepted by customers.

Rule 25-17.0021, F.A.C., provides the Commission and affected utilities with procedural guidance on setting DSM goals and considering DSM plans and programs. Rule 25-17.0021(3), F.A.C., establishes that in goal-setting proceedings, each utility shall propose goals for the ten-year period and provide projections of the total, cost-effective winter and summer peak demand and annual energy savings reasonably achievable in the residential and commercial/industrial classes through DSM.

Sections 366.81, and 366.82, F.S., require the Commission to set appropriate DSM goals that are cost-effective. The statutes and the FPSC’s rules implementing the statutes do not specify a single methodology for determining cost-effectiveness. An associated Commission Rule 25-17.008, F.A.C., requires utilities to perform three cost-effectiveness tests, including the Rate Impact Measure (RIM) test, the Total Resource Cost (TRC) test, and the Participants test to provide information for the Commission’s consideration. The RIM test estimates the benefits and costs to non-participants; the TRC test determines benefits and costs from a societal view; and the Participants test identifies the benefits and costs to participants in the program.

Within 90 days after the Commission issues its order approving DSM goals, each affected utility must file a DSM plan with the Commission for approval. These plans describe the DSM programs to be offered to customers, which are designed to generate the demand and energy savings required by each utility’s DSM goals. In addition to the recurring requirement to provide a DSM plan that meets goals established by the Commission, utilities are required to petition the Commission for approval to add, modify, or delete programs.

Rule 25-17.0021, F.A.C., implements Section 366.82 (1)–(4), F.S., by: (1) establishing the procedures for setting energy efficiency and demand-side management goals,



(2) requiring utilities to develop and implement DSM plans and programs to achieve those goals, and (3) requiring utilities to file annual reports on the demand and energy savings achieved by the plans. The rule became effective on April 30, 1993, and remains unchanged since that date. A copy of Rule 25-17.0021, F.A.C., is included with Attachment 1.

Through their DSM plans, the FEECA utilities currently offer more than 100 conservation programs for residential, commercial, and industrial customers. As an example of the far-reaching nature of these programs, during 2010 alone, Florida’s IOUs performed more than 225,000 residential energy audits. Pursuant to Section 366.82(11), F.S., all FEECA utilities are required to offer energy audits to residential customers. Energy audits serve as the basis for all DSM and conservation programs by allowing utilities the opportunity to evaluate conservation opportunities for their customers.

Since the enactment of FEECA in 1980, DSM programs are estimated to have reduced summer and winter peak demand by an estimated 6,626 MW and 6,711 MW, respectively, and annual energy consumption by an estimated 8,000 GWh through 2011, as shown in the table below. The demand savings from these programs have deferred the need for over 45 typical 150 MW combustion turbine generating units, while the energy savings have reduced Florida’s consumption of fossil fuels.

**Estimated Cumulative DSM Savings 1980 – 2011**

	<b>Demand and Energy Savings</b>
Summer Peak Demand	6,626 MW
Winter Peak Demand	6,711 MW
Energy Consumption (Annual)	8,000 GWh

**B. Statement of Estimated Regulatory Costs**

**1. Entities and Individuals Affected**

The number of companies subject to Rule 25-17.0021, F.A.C., is established by Section 366.82(1)(a), F.S., which requires that all entities providing electricity at retail to the public, except municipal and cooperative electric companies whose retail annual sales are less than 2,000 GWh are subject to the requirements of FEECA. This number currently consists of all five Florida IOUs and two municipal electric companies: Florida Power & Light Company (FPL); Progress Energy Florida, Inc. (PEF); Tampa Electric Company (TECO); Gulf Power Company (Gulf); Florida Public Utilities Company (FPUC); the Orlando Utilities Commission (OUC); and JEA serving Jacksonville. The seven utilities subject to FEECA currently account for approximately 89 percent of all energy sales in Florida.

In addition to the seven utilities required to comply with the rule, two general groups of entities and individuals are affected by the rule. The primary groups affected are the residential and commercial/industrial customers of the FEECA utilities. These customers

have the opportunity to reduce their electricity bills by participating in DSM programs. The general body of ratepayers for each utility are also affected when the costs of DSM programs are recovered through customer bills. IOUs recover DSM-related costs through the annual Energy Conservation Cost Recovery proceeding. Through this proceeding, DSM-related costs found reasonable and prudent by the FPSC are added to customers' monthly bills. The second group affected are those business concerns who benefit by selling their energy efficient products or services to other businesses or individuals that elect to participate in one or more of the utility DSM programs.

## 2. Economic Analysis

### a. Regulatory Costs

Subparagraph 120.541(2)(a)3., and Section 120.745, F.S., require a compliance economic review to show whether the rule, directly or indirectly, will have estimated regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years beginning on July 1, 2011. Four types of transactional costs associated with Rule 25-17.0021, F.A.C., were reviewed. Each of these categories of costs are associated with a step in the DSM goal process required by the rule, and address utility costs associated with: (1) setting DSM goals, (2) developing a DSM plan with DSM programs designed to meet these goals, (3) implementing these DSM programs, and (4) providing annual reports to the FPSC on the DSM program demand and energy savings achievements.

In reviewing costs associated with DSM goal-setting, the utilities were asked to provide the transactional costs for conducting a full technical potential study, including fees for consulting firms to conduct the study, as well as the screening for economic potential and achievable potential. The expenses may include costs related to: (1) attorney fees; (2) personnel travel and lodging to participate as witnesses at Commission hearings; (3) the discovery process; and (4) the production and filing of petitions, testimony and exhibits necessary to present the utilities' cases before the Commission.

The utilities reported costs to develop and file their DSM plans to meet newly established conservation goals that were similar to the goal-setting process costs: witness preparation, travel and lodging, discovery, and reproduction and filing of petitions. In addition, utilities incurred DSM plan development costs for conducting the required cost-effectiveness testing of each program in the proposed plans.

The third category of costs incurred was for implementation of each utility's DSM plan. Utilities were asked to separate these costs into those applicable to residential programs and commercial/industrial programs and specify which of the costs are recovered through base rates or a cost-recovery clause. The utilities reported costs in the implementation category for advertising, informational and education materials, energy surveys, equipment and incentives provided to participating customers, administrative costs, and other costs associated with implementing and conducting the DSM plan. A large portion of these implementation costs are returned to customers through incentives paid for participating in DSM programs.

In reporting costs of the final category, annual reporting, utilities provided costs related to data collection, report preparation, and other costs associated with the annual report.

Four of the seven utilities subject to the rule responded to the FPSC's survey. Since FPUC did not respond to the survey, implementation costs for FPUC were taken from the Commission's final orders in 2010 and 2011 approving FPUC's costs in the ECCR proceedings.<sup>16</sup> The higher amount approved for collection in 2011 was assumed for 2013, when the goal-setting process is expected to begin again. The lower amount approved for collection in 2012 was assumed to apply for the remaining years. The estimated transactional costs for the FEECA utilities to comply with Rule 25-17.0021, F.A.C., are shown in the table below:

**FEECA Utilities' Transactional Costs to Comply with Rule 25-17.0021, F.A.C.**

Utility	Year	Goal-Setting	DSM Plan	Implementation	Annual Report	Total
FPL	1	\$0	\$0	\$227,800,000	\$20,000	\$227,820,000
	2	\$700,000	\$0	\$229,800,000	\$20,000	\$230,520,000
	3	\$1,100,000	\$100,000	\$241,100,000	\$20,000	\$242,320,000
	4	\$0	\$150,000	\$124,100,000	\$20,000	\$124,270,000
	5	\$0	\$0	\$0	\$20,000	\$20,000
	Total	\$1,800,000	\$250,000	\$822,800,000	\$100,000	\$824,950,000
PEF	1	\$162,762	\$0	\$100,117,305	\$13,786	\$100,293,853
	2	\$519,909	\$0	\$114,821,054	\$14,916	\$115,355,879
	3	\$855,710	\$330,429	\$130,787,781	\$15,368	\$131,989,288
	4	\$0	\$324,048	\$144,648,568	\$15,820	\$144,988,436
	5	\$0	\$0	\$154,346,678	\$16,498	\$154,363,176
	Total	\$1,538,381	\$654,477	\$644,721,386	\$76,388	\$646,990,632
TECO	1	\$0	\$0	\$53,774,537	\$6,421	\$53,780,958
	2	\$8,636	\$0	\$55,118,900	\$6,614	\$55,134,150
	3	\$409,791	\$0	\$56,496,873	\$6,812	\$56,913,476
	4	\$160,169	\$195,794	\$57,909,294	\$7,016	\$58,272,273
	5	\$0	\$304,753	\$59,357,027	\$7,227	\$59,669,007
	Total	\$578,596	\$500,547	\$282,656,631	\$34,090	\$283,769,864
Gulf	1	\$0	\$0	\$20,701,000	\$5,000	\$20,706,000
	2	\$5,000	\$0	\$37,979,000	\$5,000	\$37,989,000
	3	\$438,000	\$0	\$58,050,000	\$5,000	\$58,493,000
	4	\$55,000	\$187,000	\$65,368,000	\$5,000	\$65,615,000
	5	\$0	\$428,000	\$68,526,000	\$28,000	\$68,982,000
	Total	\$498,000	\$615,000	\$250,624,000	\$48,000	\$251,785,000
FPUC	1			\$921,657		
	2			\$825,802		
	3			\$921,657		
	4			\$825,802		
	5			\$825,802		
	Total			\$4,320,720		

<sup>16</sup> See Order No. PSC-10-0703-FOF-EG, issued on November 29, 2010, in Docket No. 100002-EG, In re: Energy conservation cost recovery clause; and Order No. PSC-11-0531-FOF-EG, issued on November 15, 2011, in Docket No. 110002-EG, In re: Energy conservation cost recovery clause.

The two municipal utilities, Orlando Utilities Commission and JEA, did not respond to the survey. Since municipal utilities do not recover costs through the ECCR proceeding, their implementation costs could not be estimated.

Responses to the surveys show that the IOUs' estimated costs associated with compliance with Rule 25-17.0021, F.A.C., total \$2,011,816,216 for the 5 year period beginning on July 1, 2011. Several utilities commented that the rule implements the specific provisions of FEECA and that, therefore, the utilities would take many of the same actions to comply with FEECA in the absence of the rule. PEF noted that if the rule were not in effect, "PEF would still likely have to comply with most, if not all, of the requirements under that rule pursuant to the obligations of the Florida Energy Efficiency and Conservation Act." Gulf stated that if the rule were not in place, "in general, Gulf would continue to offer cost-effective products and programs to our customers that provide benefit to them." Utility comments also indicated the rule was beneficial in that it provides uniform procedures for compliance with the statute. It should be noted that IOU DSM-related costs that are found to be reasonable and prudent by the FPSC are recovered from ratepayers through a cost-recovery clause. DSM-related costs, however, are compared to the benefits from the deferral of electric generating capacity and associated energy savings. As discussed above, the demand savings from DSM programs have deferred the need for over 45 typical 150 MW combustion turbine generating units, while the energy savings have reduced Florida's consumption of fossil fuels.

Regulatory costs also include the costs to government agencies to implement and enforce the rule. The cost to the FPSC to implement and enforce Rule 25-17.0021, F.A.C., based on a good faith estimate for the 5 year period beginning on July 1, 2011, is \$588,355, as discussed in section III.3. (Costs to Governmental Entities) below. Other state and local government agencies are not directly impacted by the rule.

Based on the above analysis, the total regulatory costs associated with the rule, including both transactional costs and costs to the agency, are estimated to be approximately \$2,012,404,571 for the 5 year period beginning on July 1, 2011. Thus, our economic analysis indicates the rule directly or indirectly will result in estimated regulatory costs in excess of \$1 million for the 5 year period beginning on July 1, 2011.

#### b. Economic Growth, Jobs, and Investment

Paragraph 120.541(2)(a)1., and Section 120.745, F.S., require the compliance economic review to show whether the rule, directly or indirectly, is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within the 5 year period beginning on July 1, 2011. The FPSC survey of electric utilities subject to FEECA and Rule 25-17.0021, F.A.C., specifically requested information responsive to this requirement for their respective service territories.

In general, economic growth, private sector job creation or employment, or private sector investment can be impacted by Rule 25-17.0021, F.A.C., in three primary ways. First, businesses that are customers of these utilities can benefit from the rule by participating in

FPSC-approved DSM programs. Participating customers receive financial incentives, such as rebates, as well as bill savings from installing energy-saving equipment. The FPSC sets DSM goals for energy and demand savings from commercial/industrial customers and requires each utility to offer DSM programs to these customers designed to achieve these goals. Businesses that participate in these programs can enhance their competitiveness and reduce costs by taking advantage of financial incentives and improving their energy efficiency.

Second, businesses may be affected by the costs incurred by these utilities to participate in the FPSC's goal-setting proceeding and to implement the FPSC-approved DSM programs. IOU DSM-related costs that are found to be reasonable and prudent by the FPSC are recovered from all ratepayers through a cost-recovery clause. Potential rate increases cannot be viewed in a vacuum, however, but must be compared to the costs the utility would have otherwise incurred to provide additional energy and generating capacity. As discussed above, to meet the requirements of the statute, while mitigating the potential cost impacts to ratepayers, the FPSC sets DSM goals based on the level of potential DSM measures which are found to be cost-effective.

Finally, businesses that sell or install highly-efficient products within utility territories may benefit from increased demand for their products and services. The utilities subject to the rule often contract with private firms to implement the FPSC-approved DSM programs. Private firms provide services ranging from marketing campaigns to the actual installation of highly-efficient equipment.

The four utilities that responded to the FPSC data request stated that they were unable to estimate the specific impact of Rule 25-17.0021, F.A.C., on economic growth, jobs, and investment within their service territories. FPL noted that its transaction costs to comply with the rule are ultimately reflected in customer rates. FPL stated, however, that it does not "project, capture, or track economic growth, private sector job creation or employment, or private sector investment impacts resulting from its ECCR charges" and it does not have the means to do so. PEF noted that as a general matter, the costs provided by PEF to comply with the rule impact PEF's price for electricity, but PEF could not reliably estimate the impact on economic growth, jobs, or investment. TECO contends that to the extent TECO's costs to comply with the rule are incurred based on programs that are determined to be cost-effective solely by the TRC test, there could be a negative impact on economic growth, jobs, and investment. TECO states that if the FPSC requires DSM measures that pass the TRC test, but do not pass the RIM test, there will be "undue upward pressure on rates that would otherwise not exist if the RIM test was used for cost-effectiveness evaluations." Gulf stated that it does not analyze or maintain data related to the economic impacts of the rule on third parties, and that determining such impacts "can be a very complex process requiring multiple assumptions."

### c. Business Competitiveness

Subparagraphs 120.541(2)(a)2., and 120.745(1)(b)2., F.S., require each compliance economic review to show whether the rule directly or indirectly is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other state or domestic markets, productivity or

innovation in excess of \$1 million in the aggregate within the 5 year period beginning on July 1, 2011. The FPSC survey of electric utilities subject to FEECA and Rule 25-17.0021, F.A.C., specifically requested information responsive to this requirement for their respective service territories.

In general, businesses that are customers of electric utilities subject to Rule 25-17.0021, F.A.C., can be impacted by the rule in three primary ways. First, businesses that are customers of these utilities can benefit by participating in FPSC-approved DSM programs. Participating customers receive financial incentives, such as rebates, as well as bill savings from installing energy-saving equipment. The FPSC sets DSM goals for energy and demand savings from commercial/industrial customers and requires each utility to offer DSM programs to these customers designed to achieve these goals. Businesses that participate in these programs can enhance their competitiveness by taking advantage of financial incentives and improving their energy efficiency.

Second, businesses may be affected by the costs incurred by these utilities to participate in the FPSC's goal-setting proceeding and to implement the FPSC-approved DSM programs. IOU DSM-related costs that are found to be reasonable and prudent by the FPSC are recovered from ratepayers through a cost-recovery clause. Potential rate increases, however, must be compared to the costs the utility would have otherwise incurred to provide additional energy and generating capacity. As discussed above, to meet the requirements of the statute, while mitigating the potential cost impacts to ratepayers, the FPSC sets DSM goals based on the level of potential DSM measures which are found to be cost-effective. Finally, businesses that sell or install highly-efficient products within utility territories may benefit from increased demand for their products and services.

The four utilities that responded to the FPSC data request stated that they were unable to estimate the impact of Rule 25-17.0021, F.A.C., on business competitiveness within their service territories. FPL noted that in general, customers who participate in its DSM programs benefit from FPL-provided rebates along with savings on their bills, while all customers share the costs of the programs recovered by FPL through a cost-recovery clause. FPL contends that if all DSM programs approved by the FPSC pass the RIM test, all customers will benefit from lower electric rates in the long-term. PEF noted that as a general matter, the costs provided by PEF to comply with the rule impact PEF's price for electricity. TECO explained, "Only through utilizing the Rate Impact Measure ("RIM") test for cost-effectiveness evaluations can a utility offer DSM programs in its DSM plan that equitably and fairly distribute program costs across all customers such that a "no loser" criterion will be met." Gulf stated that it does not analyze or maintain data related to the economic impacts of the rule on third parties, and that determining such impacts "can be a very complex process requiring multiple assumptions."

### 3. Costs to Governmental Entities

Subparagraphs 120.745(1)(b)2., and 120.541(2)(c), F.S., require a compliance economic review to include a good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the rule, and any anticipated effect on state or local revenues. In order to provide a good faith estimate of the

rule's cost to the agency, the estimated annual number of hours dedicated to implementing and enforcing the rule, specific to each employee classification, was multiplied by the associated labor rates, and the resulting costs were aggregated across all employee classifications. The estimated cost to the FPSC to implement and enforce the requirements of FEECA and the rule for the 5 year period beginning on July 1, 2011, is \$588,355. Other state and local government agencies are not directly impacted by the rule. Thus, the cost to the state necessary to implement the requirements of FEECA and achieve the benefits of the rule identified in III. A. above, including the setting of DSM goals and approval of DSM plans and programs, for the 5 year period beginning on July 1, 2011, is estimated to be \$588,355.

#### 4. Transactional Costs Incurred by Companies

Paragraph 120.541(2)(d), and Subparagraph 120.745(1)(b)2., F.S., require a compliance economic review to include 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 incurred by the IOUs are reflected in the table above (III.B.2.a., page 8), entitled FEECA Utilities' Transactional Costs. IOU DSM-related costs that are found to be reasonable and prudent by the FPSC are passed on to utility customers through a cost-recovery clause. The reported transactional costs, therefore, also impact individuals, businesses, and government entities throughout the utilities' service areas. Over the 5 year period reviewed, these costs are estimated to total \$2,011,816,216.

Several utilities commented that the rule implements the specific provisions of FEECA; therefore, the utilities would take many of the same actions to comply with FEECA in the absence of the rule. FPL, for example, stated, "In the event that FEECA remained but the Rule did not, most of the requirements imposed by this Rule would theoretically still exist (as they are also requirements of FEECA), though they may be complied with in some different manner." TECO responded that it "may perform certain aspects of Rule 25-17.0021, F.A.C., as it meets its statutory requirement." PEF also noted that it "would still likely have to comply with most, if not all, of the requirements under that rule pursuant to the obligations of the Florida Energy Efficiency and Conservation Act." Utility comments also indicated they believe the rule is beneficial in that it provides uniform procedures for compliance with the statute.

#### 5. Impacts on Small Businesses, Small Counties, and Small Cities

Paragraph 120.541(2)(e), and Subparagraph 120.745(1)(b)2., F.S., require a compliance economic review to include an analysis of the impact on small businesses as defined by Section 288.703, F.S., and an analysis of the impact on small counties and small cities as defined in Section 120.52, F.S. The impact analysis for small businesses must include the basis for the agency's decision not to implement alternatives that would reduce adverse impacts on small businesses.

In general, small businesses, small counties, and small cities that are customers of electric utilities subject to Rule 25-17.0021, F.A.C., can be impacted by the rule in two primary ways. First, the small businesses and the governments of small counties and small

cities that are customers of these utilities can benefit from the rule by participating in FPSC-approved DSM programs. Participating customers receive financial incentives, such as rebates, as well as bill savings from installing energy-saving equipment.

Second, customers are affected by costs incurred by these utilities to participate in the FPSC's goal-setting proceeding and to implement the FPSC-approved DSM programs. IOU costs which are found to be reasonable and prudent are recovered from ratepayers through a cost-recovery clause. Potential rate increases, however, must be compared to the costs the utility would have otherwise incurred to provide the additional energy and generating capacity. As discussed above, to meet the requirements of the statute, while mitigating the potential cost impacts to ratepayers, the FPSC sets DSM goals based on the level of potential DSM measures which are found to be cost-effective.

The four utilities that responded to the FPSC data request stated that they were unable to estimate the impact of Rule 25-17.0021, F.A.C., on small businesses, small counties, and small cities within their service territories. FPL noted that, in general, customers who participate in its DSM programs benefit from FPL-provided rebates along with savings on their bills, while all customers share the costs of the programs recovered by FPL through a cost-recovery clause. FPL contends that if all DSM programs approved by the FPSC pass the RIM test, all customers will benefit from lower electric rates in the long-term. PEF noted that as a general matter, the costs provided by PEF to comply with the rule impact PEF's price for electricity. TECO explained, "Only through utilizing the Rate Impact Measure test for cost-effectiveness evaluations can a utility offer DSM programs in its DSM plan that equitably and fairly distribute program costs across all customers such that a "no loser" criterion will be met." Gulf stated that it does not analyze or maintain data related to the economic impacts of the rule on third parties, and that determining such impacts "can be a very complex process requiring multiple assumptions."

#### 6. Additional Information

Paragraphs 120.541(2)(f), and 120.745(1)(b)2., F.S., require a compliance economic review to include any additional information that the agency determines may be useful. No additional useful information has been identified regarding the estimated regulatory costs of the rule.

#### 7. Regulatory Alternatives

Paragraphs 120.541(2)(g), and 120.745(1)(b)2., F.S., require a compliance economic review to include a description of any regulatory alternatives submitted under paragraph 120.541(1)(a), F.S., and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the rule. No regulatory alternatives have been submitted under Paragraph 120.541(1)(a), F.S.



COMMISSIONERS:  
RONALD A. BRISÉ, CHAIRMAN  
LISA POLAK EDGAR  
ART GRAHAM  
EDUARDO E. BALBIS  
JULIE I. BROWN

STATE OF FLORIDA



DIVISION OF REGULATORY ANALYSIS  
BETH W. SALAK  
DIRECTOR  
(850) 413-6600

## Public Service Commission

February 24, 2012

To: Investor-Owned Electric Utilities

Re: Industry survey for legislative review of agency rules in effect on or before November 16, 2010  
Docket No. 110303-OT

To whom this may concern:

Please see attached staff's survey questions. Your timely response to these survey questions regarding Rules 25-17.0021, 25-22.032, and 25-6.0436, Florida Administrative Code (F.A.C.), will be used to complete the Commission's Compliance Economic Review required by Sections 120.745 and 120.541, Florida Statutes. All responses should be filed in Docket No. 110303-OT by 5:00 p.m., Wednesday, March 14, 2012, and addressed to:

Judy Harlow  
c/o Ann Cole  
Commission Clerk  
Office of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

If you have questions regarding the survey for Rule 25-17.0021, F.A.C., please contact Stephen Garl at 850-413-6676 or [sgarl@psc.state.fl.us](mailto:sgarl@psc.state.fl.us) or Judy Harlow at 850-413-6842 or [jharlow@psc.state.fl.us](mailto:jharlow@psc.state.fl.us). If you have questions regarding the survey for Rule 25-22.032, F.A.C., please contact Jessica Miller at 850-413-6546 or [jemiller@psc.state.fl.us](mailto:jemiller@psc.state.fl.us) or Laura King at (850) 413-6588 or [lking@psc.state.fl.us](mailto:lking@psc.state.fl.us). If you have any questions regarding the survey for Rule 25-6.0436, F.A.C., please contact Bill McNulty at 850-413-6848 or [bmcnulty@psc.state.fl.us](mailto:bmcnulty@psc.state.fl.us). Thank you for your assistance.

Sincerely,

/s/ Judy Harlow  
Judy Harlow  
Senior Analyst  
Division of Regulatory Analysis

COMMISSIONERS:  
RONALD A. BRISÉ, CHAIRMAN  
LISA POLAK EDGAR  
ART GRAHAM  
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JULIE I. BROWN

STATE OF FLORIDA



DIVISION OF REGULATORY ANALYSIS  
BETH W. SALAK  
DIRECTOR  
(850) 413-6600

## Public Service Commission

February 24, 2012

To: JEA ([parapg@jea.com](mailto:parapg@jea.com)) and Orlando Utilities Commission ([cbrowder@ouc.com](mailto:cbrowder@ouc.com))

Re: Industry survey for legislative review of agency rules in effect on or before November 16, 2010  
Docket No. 110303-OT

To whom this may concern:

Please see attached staff's survey questions. Your timely response to these survey questions regarding Rule 25-17.0021, Florida Administrative Code, will be used to complete the Commission's Compliance Economic Review required by Sections 120.745 and 120.541, Florida Statutes. All responses should be filed in Docket No. 110303-OT by 5:00 p.m., Wednesday, March 14, 2012, and addressed to:

Judy Harlow  
c/o Ann Cole  
Commission Clerk  
Office of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

If you have any questions, please contact Stephen Garl at (850) 413-6676 or [sgarl@psc.state.fl.us](mailto:sgarl@psc.state.fl.us) or Judy Harlow at (850) 413-6842 or [jharlow@psc.state.fl.us](mailto:jharlow@psc.state.fl.us). Thank you for your assistance.

Sincerely,

/s/ Judy Harlow  
Judy Harlow  
Senior Analyst  
Division of Regulatory Analysis

**Rule 25-17.0021, F.A.C. - Survey Questions**

The following survey questions apply to **Rule 25-17.0021, F.A.C., Goals for Electric Utilities**. For responding to these questions, please refer to Subsection 120.541(2), F.S., and Subparagraph 120.745(1)(b)2, F.S. Transactional costs” are defined in Subparagraph 120.541(2)(d), F.S., as:

...direct costs that are readily ascertainable based upon standard business practices, including filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule.

The Company’s response data to these survey questions should be provided for the entire rule, unless the response data is available by rule section, in which case we request the response data be provided by rule section. Please present data in annualized format, if possible, and all cost or benefit dollar estimates should be stated in nominal terms.

Please provide the information requested below as it pertains to this Rule by March 14, 2012:

- A. What are the utility’s estimated transactional costs resulting from the Company’s compliance with Rule 25-17.0021, F.A.C., for the five-year period beginning July 1, 2011?
  1. **Goal Setting** – Please provide the actual or estimated transactional costs for each of the 5 years, beginning July 1, 2011, to comply with Rule 25-17.0021, F.A.C., subparagraph 3. Also please specify which of these costs are recovered through base rates or a cost recovery clause. Include, for example, the following:
    - a. The cost of any studies, such as a technical potential study – the portion of the cost paid by your company of the ITRON Technical Potential Study for the last goal-setting proceeding may be used as a starting point, but should be time-shifted to approximately 2014 when the next goal-setting proceeding will commence.
    - b. Witness preparation and their appearances before the Commission.
    - c. Petition and testimony filings.
    - d. Discovery costs.
    - e. Other costs associated with the goal-setting process – please identify each.
  2. **DSM Plan** – Please provide the actual or estimated transactional costs for each of the 5 years, beginning July 1, 2011, to comply with Rule 25-17.0021, F.A.C., subparagraph 4. Also please specify which of these costs are recovered through base rates or a cost recovery clause. Include, for example, the following:
    - a. The cost of cost-effectiveness testing.
    - b. Witness preparation and appearances before the Commission.
    - c. Petition and testimony filings.

- d. Discovery costs.
  - e. Other costs associated with developing the DSM plan - please identify each.
3. **Annual Report** – Please provide the actual or estimated transactional costs for each of the 5 years, beginning July 1, 2011, to comply with Rule 25-17.0021, F.A.C., subparagraph 5. Also please specify which of these costs are recovered through base rates or a cost recovery clause. Include, for example, the following:
- a. The cost of data collection.
  - b. The cost of report preparation.
  - c. Other costs associated with the annual report - please identify each.
4. **Plan Implementation Cost** – Please provide the actual or estimated transactional costs for each of the five years, beginning July 1, 2011, paid by residential and commercial/industrial customers to carry out the utility's DSM plan. Please separate these costs into those applicable to residential programs and commercial/industrial programs. Also please specify which of these costs are recovered through base rates or a cost recovery clause. Include, for example, the following:
- a. The cost of advertising DSM programs.
  - b. The cost of informational and education materials.
  - c. The cost of energy surveys.
  - d. The cost of equipment and incentives provided to participating customers.
  - e. Administrative costs.
  - f. Other costs associated with implementing and conducting the DSM plan - please identify each
5. Of the costs provided above, please discuss which are likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment.
6. Of the costs provided above, which are likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing similar business in other states or domestic markets, productivity, or innovation.
- B. For the five year period beginning July 1, 2011, which requirements of this rule, if any, would be performed by the Company assuming the rule were not in effect? Please explain.
- C. For each of the requirements identified in B above, what are the transactional costs associated with such requirements for the five year period beginning July 1, 2011?
- D. What is the utility's estimate of the likely impact, stated in terms of costs and/or benefits, on small businesses (as defined by s. 288.703, F.S.) located in the Company's service territory, resulting from the implementation of 25-17.0021, F.A.C., for the five year period beginning July 1, 2011?

- E. What is the utility's estimate of the likely impact, stated in terms of costs and/or benefits, on small counties and small cities (as defined in s. 120.52) located in the Company's service territory, resulting from the implementation of 25-17.0021, F.A.C., for the five year period beginning July 1, 2011?
- F. What is the utility's estimate of the likely impact, stated in terms of costs and/or benefits, on entities located in the Company's service territory other than those specifically identified in Questions D and E, resulting from the implementation of 25-17.0021, F.A.C., for the five year period beginning July 1, 2011?
- G. What does the utility believe is the expected impact of Rule 25-17.0021, F.A.C., on economic growth, private sector job creation or employment, and private sector investment for the five year period beginning July 1, 2011, in the utility's service territory?
- H. What does the utility believe is the expected impact of Rule 25- 17.0021, F.A.C., on business competitiveness, including the ability of persons doing business in the utility's service territory to compete with persons doing business in states other than Florida or other domestic markets, productivity, and innovation, for the five year period July 1, 2011?
- I. What are the benefits to your utility associated with Rule 25- 17.0021, F.A.C.?

**25-17.0021 Goals for Electric Utilities.**

(1) The Commission shall establish numerical goals for each affected electric utility, as defined by Section 366.82(1), F.S., to reduce the growth rates of weather-sensitive peak demand, to reduce and control the growth rates of electric consumption, and to increase the conservation of expensive resources, such as petroleum fuels. Overall Residential KW and KWH goals and overall Commercial/Industrial KW and KWH goals shall be set by the Commission for each year over a ten-year period. The goals shall be based on an estimate of the total cost effective kilowatt and kilowatt-hour savings reasonably achievable through demand-side management in each utility's service area over a ten-year period.

(2) The Commission shall set goals for each utility at least once every five years. The Commission on its own motion or petition by a substantially affected person or a utility may initiate a proceeding to review and, if appropriate, modify the goals. All modifications of the approved goals, plans and programs shall only be on a prospective basis.

(3) In a proceeding to establish or modify goals, each utility shall propose numerical goals for the ten year period and provide ten year projections, based upon the utility's most recent planning process, of the total, cost-effective, winter and summer peak demand (KW) and annual energy (KWH) savings reasonably achievable in the residential and commercial/industrial classes through demand-side management. Each utility's projection shall reflect consideration of overlapping measures, rebound effects, free riders, interactions with building codes and appliance efficiency standards, and the utility's latest monitoring and evaluation of conservation programs and measures. Each utility's projections shall be based upon an assessment of, at a minimum, the following market segments and major end-use categories.

**Residential Market Segment:**

**(Existing Homes and New Construction should be separately evaluated) Major End-Use Category**

- (a) Building-Envelope Efficiencies.
- (b) Cooling and Heating Efficiencies.
- (c) Water Heating Systems.
- (d) Appliance Efficiencies.
- (e) Peakload Shaving.
- (f) Solar Energy and Renewable Energy Sources.
- (g) Renewable/Natural gas substitutes for electricity.
- (h) Other.

**Commercial/Industrial Market Segment:**

**(Existing Facilities and New Construction should be separately evaluated) Major End-Use Category**

- (i) Building Envelope Efficiencies.
- (j) HVAC Systems.
- (k) Lighting Efficiencies.
- (l) Appliance Efficiencies.
- (m) Power Equipment/Motor Efficiency.
- (n) Peak Load Shaving.
- (o) Water Heating.
- (p) Refrigeration Equipment.
- (q) Freezing Equipment.
- (r) Solar Energy and Renewable Energy Sources.
- (s) Renewable/Natural Gas substitutes for electricity.
- (t) High Thermal Efficient Self Service Cogeneration.
- (u) Other.

(4) Within 90 days of a final order establishing or modifying goals, or such longer period as approved by the Commission, each utility shall submit for Commission approval a demand side management plan designed to meet the utility's approved goals. The following information shall be submitted for each program in the plan for a ten-year projected horizon period:

- (a) The program name;
- (b) The program start date;

- (c) A statement of the policies and procedures detailing the operation and administration of the program;
  - (d) The total number of customers or appropriate unit of measure in each class of customer (i.e. residential, commercial, industrial, etc.) for each year in the planning horizon;
  - (e) The total number of eligible customers or appropriate unit of measure in each class of customers (i.e., residential, commercial, industrial, etc.) for each year in the planning horizon;
  - (f) An estimate of the annual number of customers or appropriate unit of measure in each class projected to participate in the program, including a description of how the estimate was derived;
  - (g) The cumulative penetration levels of the program by year calculated as the percentage of projected cumulative participating customers or appropriate unit of measure by year to the total customers eligible to participate in the program;
  - (h) Estimates on an appropriate unit of measure basis of the per customer and program total annual KWH reduction, winter KW reduction, and summer KW reduction, both at the customer meter and the generation level, attributable to the program. A summary of all assumptions used in the estimates will be included;
  - (i) A methodology for measuring actual kilowatt and kilowatt-hour savings achieved from each program, including a description of research design, instrumentation, use of control groups, and other details sufficient to ensure that results are valid;
  - (j) An estimate of the cost-effectiveness of the program using the cost-effectiveness tests required pursuant to Rule 25-17.008, F.A.C. If the Commission finds that a utility's conservation plan has not met or will not meet its goals, the Commission may require the utility to modify its proposed programs or adopt additional programs and submit its plans for approval.
- (5) Each utility shall submit an annual report no later than March 1 of each year summarizing its demand side management plan and the total actual achieved results for its approved demand side management plan in the preceding calendar year. The report shall contain, at a minimum, a comparison of the achieved KW and KWH reductions with the established Residential and Commercial/Industrial goals, and the following information for each approved program:
- (a) The name of the utility;
  - (b) The name of the program and program start date;
  - (c) The calendar year the report covers;
  - (d) Total number of customers or appropriate unit of measure by customer class for each year of the planning horizon;
  - (e) Total number of customers or appropriate unit of measure eligible to participate in the program for each year of the planning horizon;
  - (f) Total number of customers or appropriate unit of measure projected to participate in the program for each year of the planning horizon;
  - (g) The potential cumulative penetration level of the program to date calculated as the percentage of projected participating customers to date to the total eligible customers in the class;
  - (h) The actual number of program participants and current cumulative number of program participants;
  - (i) The actual cumulative penetration level of the program calculated as the percentage of actual cumulative participating customers to the number of eligible customers in the class;
  - (j) A comparison of the actual cumulative penetration level of the program to the potential cumulative penetration level of the program;
  - (k) A justification for variances larger than 15% for the annual goals established by the Commission;
  - (l) Using on-going measurement and evaluation results the annual KWH reduction, the winter KW reduction, and the summer KW reduction, both at the meter and the generation level, per installation and program total, based on the utility's approved measurement/evaluation plan;
  - (m) The per installation cost and the total program cost of the utility;
  - (n) The net benefits for measures installed during the reporting period, annualized over the life of the program, as calculated by the following formula:

$$\text{annual benefits} = B_{npv} \times d/[1 - (1+d)^{-n}]$$

where

- $B_{npv}$  = cumulative present value of the net benefits over the life of the program for measures  
installed during the reporting period
- $d$  = discount rate (utility's after tax cost of capital)
- $n$  = life of the program.

*Specific Authority 366.05(1), 366.82(1)-(4) FS. Law Implemented 366.82(1)-(4) FS. History—New 4-30-93.*



## **Rule 25-17.0021, F.A.C., Goals for Electric Utilities**

### **Lower cost regulatory alternatives received by agency**

No lower cost regulatory alternatives were received by the Commission pursuant to paragraph 120.745(5)(c), F.S., for Rule 25-17.0021, F.A.C., Goals for Electric Utilities.

### **Explanation for rejecting lower regulatory cost alternatives**

Because no lower cost regulatory alternatives were received by the Commission, no lower cost regulatory alternatives were rejected.

### **Rule 25-17.0021, F.A.C., Justification Statement**

The Commission intends to retain Rule 25-17.0021, F.A.C., Goals for Electric Utilities, without amendment, and has no immediate plans to amend or repeal this rule. The compliance economic review for Rule 25-17.0021, F.A.C., contains a detailed rule justification section. See pages 59-61 above. As set forth therein, Rule 25-17.0021, F.A.C., implements sections 366.81 and 366.82(1) (5), F.S., of the Florida Energy Efficiency and Conservation Act (FEECA) and Section 366.051, F.S. The rule establishes the procedures for setting energy efficiency and demand-side management goals; requires utilities to develop and implement demand-side management plans and programs to achieve those goals, and; requires utilities to file annual reports on the demand and energy savings achieved by the plans. The demand savings from these programs have deferred the need for over 45 typical 150 MW combustion turbine generating units, while the energy savings have reduced Florida's consumption of fossil fuels. See page 64 above.

As part of the compliance economic review, the Commission distributed surveys to the seven electric utilities subject to FEECA. The compliance economic review states that several utilities commented that the rule implements the specific provisions of FEECA, and that the rule is beneficial in providing uniform procedures for compliance with the statute. See page 67 above. All survey responses indicated that the utilities did not capture, track, or analyze economic impacts to third parties, and, therefore, the investor-owned utilities were unable to estimate impacts to economic growth, job creation, investment, business competitiveness,, small businesses, small counties, and small cities resulting from compliance with the rule. See pages 65-66, 68 above.

The compliance economic review concludes that businesses, small counties and small cities that are customers of the utilities can benefit from the rule by participating in Commission-approved demand-side management programs, receiving financial incentives, and obtaining bill savings by installing energy-saving equipment. These entities can enhance their competitiveness and reduce costs by taking advantage of financial incentives and improving their energy efficiency. See pages 64-68 above.

**Compliance Economic Review  
for  
Rule 25-22.032, Florida Administrative Code,  
Customer Complaints**

**Florida Public Service Commission**

This document is prepared in response to the requirements  
of Section 120.745, Florida Statutes

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Attachment 1: Survey on Rule 25-22.032, F.A.C., with attached rule

## I. EXECUTIVE SUMMARY

Section 120.745, Florida Statutes (F.S.), became effective in 2011 and requires each agency to complete an enhanced biennial review of all its existing rules effective, on or before November 16, 2010, and publish a report by December 1, 2011. The statute requires each agency to identify in its report each of its rules which require a compliance economic review. A compliance economic review is defined as a good faith economic analysis which includes: a justification for the rule, a statement of estimated regulatory costs for the 5 year period beginning on July 1, 2011, and an explanation of the methodology used to conduct the analysis. A compliance economic review is required for each entire rule that the agency does not plan to repeal by December 31, 2012, was effective on or before November 16, 2010, and is considered by the agency to probably have any of the economic impacts described in Section 120.541(2)(a), F.S., for the 5 year period beginning on July 1, 2011.

The Florida Public Service Commission (FPSC or Commission) completed its enhanced biennial review report on November 22, 2011. Within the report, the FPSC delineated ten rules it determined were subject to a compliance economic review. Pursuant to Section 120.745(2)(h), F.S., the FPSC divided these rules into Group 1, with the accompanying compliance economic review due May 1, 2012, and Group 2, due May 1, 2013. Rule 25-22.032, Florida Administrative Code (F.A.C.), Customer Complaints, is one of five rules included in the list of Group 1 rules appearing in the FPSC's enhanced biennial review and is the subject of this compliance economic review.

Rule 25-22.032, F.A.C., was implemented to codify the FPSC's procedure for resolving disputes between regulated companies and their customers as quickly, effectively, and inexpensively as possible. As part of the review required by Section 120.745, F.S., surveys were sent to the 287 companies subject to this rule. Information gathered from those surveys is reported by industry because the utilities subject to the rule range from very large investor-owned electric companies to small "mom and pop" water companies. The survey results, along with data on file with the FPSC, show:

- Based on the survey responses received from the utilities subject to the rule, the total transactional costs identified are \$2,949,871.
- Four of the five electric investor-owned utilities (IOUs) responded to the survey.
- The expected total transactional costs associated with compliance with the rule for the four electric IOUs are \$2,671,594.
- The electric IOUs believe there are many benefits to the rule and did not identify any adverse impacts of the rule either relating to costs or process/procedure. The respondents stated that if the rule were no longer in effect they would continue addressing customer complaints, and the transactional costs to do so would likely increase.
- The three natural gas companies that responded to the survey found that compliance with the rule had minimal costs that would likely be the same or increase if the rule were not in place.
- Most of the transactional costs incurred by the gas and electric utilities for compliance with the rule are associated with staffing and salaries.
- The majority of the complaints handled by gas and electric IOUs are resolved within 30 days. This was also true for the pay phone and Lifeline providers that responded to the survey.

- Four water and wastewater companies responded to the survey, and three of them had either no customer complaints or no costs for compliance with the rule.
- Six pay telephone companies, seven Lifeline providers, and two relay providers responded to the survey. This represents a 12 percent response rate.
- Except for one company, none of the pay telephone providers, Lifeline providers, or relay providers offered any specific estimates of transactional costs (most noting they do not track such information or that the costs are minimal).
- The electric companies, pay phone, Lifeline, and relay providers that responded to the survey, stated that they would continue to address customer complaints if this rule were eliminated; therefore, costs would not be eliminated or necessarily decreased if the rule were no longer in effect.
- No adverse impacts were found regarding economic growth, private sector job creation or employment, or private sector investment.
- No adverse impacts were found regarding business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity or innovation.
- There appear to be no adverse impacts from the rule on small businesses, small counties and small cities.

## II. TECHNICAL METHODOLOGY

Section 120.745(1)(b)2.c., F.S., requires an explanation of the technical methodology used to conduct the analysis required in Section 120.541(2), F.S., for each agency rule for which a compliance economic review is performed. The FPSC conducted a survey of each of the utilities subject to the rule. A copy of the survey and Rule 25-22.032, F.A.C., is included as Attachment 1. The purpose of the survey was to determine the estimated impacts of the rule on the regulated utilities and customers, including small businesses, small counties, and small cities.

The methodology for conducting the analysis required in Section 120.541(2), F.S., required the development and distribution of a survey designed to collect data on the specific impacts of the rule for the 5 year period beginning on July 1, 2011. The FPSC used routine regulatory communications in conducting this survey.

The next step was to review the information contained in the survey responses. The information provided by regulated utilities was then compared with information the FPSC has in its records in order to determine whether the responses received appeared to be consistent with similar data or information for recent periods or forecasted periods. The rule has been in effect for 23 years, and some of the information pertaining to the financial impacts of the rule has already been quantified and in some cases provided to the FPSC. As a part of its review of in-house information, the FPSC examined documents filed by outside parties or developed by the FPSC during its rulemaking proceedings, including any previously performed Statements of Estimated Regulatory Costs.

The final step in the analysis involved aggregating the responses of all of the respondents in order to determine the rule's quantitative and qualitative impacts as required by the statute. In cases where one or more regulated entities did not provide a response to the survey, it became necessary to rely upon other information on file with the FPSC to estimate the rule's impacts on that entity(ies) in order to contribute as much information as possible to the statewide impacts.

## III. Economic Review Components

### A. Rule Justification

The FPSC has the statutory responsibility to ensure fair and reasonable standards of quality and the reliable provision of service by public utilities in Sections 366.03, 366.05, and 367.111, F.S. The FPSC is granted specific authority to create standards of service quality for water and wastewater systems in Sections 367.121, and 367.011, F.S. The FPSC is granted broad jurisdiction over investor-owned gas and electric utilities operating in the state, including the regulation of quality of service, in Section 366.04, F.S.

The intent of Rule 25-22.032, F.A.C., is to resolve disputes between regulated companies and their customers as quickly, effectively, and inexpensively as possible. The companies that must comply with this rule are:

- investor-owned electric companies

- investor-owned gas companies
- jurisdictional investor-owned water and wastewater companies
- pay telephone companies
- the State's relay service provider<sup>17</sup>
- Lifeline providers

The rule was implemented in 1989 to codify the FPSC's procedures for dealing with disputes between customers and utilities. As part of an ongoing effort by the FPSC to improve service to customers and increase the efficiency of its operations and that of the utilities, the rule was amended in 1993, 2000, and 2004. Amendments included:

- Implementing the e-mail transfer connection program.
- Allowing the Process Review Team to recommend that a complaint should be dismissed without an informal conference if no basis for relief exists under the Florida Statutes, FPSC rules or orders, or the applicable tariffs. Prior to this change the rule required an informal conference to be held if one was requested.
- Clarifying that the complaint procedure is designed to address only those complaints that fall within the Commission's jurisdiction.
- Allowing telephone, e-mail and written complaints to be forwarded directly to the utility company for resolution in most instances.
- Establishing a Process Review Team which reviews complaints before they are forwarded to an informal conference.
- Providing for extensions of time for filing responses, forms, reports or other submissions required by the rule in emergency situations, such as a storm named by the National Hurricane Center or a major electrical outage.
- Codifying procedures for the one-time pilot project of warm telephone transfers known as transfer-connect.<sup>18</sup> The transfer-connect program allows the FPSC staff to connect a consumer directly with the utility for expedited handling of the consumer's concern with minimal intervention by the FPSC.

The original rule and the amendments were proposed, in most cases, after a collaborative process among the FPSC staff, industry, and customer representatives.

Specific benefits of the rule identified by the survey respondents are:

- Having a streamlined process for handling consumer complaints.
- Building better working relationships between utility companies, the Commission, and utility customers.
- Empowering consumers.

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<sup>17</sup> Sprint is currently providing relay service; AT&T will be providing relay service beginning June 1, 2012. Since this economic review examines costs 5 years into the future, both the current and future providers were sent a survey.

- Creating a smooth and seamless process to resolve complaints easily while minimizing escalated complaints to the Commission.
- Providing an organized and efficient means for utilities and the FPSC to process and resolve consumer complaints.
- Giving consumers a choice as to how they would like to have their complaint handled, through direct contact with the company or through the FPSC's investigative process.
- Providing a definitive timeline for resolution or dismissal of a complaint.

In calendar year 2011, 11,520 complaints were logged with the FPSC against utility companies. Of these, 9,318 were against electric companies; 205 were against gas companies; 243 were against water/wastewater companies; and 1,754 were against telecommunications companies.<sup>19</sup>

## B. Statement of Estimated Regulatory Costs

### 1. Entities and Individuals Affected

As of February 24, 2012, there were 287 companies subject to Rule 25-22.032, F.A.C., consisting of:

- 5 investor-owned electric companies
- 7 investor-owned gas companies
- 148 jurisdictional water and wastewater companies
- 99 pay telephone companies
- 26 Lifeline providers
- 2 relay providers<sup>20</sup>

Consumers are affected by this rule when they contact the Commission seeking assistance in resolving disputes with the regulated utilities identified above. The affected customers may be small or large businesses, municipalities, or individuals.

### 2. Economic Analysis

#### a. Regulatory Costs

Subparagraph 120.541(2)a.3., and Section 120.745, F.S., require a compliance economic review to show whether the rule, directly or indirectly, will have estimated regulatory costs, including transactional costs, in excess of \$1 million in the aggregate within a 5 year period beginning on July 1, 2011.

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<sup>19</sup>Florida Public Service Commission 2011 Annual Report. This number includes non-certificated complaints logged, complaints transferred via the telephone transfer-connect or e-transfer process, and complaints logged and resolved under the three-day rule. Effective July 1, 2011, FPSC jurisdiction over telecommunications companies changed.

<sup>20</sup>Technically, AT&T Corp., a relay service provider, is not required to comply with the rule until it begins to provide service on June 1, 2012.



### Investor-Owned Electric Companies

Four of the five investor-owner electric companies responded to the survey, providing estimated transactional cost data and identifying benefits associated with the rule. No respondent identified any adverse impacts of the rule either relating to costs or process/procedure. In fact, the respondents stated that if the rule were no longer in effect, they would continue addressing customer complaints, and the transactional costs to do so would likely increase. Responses are summarized below.

#### Florida Power & Light Company (FPL)

FPL estimates its transactional costs resulting from compliance with Rule 25-22.032, F.A.C., for the 5 year period beginning on July 1, 2011, to be (for the 12 months ended June 30):

<b>FPL's Transactional Cost Estimate</b>					
2012	2013	2014	2015	2016	Total
\$253,000	\$261,000	\$270,000	\$280,000	\$290,000	\$1,354,000

The company believes its estimated transactional costs resulting from compliance with the rule are limited to the additional processes/requirements identified in the rule. Rule 25-6.094, F.A.C., Complaints and Service Requests, requires “a full and prompt investigation of all customer complaints and other service requests” separate and apart from the requirements of the Customer Complaint Rule. While FPL does not specifically track these costs, it developed the compliance cost estimates shown above. FPL believes that the costs to comply with the rule will increase over the next 5 years. FPL used annual forecasted Consumer Price Index and customer growth increases to reflect its projected year-to-year increases, assuming the complaint levels remain the same. Actual transactional costs for compliance with the rule for the period July 1, 2011, to December 31, 2011, were approximately \$134,000.

When asked which requirements of the rule, if any, the company would continue to perform if the rule were no longer in effect, FPL stated that the additional activities required by the rule and included in its cost estimates, would no longer be performed in a formal manner, and as a result, their associated costs would also be eliminated. However, FPL believes that the costs associated with newly created voluntary activities and increased inefficiencies resulting from the elimination of the rule’s formal procedures and processes, while not quantifiable, would be greater than those currently incurred.

#### Other information provided by FPL:

- The costs incurred to comply with the records retention, reporting and auditing requirements of section (10) of Rule 25-22.032, F.A.C., do not have an adverse impact on FPL.
- FPL’s staffing costs represent 99 percent of its total estimated costs; postage, shipping, and communications each represent less than 1 percent.

- Twenty-seven employees handle complaints associated with the rule; twenty-six are full-time and one is a part-time employee. These employees also have other responsibilities apart from handling complaints to the FPSC.
- FPL subscribes to the FPSC's telephone transfer-connect and e-mail transfer system. The annual cost associated with the telephone system is approximately \$4,000.
- FPL believes that through established timelines and systems (e.g., "transfer-connect"), the rule provides customers with a more streamlined and expeditious process for resolving their complaints and a choice as to how they would like to have their complaints handled through immediate and direct contact with the company<sup>21</sup> (transfer-connect) or through the FPSC's investigative processes.
- The rule provides for a "quick, effective and inexpensive" means for FPL, the FPSC, and customers to receive and resolve customer complaints, and it has had a positive impact on FPL.
- Costs are minimal to FPL (and its customers) and are outweighed by the benefits.

### Gulf Power Company (Gulf)

Gulf estimates its transactional costs resulting from compliance with Rule 25-22.032, F.A.C., for the 5 year period beginning July 1, 2011, to be \$119,000. Gulf did not provide annual data. Costs associated with salaries are incremental dollars associated with the administration of the transfer-connect process. The breakdown of estimated transactional costs is itemized below:

- Designated Fax Machine and supplies - \$1,000
- Designated Phones for Warm Transfer Process - \$7,000
- Salaries - \$111,000

The actual transactional costs for the period of July 1, 2011, to December 31, 2011, were \$11,843.

When asked which requirements of the rule, if any, the company would continue to perform if the rule were no longer in effect, Gulf replied that all requirements of the rule would still be performed. The company believes the requirements provide for a timely and effective process through which to resolve customer complaints and since the company would perform all current requirements, the estimated transactional costs would not change. Gulf expects the costs to comply with the rule, going forward, to increase as dedicated communications and personnel costs will escalate over time.

#### Other information provided by Gulf:

- The costs incurred to comply with the records retention, reporting and auditing requirements of section (10) of Rule 25-22.032, F.A.C., do not have an adverse impact on the company.

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<sup>21</sup> In 2011 FPL customers chose the "transfer-connect" process 80 percent of the time. FPL believes without this efficient and effective process, costs to FPL, the FPSC, and ultimately customers could have been significantly higher.

- Gulf's staffing costs represent 94 percent of its total estimated costs; postage, shipping, and document storage/retention costs are nominal; communications (dedicated phone lines, e-mails or faxes) represent 6 percent.
- Twenty-one full-time employees have some level of responsibility for handling customer complaints. The employees also have other responsibilities. Only one employee allocates approximately 50 percent of their time associated with the Customer Complaint rule. All other combined resources allocate less than 1 percent of their time to the process.
- Gulf subscribes to the FPSC's telephone transfer-connect and e-mail transfer system. The annual incremental cost associated with the transfer-connect process is approximately \$13,000.

Progress Energy Florida, Inc. (PEF)

PEF estimates its transactional costs resulting from compliance with Rule 25-22.032, F.A.C., for the 5 year period beginning on July 1, 2011, to be:

<b>PEF's Transactional Cost Estimate</b>					
2011	2012	2013	2014	2015	Total
\$132,111	\$140,340	\$144,501	\$148,787	\$153,202	\$718,941

The actual transactional costs for the period July 1, 2011, to December 31, 2011, were approximately \$66,056.

When asked which requirements of the rule, if any, the company would continue to perform if the rule were no longer in effect, PEF acknowledges that its processes would be similar and as such costs would remain the same. However, the company would have to evaluate the impact of removing the rule to determine which requirements (or similar controls) would be retained. PEF utilizes a similar process for handling complaints/concerns that are received via avenues other than the FPSC (governmental agencies, media personnel, etc.). By utilizing the current process for complaint handling, PEF believes the concerns brought forth by customers are handled in the most efficient manner. In general, the company believes costs over time would not increase significantly to comply with the rule itself; however, certain factors would play a role in causing an increase in cost, such as: employee salary, cost of living increases, postal charge increases, telecommunication charge increases, etc.

Other information provided by PEF:

- The costs incurred to comply with the records retention, reporting and auditing requirements of section (10) of Rule 25-22.032, F.A.C., do not have an adverse impact on the company.
- PEF's staffing costs represent 98.76 percent of its total estimated costs; postage/shipping represents 0.31 percent; document storage/retention costs represent 0.04 percent; and communications 0.89 percent.
- Nine staff members are responsible for handling consumer complaints associated with the rule (three Consumer Affairs Analysts, six Senior Consumer Affairs Associates). The

staff members also handle concerns received via other avenues, such as governmental offices, media personnel, and any other high level customer concerns.

- PEF’s annual costs associated with subscription to the FPSC’s telephone transfer-connect and e-mail transfer systems are approximately \$1,181.
- The rule has not had any significant impact on the way PEF handles complaints; however, the rule does provide additional standards and structure to the overall complaint handling process.
- The rule helps drive timely and thorough resolution to complaints as well as improving customer satisfaction.

Tampa Electric Company (TECO)

TECO estimates its transactional costs resulting from compliance with Rule 25-22.032, F.A.C., for the 5 year period beginning on July 1, 2011, to be:

<b>TECO’s Transactional Cost Estimate</b>						
2011 (7/1-12/31)	2012	2013	2014	2015	2016 (1/1-7/31)	Total
\$46,332	\$93,822	\$96,167	\$98,517	\$101,035	\$51,780	\$487,653

Actual transactional costs resulting from compliance with the rule for July 1, 2011, to December 31, 2011, were approximately \$46,332.

When asked which requirements of the rule, if any, the company would continue to perform if the rule were no longer in effect, TECO stated it would continue to try and resolve any disputes in a fair and reasonable manner. Procedures for dispute resolution would have to be established as the FPSC staff currently serves as an independent third party on issues where the parties cannot reach a satisfactory resolution. TECO has staff in place that can resolve the majority of disputes that do arise. For the few that escalate and require third party intervention, steps would have to be put in place. A determination of the transactional costs necessary to perform the tasks in absence of the rule would depend on the resolution process established. However, TECO stated that it would be fair to assume that the transactional costs would be significantly greater than what currently exists. TECO expects its costs to comply with the rule to increase somewhat over time as a result of continued cost increases for various O&M costs being experienced by the industry.

Other information provided by TECO:

- The costs incurred to comply with the records retention, reporting and auditing requirements of section (10) of the rule do not have an adverse impact on the company.
- TECO’s staffing costs represent 98 percent of its total estimated transactional costs. Postage/shipping and document storage/retention each represent less than 1 percent, and communications represent 1 percent. The company occasionally incurs legal costs associated with complaints.
- Three full-time employees are currently responsible for handling customer complaints. If additional information is required to resolve/respond to a complaint, individuals in other areas may assist. These individuals also have other responsibilities.

- TECO subscribes to the transfer connect and e-mail transfer system. Annual costs associated with the subscription to these systems are \$3,060.
- The rule has had a positive impact, as it provides a structured process for resolving customer complaints.
- Costs associated with handling of complaints are not significantly incremental to the costs that would exist without the requirements of the rule.
- The existing rule provides a smooth and seamless process to resolve complaints while minimizing escalated complaints to the Commission.

Based on the above, the transactional costs associated with compliance with Rule 25-22.032, F.A.C., for the four electric IOUs that responded to our survey is estimated to be \$2,671,594 over the next 5 years. Florida Public Utilities Company (FPUC) did not respond to the FPSC's survey. The FPSC has no in-house data that can be used to estimate FPUC's costs to comply with the rule. The four electric IOUs that responded believe that the benefits of the rule to their company and customers outweigh the costs.

#### Pay Telephone Providers, Relay Providers, and Lifeline Providers

Six pay telephone companies, seven Lifeline providers, and two relay providers<sup>22</sup> responded to the survey. This represents a 12 percent response rate. Four respondents provided no data because they are not currently providing service or have received no complaints from their consumers via the FPSC and therefore, have no experience with the rule in question. Five respondents indicated that they do not track Florida-specific costs, and the remaining five respondents noted that costs were either “de minimis,” “negligible,” or “relatively low.”

Company responses to the survey include the following:

- Three respondents, two relay service providers and a Lifeline provider, identified some benefits associated with Rule 25-22.032, F.A.C. Other respondents did not identify any benefits of the rule; however, no provider recommended repeal or alternatives.
- The majority of respondents believe that costs will be unchanged or perhaps decrease over the next 5 years assuming the rule is unchanged.
- All of the respondents would continue to accept customer complaints if the rule were repealed.
- One respondent, CenturyLink, a Lifeline and pay phone provider, noted that without the requirements within section (10) of Rule 25-22.032, F.A.C., it would not be necessary for the company to prepare formalized reports on complaints, which requires additional research and documentation. In addition, the company stated that if the rule were not in place, responding to an audit would not be necessary. CenturyLink did not quantify whether or not these requirements have adverse cost impacts. The majority of other respondents noted that the costs incurred to comply with the records retention, reporting, and auditing requirements of section (10) did not have an adverse impact.

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<sup>22</sup> Sprint is currently the relay service provider in Florida. AT&T will begin providing service on June 1, 2012. Since the analysis requires looking at current cost impacts and future cost impacts of the rule, both Sprint and AT&T were asked to provide data.

- AT&T Southeast noted that because the rule has been in effect since 1989, AT&T modified any processes and procedures that it uses to address customer complaints many years ago.

It would appear, based on the lack of actual cost data and low response rate, that the transactional costs for pay phone providers, Lifeline providers, and relay providers to comply with the rule are not an issue. As noted above, several providers state that they do not track these costs because they are not material, and they receive few complaints from customers via the FPSC.

### Investor-Owned Gas Utilities

Three of the seven investor-owned gas companies provided responses to the survey with information regarding the impact and costs resulting from compliance with Rule 25-22.032, F.A.C. The gas companies were generally positive about the rule and stated that the costs associated with its implementation are minimal and are expected to increase marginally over time as a result of prices increasing overall. Only in one instance did a company have a complaint escalate to the point of having an informal conference or a hearing. The overwhelming majority of complaints are resolved within 30 days. The companies also have policies in place that would handle consumer complaints in a similar manner if the rule were repealed. The majority of costs associated with the rule are incurred from staffing.

#### Florida City Gas

Florida City Gas, (City Gas) estimated that the transactional costs associated with the rule for the period from July 1, 2011, to December 31, 2011, were \$9,300. The company predicted that costs for compliance with the rule will stay flat over the 5 year period beginning July 1, 2011. The company has four full-time employees who handle complaints in addition to other responsibilities. City Gas subscribes to the FPSC's transfer-connect system, but does not estimate that this results in any extra costs because the utility would have a similar process if the rule were repealed. Overall, City Gas believes that the rule has had a positive impact, and that it improves interaction between the utility, consumers, and the Commission. All of the complaints City Gas had recorded were resolved within 30 days.

#### St. Joe Natural Gas Company

St. Joe Natural Gas Company (St. Joe) estimated that the transactional cost of compliance with the rule is \$135.00 per complaint, and that this amount will increase as operating costs increase over the next five years. The majority of this amount is spent on communications (59 percent) and staffing (15 percent). St. Joe has one full-time employee responsible for handling consumer complaints. There were no complaints in the period from July 1, 2011, to December 31, 2011, and of the complaints on record, 100 percent were resolved within 30 days. St. Joe stated in the survey response that the rule, "empowers a customer while adding to cost of service," and said that the rule did have an adverse impact due to the cost, though marginal.

## People’s Gas System

People’s Gas System, (People’s Gas) provided detailed annual cost information for compliance with Rule 25-22.032, F.A.C., over the 5 year period beginning on July 1, 2011:

<b>People’s Gas Transactional Cost Estimate</b>						
2011 (7/1-12/31)	2012	2013	2014	2015	2016 (1/1-7/31)	Total
\$26,436	\$53,533	\$54,871	\$56,243	\$57, 649	\$29,545	\$278,277

People’s Gas believes that without the rule, transactional costs for handling consumer complaints would be significantly greater, as the rule provides a “smooth and seamless process to resolve complaints easily while minimizing escalated complaints to the Commission.” In lieu of the rule, People’s Gas would have to develop mechanisms and processes to continue to handle complaints. The company estimates that 99 percent of the cost associated with the rule is used for staffing. The company has one full-time employee who receives complaints. The company currently subscribes to the FPSC’s transfer-connect system at an annual cost of \$492. People’s Gas has a very positive view of the rule and mentioned numerous times in the survey response that the rule helps to resolve disputes quickly and efficiently, with less than 1 percent of complaints escalating beyond the initial 30-day period.

## Water and Wastewater Utilities

Of the 148 jurisdictional water and wastewater utilities that the survey was sent to, only four sent back a response. It is possible to infer from this that the vast majority of these utilities rarely receive complaints and that costs of compliance are minimal. These assumptions are reinforced by the information provided by the companies that did respond, with three of the companies stating that they either did not receive any complaints or that they incurred no costs to remain in compliance with Rule 25-22.032, F.A.C.

### Aquarina Utilities, Inc.

The one utility, Aquarina Utilities, Inc., (Aquarina), that provided cost data had five complaints in 2011. Two of the complaints were successfully resolved with the assistance of the FPSC. Aquarina was not able to estimate its transactional costs associated with the handling of complaints, but believes that without the FPSC’s rule in place, those costs could reach in excess of \$500,000 over a five-year span with the majority of these funds going to legal costs. The utility believes that those increased costs would have a significant impact on rates. The actual cost for compliance with the rule from July 1, 2011, through December 31, 2011, was \$35,000.

The majority of Aquarina’s costs for compliance with the rule (60 percent) are spent on staffing and salaries. These employees would remain to resolve complaints and the company would still maintain many of the same policies and processes regardless of whether the rule was in effect. Only 20 percent of the complaints Aquarina received in 2011 were able to be resolved within 30 days.

Aquarina believes that the rule will have little or no effect on small businesses, economic growth, private sector job creation, or private sector investment in the utility's service territory and that the impact on business competitiveness will be minimal. The utility does not anticipate changes or increases in the costs to comply with the rule. Overall, Aquarina believes that the rule has a positive effect on the company for the following reasons:

- It provides a definitive time frame for resolution or dismissal of a complaint.
- It provides the customer and the utility with a clear-cut process for complaint review.
- It makes the FPSC accountable for any deviation from the complaint procedure outlined by the rule.

#### Total Regulatory Costs

Regulatory costs also include the costs to government agencies to implement and enforce the rule. The cost to the FPSC to implement and enforce Rule 25-22.032, F.A.C., based on a good faith estimate for the 5 year period beginning July 1, 2011, is \$1,229,231, as discussed in section III.3. (Costs to Governmental Entities) below. Other state and local government agencies are not directly impacted by the rule.

Based on the above analysis, the total regulatory costs associated with the rule including both transactional costs and costs to the agency, is estimated to be approximately \$4,179,102 for the 5 year period beginning on July 1, 2011. Thus, our economic analysis indicates the rule directly or indirectly will have estimated regulatory costs in excess of \$1 million for the 5 year period beginning on July 1, 2011.

#### b. Economic Growth, Jobs, and Investment

Paragraph 120.541(2)(a)1., and Section 120.745, F.S., require that the compliance economic review show whether the rule, directly or indirectly, is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within a 5 year period beginning on July 1, 2011. The FPSC survey specifically requested information responsive to this requirement for each company's specific service territory. In reply to this question, the majority of respondents stated that they do not track or analyze this type of data and that determining such impacts can be a very complex process requiring multiple assumptions. Progress Energy Florida, Inc., noted that as a general matter, all of the transactional costs it identified ultimately impact the price for electric power, but the company cannot reliably estimate what impact these costs may or may not have. TECO stated that it is not aware of any impacts the rule would have on economic growth, private sector job creation or employment, and private sector investment in its service territory. Verizon Florida, LLC, responded that the rule does not have a significant impact on economic growth, private sector job creation or employment, and private sector investment. Smart City Telecom, AT&T Southeast, AT&T Corp., and ICSolutions stated that they believe the expected impact is not material.

The costs associated with this rule in many cases are passed through to customers/ratepayers. Pay phone providers, Lifeline providers, and relay service provider rates are not subject to rate-of-return regulation. As such, they may or may not include costs, if any, to comply with this rule within



rates charged to customers. FPL stated that the majority of other parties' costs (annually and over a 5 year period) would result from estimated costs being reflected in FPL's base rates and charges. The estimated costs spread across the more than 4.5 million FPL customers has a minimal impact on individual customer bills. While FPL is unable to quantify the dollar value of the associated benefits, FPL has seen how "quickly, effectively, and inexpensively" complaints have been resolved since the current rule was implemented eight years ago. Moreover, the electric companies and the pay phone, Lifeline, and relay providers that responded to the survey stated that they would continue to address customer complaints if this rule were eliminated. Therefore, costs would not be eliminated or necessarily decreased if the rule were no longer in effect. FPL stated that it believes the costs associated with newly created voluntary activities and increased inefficiencies resulting from the elimination of the rule, while not quantifiable, would be greater than those currently incurred. Gulf noted that the rule's requirements provide for a timely and effective process through which to resolve customer complaints, and since the company would perform all current requirements, the estimated transactional costs would not change. PEF stated that it would continue to handle complaints in basically the same manner if Rule 25-22.032, F.A.C., were eliminated, and that the cost difference would be insignificant. TECO stated that costs associated with handling of complaints are not significantly incremental to the costs that would exist without the requirements of the rule.

The majority of complaints received by the FPSC are against electric utilities. FPL reports that approximately 95 percent of all filed complaints associated with the rule are resolved within 30 days. Gulf reports that 100 percent of all such complaints are resolved within 30 days, PEF reports 95 percent, and TECO notes that nearly all complaints are resolved by the company within 30 days.

The intent of Rule 25-22.032, F.A.C., is to resolve disputes between regulated companies and their customers as quickly, effectively, and inexpensively as possible. Based on the survey responses provided, the rule is meeting this objective. Elimination of the rule may cause an adverse impact on economic growth, private sector job creation or employment, or private sector investment, causing costs to increase for some utilities, including the electric IOUs.

### c. Business Competitiveness

Subparagraphs 120.541(2)(a)2., and 120.745(1)(b)2., F.S., require a compliance economic review to show whether the rule directly or indirectly is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity or innovation in excess of \$1 million in the aggregate within a 5 year period beginning on July 1, 2011. The FPSC survey of those companies subject to Rule 25-22.032, F.A.C., specifically requested information responsive to this requirement for each company's specific service territory.

FPL notes that it does not project, capture or track business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, and innovation resulting from the impact of the rule. Additionally, FPL does not presently have the means to accurately estimate this information. Gulf provided a similar response noting that it does not analyze or maintain data concerning the economic impacts of this rule on third parties. PEF stated that as a general matter, all of the transactional costs it identified impact the ultimate price for electric power. However, PEF cannot reliably estimate what impact

these costs may or may not have on business competitiveness, including the ability of persons doing business in the utility's service territory to compete with persons doing business in states other than Florida or other domestic markets, productivity, and innovation, for the 5 year period beginning on July 1, 2011. TECO was not aware of any impact of the rule on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, and innovation, for the 5 year period beginning on July 1, 2011, in its service territory.

AT&T Southeast and AT&T Corp. noted that the impacts would be de minimis or immaterial. However, CenturyLink, a pay telephone and Lifeline provider, noted that to the extent it incurs regulatory costs to comply with Rule 25-22.032, F.A.C., that its competitors do not incur, it may be competitively disadvantaged. CenturyLink further stated that to the extent the company passes those costs on to its customers, including its business customers, those customers may be at a disadvantage as compared to customers of competitors that do not incur the regulatory costs. While this is a valid concern, today all pay phone and Lifeline providers must comply with this rule in the same manner.<sup>23</sup> Other pay phone and Lifeline respondents noted that they believe the expected impacts of the rule on economic growth, private sector job creation or employment, and private sector investment for the 5 year period beginning on July 1, 2011, are very little, not material, unknown, or the company did not have data sufficient to answer the question.

It does not appear that Rule 25-22.032, F.A.C., has a direct or indirect adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets. Many states have complaint processes for matters under their jurisdiction. Rule 25-22.032, F.A.C., allows for business or residential customers of a utility to come to the FPSC to have complaints and concerns addressed by a third party, possibly avoiding costly litigation or delays in service. This would appear to be a benefit to the business community in Florida.

### 3. Costs to Governmental Entities

Subparagraphs 120.745(1)(b)2., and 120.541(2)(c), F.S., require a compliance economic review to include a good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the rule, and any anticipated effect on state or local revenues. In order to provide a good faith estimate of the rule's cost to the agency, the estimated annual number of hours dedicated to implementing and enforcing the rule, specific to each employee classification, was multiplied by the associated labor rates, and the resulting costs were aggregated across all employee classifications. The estimated cost to the FPSC to implement and enforce the requirements of Rule 25-22.032, F.A.C., for the 5 year period beginning July 1, 2011, is \$1,229,231. Other state and local government agencies are not directly impacted by the rule. Thus, the cost to the state necessary to implement the requirements of the rule for the 5 year period beginning July 1, 2011, is estimated to be \$1,229,231.

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<sup>23</sup> In the past, incumbent local exchange companies were subject to different rules and standards than competitive telecommunications providers in order to allow for the telecommunications market to evolve from a monopoly market to a competitive market.

#### 4. Transactional Costs Incurred by Companies

Paragraph 120.541(2)(d), and Subparagraph 120.745(1)(b)2., F.S., require a compliance economic review to include 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 are defined as direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule.

Due to the limited number of survey responses received, the transactional costs identified in this report, \$2,949,871, represent those costs incurred by the four largest electric IOUs and one gas IOU. However, since the majority of complaints received by the Commission are against electric companies, it is believed that this is a reasonable representation of total transactional costs. The FPSC does not have in-house data to estimate transactional costs for companies that did not respond to the survey. Detailed transactional cost data is provided in section III.B.2.a. of this report.

#### 5. Impacts on Small Businesses, Small Counties, and Small Cities

Paragraphs 120.541(2)(e), and 120.745(1)(b)2., F.S., require a compliance economic review to include an analysis of the impact of the proposed rule change on small businesses as defined by Section 288.703, F.S., and an analysis of the impact on small counties and small cities as defined in Section 120.52, F.S. The impact analysis for small businesses must include the basis for the agency's decision not to implement alternatives that would reduce adverse impacts on small businesses.

FPL responded to the FPSC survey question regarding small business, small county, and small city impacts for the 5 year period beginning 2011 by stating that it believes that based on the costs and benefits it can identify, the associated benefits outweigh the costs. The majority of customers' costs (annually and over a 5 year period) would result from FPL's estimated costs being reflected in FPL's base rates and charges. The estimated costs spread across the more than 4.5 million FPL customers has a minimal impact on individual customer bills, including small businesses and small counties and cities. While FPL is unable to quantify the dollar value of the associated benefits, FPL has seen how "quickly, effectively, and inexpensively" complaints have been resolved since Rule 25-22.032, F.A.C., was implemented eight years ago. FPL stated that these benefits have been realized by FPL, its customers, and the FPSC.

Gulf responded that while it has attempted to provide high-level estimates of costs that the company has incurred, or may incur, as a result of compliance with Rule 25-22.032, F.A.C., it does not analyze or maintain data concerning the economic impacts of this rule on third parties. TECO believes the impact is minimal because small business customer complaints account for less than one percent of total customer complaints, and of those, none have resulted in an informal conference with the FPSC staff. TECO stated that there is a benefit with the rule because in the event of an unresolved complaint, FPSC staff would be available as an independent third party to assist in reaching resolution. PEF stated that, as a general matter, all of the costs it identified do impact PEF's ultimate

price for electric power, but PEF cannot reliably estimate what impact these costs may or may not have on small businesses.

AT&T Southeast and AT&T Corp. believe that the costs and/or benefits to small businesses, small counties, and small cities would be de minimis. Verizon and Smart City Telecom noted that they believe there will be no impact on small businesses, small counties, and small cities. Sprint and Express Phone did not have any information responsive to specify and CenturyLink advised the likely impacts are “unknown.” ICSolutions, a pay phone provider, noted it believes that the rule has no material impact on small counties or cities. Further, ICSolutions stated that Rule 25-22.032, F.A.C, could be burdensome for any small business that, like ICSolutions receives very few complaints if the “transfer-connect” program were made mandatory, since the overhead of maintaining the technical knowledge and operational readiness of a Florida-specific complaint reporting mechanism far outweighs any benefit that it provides. While ICSolutions’ concern is valid, a rule modification would only occur after a proceeding that allowed for companies subject to the rule to comment and economic impacts are again reviewed.

It does not appear that the rule has a direct or indirect adverse impact on small businesses, small counties, and small cities. To the contrary, it appears that based on data provided in response to the survey, some utilities believe the costs to comply with the rule would likely increase in its absence. Increased costs could be passed on to customers and ratepayers which could have adverse impacts. In addition, the rule allows business or residential customers of a utility to come to the FPSC to have complaints and concerns addressed by a third party, possibly avoiding costly litigation or delays in service. This would appear to be an additional benefit of the rule as it relates to small cities, small counties, and small businesses.

#### 6. Additional Information

Paragraphs 120.541(2)(f), and 120.745(1)(b)2., F.S., require a compliance economic review to include any additional information that the agency determines may be useful. No additional useful information has been identified regarding the estimated regulatory costs.

#### 7. Regulatory Alternatives

Paragraphs 120.541(2)(g), and 120.745(1)(b)2., F.S., require a compliance economic review to include a description of any regulatory alternatives submitted under Section 120.541(1)(a), F.S., and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the rule. No regulatory alternatives have been submitted under Section 120.541(1)(a), F.S.

COMMISSIONERS:  
RONALD A. BRISÉ, CHAIRMAN  
LISA POLAK EDGAR  
ART GRAHAM  
EDUARDO E. BALBIS  
JULIE I. BROWN

STATE OF FLORIDA



DIVISION OF REGULATORY ANALYSIS  
BETH W. SALAK  
DIRECTOR  
(850) 413-6600

## Public Service Commission

February 24, 2012

To: Pay Telephone Companies, Lifeline Providers, Relay Providers

Re: Industry survey for legislative review of agency rules in effect on or before November 16, 2010  
Docket No. 110303-OT

To whom this may concern:

Please see attached staff's survey questions. Your timely response to these survey questions regarding Rule 25-22.032, Florida Administrative Code (F.A.C.) will be used to complete the Commission's Compliance Economic Review required by Sections 120.745 and 120.541, Florida Statutes. All responses should be filed in Docket No. 110303-OT by 5:00 p.m., Wednesday, March 14, 2012, and addressed to:

Judy Harlow  
c/o Ann Cole  
Commission Clerk  
Office of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

If you have any questions, please contact Jessica Miller at (850) 413-6546 or [jemiller@psc.state.fl.us](mailto:jemiller@psc.state.fl.us) or Laura King at (850) 413-6588 or [lking@psc.state.fl.us](mailto:lking@psc.state.fl.us). Thank you for your assistance.

Sincerely,

/s/ Judy Harlow  
Judy Harlow  
Senior Analyst  
Division of Regulatory Analysis

COMMISSIONERS:  
RONALD A. BRISÉ, CHAIRMAN  
LISA POLAK EDGAR  
ART GRAHAM  
EDUARDO E. BALBIS  
JULIE I. BROWN

STATE OF FLORIDA



DIVISION OF REGULATORY ANALYSIS  
BETH W. SALAK  
DIRECTOR  
(850) 413-6600

## Public Service Commission

February 24, 2012

To: Investor-Owned Electric Utilities

Re: Industry survey for legislative review of agency rules in effect on or before November 16, 2010  
Docket No. 110303-OT

To whom this may concern:

Please see attached staff's survey questions. Your timely response to these survey questions regarding Rules 25-17.0021, 25-22.032, and 25-6.0436, Florida Administrative Code (F.A.C.), will be used to complete the Commission's Compliance Economic Review required by Sections 120.745 and 120.541, Florida Statutes. All responses should be filed in Docket No. 110303-OT by 5:00 p.m., Wednesday, March 14, 2012, and addressed to:

Judy Harlow  
c/o Ann Cole  
Commission Clerk  
Office of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

If you have questions regarding the survey for Rule 25-17.0021, F.A.C., please contact Stephen Garl at 850-413-6676 or [sgarl@psc.state.fl.us](mailto:sgarl@psc.state.fl.us) or Judy Harlow at 850-413-6842 or [jharlow@psc.state.fl.us](mailto:jharlow@psc.state.fl.us). If you have questions regarding the survey for Rule 25-22.032, F.A.C., please contact Jessica Miller at 850-413-6546 or [jemiller@psc.state.fl.us](mailto:jemiller@psc.state.fl.us) or Laura King at (850) 413-6588 or [lking@psc.state.fl.us](mailto:lking@psc.state.fl.us). If you have any questions regarding the survey for Rule 25-6.0436, F.A.C., please contact Bill McNulty at 850-413-6848 or [bmcnulty@psc.state.fl.us](mailto:bmcnulty@psc.state.fl.us). Thank you for your assistance.

Sincerely,

/s/ Judy Harlow  
Judy Harlow  
Senior Analyst  
Division of Regulatory Analysis

COMMISSIONERS:  
RONALD A. BRISÉ, CHAIRMAN  
LISA POLAK EDGAR  
ART GRAHAM  
EDUARDO E. BALBIS  
JULIE I. BROWN

STATE OF FLORIDA



DIVISION OF REGULATORY ANALYSIS  
BETH W. SALAK  
DIRECTOR  
(850) 413-6600

## Public Service Commission

February 24, 2012

To: Jurisdictional Water/Wastewater Utilities

Re: Industry survey for legislative review of agency rules in effect on or before November 16, 2010  
Docket No. 110303-OT

To whom this may concern:

Please see attached staff's survey questions. Your timely response to these survey questions regarding Rule 25-22.032, Florida Administrative Code (F.A.C.) will be used to complete the Commission's Compliance Economic Review required by Sections 120.745 and 120.541, Florida Statutes. All responses should be filed in Docket No. 110303-OT by 5:00 p.m., Wednesday, March 14, 2012, and addressed to:

Judy Harlow  
c/o Ann Cole  
Commission Clerk  
Office of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

If you have any questions, please contact Jessica Miller at (850) 413-6546 or [jemiller@psc.state.fl.us](mailto:jemiller@psc.state.fl.us) or Laura King at (850) 413-6588 or [lking@psc.state.fl.us](mailto:lking@psc.state.fl.us). Thank you for your assistance.

Sincerely,

/s/ Judy Harlow  
Judy Harlow  
Senior Analyst  
Division of Regulatory Analysis

COMMISSIONERS:  
RONALD A. BRISÉ, CHAIRMAN  
LISA POLAK EDGAR  
ART GRAHAM  
EDUARDO E. BALBIS  
JULIE I. BROWN

STATE OF FLORIDA



MARSHALL WILLIS, DIRECTOR  
DIVISION OF ECONOMIC REGULATION  
(850) 413-6900

## Public Service Commission

February 24, 2012

To: Florida Investor-Owned Gas Utilities

Re: Docket No. 110303-OT - Industry survey for legislative review of agency rules in effect on or before November 16, 2010

To Whom It May Concern:

Please see attached Staff's survey questions. Your timely response to these survey questions regarding Rule 25-7.0131, F.A.C. – Regulatory Assessment Fees; Gas Utilities, Gas Municipals, and Gas Districts and Rule 25-22.032, F.A.C. – Customer Complaints will be used to complete the Commission's Compliance Economic Review required by Sections 120.745 and 120.541, Florida Statutes. All responses should be filed in Docket No. 110303-OT by 5:00 p.m., Wednesday, March 14, 2012, and addressed to:

Bill McNulty  
c/o Ann Cole  
Commission Clerk  
Office of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

If you have any questions, please contact me at 850-413-6848 or [bmcnulty@psc.state.fl.us](mailto:bmcnulty@psc.state.fl.us). Thank you for your assistance.

Sincerely,

/s/ Bill McNulty  
Bill McNulty  
Economic Analyst  
Division of Economic Regulation



**Rule 25-22.032, F.A.C. - Survey Questions**

The following survey questions apply to **Rule 25-22.032, F.A.C, Consumer Complaints**. For responding to these questions, please refer to Subsection 120.541(2), F.S., and Subparagraph 120.745(1)(b)2, F.S. “Transactional costs” are defined in Subparagraph 120.541(2)(d), F.S., as:

...direct costs that are readily ascertainable based upon standard business practices, including filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule.

The Company’s response data to these survey questions should be provided for the entire rule, unless the response data is available by rule section, in which case we request the response data be provided by rule section. Please present data in annualized format, if possible, and all cost or benefit dollar estimates should be stated in nominal terms.

1. What are the Company’s estimated transactional costs resulting from the Company’s compliance with Rule 25-22.032, F.A.C., for the five year period beginning July 1, 2011?
  - a. For the five year period beginning July 1, 2011, which requirements of Rule 25-22.032, F.A.C., if any, would be performed by the Company assuming the rule were not in effect? Please explain.
  - b. For each of the requirements identified in 1a., what are the estimated transactional costs associated with such requirements for the five year period beginning July 1, 2011?
  - c. What are your actual transactional costs resulting from your Company’s compliance with Rule 25-22.032, F.A.C., for the period July 1, 2011 to December 31, 2011?
2. What is the Company’s estimate of the likely impact, stated in terms of costs and/or benefits, on small businesses (as defined by Section [288.703](#), F.S.) located in the Company’s service territory, resulting from the implementation of 25-22.032, F.A.C., for the five year period beginning July 1, 2011?
3. What is the Company’s estimate of the likely impact, stated in terms of costs and/or benefits, on small counties and small cities (as defined in Section [120.52](#), F.S.) located in the Company’s service territory, resulting from the implementation of 25-22.032, F.A.C., for the five year period beginning July 1, 2011?
4. What is the Company’s estimate of the likely impact, stated in terms of costs and/or benefits, on entities located in the Company’s service territory other than those specifically identified in Questions 2 and 3, resulting from the implementation of 25-22.032, F.A.C., for the five year period beginning July 1, 2011?

5. What does the Company believe is the expected impact of Rule 25-22.032, F.A.C., on economic growth, private sector job creation or employment, and private sector investment for the five year period beginning July 1, 2011 in the company's service territory?
6. What does the Company believe is the expected impact of Rule 25-22.032, F.A.C., on business competitiveness, including the ability of persons doing business in the Company's service territory to compete with persons doing business in states other than Florida or other domestic markets, productivity, and innovation, for the five year period beginning July 1, 2011?
7. What does the Company believe are the benefits of Rule 25-22.032, F.A.C.?
8. Assuming Rule 25-22.032, F.A.C., is unchanged over the next five years, do you expect your Company's costs to comply with the rule going forward, to increase, decrease, or remain the same. Please explain your response.
9. Does your Company currently have procedures/personnel in place to address complaints received directly from your consumers?
10. If Rule 25-22.032, F.A.C., were repealed would your Company continue to accept and address consumer complaints? Please explain your response.
11. Do you believe the costs, if any, incurred by your Company to comply with the records retention, reporting, and auditing requirements of Rule 25-22.032(10), F.A.C., for the five year period beginning July 1, 2011, if any, have an adverse impact on your Company? If so, please provide any and all data which supports your response.
12. Of the transactional costs estimated to be associated with compliance with 25-22.032, F.A.C., what percentage is spent on the following items:
  - a. Staffing
  - b. Document storage and retention
  - c. Postage and shipping
  - d. Communications (dedicated phone lines, e-mails or faxes)
  - e. Other
13. How many staff members at your Company are currently responsible for handling consumer complaints associated with 25-22.032, F.A.C.?
  - a. Are they full time employees?
  - b. Do these employees have responsibilities apart from handling complaints?
14. Section 3 of Rule 25-22.032, F.A.C., states that a customer's service shall not be discontinued during the complaint resolution process. Have there been instances within 2010 through 2011, when your Company was uncompensated for service provided as a result of a billing dispute?
  - a. In the majority of these cases, is the Company able to recoup these costs after the complaint is resolved?

15. Does your Company subscribe to the Florida Public Service Commission’s telephone “transfer-connect” or e-mail transfer system?
  - a. What are the annual costs associated with subscription to these systems, including costs due to additional requirements for staffing, operating hours and document retention?
16. Approximately what percentage of complaints are resolved prior to reaching the Informal Conference stage described in section 8 of Rule 25-22.032, F.A.C.?
  - a. How many times has your Company had a consumer complaint that has escalated all the way to the informal conference stage in the previous two years?
  - b. How many times within 2010 through 2011, has your Company had a complaint process that was escalated beyond the informal conference stage?
17. Approximately what percentage of complaints from your customers filed with the Florida Public Service Commission are successfully resolved within 30 days?
18. How has Rule 25-22.032, F.A.C., affected the way your Company processes complaints?
  - a. Has the rule had a positive, negative, or neutral impact on your Company?
  - b. How has the rule affected the Company’s cost of handling complaints?

**25-22.032 Customer Complaints.**

(1) Intent; Application and Scope. It is the Commission's intent that disputes between regulated companies and their customers be resolved as quickly, effectively, and inexpensively as possible. This rule establishes informal customer complaint procedures that are designed to address disputes, subject to the Commission's jurisdiction, that occur between regulated companies and individual customers. It provides for expedited processes for customer complaints that can be resolved quickly by the customer and the company. It also provides a process for informal Commission staff resolution of complaints that cannot be resolved by the company and the customer.

(2) Processing of Complaints.

(a) Any customer of a Commission regulated company may file a complaint with the Division of Service, Safety and Consumer Assistance whenever the customer has an unresolved dispute with the company regarding electric, gas, telephone, water, or wastewater service that is subject to the Commission's jurisdiction. The complaint may be communicated orally or in writing. The complaint shall include the name of the company against which the complaint is made, the name of the customer of record, and the customer's service address. Upon receipt of a complaint by telephone, Commission staff will determine if the customer has contacted the company.

(b) In the case of complaints made by telephone, if the customer agrees, Commission staff will put the customer in contact with the company for resolution of the complaint using the telephone transfer-connect system described in subsection (4), or by other appropriate means if the company does not subscribe to the telephone transfer-connect system. If the customer does not agree to be put in contact with the company, then, in the case of companies subscribing to the telephone transfer-connect system, staff will submit the complaint to the company for resolution in accordance with the provisions set forth in subsection (5).

(c) For those companies not subscribing to the telephone transfer-connect or to the E-mail transfer system described in subsection (4), staff will submit the complaint to the company for resolution in accordance with the provisions of subsection (6).

(3) Protection from Disconnection. During the complaint process described in subsections (5)-(9), a company shall not discontinue service to a customer because of any unpaid disputed amount until the complaint is closed by Commission staff. However, the company may require the customer to pay that part of a bill which is not in dispute. If the company and the customer cannot agree on the amount in dispute, Commission staff will make a reasonable estimate to establish an interim disputed amount until the complaint is closed by Commission staff. If the customer fails to pay the undisputed portion of the bill, the company may discontinue the customer's service pursuant to Commission rules.

(4) Telephone Transfer-connect and E-mail Transfer Systems.

(a) Each company subject to regulation by the Commission may provide a telephone transfer-connect telephone number by which the Commission may directly transfer a customer to that company's customer service personnel. When the telephone transfer is complete, any further charges for the call shall be the responsibility of the company and not the Commission or the customer. Each company that subscribes to the telephone transfer-connect system must provide customer service personnel to handle transferred calls during the company's normal business hours and at a minimum from Monday through Friday, 9:00 a.m. to 4:00 p.m., Eastern time, excluding all holidays observed by the company. Telephone transfer-connect calls shall not be initially answered by a recorded voice but shall be answered by a person ready to receive information about the complaint.

(b) A company may also provide to the Commission an E-mail address by which the customer may directly E-mail a complaint to the company's customer service personnel from the Commission's Internet Web site. The company shall acknowledge the customer's E-mail to the customer by no later than the working day after the date of receipt.

(5) Complaints resolved within three (3) days by companies participating in the Telephone Transfer-Connect System or the E-mail Transfer System. Companies that subscribe to the telephone transfer-connect or E-mail transfer system may resolve a customer complaint within three (3) days in the following manner:

(a) The Commission staff handling the complaint will forward a description of the complaint to the company for response and resolution. The three (3) day period will begin the working day after the day the information is sent to the company and end at 5:00 p.m. Eastern time on the third working day, excluding weekends and company holidays. If the company satisfactorily resolves the complaint, the company shall notify Commission staff of the resolution in writing by no later than 5:00 p.m. Eastern time on the third day.

(b) If the customer does not object to the company's resolution to the complaint, the complaint will not be reported in the total number of complaints shown for that company in the Commission's Consumer Complaint Activity Report. However, the Commission will retain the information for use in enforcement proceedings, or for any other purpose necessary to perform its regulatory obligations.

(c) If the customer informs Commission staff that the complaint has not been resolved, the Commission staff will notify the company and require a full report as prescribed in subsection (6).

(d) For purposes of this subsection a complaint will be considered "resolved" if the company report indicates that the problem has been corrected or the company report indicates that the company and the customer have agreed to a plan to correct the problem.

(6) General Commission Staff Complaint Investigation. If the customer is not placed in direct contact with the company by means of the telephone transfer-connect or E-mail transfer system for resolution of his complaint, Commission staff will investigate the complaint and attempt to resolve the dispute in the following manner:

(a) Commission staff will acknowledge receipt of the complaint to the customer, notify the company of the complaint and request a written response from the company. Notification to the company by Commission staff will be to the primary Commission liaison for each certificate unless the company has provided to the Director of the Division of Service, Safety and Consumer Assistance a name, address, telephone and facsimile numbers and E-mail address for a separate point of contact for complaint handling for each certificate. It is preferable for a company to have a single point of contact for complaint handling but a company may identify up to a maximum of three points of contact for complaint handling per certificate. However, if Commission staff directs a complaint to any one of the identified multiple complaint handling contacts, the company shall process the complaint and not return the complaint to Commission staff for redirecting the complaint to other company points of contact.

(b) If the customer specifically makes a request to the Commission that he or she not be contacted by the company, Commission staff will request that the company not contact the customer directly. Otherwise, the company shall make direct contact with the customer verbally or in writing and provide to the customer its response to the complaint within 15 working days after the Commission staff sends the complaint to the company. Responses sent by mail must be postmarked within the 15 working day time period. The company shall also provide to the Commission staff, within 15 working days after the Commission staff sends the complaint to the company, a written response to the customer's complaint. However, in the case of those complaints where the company has proposed, under the provisions of subsection (5) of this rule (complaints resolved in 3 days), a resolution with which the customer is not satisfied, the company shall respond within twelve (12) working days of the case being resent to the company.

(c) The company's response to the Commission staff shall explain the likely cause of the problem, all actions taken by the company to resolve the customer's complaint, and the company's resolution or proposed resolution of the complaint and shall answer any specific questions raised by Commission staff. The company response shall also include letters or E-mails sent to the customer that contain the company's proposed resolution of the complaint or statement of position in addressing or resolving the complaint. Upon Commission staff request, other documentation related to the complaint shall be provided to Commission staff. If the company's proposed resolution has not yet been implemented at the time of the response to the Commission staff and customer, the company shall fully set forth in its response the steps that will be taken by the company to resolve the complaint and the dates by which each step will be taken by the company. The company shall promptly notify the customer if it is subsequently unable to take its proposed action as scheduled and shall provide to the customer and, upon request, to Commission staff, a new resolution schedule for the complaint.

(d) Commission staff will not normally further respond to the customer. However, if a customer objects to the company response to the complaint, the customer may request further review of the complaint by Commission staff. Commission staff will then propose a resolution of the complaint. The proposed resolution to the customer may be either oral or written. Upon request of either the customer or the company, Commission staff shall provide the proposed resolution in writing.

(e) Commission staff may request copies of bills, billing statements, field reports, written documents, or other information in the participants' possession that may be necessary to resolve the dispute. The company shall respond in 7 working days to each subsequent request by staff after the initial company response. If a complete response cannot be provided in the 7 working days, the company shall provide an update regarding the response every 15 working days until the response is completed. Such update shall identify all actions taken since the last report, an explanation of why a

complete response cannot be provided, and a time schedule for providing a complete response. Commission staff may perform, or request the company to perform, any tests, on-site inspections, and reviews of company records necessary to aid in the resolution of the dispute.

(7) Process Review Team.

(a) If the customer or the company is not in agreement with Commission staff's proposed resolution, the Division of Service, Safety and Consumer Assistance will refer the complaint to a Process Review Team consisting of staff from the Office of the General Counsel, the Division of Regulatory Compliance and Consumer Assistance, and the appropriate technical division. This Process Review Team will review the complaint file to determine further handling of the complaint.

(b) If the Process Review Team finds that the subject matter of the complaint may be within the Commission's jurisdiction, that the relief sought can possibly be granted by the Commission, that the basis of the complaint is not an objection to current statutes, rules, company tariffs, or orders of the Commission, and that a violation of an applicable statute, rule, company tariff or order of the Commission may have occurred, the Division of Service, Safety and Consumer Assistance shall schedule an informal conference. The fact that an informal conference is scheduled shall not preclude any participant or Commission staff from later taking a position that the complaint does not fall into one or more of the above categories.

(c) The Process Review Team will recommend that the Office of the General Counsel send a closure letter to the participants if the team finds that:

1. The case involves issues or concerns that fall outside the jurisdiction of the Commission,
2. The relief sought cannot be provided by the Commission,
3. The basis of the complaint is an objection to current statutes, rules, company tariffs, or orders of the Commission, or
4. It does not appear that a violation of applicable statutes, rules, company tariffs, or orders of the Commission occurred.

(d) Once the closure letter has been sent, the case will be closed.

(8) Informal Conference.

(a) If the Process Review Team identifies a complaint for an informal conference, Division of Service, Safety and Consumer Assistance staff will notify the company and provide to the customer a Dispute Resolution Form PSC/SSC 010 (01/04), incorporated herein by reference, via certified mail. The customer shall return the completed Dispute Resolution Form PSC/SSC 010 to the Division of Service, Safety and Consumer Assistance postmarked within 15 working days after the date of its being sent to the customer. If the completed Dispute Resolution Form PSC/SSC 010 is not received from the customer with a postmark within the required 15 working days, the customer's complaint will be closed at that point. If the Dispute Resolution Form is completed and returned by the customer, Commission staff will provide a copy to the company.

(b) A customer's completed Dispute Resolution Form PSC/SSC 010 shall consist of:

1. A statement describing the facts that give rise to the complaint and, to the extent known, an explanation of why the basis of the complaint may be a violation of the applicable statutes, rules, company tariffs, or orders of the Commission. The statements filed by the customer should not raise any new issues not addressed in the initial complaint.

2. A statement of the issues to be resolved.

3. Any dollar amount in dispute.

4. A statement of the relief requested.

(c) Any participant may file additional information, documentation, or arguments; however, such additional information, documentation or arguments shall be limited to the issues from the customer's original complaint which are identified in the customer's Dispute Resolution Form PSC/SSC 010.

(d) When an informal conference is scheduled, the presiding staff member appointed to conduct the conference shall not have participated in the proposed resolution of the complaint. The appointed staff shall be comprised of a representative of the Division of Service, Safety and Consumer Assistance staff, an attorney from the Office of the General Counsel, and a staff member from appropriate technical staff. The representative from the Division of Service, Safety and Consumer Assistance will preside at the informal conference.

(e) After receiving the Dispute Resolution Form from the customer, Commission staff will send a written notice to the participants setting forth the unresolved issues, the procedures to be followed at the informal conference, and the dates by which written materials are to be filed. A company may at this time respond to information contained on the customer's

Dispute Resolution Form. Each participant may be represented at the informal conference by an attorney or other representative or may represent himself. Each participant shall be responsible for his own expenses in the handling of the complaint. The conference may be held no sooner than ten days following a notice, unless all participants agree to an earlier date.

(f) At the conference, the participants shall have the opportunity to present information, orally or in writing, in support of their positions. During the conference, staff may encourage the parties to resolve the dispute. The Commission staff will be responsible for tape-recording, but not transcribing, the informal conference. A participant may arrange for transcription at his own expense.

(g) If a settlement is not reached within 20 working days following the informal conference and if the complaint is not withdrawn, staff shall submit a recommendation to the Commission for consideration at the next available Commission Conference. Copies of the recommendation shall be sent to the participants by the Office of the General Counsel.

(h) The Commission will address the matter by issuing a notice of proposed agency action or by setting the matter for hearing pursuant to Section 120.57, Florida Statutes. If the Commission sets the matter for hearing, the participants may be represented by an attorney or a qualified representative as prescribed in Rule 28-106.106, F.A.C., or may represent themselves. Each participant shall be responsible for his own expenses in the handling of the complaint.

(9) Settlement. At any time the participants may agree to settle their dispute. If a settlement is reached, the participants or their representatives shall file with the Division of Service, Safety and Consumer Assistance a written statement to that effect. The statement shall indicate that the settlement is binding on all participants, and that the participants waive any right to further review or action by the Commission. If the complaint has been docketed, the Division of Service, Safety and Consumer Assistance shall submit the settlement to the Commission for approval. If the complaint has not been docketed, the Division of Service, Safety and Consumer Assistance will acknowledge the statement of settlement by letter to the participants.

(10) Record Retention, Reports, and Auditing.

(a) All companies shall retain documentation relating to each Commission complaint for two years after the date the complaint was closed by the Commission.

(b) All companies that participate in the telephone transfer-connect, E-mail transfer or three day complaint resolution options shall file with the Commission's Division of Service, Safety and Consumer Assistance, by the fifth working day of each month a report in tabular form that summarizes the following information for the preceding calendar month:

1. The number of calls handled via telephone transfer-connect, including the date received, customer's name, a brief description of the complaint, and whether the complaint was addressed;

2. The number of complaints handled via E-mail transfer, including the date received, the customer's name, the Commission assigned tracking number, a brief description of the complaint, and whether the complaint was addressed.

3. The number of complaints handled under the three day complaint resolution procedure, including the date received, the customer's name, the Commission assigned filing number, a brief description of the complaint, and whether the complaint was resolved.

(c) Companies shall provide access to the Commission to all such records for audit purposes.

(11) Extensions of Time.

(a) In the event of a storm named by the National Hurricane Center, a tornado recorded by the National Weather Service, a flood, a telephone cable cut, a severe gas or water main break, a major electrical outage, an extreme weather disturbance or fire causing activation of the county emergency operation center, acts of terrorism, or work stoppage, any of which substantially affects its operations and resources, a company may file a notice which will automatically extend by three working days the time for filing responses, forms, reports and other submissions required by this rule. Such notice shall be submitted in writing to the Director of the Division of Service, Safety and Consumer Assistance and shall state a reason for the three day extension. The utility will send one written request that will apply to all complaints or reports pending or received during the extension period. When the company does provide complaint responses or reports containing information on complaints affected by an extension of time, the extension must be noted on the complaint or report. For complaints, the three day extension shall apply to any complaints pending at the time such notification is given and to new complaints received during the extension period.

(b) If the company participates in the transfer connect system described in subsection (4), and the circumstances

described in paragraph (11)(a) affect the operation of the transfer-connect system, the company may establish an alternative, temporary means of transmitting customer concerns from the Commission to the company for handling within the transfer-connect program.

*Specific Authority 350.127(2), 364.0252, 364.19, 366.05, 367.121 FS. Law Implemented 120.54, 120.569, 120.57, 120.573, 364.01, 364.0252, 364.03(1), 364.15, 364.183, 364.185, 364.19, 364.337(5), 366.03, 366.04, 366.05, 367.011, 367.111, 367.121 FS. History–New 1-3-89, Amended 10-28-93, 6-22-00, 1-29-04.*



## **Rule 25-22.032, F.A.C., Customer Complaints**

### **Lower cost regulatory alternatives received by agency**

No lower cost regulatory alternatives were received by the Commission pursuant to paragraph 120.745(5)(c), F.S., for Rule 25-22.032, F.A.C., Customer Complaints.

### **Explanation for rejecting lower regulatory cost alternatives**

Because no lower cost regulatory alternatives were received by the Commission, no lower cost regulatory alternatives were rejected.

### **Rule 25-22.032, F.A.C., Justification Statement**

The Commission intends to retain Rule 25-22.032, F.A.C., Customer Complaints, without amendment, and has no immediate plans to amend or repeal this rule. The compliance economic review for Rule 25-22.032, F.A.C., contains a detailed rule justification section. See pages 82-84 above. The intent of Rule 25-22.032, F.A.C., is to resolve disputes between regulated companies and their customers as quickly, effectively, and inexpensively as possible. As part of an ongoing effort by the Commission to improve service to customers and increase the efficiency of its operations and that of the utilities, the rule has been amended three times since it was adopted in 1989. See page 83 above.

As part of the compliance economic review, surveys were sent to the 287 companies subject to this rule. Based upon the survey responses, the rule is meeting its objectives. The electric investor-owned utilities believe there are many benefits to the rule and did not identify any adverse impacts of the rule either relating to costs or procedure. See pages 85-89 above. The gas companies surveyed were generally positive about the rule, and the rule's benefit of assisting to resolve disputes quickly and efficiently was emphasized. See pages 90-91 above. Survey respondents stated that if the rule were no longer in effect, they would continue addressing customer complaints, and the transactional costs to do so would likely increase. See pages 85-91 above.

The compliance economic review found no adverse impacts regarding economic growth, private sector job creation, employment or private sector investment. The review found that elimination of the rule may cause adverse impacts on these factors, causing costs to increase for some utilities, including the electric investor-owned utilities. See pages 92-93 above. No adverse impacts were found regarding business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity or innovation. The review found that an apparent benefit to the Florida business community is the rule's facilitation of the efficient processing of customer complaints, which may avoid costly litigation or delays in service. See pages 93-94 above. There appear to be no adverse impacts from the rule on small businesses, small counties and small cities. A benefit of the rule for these entities is that business or residential customers have complaints addressed by a third party, possibly avoiding costly litigation or delays in service. See pages 95-96 above.