

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

### -M-E-M-O-R-A-N-D-U-M-

**DATE:** May 22, 2014

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Office of the General Counsel (Gervasi) *PS SMC*  
Office of Accounting and Finance (Bulecza-Banks) *ALM*  
Division of Economics (Rome) *CRW AD J.W.D.*

**RE:** Docket No. 140093-WS – Proposed amendment of Rule 25-30.455, FAC, Staff Assistance in Rate Cases, Rule 25-30.456, FAC, Staff Assistance in Alternative Rate Setting, and Rule 25-30.457, FAC, Limited Alternative Rate Increase.

**AGENDA:** 06/05/14 – Regular Agenda – Rule Proposal – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Brisé

**RULE STATUS:** Proposal May Be Deferred

**SPECIAL INSTRUCTIONS:** None

### Case Background

Rule 25-30.455, Florida Administrative Code (F.A.C.), Staff Assistance in Rate Cases, Rule 25-30.456, F.A.C., Staff Assistance in Alternative Rate Setting, and Rule 25-30.457, F.A.C., Limited Alternative Rate Increase, implement section 367.0814(1), Florida Statutes (F.S.), which authorizes the Commission to establish rules by which a water or wastewater utility whose gross annual revenues are \$250,000 or less may request and obtain staff assistance in changing its rates and charges. Section 367.0814(1) requires the gross annual revenue level for requesting and obtaining such staff assistance to be adjusted on July 1, 2013, and every five years thereafter, based on the most recent cumulative five years of the price index established by the Commission. This recommendation implements the statutory directive to adjust the gross annual revenue level in 2013. The adjustment increases the maximum gross annual revenue level for a water or wastewater utility to qualify for staff assistance in rate proceedings from \$250,000

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to \$275,000, and from \$500,000 to \$550,000 for a utility that provides both water and wastewater service.

The Commission's Notice of Development of Rulemaking was published on April 2, 2014, in Volume 40, Number 64, of the Florida Administrative Register. No rule development workshop was requested, and thus a workshop was not held. The Commission has jurisdiction pursuant to sections 120.54, 350.127(2), 367.0814, and 367.121, F.S.

### **Discussion of Issues**

**Issue 1:** Should the Commission propose the amendment of Rule 25-30.455, F.A.C., Staff Assistance in Rate Cases, Rule 25-30.456, F.A.C., Staff Assistance in Alternative Rate Setting, and Rule 25-30.457, F.A.C., Limited Alternative Rate Increase?

**Recommendation:** Yes, the Commission should propose the amendment of Rules 25-30.455, 25-30.456, and 25-30.457, F.A.C., as set forth in Attachment A of this recommendation. (Gervasi, Bulecza-Banks, Rome)

**Staff Analysis:** A number of the recommended amendments to Rules 25-30.455, 25-30.456, and 25-30.457, F.A.C., set forth in Attachment A are non-substantive and are intended to clarify and better organize the rules. Moreover, certain language contained on page 6, lines 6-9 and on page 16, lines 10-13 of Attachment A should be stricken from the rules pursuant to section 120.545(1)(c), F.S., because it reiterates or paraphrases statutory material. The substantive recommended rule amendments are discussed below.

The recommended rule amendments implement the statutory requirement under section 367.0814(1), F.S., to adjust the gross annual revenue level for requesting and obtaining staff assistance in rate proceedings on July 1, 2013, and every five years thereafter, based on the most recent cumulative five years of the price index established by the Commission. This statutory adjustment increases the maximum gross annual revenue level for a water or wastewater utility to qualify for staff assistance in rate proceedings from \$250,000 to \$275,000, and from \$500,000 to \$550,000 for a utility that provides both water and wastewater service. This adjustment will enable three additional utilities to qualify for staff assistance in rate proceedings. Staff recommends that the Commission should propose to amend Rules 25-30.455, 25-30.456, and 25-30.457, F.A.C., to increase the gross annual operating revenues levels for requesting and obtaining staff assistance in rate proceedings accordingly.

Staff also recommends that Rules 25-30.455, 25-30.456, and 25-30.457, F.A.C., be amended to remove from the Commission's consideration in determining whether to grant or deny an application whether the applicant has complied in a timely manner with all Commission decisions and requests affecting water and wastewater utilities for two years prior to the filing of the application. It has been staff's experience that there are instances in which a qualifying water and/or wastewater utility may need a rate increase in order to be able to afford to comply with all Commission decisions and requests. Moreover, this is a broad consideration that is unnecessary to the determination of whether a rate increase is warranted for a particular applicant, which determination is based on whether the applicant's revenue requirements are sufficient to allow it to earn a fair rate of return on its rate base.

Additionally, staff recommends that Rule 25-30.457, F.A.C., be further amended to remove from the Commission's consideration in determining whether to grant or deny an application for limited alternative rate increase 1) whether the utility has been granted a limited alternative rate increase within three years prior to the receipt of the application; and 2) whether the utility is currently in compliance with any applicable water management district permit conditions concerning rate structure. The removal of these considerations is recommended to afford prospective applicants greater flexibility in the opportunity to participate in this alternative

rate setting option, which is less costly than the staff assisted rate case option under Rule 25-30.455, F.A.C. Moreover, it has been staff's experience that there are instances in which a qualifying water and/or wastewater utility may need a limited alternative rate increase in order to be able to afford to comply with any applicable water management district permit conditions concerning rate structure. Finally, these considerations are unnecessary to the determination of whether a rate increase is warranted, which determination is based on whether the utility's revenue requirements are sufficient to allow it to earn a fair rate of return on its rate base.

#### Statement of Estimated Regulatory Costs

The Florida Administrative Procedure Act encourages an agency to prepare a Statement of Estimated Regulatory Costs (SERC). Section 120.54(3)(b), F.S. An agency must prepare a SERC if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate within one year after implementation of the rule, and shall consider the impact of the rule on small businesses, small counties, and small cities. Id.

Section 120.541(2)(a), F.S., requires a SERC to include an economic analysis showing whether the rule, directly or indirectly, is likely to: 1) have an adverse impact on economic growth, private sector job creation, employment, or investment; 2) have an adverse impact on business competitiveness; or 3) increase regulatory costs in excess of \$1 million in the aggregate within five years after the implementation of the rule. Section 120.541(3), F.S., requires that if the adverse impact or regulatory costs of the rule exceed any of those criteria, the rule shall be submitted to the President of the Senate and Speaker of the House, and may not take effect until it is ratified by the Legislature.

The SERC prepared by staff is included as Attachment B to this recommendation. It indicates that economic growth, private job sector employment, investment, and business competitiveness are not expected to be adversely impacted during the five-year period following implementation of the rules, and that the utilities affected should benefit from the recommended rule revisions. Based on the SERC, the recommended rules will not require legislative ratification.

Attachment B also contains the estimated number of individuals and entities likely to be required to comply with the rules, the estimated cost of implementing and enforcing the rules, the estimated transactional costs likely to be incurred by individuals and entities required to comply with the rules, and an analysis of the impact on small businesses, small counties, and small cities. Section 120.541(2)(b)-(e), F.S., requires that a SERC include these considerations.

For the foregoing reasons, staff recommends that the Commission propose the amendment of Rules 25-30.455, 25-30.456, and 25-30.457, F.A.C., as set forth in Attachment A to this recommendation.

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes, if no requests for hearing or comments are filed, the rule amendments as proposed should be filed for adoption with the Secretary of State and the docket should be closed. (Gervasi)

**Staff Analysis:** Unless comments or requests for hearing are filed, the rules as proposed may be filed with the Secretary of State without further Commission action. The docket may then be closed.

1           **25-30.455 Staff Assistance in Rate Cases.**

2           (1) Water and wastewater utilities whose total gross annual operating revenues are  
3 ~~\$275,000~~ ~~\$250,000~~ or less for water service or ~~\$275,000~~ ~~\$250,000~~ or less for wastewater  
4 service, or ~~\$550,000~~ ~~\$500,000~~ or less on a combined basis, may petition the Commission for  
5 staff assistance in rate applications by submitting a completed staff assisted rate case  
6 application. ~~In accordance with Section 367.0814(4), F.S., a utility that requests staff~~  
7 ~~assistance waives its right to protest by agreeing to accept the final rates and charges approved~~  
8 ~~by the Commission unless the final rates and charges would produce less revenue than the~~  
9 ~~existing rates and charges.~~ If a utility that chooses to utilize the staff assistance option employs  
10 outside experts to assist in developing information for staff or to assist in evaluating staff's  
11 schedules and conclusions, the reasonable and prudent expense will be recoverable through  
12 the rates developed by staff. A utility that chooses not to exercise the option of staff assistance  
13 may file for a rate increase under the provisions of Rule 25-30.443, F.A.C.

14           (2) The appropriate application form, Commission Form PSC/AFD 2-W (11/86),  
15 entitled "Application for Staff Assisted Rate Case," is incorporated into this rule by reference  
16 and is available at: [hyperlink]. ~~Upon request, the Division of Accounting and Finance shall~~  
17 ~~provide the potential applicant with the appropriate application form, Commission Form~~  
18 ~~PSC/AFD 2-W (Rev. 11/86), "Application for Staff Assisted Rate Case", which is~~  
19 ~~incorporated by reference in this rule, and a copy of Rule 25-30.455, F.A.C., governing staff~~  
20 ~~assisted rate cases.~~ The form may also be obtained from the Commission's Division of  
21 Accounting and Finance, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

22           (3) Upon completion of the form, the applicant shall file it with ~~petitioner may return it~~  
23 ~~to~~ the Office of Commission Clerk, Florida Public Service Commission, 2540 Shumard Oak  
24 Boulevard, Tallahassee, Florida 32399-0870.

25           (4) ~~Upon receipt of a completed application, the Office of Commission Clerk shall~~  
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1 acknowledge its receipt, assign a docket number for identification, and shall forward the  
2 application to a committee comprised of one member each of the Commission's Divisions of  
3 Accounting and Finance, Office of Auditing and Performance Analysis, and Office of General  
4 Counsel.

5 ~~(4)(5)~~ Within 30 days of receipt of the completed application, the Commission will  
6 ~~committee shall~~ evaluate the application and determine the applicant's ~~petitioner's~~ eligibility  
7 for staff assistance.

8 (a) If the Commission has received four or more applications in the previous 30 days;  
9 or, if the Commission has 20 or more docketed staff assisted rate cases in active status on the  
10 date the application is received, the Commission will ~~shall~~ deny initial evaluation of an  
11 application for staff assistance and close the docket. When an application is denied under the  
12 provisions of this subsection, the Commission will notify the applicant ~~shall be notified~~ of the  
13 date on which the application may be resubmitted.

14 (b) Initially, determinations of eligibility will ~~may~~ be conditional, pending an ~~actual~~  
15 examination of the condition of the applicant's ~~petitioner's~~ books and records. ~~After an initial~~  
16 ~~determination of eligibility, the Office of Auditing and Performance Analysis committee shall~~  
17 ~~examine the books and records of the utility before making a final determination of eligibility.~~

18 (c) ~~All recommendations of ineligibility shall be in writing and shall state the~~  
19 ~~deficiencies in the application with reference to guidelines set out in subsection (8) of this~~  
20 ~~rule.~~

21 ~~(5)(6)~~ Upon making its final determination of eligibility, the Commission will notify  
22 the applicant in writing as to whether the application is officially accepted or denied. ~~Upon~~  
23 ~~reaching a decision to officially accept or deny the application, the Deputy Executive Director,~~  
24 ~~Technical shall notify the petitioner by letter and initiate staff assistance for the accepted~~  
25 ~~applicant.~~ If the application is accepted, a staff assisted rate case will be initiated. If the

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1 application is denied, the notification of application denial will state the deficiencies in the  
2 application with reference to the criteria set out in subsection (7) of this rule.

3 ~~(6)(7)~~The official date of filing will be 30 days after the date of the written notification  
4 to letter notifying the applicant of the Commission's official acceptance of the application by  
5 the Commission.

6 ~~(7)(8)~~ In determining arriving at a recommendation whether to grant or deny the  
7 application petition, the Commission will consider the following criteria: following shall be  
8 considered:

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

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

14 (c) Whether the applicant petitioner has filed annual reports;

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

16 (e) Whether the applicant petitioner has at least one year of 4-year's actual experience  
17 in utility operation;

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

20 (g) Whether the utility was granted a rate case increase within the 2-year period prior  
21 to the receipt of the application under review. Whether the petitioner has complied in a timely  
22 manner with all Commission decisions and requests affecting water and wastewater utilities  
23 for 2 years prior to the filing of the application under review;

24 (h) Whether the utility has applied for a staff assisted rate case within the 2-year period  
25 prior to the receipt of the application under review.

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1           ~~(8)(9)~~ The Commission will deny the application if the a utility does not remit the  
2 filing fee, as provided by ~~Section 367.145, F.S., and Rule paragraph~~ 25-30.020(2)(f), F.A.C.,  
3 within 30 days after official acceptance.

4           ~~(9)(10)~~ An aggrieved applicant ~~petitioner~~ may request reconsideration of the  
5 application denial, which will ~~shall~~ be decided by the full Commission.

6           ~~(10)(11)~~ A substantially affected person may file a petition to protest the  
7 Commission's proposed agency action in a staff assisted rate case within 21 days of issuance  
8 of the Notice of Proposed Agency Action Order, as set forth in Rule ~~28-106.111~~ 25-22.036,  
9 F.A.C.

10           ~~(11)~~ A petition to protest the Commission's proposed agency action shall conform to  
11 Rule 28-106.201, F.A.C.

12           (12) In the event of a protest of the Commission's Notice of Proposed Agency Action  
13 Order ~~(PAA Order)~~ in a staff assisted rate case, the utility shall:

14           (a) Provide prefiled direct testimony in accordance with the Order Establishing  
15 Procedure ~~procedural order~~ issued in the case. At a minimum, that testimony shall adopt the  
16 Commission's Proposed Agency Action ~~PAA Order~~ in the case;

17           (b) Sponsor a witness to support source documentation provided to the Commission  
18 staff in its preparation of the staff audit, the staff engineering and accounting report and the  
19 staff proposed agency action ~~PAA~~ recommendation in the case;

20           (c) Include in its testimony the necessary factual information to support its position on  
21 any issue that it chooses to take a position different than that contained in the Commission's  
22 Proposed Agency Action ~~PAA Order~~; and

23           (d) Meet all other requirements of the Order ~~E~~ Establishing ~~P~~ procedures.

24           (13) Failure to comply with the dates established in the Order Establishing Procedure  
25 ~~procedural order~~, or to ~~file~~ timely file a request for extension of time for good cause shown,  
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1 may result in dismissal of the staff assisted rate case and closure of the docket.

2 (14) In the event of a protest of the Commission's Proposed Agency Action PAA  
3 Order in a staff assisted rate case, the Commission staff shall:

4 (a) File prefiled direct testimony to explain its analysis in the staff proposed agency  
5 action PAA recommendation. In the event the staff wishes to alter its ~~PAA~~ position on any  
6 issue, it shall provide factual testimony to support its changed position:-

7 (b) Meet all other requirements of the ~~O~~order ~~E~~establishing ~~P~~procedures; and

8 (c) Provide to the utility materials to assist the utility in the preparation of its testimony  
9 and exhibits. This material shall consist of an example of testimony filed by a utility in another  
10 case, an example of testimony that would support the Proposed Agency Action PAA Order in  
11 this case, an example of an exhibit filed in another case, and examples of prehearing  
12 statements and briefs filed in other cases.

13 *Rulemaking Authority 350.127(2),~~367.0814~~ ~~371.0814~~, 367.121 FS. Law Implemented*  
14 *~~367.0814 FS. History—New 12-8-80, Formerly 25-10.180, Amended 11-10-86, 8-26-91, 11-30-~~*  
15 *~~93, 1-31-00, 12-16-08,\_\_\_\_\_.~~*

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1                   **25-30.456 Staff Assistance in Alternative Rate Setting.**

2                   (1) As an alternative to a staff assisted rate case as described in Rule 25-30.455,  
3 F.A.C., water and wastewater utilities whose total gross annual operating revenues are  
4 ~~\$275,000~~ ~~\$250,000~~ or less for water service or ~~\$275,000~~ ~~\$250,000~~ or less for wastewater  
5 service, or ~~\$550,000~~ ~~\$500,000~~ or less on a combined basis, may petition the Commission for  
6 staff assistance in alternative rate setting by submitting a completed staff assisted application  
7 for alternative rate setting.

8                   (2) The appropriate application form, Commission Form PSC/AFD 25 (11/93), entitled  
9 “Application for Staff Assistance for Alternative Rate Setting,” is incorporated into this rule  
10 by reference and is available at: [hyperlink]. ~~Upon request, the Division of Accounting and~~  
11 ~~Finance shall provide the potential applicant with the application form, PSC/AFD 25 (11/93),~~  
12 ~~titled “Application for Staff Assistance for Alternative Rate Setting” which is incorporated by~~  
13 ~~reference in this rule, and a copy of the rules governing Staff Assistance in Alternative Rate~~  
14 ~~Setting.~~ The form may also be obtained from the Commission’s Division of Accounting and  
15 Finance, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

16                   (3) Upon completion of the form, the applicant shall file it with ~~may return it to~~ the  
17 Office of Commission Clerk, Florida Public Service Commission, 2540 Shumard Oak  
18 Boulevard, Tallahassee, Florida 32399-0870.

19                   ~~(4) Upon receipt of an application, the Office of Commission Clerk shall acknowledge~~  
20 ~~its receipt, assign a docket number for identification, and shall forward the application to the~~  
21 ~~Commission’s Division of Accounting and Finance.~~

22                   ~~(4)(5)~~ Within 30 days of receipt of the completed application, the Commission will  
23 ~~Division of Accounting and Finance shall~~ evaluate the application and determine the  
24 applicant’s ~~petitioner’s~~ eligibility for staff assistance.

25                   (a) If the Commission has received four or more alternative rate setting applications in  
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1 the previous 30 days; or, if the Commission has 20 or more docketed staff assisted rate cases  
2 in active status on the date the application is received, the Commission will ~~shall~~ deny initial  
3 evaluation of an application for staff assistance and close the docket. When an application is  
4 denied under the provisions of this subsection, the Commission will notify the applicant ~~shall~~  
5 ~~be notified~~ of the date on which the application may be resubmitted.

6 (b) Determinations of eligibility will ~~may~~ be conditional, pending an ~~actual~~  
7 examination of the condition of the applicant's ~~petitioner's~~ books and records.

8 ~~(e) All recommendations of ineligibility shall be in writing and shall state the~~  
9 ~~deficiencies in the application with reference to guidelines set out in subsection (8) of this~~  
10 ~~rule.~~

11 ~~(5)(6) Upon making its final determination of eligibility, the Commission will notify~~  
12 ~~the applicant in writing as to whether the application is officially accepted or denied. Upon~~  
13 ~~reaching a decision to officially accept or deny the application, the Deputy Executive Director,~~  
14 ~~Technical shall notify the applicant by letter and initiate staff assistance for the accepted~~  
15 ~~applicant. If the application is accepted, staff assistance in alternative rate setting will be~~  
16 ~~initiated. If the application is denied, the notification of application denial will state the~~  
17 ~~deficiencies in the application with reference to the criteria set out in subsection (7) of this~~  
18 ~~rule.~~

19 ~~(6)(7) The official date of filing will be 30 days after the date of the written~~  
20 ~~notification to the applicant of the Commission's official acceptance of the application by the~~  
21 ~~Commission.~~

22 ~~(7)(8) In determining ~~deciding~~ whether to grant or deny the application, the~~  
23 ~~Commission will consider the following criteria: following shall be considered:~~

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

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1           (b) Whether the applicant's books and records are organized consistent with Rule 25-  
2 30.110, F.A.C., so as to allow Commission personnel to verify costs and other relevant factors  
3 within the 30-day time frame set out in this rule;

4           (c)(b) Whether the applicant has filed annual reports;

5           (d)(e) Whether the applicant has paid applicable regulatory assessment fees;

6           (e)(d) Whether the applicant has at least one year of 1-year's actual experience in  
7 utility operation;

8           (f)(e) Whether the applicant has filed additional relevant information in support of  
9 eligibility, together with reasons why the information should be considered; and

10           (f) ~~Whether the applicant has made a good faith effort in a timely manner to comply~~  
11 ~~with all Commission decisions and requests affecting water and wastewater utilities for 2~~  
12 ~~years prior to the filing of the application under review;~~

13           (g) Whether the utility was ~~has been~~ granted a rate case increase ~~staff assisted rate case~~  
14 ~~or alternative rate setting~~ within the 2-year period prior to the receipt of the application under  
15 review.

16           (8)(9) The Commission will ~~shall~~ deny the application if the ~~a~~ utility does not remit the  
17 filing fee, as provided by ~~Section 367.145, F.S., and paragraph~~ Rule 25-30.020(2)(f), F.A.C.,  
18 within 30 days after official acceptance.

19           (9)(10) An aggrieved applicant may request reconsideration of the application denial,  
20 which will ~~shall~~ be decided by the full Commission.

21           (10)(11) The Commission will ~~shall~~, for the purposes of determining the amount of  
22 rate increase, if any, compare the operation and maintenance expenses (O & M) of the utility  
23 to test year operating revenues. The Commission will ~~shall~~ consider an allowance for return on  
24 working capital using the one-eighth of O & M formula approach.

25           (11)(12) The Commission will ~~shall~~ limit the maximum increase in operating revenues  
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1 to 50 percent of test year operating revenues.

2 ~~(12)(13)~~ The Commission will ~~shall~~ vote on a proposed agency action ~~(PAA)~~  
3 recommendation establishing rates no later than 90 days from the official filing date as  
4 established in subsection (6) of this rule. ~~25-30.455(7), F.A.C.~~

5 ~~(13)(14)~~ A substantially affected person may file a petition to protest the  
6 Commission's Proposed Agency Action PAA Order regarding a staff assisted alternative rate  
7 setting application within 21 days of issuance of the Notice of Proposed Agency Action Order,  
8 as set forth in Rule 28-106.111 ~~28-106.201~~, F.A.C.

9 (14) A petition to protest the Commission's proposed agency action shall conform to  
10 Rule 28-106.201, F.A.C.

11 (15) In the event of protest of the Proposed Agency Action PAA Order by a  
12 substantially affected person party, the rates established in the Proposed Agency Action PAA  
13 Order may be implemented on a temporary basis, subject to refund with interest in accordance  
14 with Rule 25-30.360, F.A.C. At that time, the utility may elect to pursue rates set pursuant to  
15 the rate base determination provisions of Rule 25-30.455, F.A.C.

16 (16) In the event of a protest, the maximum increase established in subsection (11) of  
17 this rule ~~(13) above~~ shall no longer apply.

18 (17) In the event of a protest of the Commission's Proposed Agency Action PAA  
19 Order in a staff assisted alternative rate setting application, the utility shall:

20 (a) Provide prefiled direct testimony in accordance with the Order Establishing  
21 Procedure ~~procedural order~~ issued in the case. At a minimum, that testimony shall adopt the  
22 Commission's Proposed Agency Action PAA Order ~~in the case~~;

23 (b) Sponsor a witness to support source documentation provided to the Commission  
24 staff in its preparation of the staff engineering and accounting analysis and the staff proposed  
25 agency action PAA recommendation in the case;

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1 (c) Include in its testimony the necessary factual information to support its position on  
2 any issue that it chooses to take a position different than that contained in the Commission's  
3 Proposed Agency Action PAA Order; and

4 (d) Meet all other requirements of the Oorder Eestablishing Pprocedures.

5 (18) Failure to comply with the dates established in the Order Establishing Procedure  
6 ~~procedural order~~, or to timely file a request for extension of time for good cause shown, may  
7 result in dismissal of the staff assisted alternative rate setting application and closure of the  
8 docket.

9 (19) In the event of protest of the Commission's Proposed Agency Action PAA Order  
10 in a staff assisted alternative rate setting application, the Commission staff shall:

11 (a) File prefiled direct testimony to explain its analysis in the proposed agency action  
12 ~~PAA~~ recommendation. In the event the staff wishes to alter its ~~PAA~~ position on any issue, it  
13 shall provide factual testimony to support its changed position; :

14 (b) Meet all other requirements of the Oorder Eestablishing Pprocedures; and

15 (c) Provide to the utility materials to assist the utility in the preparation of its testimony  
16 and exhibits. This material shall consist of an example of testimony filed by a utility in another  
17 case, a sample of testimony that would support the Proposed Agency Action PAA Order in  
18 this case, an example of an exhibit filed in another case, and examples of prehearing  
19 statements and briefs filed in other cases.

20 *Rulemaking Authority 350.127(2), 367.0814, 367.121 FS. Law Implemented 367.0814 FS.*

21 *History—New 11-30-93, Amended 1-31-00, 12-16-08, \_\_\_\_\_.*

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1           **25-30.457 Limited Alternative Rate Increase.**

2           (1) As an alternative to a staff assisted rate case as described in Rules 25-30.455,  
3 F.A.C., or to staff assistance in alternative rate setting as described in Rule ~~and~~ 25-30.456,  
4 F.A.C., water utilities whose total gross annual operating revenues are \$275,000 ~~\$250,000~~ or  
5 less for water service and wastewater utilities whose total gross annual operating revenues are  
6 \$275,000 ~~\$250,000~~ or less for wastewater service may petition the Commission for a limited  
7 alternative rate increase of up to 20 percent applied to metered or flat recurring rates of all  
8 classes of service by filing with the Office of Commission Clerk ~~submitting a completed~~  
9 ~~application that includes~~ the information required by subsections (7), (8) and (9) of this rule.  
10 ~~In accordance with Section 367.0814(6), F.S., a utility that requests staff assistance waives its~~  
11 ~~right to protest by agreeing to accept the final rates and charges approved by the Commission~~  
12 ~~unless the final rates and charges would produce less revenue than the existing rates and~~  
13 ~~charges. The original and two copies of the application shall be filed with the Office of~~  
14 ~~Commission Clerk.~~

15           ~~(2) Upon filing a petition for a limited alternative rate increase, the utility shall mail a~~  
16 ~~copy of the petition to the chief executive officer of the governing body of each municipality~~  
17 ~~and county within the service areas included in the rate request and retain a copy at the~~  
18 ~~utility's business office.~~

19           ~~(2)(3)~~ Within 30 days of receipt of the completed petition application, the Commission  
20 will ~~Division of Accounting and Finance~~ shall evaluate the petition application and determine  
21 the petitioner's eligibility for a limited alternative rate increase.

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

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

1           ~~(4) Upon reaching a decision to officially accept or deny the application, the Deputy~~  
2 ~~Executive Director, Technical shall notify the petitioner by letter. If the application is~~  
3 ~~accepted, the Director will initiate limited alternative rate setting. If the application is denied,~~  
4 ~~the letter shall state the reasons for denial.~~

5           (4)(5) The official date of filing will be 30 days after the date of the written  
6 notification to the petitioner of the Commission's official acceptance of the petition  
7 application by the Commission.

8           (5) In determining whether to grant or deny the petition, the Commission will consider  
9 the following criteria:

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

12           (b) Whether the petitioners' books and records are organized consistent with Rule 25-  
13 30.110, F.A.C, so as to allow Commission personnel to verify costs and other relevant factors  
14 within the 30-day time frame set out in this rule;

15           (c) Whether the petitioner has filed annual reports;

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

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

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

20           (g) Whether the utility was granted a rate case increase within the 2-year period prior  
21 to the receipt of the petition under review;

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

25           ~~(6) A utility described in subsection (1) will qualify for limited alternative rate setting~~

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1 if it satisfies the following criteria:

2 (a) ~~The petitioner has filed all annual reports required by subsection 25-30.110(3),~~  
3 ~~F.A.C.;~~

4 (b) ~~The petitioner has paid applicable regulatory assessment fees as required by Rule~~  
5 ~~25-30.120, F.A.C.;~~

6 (c) ~~The petitioner has at least 1 year's actual experience in utility operation;~~

7 (d) ~~The petitioner has complied in a timely manner with all Commission decisions~~  
8 ~~affecting water and wastewater utilities for 2 years prior to the filing of the application under~~  
9 ~~review;~~

10 (e) ~~The utility has not been granted a staff assisted rate case pursuant to Rule 25-~~  
11 ~~30.455, F.A.C., or a staff assisted alternative rate setting pursuant to Rule 25-30.456, F.A.C.,~~  
12 ~~within the 2-year period prior to the receipt of the application under review;~~

13 (f) ~~The utility has not been granted a limited alternative rate increase pursuant to this~~  
14 ~~rule within the 3-year period prior to the receipt of the application under review;~~

15 (g) ~~The utility is currently in compliance with any applicable water management~~  
16 ~~district permit conditions concerning rate structure; and~~

17 (h) ~~A final order in a rate proceeding that established the utility's rate base, capital~~  
18 ~~structure, annual operating expenses and revenues has been issued for the utility within the 7-~~  
19 ~~year period prior to the receipt of the application under review.~~

20 ~~(6)(7)~~ The Commission will ~~shall~~ deny the petition ~~application~~ if the ~~a~~ petitioner does  
21 not remit the filing fee, as provided by ~~Section 367.145, F.S., and paragraph Rule 25-~~  
22 ~~30.020(2)(f), F.A.C., within 30 days after official acceptance of the~~ petition application.

23 ~~(7)(8)~~ Each petitioner for limited alternative rate increase shall provide the following  
24 general information to the Commission:

25 (a) The name of the utility as it appears on the utility's certificate and the address of  
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existing law.

1 the utility's principal place of business; and

2 (b) The type of business organization under which the utility's operations are  
3 conducted: ~~if the petitioner is a corporation, the date of incorporation and the names and~~  
4 ~~addresses of all persons who own 5 percent or more of the petitioner's stock; if the petitioner~~  
5 ~~is not a corporation, the names and addresses of the owners of the business.~~

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

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

10 ~~(8)(9)~~ The petitioner shall provide a schedule showing:

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

13 (b) Current and proposed rates for all classes of customers.

14 ~~(9)(10)~~ The petitioner shall provide a statement that the figures and calculations upon  
15 which the change in rates is based are accurate and that the change will not cause the utility to  
16 exceed its last authorized rate of return on equity.

17 ~~(10)(11)~~ A financial or engineering audit of the utility's financial or engineering books  
18 and records shall not be required in conjunction with the petition application under review.

19 ~~(11)(12)~~ The petition application will be approved, denied, or approved with  
20 modifications within 90 days from the official filing date as established in subsection (4) of  
21 this rule ~~(5) above~~.

22 ~~(12)(13)~~ ~~In consideration of subsections (11) and (12), the utility agrees to hold~~ Any  
23 revenue increase granted under the provisions of this rule shall be held subject to refund with  
24 interest in accordance with Rule 25-30.360, F.A.C., for a period of 15 months after the filing  
25 of the utility's annual report required by Rule 25-30.110, F.A.C., Section 367.121, F.S., for the  
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1 year the adjustment in rates was implemented.

2 ~~(13)~~(14) To insure overearnings will not occur due to the implementation of this rate  
3 increase, the Commission will conduct an earnings review of the utility's annual report to  
4 determine any potential overearnings for the year the adjustment in rates was implemented.

5 ~~(14)~~(15) If, within 15 months after the filing of a utility's annual report ~~required by~~  
6 ~~Section 367.121, F.S.~~, the Commission finds that the utility exceeded the range of its last  
7 authorized rate of return on equity after an adjustment in rates, as authorized by this rule, was  
8 implemented within the year for which the report was filed, such overearnings, up to the  
9 amount held subject to refund, with interest, shall be disposed of for the benefit of the  
10 customers. ~~as provided in Section 367.081(4)(d), F.S.~~

11 ~~(15)~~(16) In the event of a protest of the ~~P~~roposed ~~A~~gency ~~A~~ction (~~PAA~~) ~~O~~rder  
12 pursuant to Rule ~~28-106.111~~ ~~28-106.201~~, F.A.C., by a substantially affected person other than  
13 the utility, unless the Proposed Agency Action ~~PAA~~ Order proposes a rate reduction, the  
14 utility may implement the rates established in the Proposed Agency Action ~~PAA~~ Order on a  
15 temporary basis subject to refund with interest in accordance with Rule 25-30.360, F.A.C.,  
16 upon the utility filing a staff assisted rate case application pursuant to Rule 25-30.455, F.A.C.,  
17 within 21 days of the date the protest is filed.

18 ~~(16)~~(17) In the event of a protest, the limit on the maximum increase provided in  
19 subsection (1) of this rule ~~above~~ shall no longer apply.

20 ~~(17)~~(18) If the utility fails to file a staff assisted rate case application within 21 days in  
21 the event ~~of there is~~ a protest, the petition ~~application~~ for a limited alternative rate increase  
22 will be deemed withdrawn.

23 *Rulemaking Authority 350.127(2), 367.0814, 367.121 FS. Law Implemented 367.0814 FS.*  
24 *History—New 3-15-05, Amended 12-16-08,\_\_\_\_\_.*

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State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

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**DATE:** May 5, 2014  
**TO:** Rosanne Gervasi, Senior Attorney, Office of the General Counsel  
**FROM:** C. Donald Rome, Jr., Public Utility Analyst II, Division of Economics *CR*  
**RE:** Statement of Estimated Regulatory Costs for Proposed Amendments to Rules 25-30.455, 25-30.456, and 25-30.457, Florida Administrative Code (F.A.C.)

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Section 367.0814, Florida Statutes (F.S.), was amended during the 2008 legislative session to require that staff assistance in ratemaking be offered to water and wastewater utilities that have annual revenues of \$250,000 or less or \$500,000 or less on a combined water and wastewater basis. The statute also requires that the annual revenue threshold level be adjusted every five years based on the most recent cumulative five years of the price index established by the Commission pursuant to Paragraph 367.081(4)(a), F.S. The recommended rule revisions implement the changes to the eligibility requirements for staff assistance in rate cases in conformance with statute. The effect of the recommended changes would be to raise the threshold level for eligibility to \$275,000 or less or \$550,000 or less on a combined basis in the total gross annual operating revenues for a water or wastewater utility. As a result, this would enable three additional utilities to qualify for staff assistance in rate proceedings. As noted in the attached Statement of Estimated Regulatory Costs (SERC), the amended rules would be applicable overall to 116 utilities.

Rule 25-30.455, F.A.C., Staff Assistance in Rate Cases, defines the eligibility requirements for a water or wastewater utility to qualify for a Staff Assisted Rate Case (SARC). The recommended rule revisions increase the threshold amount of total gross annual operating revenues to \$275,000 or \$550,000 on a combined basis. Procedural sections of the rule establish procedures for a utility to apply for a SARC, the conditions under which a SARC will be conducted, and the time frame for the determination of the rendering of assistance. Editorial changes being recommended for the procedural sections of the rule are for purposes of clarification and are non-substantive.

Rule 25-30.456, F.A.C., Staff Assistance in Alternative Rate Setting, defines the eligibility requirements for a water or wastewater utility to qualify for staff assistance in alternative rate setting. The alternative rate setting process is less detailed than that conducted for a SARC and limits the maximum increase in operating revenues to 50 percent of test year operating revenues. The recommended rule revisions increase the eligibility threshold amount of total gross annual operating revenues to \$275,000 or \$550,000 on a combined basis. Procedural sections of the rule establish procedures for a utility to apply for an alternative rate setting evaluation, the conditions under which it will be conducted, and the time frame for the

determination of the rendering of assistance. Editorial changes being recommended for the procedural sections of the rule are for purposes of clarification and are non-substantive.

Rule 25-30.457, Limited Alternative Rate Increase, allows for a limited alternative procedure to a SARC. This procedure is less detailed than that conducted for a SARC and may allow for a limited alternative rate increase of up to 20 percent applied to metered or flat recurring rates of all classes of service. The recommended rule revisions increase the eligibility threshold amount of total gross annual operating revenues to \$275,000 or \$550,000 on a combined basis. Procedural sections of the rule establish procedures for a utility to apply for a limited alternative rate increase, the conditions under which the evaluation will be conducted, and the time frame for the determination of the rendering of assistance. Changes to the procedural sections of the rule are being recommended to afford prospective applicants greater flexibility in the opportunity to participate in this alternative rate setting option that is less costly than a SARC.

The utilities affected by the recommended rule revisions potentially may achieve cost savings as a result of lower rate case expenses. No workshop was requested in conjunction with the recommended rule revisions. No regulatory alternatives were submitted pursuant to Paragraph 120.541(1)(a), F.S. None of the impact/cost criteria established in Paragraph 120.541(2)(a), F.S., will be exceeded as a result of the recommended revisions.

cc: (Draper, Daniel, Dean, Bulecza-Banks, Maurey, Cibula, SERC file)

FLORIDA PUBLIC SERVICE COMMISSION  
STATEMENT OF ESTIMATED REGULATORY COSTS  
Sections 25-30.455, 456, 457, F.A.C.

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

Yes

No

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

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

Yes

No

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

A. Whether the rule directly or indirectly:

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

Economic growth

Yes  No

Private-sector job creation or employment

Yes  No

Private-sector investment

Yes  No

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

Business competitiveness (including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets)

Yes  No

Productivity

Yes  No

Innovation

Yes  No

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

Yes  No

Economic Analysis: The affected entities should benefit from the recommended rule changes. A summary of the recommended rule revisions is included in the attached memorandum to Counsel.

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

(1) The number of individuals and entities likely to be required to comply with the rule.  
116; three of which will be able to take advantage of the revised revenue thresholds.

(2) A general description of the types of individuals likely to be affected by the rule.  
The affected entities are investor-owned water and wastewater utilities.

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

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

- None. To be done with the current workload and existing staff.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

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

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

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

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

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

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

If the recommended rule revisions are adopted, the affected utilities potentially may achieve cost savings as a result of lower rate case expenses.

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

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

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

(2) A "Small City" is defined by Section 120.52, F.S., as any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census. A "small county" is defined by Section 120.52, F.S., as any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

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

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

- None.

Additional Information:

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

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