

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: December 4, 2014

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Gervasi) *OGC*
Division of Economics (Rome) *JWD*
Division of Engineering (King, Rieger, Hill) *HR*
Office of Industry Development and Market Analysis (Bloom, Dowds) *TJB* *HB* *MA*

RE: Docket No. 140205-WS – Proposed adoption of Rule 25-30.091, F.A.C., Petition to Revoke Water Certificate of Authorization, and proposed amendment of Rule 25-30.440, F.A.C., Additional Engineering Information Required of Class A and B Water and Wastewater Utilities in an Application for Rate Increase.

AGENDA: 12/18/14 – Regular Agenda – Rule Proposal – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

RULE STATUS: Proposal Should Not Be Deferred

SPECIAL INSTRUCTIONS: None

Case Background

During the 2014 Legislative Session, the Florida Legislature enacted Senate Bill 272, which created Section 367.072, Florida Statutes (F.S.), Petition to revoke certificate of authorization, and Section 367.0812, F.S., Rate fixing; quality of water service as criterion. Those laws became effective on July 1, 2014.

Section 367.072, F.S., provides a process by which the Commission may revoke a water utility's certificate of authorization if, after at least 65 percent of the utility's customers file a petition for revocation, the Commission finds that revocation is in the best interest of the customers in accordance with that section. Section 367.072(6), F.S., requires the Commission to

adopt rules to implement the section. To implement Section 367.072, F.S., staff is recommending that the Commission propose to adopt Rule 25-30.091, Florida Administrative Code (F.A.C.), Petition to Revoke Water Certificate of Authorization.

Section 367.0812, F.S., requires that in fixing just, reasonable, compensatory, and not unfairly discriminatory rates, the Commission shall consider the extent to which a water utility provides service that meets secondary water quality standards as established by the Department of Environmental Protection (DEP). This section prescribes what the Commission must consider in determining whether a utility meets these standards. Section 367.0812(1)(c), F.S., requires the Commission to consider “[c]omplaints regarding the applicable secondary water quality standards filed by customers with the [C]ommission, the [DEP], the respective local governmental entity, or a county health department during the past 5 years.” Section 367.0812(5), F.S., requires the Commission to adopt rules to implement the section. Therefore, staff is recommending that the Commission propose to amend Rule 25-30.440, F.A.C., Additional Engineering Information Required of Class A and B Water and Wastewater Utilities in an Application for Rate Increase, to require that when a utility applies for a rate increase, it must provide a copy of all customer complaints that it has received regarding DEP secondary water quality standards during the past five years.¹

The Commission’s Notice of Development of Rulemaking was published on September 19, 2014, in Volume 40, Number 183, of the Florida Administrative Register. A rule development workshop was held on October 7, 2014. Participants included utility representatives, the Office of Public Counsel (OPC), the Florida Rural Water Association, and Ballard Partners. A first round of post-workshop comments were submitted on October 17, 2014. Staff thereafter provided updated rule drafts to the participants incorporating several of the suggestions received in the post-workshop comments, and provided interested persons an opportunity to file further written comments on the updated rule drafts. Further written comments were submitted on October 30 and 31, 2014.

Section 120.54(1)(b), F.S., requires executive branch agencies to propose rules within 180 days after the effective date of new legislation requiring implementation by agency rules. Although the Commission is not an executive branch agency, we still strive to meet the 180-day deadline, which in this instance is December 29, 2014. The Commission has jurisdiction pursuant to sections 120.54, 350.127(2), 367.072(6), 367.0812(5) and 367.121, F.S.

¹ Rule 25-30.443, F.A.C., Minimum Filing Requirements for Class C Water and Wastewater Utilities, requires Class C utilities seeking a rate increase to submit an application which contains, among other things, the information required by Rule 25-30.440, F.A.C. Thus, Rule 25-30.440, F.A.C., applies to all water and wastewater utilities seeking a rate increase.

Discussion of Issues

Issue 1: Should the Commission propose to adopt Rule 25-30.091, F.A.C., Petition to Revoke Water Certificate of Authorization, and amend Rule 25-30.440, F.A.C., Additional Engineering Information Required of Class A and B Water and Wastewater Utilities in an Application for Rate Increase?

Recommendation: Yes, the Commission should propose to adopt Rule 25-30.091, F.A.C., and amend Rule 25-30.440, F.A.C., as set forth in Attachment A. (Gervasi, Dowds, Bloom, King, Rieger, Hill, Rome)

Staff Analysis:

I. Proposed Adoption of Rule 25-30.091, F.A.C.

Staff has drafted Rule 25-30.091, F.A.C., to implement the statutory requirements contained in newly enacted Section 367.072, F.S., which authorizes the Commission to revoke a water utility's certificate of authorization if, after the utility's customers file a petition for revocation, the Commission finds that revocation is in the best interest of the customers in accordance with that section. The draft rule is included within Attachment A to this recommendation. A summary of the provisions of draft Rule 25-30.091 is as follows.

A. Paragraph (1)

Paragraph (1) of draft Rule 25-30.091 sets forth the purpose of the rule, which is to establish a process by which customers may petition for revocation of their water utility's certificate pursuant to Section 367.072, F.S.

B. Paragraph (2)

Paragraph (2) references the prohibition against petitioning for revocation contained in newly enacted Section 367.0812, F.S., which is further discussed below under the heading "Proposed Amendment of Rule 25-30.440, F.A.C." Section 367.0812(3), F.S., provides that "[n]otwithstanding s. 367.072, customers may not petition the [C]ommission to revoke the certificate of authorization of a utility if it is the subject of a proceeding under [Chapter 367, F.S.]." In its written comments submitted October 31, 2014, OPC expressed concern that an earlier draft of Rule 25-30.091 disseminated prior to the workshop did not define the type of proceedings under Chapter 367, F.S., that would prevent the filing of a petition. OPC opined that because Section 367.0812, F.S., is entitled "Rate fixing; quality of water service as criterion," the rule should include language that clarifies that a proceeding as contemplated in Section 367.0812(3), F.S., means a rate proceeding in which quality of water service issues are addressed. Staff agrees. Therefore, Paragraph (2) clarifies the types of pending proceedings under Chapter 367, F.S., that would prohibit the filing of a customer petition for revocation to include "any rate proceeding in which quality of water service is addressed, such as a general rate proceeding under Section 367.081, F.S., a staff assisted rate proceeding under Section 367.0814, F.S., or a limited proceeding under Section 367.0822, F.S."

Paragraph (2) further clarifies when a utility is considered to be the subject of a proceeding under Chapter 367, F.S., by stating that “[a] general rate proceeding under Chapter 367, F.S., is initiated upon the utility’s filing of a request for approval of a test year pursuant to Rule 25-30.430, F.A.C. Other rate proceedings under Chapter 367, F.S., are initiated upon the utility’s filing of an application for rate relief.” There is disagreement between the utilities represented at the workshop and OPC concerning this language. The disagreement arises from the Section 367.0812(3) prohibition against customers petitioning for revocation if the utility is the subject of a Chapter 367, F.S., proceeding, coupled with the converse prohibition contained in Section 367.072(3), F.S., which provides that “[i]f [a] petition [for revocation] is in compliance with this section and the issues identified within the petition support a reasonable likelihood that the utility is failing to provide quality of water service, the utility shall thereafter be prohibited from filing a rate case until the [C]ommission has issued a final order addressing the issues identified in the petition.”

Utilities, Inc. agrees with the draft language of Paragraph (2), and in written comments filed November 4, 2014, U.S. Water Services Corp. supports Utilities, Inc.’s comments. In post-workshop comments filed October 17, 2014, Utilities, Inc. argues that because a utility is prohibited from filing a rate case once a threshold determination on a petition for revocation has been made, a rate case must be considered filed when it is docketed, which is when the utility files its request for approval of a test year. It argues that customer comments or concerns about water quality can be raised in the normal course and under normal procedures in the rate case.

At the workshop, Utilities, Inc. clarified that if a proceeding is not considered initiated upon the utility’s filing of a request for approval of a test year, but instead at a later time, such as when the Chairman issues a test year approval letter, or when the official date of filing is established, customers could thereby respond to the utility’s request for approval of a test year by filing a petition for revocation in order to delay a potential rate increase until after the Commission issues a final order resolving the petition pursuant to Section 367.072(3), F.S. It argues that this is a huge issue because there is no statutory deadline for issuing a final order on a petition for revocation, and during the pendency of the petition for revocation proceeding, the utility’s constitutional right to have an opportunity to earn a fair return on its investment by filing for a rate increase is taken away. See workshop transcript pp. 16-21.

In its written comments filed October 31, 2014, OPC argues that Section 367.021(9), F.S., defines the “official date of filing” as being “the date upon which it has been determined, pursuant to s. 367.083, by the [C]ommission that the utility has filed with the clerk the minimum filing requirements as established by rule of the [C]ommission.” OPC is concerned that Paragraph (2) creates a conflicting definition of the official commencement date for rate proceedings which has already been defined by statute. OPC also expresses concern that Paragraph (2) would allow a utility to circumvent the customers’ petition by merely filing a request for approval of a test year upon receipt of a customer letter of intent to file a petition for revocation filed pursuant to Paragraph (3) of the draft rule, explained below.

Staff agrees with Utilities, Inc.’s comments on this issue. Section 367.0812(3), F.S., prohibits customers from petitioning for revocation if the utility is the subject of a Chapter 367, F.S., proceeding. The “official date of filing” is the date upon which the utility satisfies its

minimum filing requirements for a rate proceeding. Depending on the number of deficiencies identified in the initial filing, the “official date of filing” may be months after the utility files its initial minimum filing requirements. The “official date of filing” begins the statutory timeframe within which the Commission must take action on a rate proceeding pursuant to Section 367.081, F.S. It does not establish when a utility becomes the subject of the rate proceeding. A utility becomes the subject of a rate proceeding when the proceeding is docketed. General rate proceedings are docketed when the utility files a request for approval of a test year, and other rate proceedings are docketed upon the utility’s filing of an application for rate relief.

OPC’s concern that Paragraph (2) would allow a utility to circumvent the customers’ petition by merely filing a request for approval of a test year upon its receipt of a customer letter of intent to file a petition is a concern with the language of Section 367.0812(3), F.S., which the Commission is required by law to implement. Section 367.0812(5), F.S., requires the Commission to “adopt rules to assess and enforce compliance with [Section 367.0812, F.S.]” Nevertheless, in response to this concern, staff notes that Rule 25-30.430(2), F.A.C., sets forth the information a utility must submit in its request for approval of a test year, and that information includes, among other things, “[a] general statement of major plant expansions or changes in operational methods.” Thus, a utility cannot file a request for approval of a test year without substantiating its reason(s) for its intent to file an application for rate increase.

Moreover, Section 367.081(2)(a)1., F.S., requires the Commission to consider quality of service in every rate proceeding. Section 367.0812(1), F.S., requires that in fixing rates, the Commission shall consider whether the utility has satisfied its obligation to provide quality of water service that meets secondary water quality standards as established by the DEP. And Section 367.0812(4), F.S., authorizes the Commission to prescribe penalties for a utility’s failure to adequately resolve each quality of service issue, including:

penalties as provided in s. 367.161, a reduction of return on equity of up to 100 basis points, the denial of all or part of a rate increase for a utility’s system or part of a system if it determines that the quality of water service is less than satisfactory until the quality of water is found to be satisfactory, or revocation of the certificate of authorization pursuant to s. 367.072.

Id. Therefore, quality of service will be at issue in every rate case, regardless of whether the utility files a request for test year approval after the customers file a notice of intent to file a petition for revocation, thereby prohibiting the customers from filing the petition pursuant to Section 367.0812(3), F.S.

C. Paragraphs (3) and (4)

Paragraph (3) requires customers who intend to petition for revocation to file a notice of intent to file the petition, and to advise the Commission of the name and address of their water utility. This paragraph implements Section 367.072(1)(a), F.S. The filing of this information is required because also pursuant to Section 367.072(1)(a), the filing of a notice of intent triggers the requirement for staff to notify the utility of the customers’ intent within 10 days after receipt thereof, which requirement is contained in Paragraph (4).

D. Paragraph (5)

Section 367.072(1)(b), F.S., requires the Commission staff to review the petition and notify the customers within 10 days after receipt thereof that it is sufficient for the Commission to act or that additional information is necessary. Section 367.072(2), F.S., sets forth the information a petition for revocation must contain. Section 367.072(2)(b) requires that the petition must “[b]e signed by at least 65 percent of the customers of the service area covered under the certificate of authorization.” Paragraphs (5) and (6) address that requirement.

Paragraph (5) provides that “[i]n the notification letter to the utility, the Commission staff will request that the utility certify, within 30 days after receipt of the notification letter, the number of water customers the utility serves by counting its service connections, and provide staff with a list of its customers’ names and addresses.”

In its written comments dated October 7, 2014, and filed October 20, 2014, U.S. Water Services Corp. agrees that the Commission should obtain an accurate listing of actual customers from the utility. However, it argues that the Commission should treat customer personal information, such as names and addresses, as confidential in accordance with Commission practice, as evidenced by Order Nos. PSC-02-0356-CFO-EI² and PSC-07-0552-CFO-EI.³ It suggests that the proposed rule should state that this information will be treated as confidential and proprietary without the need to file any such request because the majority of the remaining regulated water utilities are Class B and C, with limited financial and technical expertise to file requests for confidential consideration without the use of an outside attorney.

Staff disagrees that the proposed rule should automatically provide for the confidential treatment of customer personal information. The Commission lacks the statutory authority to include such a provision. Requests for confidentiality are filed pursuant to Section 367.156, F.S., and Rule 25-22.006, F.A.C. Section 367.156(3), F.S., defines proprietary confidential business information as information “which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person’s or company’s business operations, and has not been disclosed. . .” Rule 25-22.006(3), F.A.C., states that “[m]aterial obtained by the Commission or its staff outside of an inquiry [pursuant to Section 350.121, F.S.] shall be subject to inspection and examination pursuant to Section 119.07(1), F.S., unless the utility or other person requests that it be classified as confidential information.” Rule 25-22.006(4)(a)-(e), F.A.C., requires requests for confidential classification to be filed in writing, and sets forth the specific information that such requests must contain. Rule 25-22.006(4)(c) provides that it is the utility’s burden to demonstrate how the information asserted to be confidential qualifies as one of the statutory examples listed in Section 367.156(3), F.S.

² Issued March 15, 2002, in Docket No. 000824-EI, In Re: Review of Florida Power Corporation’s earnings, including effects of proposed acquisition of Florida Power Corporation by Carolina Power & Light (finding customer names and account numbers to be confidential).

³ Issued June 29, 2007, in Docket No. 070245-EI, In Re: Request for confidential treatment of certain information contained in draft report setting forth a review of customer deposit procedures of Florida’s five investor-owned utilities, by Progress Energy Florida, Inc. (finding personal account numbers to be confidential).

Staff notes that in order to curb potential legal expenses, a utility may elect to have a qualified representative file confidentiality requests that may arise from Paragraph (5). Rule 28-106.106(1), F.A.C., states that a party who appears in any agency proceeding has the right to be represented by counsel or by a qualified representative at his or her own expense. The criteria for being designated as a qualified representative is set forth in Rule 28-106.106(4)(a)-(e).

E. Paragraph (6)

Paragraph (6) provides an alternative means by which staff will determine the number of customers the utility serves if the utility fails to certify the number of customers it serves by the date requested in the notification letter. In this event, staff will utilize the number of customers reported by the utility in its most recent annual report to evaluate the sufficiency of the petition.

F. Paragraph (7)

Section 367.072(1)(b), F.S., requires staff to send to the customers “instructions regarding the information required on the petition and the subsequent process the [C]ommission will follow.” Paragraph (7)(a) - (e) sets forth the materials that staff will send to the customers, either upon receipt of the utility’s response to staff’s request to certify the number of customers it serves or upon the expiration of 30 days from the utility’s receipt of that request. Those materials include: the “Instructions for Petitioning for Revocation of Water Certificate” (Paragraph (7)(a)); the petition form (Paragraph (7)(b)); a copy of Section 367.072, F.S. (Paragraph (7)(c)); a copy of the rule implementing Section 367.072, F.S. (Paragraph (7)(d)); and a copy of the state primary and secondary drinking water standards, as contained in DEP Rule 62-550.828, F.A.C. (Paragraph (7)(e)).

The “Instructions for Petitioning for Revocation of Water Certificate” referenced in Paragraph (7)(a) are attached to this recommendation as part of Attachment A, and are incorporated in the draft rule by reference. The Instructions advise customers who file a letter of intent of the number of customers the utility serves and set forth the statutory deadlines applicable to petitions for revocation. Pursuant to Section 367.072(1)(b), those deadlines include that customers have 90 days to file the petition by obtaining the signatures of at least 65 percent of the customer accounts of the utility, and that customers have 30 days to cure any deficiencies in the petition. If those deadlines are not met, that section requires the Commission to dismiss the petition with prejudice and that the customers may not file or refile another petition for one year after the dismissal. The Instructions also advise the customers how to file a petition for revocation and describe the subsequent process the Commission will follow upon receipt of the petition.

Paragraph (7)(b) and the Instructions referenced in Paragraph (7)(a) require the customers to copy and use a particular petition form for the collection of signatures to be submitted to the Commission. Staff will include the utility name and docket number in the title of the petition form before sending it to the customers along with the Instructions and other materials described in Paragraph (7)(a)-(e). The petition form has space for each customer of record to state with specificity each issue they have with the quality of their water service, each time they reported the issue to the utility, and how long each issue has existed, as required by Section 367.072(2)(a), F.S. A sample petition form is incorporated in the draft rule by reference for informational

purposes only, and is attached to this recommendation as part of Attachment A. Paragraph (7)(b) specifies that the sample petition form must not be used for the collection of signatures.

In its comments dated October 31, 2014, OPC argues that the draft rule language of Paragraph (7)(b) is confusing because it requires that the customers must copy and use the petition form for the collection of signatures, yet the last sentence of the paragraph states that the sample petition form must not be used for the collection of signatures. OPC suggests that a sample form should be made available on the Commission's website without the word "sample" written on it, so that customers can copy the form for use in their submission. OPC also suggests that customers should be permitted to submit the necessary signatures and information utilizing a different format or computer program, rather than the specific petition form designed by staff. OPC argues that the ultimate goal should be the receipt of the statutorily required information, not whether a particular form is being used. OPC additionally argues that the statute does not state that the customers must use a form "specified by the agency." Therefore, OPC questions whether the rule can require the use of a specific form.

Staff disagrees that the draft language of Paragraph (7)(b) is confusing. Paragraph (7) clearly states what materials staff will send to customers who file a letter of intent, including the petition form referenced in Paragraph (7)(b). Moreover, Paragraph (7)(b) clearly states that a sample petition form is incorporated in the rule for informational purposes only and that the sample petition form must not be used for the collection of signatures.

Staff also disagrees with OPC's other suggestions regarding Paragraph (7)(b) because of the statutory deadlines required by Section 367.072(1)(b), F.S., including the requirement that the petition must be filed within 90 days after the customers receive the Instructions. The ultimate goal is the receipt of the statutorily required information within the statutorily prescribed timeframe. Requiring the customers to copy and use the petition form that staff sends to them along with the Instructions via Certified Mail, return receipt requested, insures the integrity of the petition process. The date the customers receive the Instructions and petition form will be indicated on the return receipt card, and that date sets the 90-day statutory timeclock required by Section 367.072(1)(b), F.S. Section 367.072(1)(b) also requires staff to "review the petition and notify the customers within 10 days after receipt of the petition that the petition is sufficient for the [C]ommission to act or that additional information is necessary." The petition form seeks the statutorily required information in an orderly format, allows staff to review the petition within the 10-day statutory timeframe, and allows the Commission to track and implement the 90-day statutory deadline for filing the petition. Moreover, Section 367.072(6), F.S., requires the Commission to "adopt by rule the format of and requirements for a petition and may adopt other rules to administer this section." (Emphasis added). This is precisely what the draft petition form is designed to do.

Staff has included language on the bottom of the draft petition form advising customers who sign the petition that they may be asked to testify under oath before the Commission and be subject to cross-examination. OPC suggested the following language be included on the draft form: "By signing this form, you may be called to testify before the Commission to confirm your signature and verify the issues you list above. You may be questioned by the utility or the Commission about your statements and you will be asked to answer truthfully under oath." OPC

believes the use of plain English will make the process less intimidating and easier to understand. OPC also suggested that the petition form should indicate issue numbers on the left side of the boxes, to clarify that customers may identify multiple issues and to ensure that customers include all relevant issues for the Commission's consideration. Staff agrees and has incorporated these suggestions in the draft petition form attached to this recommendation as part of Attachment A. For further clarification, staff has also included the following language on the bottom of the form: "You must identify at least one issue. If you have more than three issues or need more space to state your issue(s), you may add additional pages as needed. You may attach supporting documentation for the issue(s) identified." This language affords customers the flexibility to customize their petition forms by including more information than what will fit on the form itself. Finally, staff has included language advising that "[o]nly one customer for each service address may sign the petition," so that customers will know that only one petition form per service address will count towards the 65% threshold.

G. Paragraph (8)

Paragraph (8)(a)-(c) lists the criteria that must be met for a petition to be deemed sufficient. Paragraph (8)(a) requires each petition form to include the printed name, signature, service address, and telephone number of the customer-signatory. In its comments dated October 7, 2014, and filed October 20, 2014, U.S. Water Services Corp. suggests that if possible, Paragraph (8)(a) should also require the customer account number to be included on the petition form. Staff disagrees with this suggestion. Staff does not need customer account numbers to verify the petition forms, so long as customer names and addresses are provided. Moreover, the inclusion of customer account numbers on petition forms would likely spur the filing of confidentiality requests. As evidenced by Order Nos. PSC-02-0356-CFO-EI and PSC-07-0552-CFO-EI (see footnotes 2 and 3), the Commission has granted requests for confidentiality of customer account numbers in the past.

Pursuant to Section 367.072(2)(a), F.S., Paragraph 8(b) requires each petition form to "state with specificity each issue that the customer-signatory has with the quality of water service provided, each time the issue was reported to the utility, and how long the issue has existed." In its comments dated October 7, 2014, and filed October 20, 2014, U.S. Water Services Corp. suggests that if possible, the customers should also state the date they contacted the utility about their quality of service issue(s). Staff agrees and has included this information on the petition form.

Paragraph (8)(c) requires petition forms to be "completed by at least 65 percent of the utility's customers, as that term is defined in Section 367.072, F.S." Section 367.072 states that "[a]s used in this section, the term 'customer' means an individual whose property is serviced by a single meter or a person whose name appears on the bill for a master meter." Moreover, Section 367.072(2)(b) allows that "[a] person whose name appears on the bill for a master meter may sign a petition if at least 65 percent of the customers, tenants, or unit owners served by the master meter support the petition, in which case documentation of such support must be included with the petition."

In its October 31, 2014, post-workshop comments, OPC argues that those Section 367.072 provisions create an ambiguity as to how to determine whether 65 percent of a utility's

customers support a petition for revocation, which must be addressed in the rule. OPC believes that the appropriate application of the 65 percent threshold would be to give equal weight to all customers who receive water and wastewater service regardless of whether they are individually metered or are served by a master meter. Moreover, OPC argues that an individual whose name appears on a master meter should not be allowed to withhold their signature from the petition if 65 percent of the master metered customers support it because the individual or company in whose name the master meter is billed may not even receive service from the utility.

Staff disagrees that the statute is ambiguous. Section 367.072 clearly states that “an individual whose property is serviced by a single meter or a person whose name appears on the bill for a master meter” is included within the definition of “customer.” This definition does not include persons whose property is serviced by the master meter. Section 367.072(2)(b) clearly allows a person whose name appears on the bill for a master meter to sign a petition if that person includes documentation showing that at least 65 percent of the customers, tenants, or unit owners served by the master meter support the petition. Moreover, Section 367.072(2)(b) states that “[a] person whose name appears on the bill for a master meter may sign a petition if at least 65 percent of the customers, tenants, or unit owners served by the master meter support the petition. . .” (Emphasis added). The statute does not grant the Commission the authority to require the person whose name appears on the bill for a master meter to sign the petition.

H. Paragraph (9)

Pursuant to Section 367.072(1)(b), F.S., Paragraph (9) requires customers to file their completed petition forms with the Clerk’s Office within 90 days after receipt of staff’s instructions. Staff agrees with OPC’s October 31, 2014 comments that there is no need for the customers to provide the utility with a copy of the petition forms. The Commission will notify the utility upon the customers filing a letter of intent, and the utility can download the petition forms from the Commission’s website.

I. Paragraph (10)

Paragraph (10) implements the Section 367.072(1)(b) requirement for staff to “review the petition and notify the customers within 10 days after receipt of the petition that the petition is sufficient for the [C]ommission to act or that additional information is necessary.” The draft rule specifies that such notice will be by letter, that staff will provide a copy of the notice to the utility, and that if the petition is deficient, the notice will specify what additional information is required.

J. Paragraph (11)

Pursuant to Section 367.072(1)(b), Paragraph (11) specifies that customers must file a corrected petition curing the noticed deficiencies within 30 days after receipt of the notice and provide a copy of the cured petition to the utility. This Paragraph also provides that staff will notify the customers by letter as to whether the corrected petition has cured the deficiencies specified in the notice and provide a copy of the letter to the utility. Finally, this Paragraph states that if the customers fail to timely cure the noticed deficiencies, the petition will be dismissed pursuant to Section 367.072(1)(b), F.S. Section 367.072(1)(b) requires the Commission to

dismiss such deficient petitions with prejudice, and prohibits the customers from filing another petition for one year after the dismissal.

K. Paragraphs (12) and (13)

Paragraph (12) states that the utility may file a response to a sufficiently filed petition within 14 days from the staff letter notifying the customers that the petition is sufficient for the Commission to act. Staff believes that the utility should be allowed to respond at this juncture if it so chooses, and to participate at the agenda conference referenced in Paragraph (13), at which the Commission will determine, pursuant to Section 367.072(3), F.S., whether the issues identified in the sufficiently filed petition support a reasonable likelihood that the utility is failing to provide quality water services. If the Commission determines that the issues identified in the petition do support a reasonable likelihood that the utility is failing to provide quality service, Section 367.072(3) further provides that “the utility shall thereafter be prohibited from filing a rate case until the [C]ommission has issued a final order addressing the issues identified in the petition.”

L. Paragraph (14)

In its comments filed October 31, 2014, OPC suggests that the rule should address how the customers can contest or protest a determination that there is no reasonable likelihood that the utility is failing to provide quality water service, and that the rule should explain and clarify the exact process and time deadlines for customers to file a protest. Staff has included Paragraph (14) to address that concern. Paragraph (14) states that:

[i]f the Commission determines that the issues identified in the petition do not support a reasonable likelihood that the utility is failing to provide quality water services, the Commission’s order dismissing the petition will be issued as a proposed agency action. The notice of proposed agency action will give substantially affected persons an opportunity to request a Section 120.569 or 120.57, F.S., hearing on the matter within 21 days after issuance of the notice, pursuant to Rule 25-22.029, F.A.C.

M. Paragraph (15)

If the Commission determines that a sufficiently filed petition identifies issues that support a reasonable likelihood that the utility is failing to provide quality water services, Section 367.072(3)(a) and (b), F.S., prescribes the criteria the utility shall use in preparing a response to the Commission to address the issues and to defend the quality of its water service. Those criteria include the applicable primary and secondary water quality standards and the utility’s relationship with its customers, including each quality of service complaint received, the length of time each customer has been complaining about the service, the resolution of each complaint, and the time it has taken to address such complaints. Section 367.072(4), F.S., requires the Commission to “evaluate the issues identified in the petition, the utility’s response as to whether it is providing quality of water service, and any other factor the [C]ommission deems relevant.”

Section 367.072(5)(a)-(c) requires the Commission to take one of three actions based upon its evaluation of the issues, as follows:

- (5) Based upon its evaluation, the [C]ommission shall:
- (a) Dismiss the petition, in which case the decision must be supported by clear and convincing evidence and is subject to ss. 120.569 and 120.57;
 - (b) Require the utility to take the necessary steps to correct the quality of water service issues identified in the petition. The [C]ommission shall set benchmarks within a timeframe, not to exceed 3 years, and may require the utility to provide interim reports describing its progress in meeting such benchmarks. The [C]ommission may extend the term 3 years for circumstances that delay the project which are not in the control of the utility, such as natural disasters and obtaining permits necessary for meeting such benchmarks; or
 - (c) Notwithstanding s. 367.045, revoke the utility's certificate of authorization, in which case a receiver must be appointed pursuant to s. 367.165 until a sale of the utility system has been approved pursuant to s. 367.071.

Paragraph (15) sets forth the procedure that staff believes the Commission should employ to implement the above stated statutory provisions. Paragraph (15) provides that:

[i]f the Commission determines that the issues identified in the petition support a reasonable likelihood that the utility is failing to provide quality water services, the Commission will order the utility to show cause as to why its water certificate of authorization should not be revoked and will set the matter for hearing pursuant to Sections 120.569, 120.57, 120.60(5),⁴ and 367.072(5), F.S. The utility's response to the show cause order shall use the criteria set forth in Section 367.072(3)(a) and (b), F.S., in addressing the issues identified within the petition.

In comments filed October 30, 2014, Utilities, Inc. argues that the three options contained in Section 367.072(5)(a)-(c) must be taken sequentially, rather than in a single show cause proceeding. It envisions that staff would first file a recommendation to deny or accept the petition. If the Commission votes to deny the petition, the process would be done unless protested. If the Commission votes to accept the petition, it should direct staff to work with the utility to seek compliance with Section 367.072(5)(b), after which time staff would file another recommendation as to whether the utility, staff and customers (OPC) believe Section 367.072(5)(b) corrective action will resolve the water quality problem. If the Commission votes that corrective action will not resolve the problem, it should then issue an order to show cause as to why the utility's certificate should not be revoked. Utilities, Inc. argues that the formal revocation proceeding under Section 367.072(5)(c) should be the option of last resort, and that the purpose of the new law is not to revoke certificates but to encourage compliance with secondary water quality standards.

⁴ Section 120.60(5), F.S., provides that "[n]o revocation . . . of any license is lawful unless, prior to the entry of a final order, the agency has served, by personal service or certified mail, an administrative complaint which affords reasonable notice to the licensee of facts or conduct which warrant the intended action and unless the licensee has been given an adequate opportunity to request a proceeding pursuant to ss. 120.569 and 120.57." The Commission's show cause order will serve as the "administrative complaint."

In comments filed October 31, 2014, U.S. Water Services Corp. supports Utilities, Inc.'s comments and echoes its concern. It argues that going straight to a formal show cause proceeding would place a substantial financial burden on the utilities, and believes that legal costs to defend against a show cause proceeding would be better spent on solutions to address the customers' concerns, such as capital improvement costs for additional treatment, flushing, etc. Additionally, it believes that the costs to defend against any show cause proceeding should be considered reasonable, prudent expenses to be recovered in any future rate proceeding if the Commission determines that the utility successfully demonstrated that it has addressed the concerns of its customers and is providing satisfactory quality of service.

Staff believes that the Commission's show cause procedure is the correct and most efficient way to process sufficiently filed petitions for revocation that identify issues supporting a reasonable likelihood that the utility is failing to provide quality water services under Section 367.072, F.S. Section 367.072(5)(a)-(c) authorizes the Commission to take one of three actions with respect to the merits of the petition. Utilities, Inc.'s suggestion that staff should first file a recommendation to deny or accept the petition, and that if the Commission votes to deny the petition, the process would be done unless protested, appears to confuse denial of the petition upon the Commission's reasonable likelihood determination with dismissal of the petition on the merits in accordance with Section 367.072(5)(a). Pursuant to Paragraph (13) of the draft rule, staff will have already filed a recommendation for the Commission to determine whether the issues identified in the petition support a reasonable likelihood that the utility is failing to provide quality water services, and pursuant to Paragraph (14), the Commission will have already voted to accept or deny the petition on that basis. Section 367.072(5)(a) does not authorize the Commission to dismiss the petition on the merits unless the decision is supported by clear and convincing evidence and is subject to Sections 120.569 and 120.57, F.S. Therefore, Utilities, Inc.'s suggestion should be rejected because it does not comply with the requirements of Section 367.072(5)(a), F.S. The Commission's show cause procedure comports with Section 367.072(5)(a) because it utilizes the higher clear and convincing evidentiary standard, and show cause hearings are conducted pursuant to Sections 120.569 and 120.57, F.S.

Utilities, Inc. argues that Paragraph (15) ignores the Section 367.072(5)(b) option to require the utility to take corrective action, and that if the Commission votes that corrective action will not resolve the problem, only then should it issue an order to show cause as to why the utility's certificate should not be revoked. Staff disagrees that the draft language of Paragraph (15) ignores Section 367.072(5)(b). Paragraph (15) includes language setting the matter for a show cause hearing pursuant to Sections 120.569, 120.57, 120.60(5), and 367.072(5), F.S., which includes all subsections thereof, including subsection (5)(b). Utility testimony and other evidence addressing Section 367.072(5)(b), such as what measures the utility could take to correct the quality of water service issues identified in the petition and under what timeframe, would certainly be relevant to the issues of the show cause proceeding. And parties would be free to request that the hearing be held in abeyance pending settlement negotiations. The Commission encourages parties to settle their disputes, and has granted such requests in various proceedings in the past, including in similar show cause proceedings.⁵

⁵ See, e.g., Order No. PSC-06-0174-PCO-WU, issued March 6, 2006, in Docket No. 050018-WU, In Re: Initiation of deletion proceedings against Aloha Utilities, Inc. for failure to provide sufficient water service consistent with the

In order for Utilities, Inc.'s suggestions to comply with the requirements of Section 367.072(5), F.S., the Commission would have to conduct two full evidentiary hearings on the matter if it determines that corrective action will not resolve the problem. The first hearing would concern whether to accept or deny the petition pursuant to Section 367.072(5)(a), and the second would be the show cause hearing as to why the utility's certificate should not be revoked. Plus there would be an indeterminate period of time in between the two hearings for the parties and staff to consider potential corrective actions, followed by an agenda conference at which the Commission would determine whether such corrective actions will resolve the water quality problem.

Staff understands the argument that formal revocation proceedings should be the option of last resort. The Commission has considered revocation to be the most severe sanction that can be brought against a utility, and it has been past Commission practice to utilize it sparingly and as a sanction of last resort, after all other efforts to bring the utility into compliance with Commission rules have failed.⁶ Nevertheless, draft Rule 25-30.091 implements Section 367.072, F.S., which allows a utility's certificate of authorization to provide water service to be revoked "if, after its customers file a petition with the [C]ommission, the [C]ommission finds that revocation is in the best interest of the customers in accordance with [that] section." Conducting a single show cause hearing for the Commission to determine whether to revoke the utility's certificate, require the utility to take certain corrective actions within the prescribed statutory timeframe to resolve the quality of service problem, or dismiss the petition is clearly the more efficient and cost-effective process.

Finally, U.S. Water Services Corp.'s argument regarding recovery of the utility's costs to defend against any show cause proceeding is an argument that can be made any time a utility chooses to seek rate relief. Rate relief is not addressed in Section 367.072, F.S., and it is therefore not appropriate for inclusion in the rule.

II. Proposed Amendment of Rule 25-30.440, F.A.C.

Staff recommends that the Commission also propose to amend Rule 25-30.440, F.A.C., to implement certain statutory requirements contained in newly enacted Section 367.0812, F.S. The draft rule amendment is included within Attachment A to this recommendation.

Section 367.0812(1) requires that "[i]n fixing rates that are just, reasonable, compensatory, and not unfairly discriminatory, the [C]ommission shall consider the extent to

reasonable and proper operation of the utility system in the public interest, in violation of Section 367.111(2), F.S. (granting the parties' joint motion to reschedule prehearing and hearing dates and to amend procedural schedule upon finding it to be reasonable, and stating that the Commission had encouraged all parties to engage in settlement negotiations at a special agenda conference). The Commission approved a settlement agreement in the case by Order PSC-06-0270-AS-WU, issued April 5, 2006.

⁶ See Order No. PSC-00-1376-PCO-WS, issued July 31, 2000, in Docket No. 991632-WS, In Re: Application for original certificate to operate water and wastewater utility in Bay County by Dana Utility Corporation; and Order No. PSC-00-0259-PAA-WS, issued February 8, 2000, in Docket No. 990080-WS, In Re: Complaint and request for hearing by Linda J. McKenna and 54 petitioners regarding unfair rates and charges of Shangri-La by the Lake Utilities, Inc. in Lake County.

which the utility provides water service that meets secondary water quality standards as established by [DEP].” According to DEP’s website, secondary water quality characteristics refer to aspects of drinking water that typically have no adverse health effects but are associated with aesthetic concerns. The DEP has established maximum allowable levels in 14 categories, including pH, color, odor, trace minerals, and total dissolved solids. DEP monitoring of secondary water quality characteristics consists of a three-year schedule of sampling water systems statewide that serve more than 25 people per day. Sampling is conducted either at the water plant or its connected distribution system, but not on the customer side of the meter.

Section 367.0812(1)(a)-(d), F.S., is prescriptive in terms of what it requires the Commission to consider in determining whether a utility has satisfied its obligation to provide quality of water service that meets those standards. Section 367.0812(1)(c) requires the Commission to consider “[c]omplaints regarding the applicable secondary water quality standards filed by customers with the [C]ommission, the [DEP], the respective local governmental entity, or a county health department during the past 5 years.” Therefore, staff recommends that Rule 25-30.440, F.A.C., should be amended to include a new Paragraph (11), requiring each applicant for a rate increase to “[p]rovide a copy of all customer complaints that the utility has received regarding DEP secondary water quality standards during the past five years.”

In its post-workshop comments, OPC argues that at a minimum, the rule language should be amended to remove the word “customer” and require the utility to provide copies of all complaints it has received no matter who or what entity filed the complaint. OPC’s concern is that the draft language might be interpreted as relieving the utility of its obligation to be aware of any ongoing secondary water quality issues. Staff is not convinced that removal of the word “customer” from the draft rule language will cause utilities to believe they are relieved of that obligation. Moreover, removal of the word “customer” would require utilities to provide copies of complaints that are filed by any person or entity whether they are customers or not, which goes beyond the Section 367.0812(1)(c) requirement for the Commission to consider such complaints “filed by customers.” And staff agrees with comments made by Utilities, Inc., that the staff assigned to the rate case are in a better position than the utility to obtain complaints filed by customers with the Commission, DEP, local governmental entities, or the county health department.

Section 367.0812, F.S., is otherwise prescriptive and self-explanatory, and there is no need to repeat the statutory language in the rule. Section 120.545(1)(c), F.S., requires the Joint Administrative Procedures Committee to examine proposed rules for the purpose of determining whether the rule “reiterates or paraphrases statutory material.”

III. 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 the rules are not expected to adversely impact economic growth, private job sector employment, investment, and business competitiveness during the five-year period following their implementation, and that any economic impacts that might be incurred by affected entities would be a result of statutory changes promulgated under Sections 367.072 and 367.0812, F.S. 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 to adopt Rule 25-30.091, F.A.C., and to amend Rule 25-30.440, F.A.C., as set forth in Attachment A.

Issue 2: Should this docket be closed?

Recommendation: Yes, if no requests for hearing or comments are filed, the rules as proposed should be filed for adoption with the Secretary of State and the docket should be closed.

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. (Gervasi)

1 **25-30.091 Petition to Revoke Water Certificate of Authorization.**

2 (1) Purpose. The purpose of this rule is to establish a process by which customers of investor-
3 owned drinking water utilities may petition the Commission to revoke a utility's certificate of
4 authorization pursuant to Section 367.072, F.S.

5 (2) Pursuant to Section 367.0812(3), F.S., customers may not petition the Commission to
6 revoke a utility's water certificate of authorization if the utility is the subject of a proceeding
7 under Chapter 367, F.S. For the purposes of this rule, a proceeding under Chapter 367, F.S.,
8 means any rate proceeding in which quality of water service is addressed, such as a general
9 rate proceeding under Section 367.081, F.S., a staff assisted rate proceeding under Section
10 367.0814, F.S., or a limited proceeding under Section 367.0822, F.S. A general rate
11 proceeding under Chapter 367, F.S., is initiated upon the utility's filing of a test year approval
12 letter pursuant to Rule 25-30.430, F.A.C. Other rate proceedings under Chapter 367, F.S., are
13 initiated upon the utility's filing of an application for rate relief.

14 (3) Letter of Intent. Utility customers who intend to petition the Commission for revocation of
15 their utility's certificate of authorization pursuant to Section 367.072, F.S., shall notify the
16 Commission in writing of their intent to file a petition for revocation of certificate. In the
17 letter of intent, the customers shall advise the Commission of the name and address of their
18 water utility. The letter of intent shall be filed with the Office of Commission Clerk.

19 (4) Within 10 days after receipt of the letter of intent, the Commission staff will notify the
20 utility of the customers' intent to file a petition for revocation of its certificate of
21 authorization.

22 (5) In the notification letter to the utility, the Commission staff will request that the utility
23 certify, within 30 days after receipt of the notification letter, the number of water customers
24 the utility serves by counting its service connections, and provide staff with a list of its
25 customers' names and addresses.

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

1 (6) If the utility fails to certify the number of customers it serves by the date requested in the
2 notification letter, Commission staff will utilize the number of customers reported by the
3 utility in its most recent annual report on file with the Commission to evaluate the sufficiency
4 of the petition pursuant to Section 367.072(1)(b), F.S.

5 (7) Upon receipt of the utility's response to the Commission staff's request to certify the
6 number of customers the utility serves, or, if the utility fails to respond to the Commission
7 staff's request to certify the number of customers the utility serves, upon the expiration of 30
8 days from the utility's receipt of the Commission staff's request, the Commission staff will
9 send the following materials to customers who file a letter of intent pursuant to subsection (3)
10 of this rule:

11 (a) "Instructions for Petitioning for Revocation of Water Certificate," (EFF. XX/XX), which
12 are incorporated herein by reference and are available at [hyperlink];

13 (b) Form PSC _____ (XX/XX), entitled "Florida Public Service Commission: Petition to
14 Revoke the Certificate of Authorization of [Utility Name]," which petition form the customers
15 must copy and use for the collection of signatures to be submitted to the Commission. A
16 sample of Form PSC _____ (XX/XX) is incorporated herein by reference for informational
17 purposes only, and is available at [hyperlink]. The sample petition form incorporated herein
18 must not be used for the collection of signatures;

19 (c) a copy of Section 367.072, F.S.;

20 (d) a copy of this rule; and

21 (e) a copy of the state primary and secondary drinking water standards, as contained in Rule
22 62-550.828, F.A.C.

23 (8) For a petition for revocation to be deemed sufficient, the following criteria must be met:

24 (a) each petition form must include the printed name, signature, service address, and
25 telephone number of the customer-signatory;

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1 (b) each petition form must state with specificity each issue that the customer-signatory has
2 with the quality of water service provided, each time the issue was reported to the utility, and
3 how long the issue has existed; and

4 (c) petition forms must be completed by at least 65 percent of the utility's customers, as that
5 term is defined in Section 367.072, F.S.

6 (9) The customers must file the completed petition forms with the Office of Commission
7 Clerk within 90 days after receipt of the staff's instructions.

8 (10) Within 10 days after receipt of the petition, the staff will provide notice to the customers
9 who filed the letter of intent or their designated representative by letter as to whether the
10 petition is sufficient for the Commission to act, and will provide a copy of the notice to the
11 utility. If the petition is deficient, the notice will specify what additional information is
12 required.

13 (11) If the notice identifies deficiencies in the petition, the customers must file a corrected
14 petition with the Office of Commission Clerk curing the noticed deficiencies within 30 days
15 after receipt of the notice, and must provide a copy of the cured petition to the utility. The staff
16 will notify the customers who file a corrected petition or their designated representative by
17 letter as to whether the corrected petition has cured the deficiencies specified in the notice
18 provided under paragraph (10), and will provide a copy of the letter to the utility. If the
19 customers fail to timely cure the noticed deficiencies, the petition will be dismissed pursuant
20 to Section 367.072(1)(b), F.S.

21 (12) The utility may file a response to a sufficiently filed petition with the Office of
22 Commission Clerk within 14 days from the staff letter notifying the customers that the
23 petition is sufficient for the Commission to act.

24 (13) The staff will file a recommendation for the Commission to determine at a scheduled
25 agenda conference whether the issues identified in a sufficiently filed petition support a

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1 reasonable likelihood that the utility is failing to provide quality water services.
2 (14) If the Commission determines that the issues identified in the petition do not support a
3 reasonable likelihood that the utility is failing to provide quality water services, the
4 Commission's order dismissing the petition will be issued as a proposed agency action. The
5 notice of proposed agency action will give substantially affected persons an opportunity to
6 request a Section 120.569 or 120.57, F.S., hearing on the matter within 21 days after issuance
7 of the notice, pursuant to Rule 25-22.029, F.A.C.
8 (15) If the Commission determines that the issues identified in the petition support a
9 reasonable likelihood that the utility is failing to provide quality water services, the
10 Commission will order the utility to show cause as to why its water certificate of authorization
11 should not be revoked, and will set the matter for hearing pursuant to Sections 120.569,
12 120.57, 120.60(5), and 367.072(5), F.S. The utility's response to the show cause order shall
13 use the criteria set forth in Section 367.072(3)(a) and (b), F.S., in addressing the issues
14 identified within the petition.
15 *Rulemaking Authority 350.127(2), 367.072, 367.0812 FS. Law Implemented 367.072,*
16 *367.0812 FS. History – New*.
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1 **25-30.440 Additional Engineering Information Required of Class A and B Water and**
2 **Wastewater Utilities in an Application for Rate Increase.**

3 Each applicant for a rate increase shall provide two copies of the following engineering
4 information to the Commission, with the exception of item (1), of which only one copy is
5 required.

6 (1) A detailed map showing:

7 (a) The location and size of the applicant's distribution and collection lines as well as its plant
8 sites, and

9 (b) The location and respective classification of the applicant's customers.

10 (2) A list of chemicals used for water and wastewater treatment, by type, showing the dollar
11 amount and quantity purchased, the unit prices paid and the dosage rates utilized.

12 (3) The most recent chemical analyses for each water system conducted by a certified
13 laboratory covering the inorganic, organic turbidity, microbiological, radionuclide, secondary
14 and unregulated contaminants specified in Chapter ~~62-550~~ 17-550, F.A.C.

15 (4) All water and wastewater plant operating reports for the test year and the year preceding
16 the test year.

17 (5) The most recent sanitary survey for each water plant and inspection report for each
18 wastewater plant conducted by the health department or the Department of Environmental
19 Protection (DEP).

20 (6) All health department and DEP construction and operating permits.

21 (7) Any Notices of Violation, Consent Orders, Letters of Notice, or Warning Notices from the
22 health department or the DEP in ~~since the utility's last rate case or~~ the previous five years,
23 ~~whichever is less.~~

24 (8) A list of all field employees, their duties, responsibilities, and certificates held, and an
25 explanation of each employees' salary allocation method to the utility's capital or expense
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existing law.

1 accounts.

2 (9) A list, by serial number and description, of all vehicles owned or leased by the utility
3 showing the original cost or annual lease expense, who the vehicle is assigned to, and the
4 method of allocation to the utility.

5 (10) Provide a list, by customer, of all complaints received during the test year, with an
6 explanation of how each complaint was resolved.

7 (11) Provide a copy of all customer complaints that the utility has received regarding DEP
8 secondary water quality standards during the past five years.

9 *Rulemaking Authority 350.127(2), 367.0812(5), 367.121 FS. Law Implemented 367.081,*
10 *367.0812 FS. History–New 11-10-86, Amended 6-25-90, _____.*

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Certified Mail
Return Receipt Requested

Instructions for Petitioning for Revocation of Water Certificate

This is to acknowledge receipt of your notice of intent filed [Month/Date/Year] with the Florida Public Service Commission regarding Section 367.072, Florida Statutes. Enclosed you will find a copy of the statute, Rule 25-30.091, Florida Administrative Code (F.A.C.), the Department of Environmental Protection's primary and secondary drinking water standards (Rule 62-550.828, F.A.C.), and the petition form that must be copied and used for the submission of signatures.

Please read the statute carefully and note the deadlines and requirements established by the Legislature for the petition process. The Commission does not have authority to waive or amend these deadlines, or alter the requirements. Please be advised that an individual signing a petition may be asked to testify under oath before the Commission and be subject to cross-examination by the utility and parties.

Petitioners have 90 calendar days from the date these instructions are received to obtain the signatures of at least 65 percent of the customer accounts of the utility. The enclosed statute provides guidance on how to count customers serviced by a master meter.

[Insert either sentence 1 or 2] 1. The Commission staff has contacted the utility and the utility has certified that as of [Month/Date/Year] there are [Insert Number] customers of record [or] 2. The utility has not certified the number of customers of record; however, the utility's most recent annual report filed with the Commission indicates that as of [Month/Date/Year] the number of customers was [Insert Number].

(This report is available at: <http://www.floridapsc.com/utilities/annualreports/>)

Once the petitions are submitted, Commission staff will review each petition form for sufficiency. For petitions to be sufficient, the petition forms must state with specificity each issue each customer has relating to water quality service, each time the customer reported the issue to the utility, and how long each issue has existed. The staff review for sufficiency will take no more than 10 calendar days to complete. If staff identifies deficiencies, you will be notified and will have 30 calendar days to cure the deficiencies. If you fail to meet the 30 calendar day deadline or elect not to refile, the Commission must dismiss the petition at a publicly noticed meeting and the customers will be barred from filing a petition for one year.

Original petition forms must be filed with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida, 32399-0870 by the deadline set by statute. Petition forms and other documents may be filed electronically. Instructions for electronic filing are available on the Commission's website: <http://floridapsc.com/dockets/e-filings/instructions2.aspx>

If you obtain the required signatures and the petition is deemed sufficient, the Commission will determine if a reasonable likelihood exists that the utility is failing to provide quality water services. The Commission's subsequent action on the petition will be subject to the requirements of Sections 120.569, 120.57, 120.60(5), and 367.072(5), Florida Statutes.

Customers with technical questions may contact the Division of Engineering at (850) 413-6910. Customers with legal questions may contact the Office of General Counsel at (850) 413-6199.
EFF. (XX/XX)

Date: December 4, 2014

**Florida Public Service Commission: Petition to Revoke the Certificate of Authorization of [Utility Name]
Docket No:[Docket Number]**

The undersigned requests the Florida Public Service Commission to revoke the certificate of authorization of the utility that is the subject of the docket referenced above.

State with specificity each issue you have with the quality of your water service.	Indicate each time you reported the issue to the utility, including the date(s) of contact.	Indicate how long each issue has existed.
<u>Issue 1:</u>		<input type="checkbox"/> 0-6 months <input type="checkbox"/> 6 months-1 year <input type="checkbox"/> 1 year or more
<u>Issue 2:</u>		<input type="checkbox"/> 0-6 months <input type="checkbox"/> 6 months-1 year <input type="checkbox"/> 1 year or more
<u>Issue 3:</u>		<input type="checkbox"/> 0-6 months <input type="checkbox"/> 6 months-1 year <input type="checkbox"/> 1 year or more

 Printed Name of Customer

 Signature

 Customer's Service Address (Street, City, Zip Code)

 Contact Number

 Alternate Contact Number
 (If Applicable)

 Date

You must identify at least one issue. If you have more than three issues or need more space to state your issue(s), you may add additional pages as needed. You may attach supporting documentation for the issue(s) identified. Only one customer for each service address may sign the petition. By signing this petition form, you may be called to testify before the Commission to confirm your signature and verify the issue(s) you list above. You may be questioned by the utility or the Commission about your statements and you will be asked to answer truthfully under oath.

PSC XXX (XX/XX)

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: November 17, 2014
TO: Rosanne Gervasi, Senior Attorney, Office of the General Counsel
FROM: C. Donald Rome, Jr., Public Utility Analyst II, Division of Economics *CRJ*
RE: Statement of Estimated Regulatory Costs for Proposed Amendments to Chapter 25-30, Florida Administrative Code (F.A.C.), Water and Wastewater Utility Rules; Adoption of Rule 25-30.091, F.A.C., and Amendment of Rule 25-30.440, F.A.C.

During the 2014 session, the Florida Legislature enacted Senate Bill 272 which was incorporated into Chapter 2014-68, Laws of Florida. The legislation created two new sections in the Florida Statutes (F.S.): Sections 367.072 and 367.0812, F.S. These laws became effective on July 1, 2014. To implement the new laws, staff is recommending the adoption of new Rule 25-30.091, F.A.C., Petition to Revoke Water Certificate of Authorization, and the amendment of Rule 25-30.440, F.A.C., Additional Engineering Information Required of Class A and B Water and Wastewater Utilities in an Application for Rate Increase. Staff is recommending these rule changes so that Commission rules will continue to be consistent with the requirements of the empowering statutes as revised during the 2014 legislative session. Therefore, any economic impacts that might be incurred by affected entities would be a result of statutory changes promulgated under Sections 367.072 and 367.0812, F.S., and not caused by staff's recommended changes to Commission rules. Key changes that are discussed in the attached Statement of Estimated Regulatory Costs (SERC) are summarized below.

Draft Rule 25-30.091, F.A.C., is being recommended to implement provisions of Section 367.072, F.S. Utility customers may choose to petition the Commission for relief due to quality of water service issues by filing a letter of intent with the Commission. Within 10 days after receipt of the letter of intent, the Commission shall notify the utility of the customers' intent to file a petition. Pursuant to draft Subsection 25-30.091(7), F.A.C., the Commission will provide instructional materials to utility customers to assist them in preparing a petition. Petition forms must be completed by at least 65 percent of the utility's customers as the term "customer" is defined in Section 367.072, F.S., and must state with specificity each issue that the customers have with the utility's quality of water service. Customers must file the completed petition forms with the Commission within 90 days after receipt of staff's instructions.

In accordance with the statutory changes effective July 1, 2014, the Commission must review the petition to determine: (a) if the petition meets the requirements of Section 367.072, F.S., and (b) if the issues identified support a reasonable likelihood that the utility is failing to provide quality of water service. The utility must respond to each problem identified in the petition and explain if the utility meets federal and state primary water quality standards or

secondary water quality standards pursuant to Section 367.0812, F.S. The utility must also give an explanation of its relationship with its customers, including each complaint received, length of time each customer has been complaining, the resolution of each complaint, and the time taken to address each complaint. The Commission must evaluate the petition by considering the issues identified, the utility's response, and any other factors the Commission deems relevant. Based upon its evaluation, the Commission may dismiss the petition, require the utility to take the necessary steps to correct the quality of water service issues identified in the petition within a time certain and with certain reporting benchmarks, or revoke the utility's certificate.¹

Draft Subsection 25-30.440(11), F.A.C., is being recommended to implement provisions of Section 367.0812, F.S., regarding the Commission's consideration of the extent to which a utility has met secondary water quality standards established by the Department of Environmental Protection (DEP). Specifically, Paragraph 367.0812(1)(c), F.S., requires the Commission to consider complaints regarding the applicable secondary water quality standards filed by customers with the Commission, DEP, the respective local governmental entity, or a county health department during the past five years. The Commission shall consider a finding by the DEP as to whether the utility has failed to meet the DEP's secondary water quality standards.

In accordance with the statutory changes effective July 1, 2014, the utility is required to meet with its customers within a time prescribed by the Commission to discuss estimated costs and benefits to implement practical solutions and report to the Commission if the customers and the utility agree on a solution for each quality of service issue identified or if the customers and the utility prefer a different solution to at least one of the issues identified. The Commission may require the utility to implement solutions that are in the best interest of the customers for each issue, establish benchmarks and interim reporting on the progress of implementation, and allow for the utility to recover costs associated with required solutions. The Commission may prescribe penalties for a utility's failure to adequately resolve each quality of water service concern, which may include penalties provided in Section 367.161, F.S., a reduction of return on equity of up to 100 basis points, denial of all or part of a rate increase until the quality of service is found to be satisfactory, or revocation of the certificate of authorization.²

A workshop to solicit input on the recommended rules was conducted by Commission staff on October 7, 2014. Several comments that either were received during the workshop or were filed subsequently were incorporated into the draft rules to provide additional clarification. 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, King, Bloom, Dowds, Cibula, SERC file)

¹ Florida Senate Bill Analysis and Fiscal Impact Statement, March 17, 2014; page 6.

² Ibid., page 7.

FLORIDA PUBLIC SERVICE COMMISSION
STATEMENT OF ESTIMATED REGULATORY COSTS
Rules 25-30.091 and 25-30.440, 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

For clarification, please see comments in Sections A(3) and E(1), below.

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

Yes

No

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

A. Whether the rule directly or indirectly:

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

Economic growth Yes No

Private-sector job creation or employment Yes No

Private-sector investment Yes No

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

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

Productivity Yes No

Innovation Yes No

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

Yes No

Economic Analysis:

A summary of the recommended rule revisions is included in the attached memorandum to Counsel. Specific elements of the associated economic analysis are discussed below in Sections B through F of this SERC.

During the 2014 session, the Florida Legislature enacted Senate Bill 272 which was incorporated into Chapter 2014-68, Laws of Florida. The legislation created two new sections in the Florida Statutes (F.S.): Section 367.072, F.S., and Section 367.0812, F.S. These laws took effect on July 1, 2014.

To implement the new laws, staff is recommending the adoption of new Rule 25-30.091, Florida Administrative Code (F.A.C.), and the amendment of Rule 25-30.440, F.A.C. Staff is recommending these rule changes so that agency rules will continue to be consistent with the requirements of empowering statutes as revised during the 2014 legislative session.

Therefore, any economic impacts that might be incurred by affected entities would be a result of statutory changes promulgated under Sections 367.072 and 367.0812, F.S., and not caused by staff's recommended changes to Commission rules. Staff believes that none of the impact/cost criteria established in Paragraph 120.541(2)(a), F.S., will be exceeded as a result of the recommended rule revisions.

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

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

Potentially affected entities include 149 investor-owned water and wastewater utilities that serve approximately 180,000 Florida customers. Utilities which come under the jurisdiction of the Commission in the future also would be required to comply.

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

The 149 investor-owned water and wastewater utilities are located in 37 counties.

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.

As noted in Section A above, any economic impacts that might be incurred by affected entities [including the Commission] would be a result of statutory changes promulgated under Sections 367.072 and 367.0812, F.S., and not caused by staff's recommended changes to Commission rules. The Commission will incur additional costs to fulfill its responsibilities as required by the new laws. Section 3 of Senate Bill 272 appropriated a 2014-2015 fiscal year reimbursement from the General Revenue Fund for Commission costs in the amount of \$224,533. As stated in the Florida Senate Bill Analysis and Fiscal Impact Statement, these costs are associated with the following:

- Three full-time equivalent positions (salary plus benefits),
- Travel to facilitate meetings between customers and utilities, and
- Other associated expenses such as the consideration of additional testimony and evidence in water rate cases heard by the Commission.

(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.

The statutory changes that triggered the initiation of the current rulemaking effort have two primary effects related to transactional costs on the affected utilities and their customers: (1) Petitions filed pursuant to the process delineated in Section 367.072, F.S., and (2) Additional aspects to be considered in utility ratemaking proceedings as delineated in Section 367.0812, F.S.

(1) Petitions filed pursuant to Section 367.072, F.S.

New Commission Rule 25-30.091, F.A.C., is being recommended to implement Subsections (1) and (2) of Section 367.072, F.S. Subsections 367.072(3) *et seq.*, F.S., are prescriptive in their direction and are not redundantly included in Rule 25-30.091, F.A.C.

Utility customers who choose to file petitions in accordance with the statute and the recommended rule would incur incremental transactional costs. These costs would be associated with the compilation of the information required to complete and submit the petition as specified in Subsections (8) and (9) of recommended Rule 25-30.091, F.A.C. Utility customers that may incur incremental costs would do so voluntarily as the opportunity to file a petition pursuant to Section 367.072, F.S., is an option that is available to utility customers if they so choose.

Utilities whose customers choose to file petitions in accordance with the statute and the recommended rule would incur incremental transactional costs. These costs would be associated with the following:

- Prohibition from filing a rate case if the petition supports a reasonable likelihood that the utility is failing to provide quality of water service [367.072(3), F.S.],
- Responding to the concerns raised in the petition regarding quality of water service issues [367.072(3)(a), F.S.],
- Explaining the utility's relationship with its customers and its complaint resolution efforts [367.072(3)(b), F.S.],
- Compliance with benchmarks set by the Commission (including the

possible filing of progress reports) to address quality of water service issues identified in the petition [367.072(5)(b), F.S.],

- If a utility does not satisfactorily address customer complaints regarding secondary water quality standards, it potentially might face revocation by the Commission of its certificate of authorization to provide water service [367.072(5)(c), F.S.]. The potential effects of certificate revocation would be more complicated for utilities that have both water and wastewater operations.

As noted in Section A above, any economic impacts that might be incurred by affected entities [e.g., utilities, customers] would be a result of statutory changes promulgated under Sections 367.072 and 367.0812, F.S., and not caused by staff's recommended changes to Commission rules.

(2) Additional aspects in utility ratemaking proceedings [367.0812, F.S.]

New language included in Subsection (11) of existing Commission Rule 25-30.440, F.A.C., is being recommended to implement Paragraph 367.0812(1)(c), F.S. The remainder of Section 367.0812, F.S., is prescriptive in its direction and is not redundantly included in Rule 25-30.440, F.A.C.

Utilities that are not meeting applicable secondary water quality standards would incur incremental transactional costs during ratemaking proceedings. In accordance with Subsection (2) of Section 367.0812, F.S., the utility is required to meet with its customers within a time prescribed by the Commission to discuss estimated costs and benefits to implement practical solutions to each quality of water service issue identified by the Commission. The utility is then required to report to the Commission if the customers and the utility agree on a solution and its associated costs for each quality of service issue identified or if the customers and the utility prefer different solutions to at least one of the identified issues. In the latter case, the utility shall inform the Commission of the preferred solutions by each and the costs of the respective solutions. The Commission may require the utility to implement solutions that are in the best interests of the customers for each issue and establish benchmarks and interim reporting on the progress of implementation.

The utility may recover its costs of implementing the solutions required by the Commission. Therefore, customers may realize an increase in the cost of water services if the quality of certain services is improved; however, customers will be fully informed of the costs and benefits and have the opportunity to participate in the decision to incur those costs in advance of any potential increases.

In accordance with Subsection (4) of Section 367.0812, F.S., the Commission may prescribe penalties for a utility's failure to adequately resolve each quality of water service concern, which may include the following:

- Penalties as provided in Section 367.161, F.S.,
- A reduction of return on equity of up to 100 basis points,
- Denial of all or part of a rate increase until the quality of service is found to

- be satisfactory, or
- Revocation of the utility's certificate of authorization.

As noted in Section A above, any economic impacts that might be incurred by affected entities [e.g., utilities, customers] would be a result of statutory changes promulgated under Sections 367.072 and 367.0812, F.S., and not caused by staff's recommended changes to Commission rules.

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. [See clarification below.]
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

While it is difficult to estimate the number of affected entities that would meet the definition of "Small Business" as defined in Section 288.703, F.S., it is reasonable to assume that many of the affected entities would meet the statutory definition and, therefore, potentially could incur additional transactional costs as discussed in Section D, above. However, as noted in Section A above, any economic impacts that might be incurred by affected entities would be a result of statutory changes promulgated under Sections 367.072 and 367.0812, F.S., and not caused by staff's recommended changes to Commission rules.

(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:

A workshop to solicit input on the recommended rules was conducted by Commission staff on October 7, 2014. Several comments that either were received during the workshop or were filed subsequently were incorporated into the draft rules to provide additional clarification.

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.