

1 BEFORE THE  
2 FLORIDA PUBLIC SERVICE COMMISSION

3  
4  
5 FILED 3/12/2018  
6 DOCUMENT NO. 02250-2018  
7 FPSC - COMMISSION CLERK

8 In the Matter of:

9 DOCKET NO. 20180029-WS

10 PROPOSED AMENDMENT OF RULE  
11 25-30.433, F.A.C., RATE  
12 CASE PROCEEDINGS.

13 /  
14  
15 PROCEEDINGS: COMMISSION CONFERENCE AGENDA  
16 ITEM NO. 2

17 COMMISSIONERS CHAIRMAN ART GRAHAM  
18 PARTICIPATING: COMMISSIONER JULIE I. BROWN  
19 COMMISSIONER DONALD J. POLMANN  
20 COMMISSIONER GARY F. CLARK  
21 COMMISSIONER ANDREW G. FAY

22 DATE: Thursday, March 1, 2018

23 PLACE: Betty Easley Conference Center  
24 Room 148  
25 4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: DANA W. REEVES  
Court Reporter and  
Notary Public in and for  
the State of Florida at Large

PREMIER REPORTING  
114 W. 5TH AVENUE  
TALLAHASSEE, FLORIDA  
(850) 894-0828

# 1 PROCEEDING S

2 CHAIRMAN GRAHAM: Okay. We will circle back  
3 around to Item No. 2.

4 MS. COWDERY: Good morning, Commissioners.

I'm Kathryn Cowdery with the Office of General Counsel. Item 2 is Staff's recommendation that the Commission propose amendment of Rule 25-30.433, which is the rate case proceedings rule. Staff is recommending amendments to the rule for three primary reasons. First is to move the Commission's consideration of the infrastructure and operational conditions of the plant and facilities from the Commission's evaluation of quality of service to a separate section of the rule. Second, to codify the information the Commission considers when evaluating the utility's quality of service. And, third, to delete language from the rule that conflicts with statutory requirements.

19 Mr. Charles Rehwinkel from the Office of  
20 Public Counsel is here to address the Commission,  
21 and Staff is available for any questions.

22 CHAIRMAN GRAHAM: Mr. Behwinkel.

23 MR. REHWINKEL: Good morning. Thank you, Mr.  
24 Chairman. Charles Rehwinkel, Deputy Public  
25 Counsel. I want to start off today by thanking the

1           Commission, thanking the Chairman for shepherding  
2           this rule along and the Staff's work. We rarely  
3           encounter a proposed rule that we are in this much  
4           agreement with and I want to commend you for being  
5           at this point at this time.

6           We did raise with Staff earlier in the week a  
7           concern about Section 1 and Section 2 of the rule  
8           and Subsections D of Section 1 and Subsection C of  
9           Section 2. I propose some language that I took  
10          from the Staff recommendation on page four. I just  
11          lifted it out and put it into the rule. We believe  
12          that this rule should be specific in what it  
13          requires the company to respond to. I do agree  
14          that the language is broad enough to encompass the  
15          language that we think -- or the types of input  
16          that we think ought to be included in the rule, but  
17          we believe there is some degree of specificity is  
18          called for because when we get years down the road  
19          and nobody that's here working on this rule today  
20          is on the Commission, the rule should still say  
21          what the Commission's intent is.

22           And the fact that there is general language  
23          about all testimony and comments leaves some, in  
24          our view, some level of ambiguity and vagueness  
25          that we think can be fixed by just putting in what

1       we think is the universe of the types of input that  
2       the Commission would expect the company to respond  
3       to. So we just cut and paste. The term EG could  
4       be replaced with the word including, but otherwise  
5       we would recommend that the Commission insert this  
6       phrase into the rule as we proposed. And, if that  
7       was the case, we would not stand between the  
8       Commission and the Secretary of State seeing this  
9       rule.

10           And I'm happy to answer any questions. I did  
11       provide a case to the Commission that I think it  
12       illustrative of the problem you have when you don't  
13       express your intent clearly in a rule, and I can go  
14       through it if there are any questions about it, but  
15       I'm here to answer questions at this point.

16           CHAIRMAN GRAHAM: Commissioners, any questions  
17       of OPC? Commissioner Fay.

18           COMMISSIONER FAY: Thank you Mr. Chairman.  
19       And I think my first question might be directed a  
20       little bit at you, or maybe the Commission. So  
21       this additional input from Charles and their team  
22       to incorporate this language that was provided,  
23       specifically in the Staff recommendation, I would  
24       presume that if those changes were voted forward,  
25       the rule would not need to formally come back to

1           the Commission. So, in other words, I think we  
2           could incorporate, if the body chose to do so, they  
3           could incorporate those changes without resetting  
4           the clock and what I believe are very good changes  
5           and are likely, you know, from my perspective, make  
6           sense to move forward.

7           I just want to make sure because I know, you  
8           know, lawyers love to argue, right, so as you look  
9           at language like this, it could be interpreted as  
10          potentially limiting the resources that could be  
11          provided, based on the language that was taken from  
12          the Staff recommendation. And, of course, the only  
13          other thought with the understanding of your intent  
14          and the purpose of it is just if it's common  
15          practice to take language out of a Staff  
16          recommendation to then attempt to incorporate it  
17          into a rule, and so maybe if you could just clarify  
18          the intent that you stated before.

19           And then, Mr. Chairman, I don't know if that's  
20          the procedural component is a question for Staff,  
21          but my interpretation would be if they -- if we  
22          chose to include this, it wouldn't reset the clock  
23          for it to come back, it's just a kickoff for the  
24          rule?

25           CHAIRMAN GRAHAM: That's correct.

1                   MR. REHWINKEL: Well, from the Public  
2                   Counsel's standpoint, yes, this language is more  
3                   specific, but I've been working in this arena for  
4                   32 years. There are others in our office that have  
5                   been around as long or longer, and this is an  
6                   inventory of everything we know that represents  
7                   input that the company would receive from customers  
8                   and others that would impact or bear upon customer  
9                   service or the state of the infrastructure that  
10                  they are supposed to maintain. So we don't see any  
11                  risk that this would be limiting and restrict the  
12                  Commission's discretion.

13                  The case that I brought to the Staff's  
14                  attention was one from my first six months in this  
15                  process where a large phone company was being  
16                  show-cause because they were quoting to Staff  
17                  members who called prices that were not the lowest  
18                  price for basic service as the rule required. And  
19                  the Commission said, we're going to withdraw the  
20                  show cause because those Staff members who were  
21                  calling weren't applicants for service. And that's  
22                  how the rule was written, but in the order  
23                  withdrawing this, they said it was our intent that  
24                  the Staff be allowed to enforce the rule this way.  
25                  Well, but it wasn't in the rule. So we think

1 intent should be expressed clearly in the rule.

2 And, you know, a rule should be clear. It  
3 should be -- it should put everyone on notice,  
4 especially the company as to what they have to  
5 respond to when they get into rate cases. And I  
6 think putting the inventory of these items out  
7 there helps the company and it helps the Commission  
8 to enforce it, because you wouldn't want a  
9 situation in a case down the road where you  
10 couldn't enforce this rule because there was some  
11 ambiguity, that the testimony wasn't sworn, that it  
12 was written versus verbal. Any ambiguity, we  
13 think, would be potentially construed against the  
14 customer and in favor of the company and we think  
15 you should just be clear.

16 COMMISSIONER FAY: Follow-up, Mr. Chairman?  
17 Thank you.

18 CHAIRMAN GRAHAM: Yes.

19 COMMISSIONER FAY: So I guess -- from what I  
20 understand then it's -- you don't believe it's  
21 sufficient that the Staff's recommendation states  
22 the intent of the rule to do that? You think it's  
23 necessary to have it within the rule?

24 MR. REHWINKEL: We believe so. I mean, if  
25 there is no dispute that the language that's in the

1       Staff rec is the intent of everyone, well, just put  
2       it in the rule. That's our view because, you know,  
3       years down the road people are going to look at the  
4       rule. They're not going to maybe go back and do  
5       research to look at what was said here in a  
6       transcript or in a Staff recommendation. Records  
7       sometimes don't travel as well in the future as the  
8       rules do. And the rules, we know, will be on the  
9       Secretary of State website, or whatever forum  
10      they're supposed to be, and that's where everybody  
11      can go and see what's expected.

12           COMMISSIONER FAY: Thank you.

13           CHAIRMAN GRAHAM: So what you're doing is just  
14       really cheating some future lawyer out of four or  
15       five hours of researching the transcript.

16           MR. REHWINKEL: Hopefully so, yes.

17           CHAIRMAN GRAHAM: Commissioner Polmann.

18           COMMISSIONER POLMANN: Thank you, Mr.  
19       Chairman. Mr. Rehwinkel, I appreciate your raising  
20       this issue. Let me ask. In paragraph D, in  
21       Section 1, I'm looking for the reference here to  
22       Section 2. If you could point me to that, it would  
23       be -- it would be helpful. That's on page 11, is  
24       that -- that's in C?

25           MR. REHWINKEL: Yes, Commissioner.

1                   COMMISSIONER POLMANN: Thank you. As I read  
2                   it, read those two paragraphs, I focus on the term,  
3                   any, that first word. And, to me, in my reading, I  
4                   believe in your comments, your introductory remarks  
5                   you use the word universe, or universal perhaps.  
6                   Not that I'm trying to put that word in your mouth,  
7                   but I'm looking at the parallelism in Section 1 and  
8                   Section 2 in the various paragraphs B, C, D, E  
9                   throughout here and I'm concerned -- I kind of  
10                  think of it in the opposite.

11                  If you include the phrasing, parentheticals  
12                  that you've suggested, in my reading, I'm thinking  
13                  that those tend to limit rather than broaden, or  
14                  trying to state the intent. I'm a little bit  
15                  concerned that adding the specificity dilutes the  
16                  meaning of the term any.

17                  And then, as an additional point, if we were  
18                  to add the parentheticals to try to show intent,  
19                  then I'd be concerned that we don't have a similar  
20                  parallel language in B, C and E. And,  
21                  specifically, if I were to include that in D on the  
22                  customer side and others, with knowledge, why would  
23                  I not want to put that in E on the utility side?  
24                  Because I think if it's in our intent on the  
25                  customer side to bring all of that testimony into

1           evidence, then on the utility testimony and  
2           response, I -- because I'm trying to weigh all of  
3           the evidence, I would expect to see parallel  
4           language. So I fall back and say, any is any, and  
5           I interpret that as any and all and I believe  
6           that's the Commission's intent sitting here today.

7           MR. REHWINKEL: Well --

8           COMMISSIONER POLMANN: So I appreciate your  
9           input and I think I'm trying to understand, but I'm  
10          not sure that the language that you're presenting  
11          accomplishes what I hear you saying. So if you  
12          could elaborate, I'd appreciate that. Thank you,  
13          sir.

14           MR. REHWINKEL: So I go back to page four and  
15          I'm looking at the third full paragraph on page  
16          four that starts, and it's post-workshop comments.  
17          And, Commissioner, we focus on this particular 2D  
18          and -- 1D and 2C because those are the customers'  
19          input. So that was our perspective, and I think  
20          the Commission Staff has said that this is our  
21          intent as the language that they put in the  
22          parenthetical at the very end of that paragraph.

23           So, you know, we think that the issue that we  
24          raise can be addressed for specifically customer  
25          input if it's clarified that it's written or oral

1       and it lists these things, and that's the  
2       perspective that we brought to you. I don't think  
3       that there are -- I mean, we don't perceive a  
4       problem with the Commission's ability to take input  
5       from DEP or their own Staff, as is indicated above  
6       in B and C there. So we were only focusing on the  
7       customer input and they're -- you know, I could  
8       recount to you instances over the last 30 years  
9       where there have been issues about the quality of  
10      customer testimony, whether a customer has to raise  
11      their hand for that to be part of the record or  
12      letters or the blue sheets that they might send in  
13      or emails. We don't want any of that controversy  
14      and we'd rather it be specified in the rule that  
15      there's no ambiguity.

16           So that's the perspective we brought forward  
17       on this. And I'm not trying to hold the process  
18       up, but we thought that the Staff was in agreement  
19       that this is supposed to encompass this, so why not  
20       just say it in the rule.

21           COMMISSIONER POLMANN: Thank you.

22           CHAIRMAN GRAHAM: Any comments from Staff?

23           MS. COWDERY: Staff believes that the language  
24       as written is broad enough, obviously, as we said  
25       in our Staff recommendation, to include these

1 examples. Just for -- going back just to -- a  
2 little bit for history, the current language just  
3 states that the Commission shall consider testimony  
4 of utilities' customers. So when we were working  
5 on this rule, we expanded it to say -- to add, and  
6 complaints, so that you be, you know, to be more  
7 specific. Then we got comments from OPC, as we  
8 have stated in the Staff recommendation, wanting it  
9 to be more broad. And so what we did was add  
10 language that we felt did, in fact, cover  
11 everything, any testimony complaints and comments.

12 That being said, from our Staff perspective,  
13 and the utility might have a different comment on  
14 this, if we're saying, for example, it does not  
15 appear that because our first sentence includes,  
16 you know, everything that by giving examples that a  
17 strong argument could be made that that was  
18 limiting. Lawyers might make an argument on  
19 anything, but that is why we had that broad  
20 language to cover everything. That's it.

21 CHAIRMAN GRAHAM: Thank you. Commissioner  
22 Brown.

23 COMMISSIONER BROWN: Thank you. I think I  
24 have a solution, and I shared similar feelings  
25 along with Commissioner Polmann, but I think,

1           although it is an example, if we did include  
2           language with the OPC recommendation that says  
3           including, but not limited to, I think that it  
4           would kind of encompass all of our concerns here.  
5           Would that suffice?

6           MR. REHWINKEL: We would be happy with that.

7           MR. FRIEDMAN: Madam Chair, this is Marti  
8           Friedman --

9           CHAIRMAN GRAHAM: Hold on. Hold on. I'm  
10          coming to you.

11          MR. FRIEDMAN: I was having my --

12          COMMISSIONER BROWN: I thought our general  
13          counsel was --

14          MR. HEDRICK: Mr. Chair, what I was going to  
15          suggest is the language, including but not limited  
16          to, is the language that's strongly discouraged by  
17          JAPC because that's -- the reason we kept this  
18          broad, with all due respect, and we agree with what  
19          OPC is trying to get to is that if we're going to  
20          list everything, then we need to try to list  
21          everything and not, including but not limited to.

22          The other thing I might suggest, and I haven't  
23          talked to my Staff about this, but I'm not sure  
24          this skins the cat, per se, but all of this  
25          language that OPC is proposing affects utility

1       customers. So maybe it's possible, and I'll let  
2       Samantha react to this, but any testimony,  
3       complaints, and comments of the utilities'  
4       customers such as, and include that language.

5       Maybe that would not draw as much ire from JAPC,  
6       but I can't promise that and I'll let Samantha  
7       comment on that.

8           MS. CIBULA: Or we could just say, for  
9       example, and not use the EG and then that would be  
10       clear that they're just examples we're setting out  
11       in the rule. They're not an exhaustive list of  
12       what we're going to be looking at. That's what I  
13       would suggest.

14           COMMISSIONER BROWN: Mr. Chairman. And you  
15       think that that would cover the intent that, in  
16       discussion, without opening a can of worms here?  
17       And I think Commissioner Polmann raised a very  
18       valid point under subsection -- the subsection  
19       relating to the utility testimony, 1B -- I mean,  
20       1E, although it is really broadly written, we're  
21       addressing similar any testimony, et cetera, under  
22       1D for the customers, as well as 2C, but then we're  
23       not doing the same with reciprocal language for the  
24       utility. We're not giving examples. So do you  
25       think that we -- that we're fine if we do that?

1                   MS. CIBULA: I think we're fine if we do that.  
2                   If someone has some examples and they want to  
3                   change the ruling, that would be fine, as well, but  
4                   I don't think anyone, unless Mr. Friedman has some  
5                   suggestions.

6                   COMMISSIONER BROWN: Thank you, Mr. Chairman.

7                   CHAIRMAN GRAHAM: Mr. Friedman.

8                   MS. FRIEDMAN: Thank you, Chairman,  
9                   Commissioners. Marry Friedman on behalf of  
10                  Utilities, Inc. of Florida. We had not intended to  
11                  speak on this, but I saw Mr. Rehwinkel come up so I  
12                  thought I would weigh in on this, as well, and I  
13                  had just seen his comments today for the first  
14                  time, but I think they're unnecessary. I think  
15                  you're right that it is comprehensive the way it is  
16                  written. I see ambiguity created by the new  
17                  language. For instance, what does directly mean?  
18                  I mean, it may sound simple, but in today's  
19                  technological world, a contact directly may be  
20                  different, and in the future with technology the  
21                  way it is, and I hate to make an argument for Mr.  
22                  Rehwinkel, but, you know, with changing technology,  
23                  you don't want to be specific. You want to be more  
24                  general in order to make sure that you can take  
25                  into consideration future technological changes.

1               My other comment would be that I think this  
2               language, as it is written, will conflict. We're  
3               going to have a workshop today at some point after  
4               IA and I think that this language conflicts with  
5               what the Staff is recommending be included in that  
6               rule, which I think was Commissioner Polmann's  
7               suggestions. And so it's going to -- there's going  
8               to be a conflict between two different rules if you  
9               adopt this limiting language here.

10              CHAIRMAN GRAHAM: Since you are at the mic, is  
11               there anything else, part of this rule you want to  
12               speak to?

13              MS. FRIEDMAN: No, I hadn't -- it was  
14               acceptable to us as it was and I hadn't intended on  
15               appearing or speaking at all until I saw Mr.  
16               Rehwinkel and can't give up that opportunity to let  
17               Charles speak without me saying something.

18              CHAIRMAN GRAHAM: Commissioner Polmann.

19              COMMISSIONER POLMANN: Thank you, Mr.  
20               Chairman. I don't want to give the impression that  
21               the comments from Public Counsel are not  
22               appreciated, or that I feel in any way that they're  
23               misplaced or not valued, because I truly do believe  
24               I understand where you're coming from, but the more  
25               we talk about this, the more I like the language

1           that's provided. So let me just leave it at that.  
2           Thank you.

3           CHAIRMAN GRAHAM: Okay. Well, I want to thank  
4       Staff and OPC and the utilities that were involved  
5       for this item. This is something that has been  
6       bugging me for a while. It just -- I think we need  
7       to be more specific when we're dealing with the  
8       customer experience and when we were including  
9       operating conditions into the customer experience,  
10      I think that was kind of blurring the focus.

11           I think there -- we do need to because the one  
12       place where the customer has their input is their  
13       actual experience and I think that needs to be  
14       something that's up on a podium that's singled out  
15       that we can address directly, and this item is  
16       still including the operating conditions and it's  
17       not diluting anything that we've done in the past,  
18       it's just allowing us to pinpoint better and I do  
19       appreciate -- this was something that was  
20       long-coming and convoluted getting there and, as  
21       you can see, even now today, it's still getting a  
22       little confused, but I think we have to sift  
23       through it all and I thank you all for your time.  
24           This wasn't easy getting here, but I think  
25       everybody saw the wisdom of doing this and I thank

1           you for your efforts. Commissioner Polmann.

2           COMMISSIONER POLMANN: Mr. Chairman, I have a  
3           comment on another paragraph if the Commission  
4           would entertain that, sir.

5           CHAIRMAN GRAHAM: Sure.

6           COMMISSIONER POLMANN: I'm looking on page  
7           ten. In Section 1, Paragraph B.

8           CHAIRMAN GRAHAM: Line 21?

9           COMMISSIONER POLMANN: Line 21 and 22. The  
10          language, as drafted, any DEP and county health  
11          department citations, violations and consent orders  
12          that address quality of service. My concern, as  
13          written, is that citation, violation, consent  
14          orders that address quality of service, I have a  
15          concern that DEP and county health department -- it  
16          does not necessarily, in fact, to my knowledge,  
17          they don't issue those types of orders that  
18          directly address quality of service. They may  
19          issue orders that have information that relates to  
20          that, but the language that's written may not be  
21          technically correct.

22           Now, the lead-in up above in paragraph one  
23          says that the Commission in making a determination  
24          shall consider that DEP and county health  
25          department, let's say, information that relates to

1           quality of service. And my Staff has looked at  
2           that and I'd like to propose a revision, some word  
3           changing, word changes. We've shared that with  
4           Staff and I believe we have it at the dais here,  
5           distributed an alternative minor edit. So if we  
6           could take a moment, let everybody have a copy of  
7           this.

8           CHAIRMAN GRAHAM: Would you read it into the  
9           record?

10           COMMISSIONER POLMANN: So it would be Section  
11           1B, line 22 in particular, on page ten of  
12           Attachment A. I'll just read line 21 and 22, to  
13           put it into context. So Paragraph B would read:  
14           Any Department of Environment Protection (DEP) and  
15           county health department citations, violations and  
16           provisions of consent orders that relate to quality  
17           of service. So strike, address.

18           CHAIRMAN GRAHAM: Okay. Staff.

19           MS. COWDERY: Staff doesn't have any problem  
20           with that language. It seems to make it a little  
21           more precise.

22           CHAIRMAN GRAHAM: OPC. Mr. Friedman,  
23           Commissioners.

24           Okay. Anything else in this Item No. 2 that  
25           anybody's got questions, comments, changes? Well,

1 then I will entertain a motion.

2                   COMMISSIONER POLMANN: Mr. Chairman, I would  
3                   like to move -- I would move, not that I like to --  
4                   I would like to -- Mr. Chairman, I would move Staff  
5                   recommendation on Item 2 as Staff presented it with  
6                   and including the revision that I've just read into  
7                   the record. Section 1B of Attachment A in line 22.

8 Is that the correct motion?

9 CHAIRMAN GRAHAM: That's correct.

10 COMMISSIONER BROWN: Second.

11 CHAIRMAN GRAHAM: It's been moved and second.

12 Any further discussion on the motion?

13 Seeing none, all in favor say aye.

14 (Chorus of ayes.)

15 CHAIRMAN GRAHAM: Any opposed?

16 (No comments made.)

17 CHAIRMAN GRAHAM: By action, you've approved  
18 Item No. 2 as amended.

19 (Agenda item concluded.)

20

21

22

23

24

25

## 1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA )  
3 COUNTY OF LEON )4 I, DANA W. REEVES, Professional Court  
5 Reporter, do hereby certify that the foregoing  
6 proceeding was heard at the time and place herein  
7 stated.8 IT IS FURTHER CERTIFIED that I  
9 stenographically reported the said proceedings; that the  
10 same has been transcribed under my direct supervision;  
11 and that this transcript constitutes a true  
12 transcription of my notes of said proceedings.13 I FURTHER CERTIFY that I am not a relative,  
14 employee, attorney or counsel of any of the parties, nor  
15 am I a relative or employee of any of the parties'  
16 attorney or counsel connected with the action, nor am I  
17 financially interested in the action.

18 DATED THIS 12th day of March, 2018.

19  
20   
21  
2223 DANA W. REEVES  
24 NOTARY PUBLIC  
25 COMMISSION #FF968527  
EXPIRES MARCH 22, 2020

**Suggested changes to rule language in 25-30-433 Rate Case Proceedings.**

Section 1(b), Line 22 on page 10 of Attachment A.

(b) Any Department of Environmental Protection (DEP) and county health department citations, violations and provisions of consent orders that relate to address quality of service;

*(COMM)*  
Parties/Staff Handout  
Internal Affairs/Agenda  
on 3 / 1 / 18  
Item No. 2