

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: August 21, 2018
TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk
FROM: Samantha Cibula, Office of the General Counsel *S.M.C.*
RE: Docket No. 20040269-TP

Please file the attached materials in the docket file listed above.

Thank you.

Attachment

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2018 AUG 21 AM 10:21
COMMISSION
CLERK

BellSouth Telecommunications, Inc.
Regulatory Relations

150 South Monroe Street
Suite 400
Tallahassee, FL 32301

nancy.sims@bellsouth.com

Nancy H. Sims
Director

850 222 1201
Fax 850 222 8640

March 15, 2004

Ms. Marlene K. Stern
Appeals, Rules & Mediation Section
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Subject: Rule Development Workshop (Dispute Resolution Process)

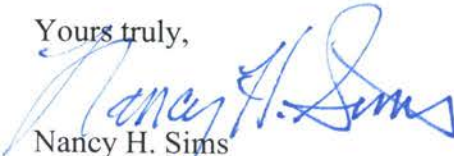
Dear Ms. Stern:

On February 27, 2004, the Florida Public Service Commission issued a Notice of Proposed Rule Development for Rule 25-22.0365, Florida Administrative Code, to adopt provisions relating to an expedited dispute resolution process for telecommunication companies. This notice stated that a workshop would be held on March 29, 2004, if someone submitted a request for the workshop.

With this letter, BellSouth Telecommunications, Inc. is requesting that the workshop be held as scheduled in the Notice.

Thank you for your attention to this request.

Yours truly,



Nancy H. Sims
Director - Regulatory Relations

Copy to: Nancy White

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FLA PUBLIC SERVICE COMM.
OFFICE OF THE
GENERAL COUNSEL

200402109

Law and Public Policy
1208 Governor's Square Boulevard
Suite 201
Tallahassee, FL 32301
Telephone 850 219 1008



March 22, 2004

FY FACSIMILE

Marlene Stern
Appeals, Rules & Mediation Section
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: **Undocketed** – Development of Rule 25-22.0365, F.A.C., to adopt provisions relating to an expedited dispute resolution process for telecommunications companies

Dear Ms. Stern,

Pursuant to notice issued February 27, 2004, AT&T Communications of the Southern States (AT&T) and MCImetro Transmission Services LLC and MCI WORLDCOM Communications, Inc. (collectively MCI), and Supra Telecommunications & Information Systems, Inc. (Supra) respectfully request a rule development workshop regarding provisions related to an expedited dispute resolution process for telecommunications companies.

Overall, AT&T, MCI, and Supra are pleased with staff's proposal but have a few specific, but important concerns. Specifically, we believe that the rule should be structured to allow for intervention when appropriate, because there will be instances when it would be appropriate to set a docket on an expedited hearing schedule because the issues are not complex, but the specific issues affect a number of companies and need to be resolved expeditiously. Where an issue is simple and is common to multiple companies, it would be administratively more efficient for the Commission to hold one hearing on an expedited basis rather than several when the issues are the same and are not complex. It would make little sense to have a series of companies filing individual expedited dispute petitions seeking the resolution of an identical simple issue. As a practical matter, it is the complexity of the issues (or the lack thereof), not the number of parties that should dictate whether a dispute is an appropriate candidate for expedited resolution.

Accordingly, we propose to eliminate the requirements of Section 25-22.0365(2)(a) and (13). Moreover, we respectfully suggest that the timeline in Section 25-22.0365(8) be revised to allow for intervention and intervenor testimony. A similar approach was considered and incorporated in the Telecommunications Competitive Forum draft expedited rule.

If you have any questions, please contact me at your convenience.

Sincerely,

Donna Canzano McNulty
Donna Canzano McNulty
MCI
1203 Governors Square Blvd.
Suite 201
Tallahassee, FL 32301
Phone: (850) 219-1008
E-mail: donna.mcnulty@mci.com

Attorney for MCImetro Access
Transmission Services, LLC, and MCI
WORLDCOM Communications, Inc.

Tracy Hatch
Tracy Hatch
AT&T
109 N. Monroe Street, Suite 700
Tallahassee, FL 32301
Phone: (850)-425-6360
E-mail: thatch@att.com

Attorney for AT&T Communications of
the Southern States, LLC

and

Jorge Cruz-Bustillo
Jorge Cruz-Bustillo
Supra Telecommunications & Information
Systems, Inc.
2620 S.W. 27th Avenue
Miami, Florida 33133
Phone: (305).476.4252
E-mail: jorge.cruz-bustillo@stis.com

Attorney for Supra Telecommunications &
Information Systems, Inc.

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: August 21, 2018
TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk
FROM: Samantha Cibula, Office of the General Counsel *S.M.C.*
RE: Docket No. 20040246-WS

Please file the attached materials in the docket file listed above.

Thank you.

Attachment

JAMES E. "JIM" KING, JR.
President

JOHNNIE BYRD
Speaker



THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**



Representative Juan-Carlos "J.C." Planas, Chair
Senator Michael S. "Mike" Bennett, Vice-Chair
Senator Nancy Argenziano
Senator Gwen Margolis
Representative Bill Galvano
Representative Yolly Roberson

F. SCOTT BOYD
EXECUTIVE DIRECTOR
AND GENERAL COUNSEL
Room 120, Holland Building
Tallahassee, Florida 32399-1300
Telephone (850) 488-9110

September 1, 2004

Ms. Christiana T. Moore
Public Service Commission
Office of the General Counsel
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Public Service Commission Rule 25-30.457

Dear Ms. Moore:

I have completed a review of proposed rule 25-30.457 and prepared the following comments for your consideration and response.

25-30.457

(1): The rule provides that water and wastewater utilities whose total gross annual operating revenues are \$150,000 or less for water service or \$150,000 for wastewater service, or \$300,000 or less combined, may apply for a limited alternative rate increase.

Section 367.0814(1), F.S., authorizes the commission to promulgate rules "by which a water or wastewater utility whose gross annual revenues are \$150,000 or less may request and obtain staff assistance for the purpose of changing its rates and charges." Thus, the statute caps the gross annual revenues of water or wastewater utilities at \$150,000 in order for the program to apply.

The rule could be interpreted to change this figure. For example, a situation could conceivably arise where the gross total operating revenues are \$120,000 for water service and \$180,000 for wastewater service. The rule would allow eligibility while the statute would not. Therefore, the rule should be amended to conform to the statute.

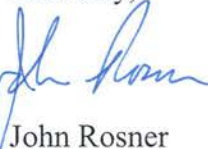
Ms. Christiana T. Moore
September 1, 2004
Page 2

(14) – (16): During the 15 month period, is the applicable rate considered to be an interim rate? If not, please explain why not. Likewise, please explain what is meant by the statement “[i]n consideration of subsections (12) and (13).”

(16): The rule provides that the commission “may” order a refund; however, no standards or criteria are disclosed to apprise the reader of whether or not the commission will order the refund under any circumstances. This renders the rule objectionable under section 120.52(8)(d), F.S. The rule should be amended accordingly.

In addition, please explain how the rate of interest is determined.

I am available at your convenience to discuss the foregoing comments.

Sincerely,

John Rosner
Chief Attorney

STATE OF FLORIDA

COMMISSIONERS:
BRAULIO L. BAEZ, CHAIRMAN
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON



OFFICE OF THE GENERAL COUNSEL
RICHARD D. MELSON
GENERAL COUNSEL
(850) 413-6199

Public Service Commission

October 21, 2004

Mr. John Rosner
Joint Administrative Procedures Committee
Room 120 Holland Building
Tallahassee, FL 32399-1300

Re: Rule 25-30.457, F.A.C., Limited Alternative Rate Increase

Dear Mr. Rosner:

This letter is in response to your inquiry concerning the above proposed rule.

25-30.437(1) You state that the rule would allow a utility with water service revenues of \$120,000 and wastewater service revenues of \$180,000 to be eligible for a rate increase under this rule, although section 367.0814(1) only authorizes promulgation of rules for a utility whose gross revenues are \$150,000 or less. We disagree that the rule would allow that eligibility. Water and wastewater utilities are separately certificated, and each one must have revenues of \$150,000 or less to apply for a rate increase under this rule. The language you question is meant to inform the small companies to which it applies that if they have both a water utility and a wastewater utility then their total combined revenues do not have to be below \$150,000. The language is identical to provisions in two existing rules, Rule 25-30.455 entitled Staff Assistance in Rate Cases, and Rule 25-30.456 entitled Staff Assistance in Alternative Rate Setting, adopted several years ago, and the Commission has never interpreted it to have the meaning you suggest.

25-30.437(14) – (16) During the 15-month period after the utility files its annual report, the rate is not considered to be an interim rate. Unless there are overearnings, there will be no occasion for further Commission action to order a refund. An "interim" rate requires further action of the Commission. The rate established under this rule becomes the final rate if no further action is taken. Until that period runs, it is viewed as a temporary rate under 367.0814(7) as further explained below.

The statement in subsection (14) explains the quid pro quo provided by this rule to obtain a limited rate increase. "In consideration of subsections (12) and (13)" explains that the utility is agreeing to hold the increase subject to refund for 15 months in exchange for an expedited review of its application and for being relieved of the typical requirement for a financial audit. The Office of Public Counsel specifically did not oppose this rule in part because the provision for holding the rates subject to refund for the 15-month period acts as a pending protest.

25-30.437 (16)

Whether or not a refund is ordered requires a case-by-case determination based upon the particular, individual circumstances. The only time a refund must be given to customers is under section 367.0814(8), when a utility becomes exempt from Commission jurisdiction. The Commission determines whether it is in the utility customers' best interest to order a refund. For example, the Commission has voted not to order a refund in cases where the amount of refund is de minimis, such that the cost of distributing the refund exceeds the amount of the refund. The Commission also has not ordered a refund but has chosen alternative action such as netting the overearnings of a water system with underearnings of a wastewater system of the same utility serving the same customers; or deferring overearnings for future construction projects; or ordering the utility to spend overearnings on conservation programs.¹ In each case, the adjudication is made by the Commissioners based upon the individual circumstances of the utility and the effect the decision will have on the customers.

The rate of interest for a refund is determined pursuant to Rule 25-30.360(4), F.A.C.

25-30.437(7) When I spoke to you recently, you asked me to also address subsection (7) of the rule, and what criteria the Commission would use to set an increase of less than 20 percent. That limitation is meant to advise utilities that they may only have a rate application handled under the abbreviated procedures provided by this rule for increases of not more than 20 percent. At the time it approves the application, the Commission will not have the information necessary to approve a lesser amount. Only if the annual reports subsequently shows that the utility is overearning will the Commission be able to act.

I hope this letter satisfactorily responds to your inquiry. I intend to file the rule with the Secretary of State on October 29, 2004.

Sincerely,



Christiana T. Moore
Associate General Counsel

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¹ Orders where the Commission netted overearnings with underearnings and did not order a refund: 1. Order PSC-01-1246-PAA-WS, issued June 4, 2001 (Pennbrooke Utilities) 2. Order PSC-99-1883-PAA-SU, issued September 21, 1999 (Lindrick Service Corp.) 3. Order PSC-97-1501-FOF-WS, issued November 25, 1997 (Lindrick Service Corp.) 4. Order PSC-96-1205-FOF-WS, issued September 23, 1996 (Indiantown Company, Inc.)

Order where the Commission deferred overearnings for future projects:
Order PSC-00-1165-PAA-WS, issued June 27, 2000 (Sun Communities Finance - wastewater overearnings for a reuse project)

Orders where the Commission ordered the utility to spend overearnings on conservation programs:
1. Order PSC-00-1165-PAA-WS, issued June 27, 2000 (Sun Communities Finance - water overearnings) 2. Order 23809, issued November 27, 1990 (Sanlando) 3. Order PSC-01-1246-PAA-WS, issued June 4, 2001 (Pennbrooke Utilities.)

JAMES E. "JIM" KING, JR.
President

JOHNNIE BYRD
Speaker



THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
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Senator Michael S. "Mike" Bennett, Vice-Chair
Senator Nancy Argenziano
Senator Gwen Margolis
Representative Bill Galvano
Representative Yolly Roberson

F. SCOTT BOYD
EXECUTIVE DIRECTOR
AND GENERAL COUNSEL
Room 120, Holland Building
Tallahassee, Florida 32399-1300
Telephone (850) 488-9110

October 27, 2004

Ms. Christiana T. Moore
Office of the General Counsel
Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

**Re: Public Service Commission
Rule 25-30.457**

Dear Ms. Moore:

Thank you for your letter dated October 21, 2004. I have carefully considered your remarks and prepared the following response.

25-30.457

(1): Section 367.0814(1), F.S., provides in pertinent part as follows:

"The commission may establish rules by which a water or wastewater utility whose gross annual revenues are \$150,000 or less may request and obtain staff assistance for the purpose of changing its rates and charges."

However, the rule provides:

"... water and wastewater utilities whose total gross annual operating revenues are \$150,000 or less for water service or \$150,000 or less for wastewater service, or \$300,000 or less on a combined basis, may petition the Commission for a limited alternative rate increase"

In your letter, you state that the rule could not be applied to alter the statutory sums beyond the \$150,000 caps, notwithstanding the rule's clear language to the contrary. In addition, you explain that the language specified is intended to inform small companies, having both water and

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GENERAL COUNSEL

wastewater utilities, that their total combined revenues do not have to be below \$150,000. However, this explanation is nowhere apparent in the rule.

As written, the rule enlarges, modifies, or contravenes the provisions of law implemented. See, section 120.52(8)(c), F.S. In order to comply with statutory authority and provide the meaning described in your letter, the rule should be amended to replace the language underlined above with your interpretation.

Thank you for referring me to rules 25-30.455 and 25-30.456. The analysis described above is also applicable to those rules. The rules should be amended accordingly.

(7): The rule provides that any increase in operating revenues shall be limited to a maximum of 20%. However, no standards or criteria are disclosed by which the Commission establishes increases of less than 20%. The rule should be amended accordingly.

(16): The rule provides in part that if certain conditions occur, "the Commission may order the utility to refund, with interest, the difference to ratepayers and adjust rates accordingly."

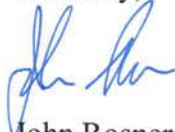
In your letter, you explain that the determination to order a refund requires a case by case determination. You footnoted several references to Commission orders as illustrations. I assume that the examples cited in your explanation are derived from those orders.

The use of the term "may" in the rule renders the rule subject to objection as an invalid exercise of delegated legislative authority. The rule is vague, fails to establish adequate standards for decision and vests unbridled discretion in the Commission. See, section 120.52(8)(d), F.S. The rule should be amended to include the criteria described in your letter as derived from past cases considered by the Commission.

In addition, the rule should specifically refer to rule 25-30.360(4) to supply criteria governing the determination of interest.

In light of the foregoing comments, please apprise me if you still intend to adopt the rule as written.

Sincerely,



John Rosner
Chief Attorney

STATE OF FLORIDA

COMMISSIONERS:
BRAULIO L. BAEZ, CHAIRMAN
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON



OFFICE OF THE GENERAL COUNSEL
RICHARD D. MELSON
GENERAL COUNSEL
(850) 413-6199

Public Service Commission

November 2, 2004

Mr. John Rosner
Joint Administrative Procedures Committee
Room 120 Holland Building
Tallahassee, FL 32399-1300

Re: Rule 25-30.457, F.A.C., Limited Alternative Rate Increase

Dear Mr. Rosner:

Pursuant to section 120.54(3)(e)(6), Florida Statutes, we are tolling the time to file this rule for adoption. Please do not hesitate to call me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Christiana T. Moore".

Christiana T. Moore
Associate General Counsel

CTM

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STATE OF FLORIDA

COMMISSIONERS:
BRAULIO L. BAEZ, CHAIRMAN
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON



OFFICE OF THE GENERAL COUNSEL
RICHARD D. MELSON
GENERAL COUNSEL
(850) 413-6199

Public Service Commission

November 3, 2004

Mr. John Rosner
Joint Administrative Procedures Committee
Room 120 Holland Building
Tallahassee, FL 32399-1300

Re: Rule 25-30.457, F.A.C., Limited Alternative Rate Increase, and Rule 25-30.458, F.A.C., Notice of and Public Information for Application for Limited Alternative Rate Increase

Dear Mr. Rosner:

I inadvertently neglected to notify you that pursuant to section 120.54(3)(e)(6), Florida Statutes, we are tolling the time to file Rule 25-30.458, F.A.C., for adoption in addition to tolling the time for filing Rule 25-30.457. Although you have not sent any comments on Rule 25-30.458, it is applicable only if Rule 25-30.457 is adopted and would be superfluous standing alone.

Sincerely,

A handwritten signature in cursive script that reads "Christiana T. Moore".

Christiana T. Moore
Associate General Counsel

CTM/

STATE OF FLORIDA

COMMISSIONERS:
BRAULIO L. BAEZ, CHAIRMAN
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON



OFFICE OF THE GENERAL COUNSEL
RICHARD D. MELSON
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(850) 413-6199

Public Service Commission

November 5, 2004

Mr. John Rosner
Joint Administrative Procedures Committee
Room 120 Holland Building
Tallahassee, FL 32399-1300

Re: Rule 25-30.457, F.A.C., Limited Alternative Rate Increase

Dear Mr. Rosner:

Enclosed is a copy of the above rule with changes I will recommend to the Commission to address the concerns you stated in your letter of October 27, 2004. If these changes do not eliminate your objections, please let me know by November 15, 2004.

Sincerely,

A handwritten signature in cursive script that reads "Christiana T. Moore".

Christiana T. Moore
Associate General Counsel

CTM/

c: Troy Rendell

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

2 (1) As an alternative to a staff assisted rate case as described in Rules 25-30.455 and
3 25-30.456, F.A.C., water ~~and wastewater~~ utilities whose total gross annual operating revenues
4 are \$150,000 or less for water service and wastewater utilities whose total gross annual operating
5 revenues are ~~or~~ \$150,000 or less for wastewater service, ~~or \$300,000 or less on a combined~~
6 ~~basis~~, may petition the Commission for a limited alternative rate increase of up to 20 percent
7 applied to metered or flat recurring rates of all classes of service by submitting a completed
8 application that includes the information required by sections (8) and (9) ~~and (10)~~. In accordance
9 with section 367.0814(6), F.S., a utility that requests staff assistance waives its right to protest by
10 agreeing to accept the final rates and charges approved by the Commission unless the final rates
11 and charges would produce less revenue than the existing rates and charges. The original and
12 five copies of the application shall be filed with the Division of the Commission Clerk and
13 Administrative Services.

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

18 (3) Within 30 days of receipt of the completed application, the Division of Economic
19 Regulation shall evaluate the application and determine the petitioner's eligibility for a limited
20 alternative rate increase.

21 (4) Upon reaching a decision to officially accept or deny the application, the Director
22 of the Division of Economic Regulation shall notify the petitioner by letter. If the application is
23 accepted, the Director will initiate limited alternative rate setting. If the application is denied, the
24 letter shall state the reasons for denial.

25 (5) The official date of filing will be 30 days after official acceptance of the

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

1 application by the Commission.

2 (6) A utility described in section (1) will qualify for limited alternative rate setting if
3 it satisfies the following criteria:

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

5 (b) The petitioner has paid applicable regulatory assessment fees as required by Rule
6 25-30.120, F.A.C.;

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

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

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

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

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

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

21 (7) ~~Any increase in operating revenues approved pursuant to this rule shall be limited~~
22 ~~to a maximum of 20 percent applied to metered or flat recurring rates of all classes of service.~~

23 (8) The Commission shall deny the application if a petitioner does not remit the fee,
24 as provided by section 367.145, F.S., and Rule 25-30.020(2)(f), F.A.C., within 30 days after
25 official acceptance of the application.

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

1 ~~(8)~~⁽⁹⁾ Each petitioner for limited alternative rate increase shall provide the following
2 general information to the Commission:

3 (a) The name of the utility as it appears on the utility's certificate and the address of
4 the utility's principal place of business; and

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

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

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

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

13 ~~(10)~~⁽¹¹⁾ The petitioner shall provide a statement that the figures and calculations
14 upon which the change in rates is based are accurate and that the change will not cause the utility
15 to exceed its last authorized rate of return on equity.

16 ~~(11)~~⁽¹²⁾ A financial or engineering audit of the utility's financial or engineering
17 books and records shall not be required in conjunction with the application under review.

18 ~~(12)~~⁽¹³⁾ The application will be approved, denied, or approved with modifications
19 within 90 days from the official filing date as established in subsection (5) above.

20 ~~(13)~~⁽¹⁴⁾ In consideration of subsections (11) and (12) and ~~(13)~~, the utility agrees to
21 hold any revenue increase granted under the provisions of this rule subject to refund with interest
22 in accordance with Rule 25-30.360, F.A.C., for a period of 15 months after the filing of the
23 utility's annual report required by section 367.121, F.S., for the year the adjustment in rates was
24 implemented.

25 ~~(14)~~⁽¹⁵⁾ To insure overearnings will not occur due to the implementation of this

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

1 rate increase, the Commission will conduct an earnings review of the utility's annual report to
2 determine any potential overearnings for the year the adjustment in rates was implemented.

3 ~~(16) If, within 15 months after the filing of a utility's annual report required by section~~
4 ~~367.121, F.S., the Commission finds that the utility exceeded the range of its last authorized rate~~
5 ~~of return on equity after an adjustment in rates as authorized by this rule was implemented within~~
6 ~~the year for which the report was filed, the Commission may order the utility to refund, with~~
7 ~~interest, the difference to the ratepayers and adjust rates accordingly.~~

8 ~~(17)~~ In the event of a protest of the proposed agency action (PAA) order pursuant to
9 Rule 28-106.201, F.A.C., by a substantially affected person other than the utility, unless the PAA
10 Order proposes a rate reduction, the utility may implement the rates established in the PAA
11 Order on a temporary basis upon the utility filing a staff assisted rate case application pursuant to
12 Rule 25-30.455, F.A.C., within 21 days of the date the protest is filed.

13 ~~(17)(18)~~ In the event of a protest, the limit on the maximum increase provided in
14 ~~(7)~~ above shall no longer apply.

15 ~~(18)(19)~~ If the utility fails to file a staff assisted rate case application within 21 days
16 in the event there is a protest, the application for a limited alternative rate increase will be
17 deemed withdrawn.

18 Specific Authority: 350.127(2), 367.0814, 367.121(1)(a), F.S.

19 Law Implemented: 350.123, 367.0814, 367.121, 367.145(2), F.S.

20 History: New XX/XX/XX.

ORIGINAL

TAMIAMI VILLAGE WATER COMPANY, INC.
9280-5 COLLEGE PARKWAY
FORT MYERS, FLORIDA 33919
(239) 482-0717
FAX: (239) 489-2017

DISTRIBUTION CENTER
04 AUG -4 AM 8:17

July 31, 2004

Director, Division of the Commission Clerk and Administration Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0862

Re: Docket No. 040246-WS

Director:

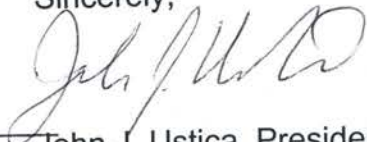
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COMMISSION
CLERK

I have the following suggestion concerning the above referenced docket.

It would be appreciated if there was consistency with rule making concerning class C utilities (small utilities). A class C utility is currently determined by the gross revenue being less than \$200,000. I would suggest to the commission that they be consistent with this threshold for any additional rulings involving small utilities.

Thank you for your attention to this matter. Should you have any questions, please call me on my direct line (239) 489-3933.

Sincerely,



John J. Ustica, President

- CMP _____
- COM _____
- CTR _____
- ECR I
- GCL I
- OPC _____
- MMS _____
- RCA _____
- SCR _____
- SEC _____
- OTH _____

20040246

OFFICE OF PUBLIC COUNSEL'S SUGGESTED LANGUAGE

June 30, 2004

25-30.457(17): The Commission's decision concerning the Utility's request for a limited alternative rate increase shall be issued as a proposed agency action (PAA) order. In the event of a protest of the ~~proposed agency action (PAA)~~ PAA order pursuant to Rule ~~28-106.201~~, 25-22.029, F.A.C., by a substantially affected person other than the utility, unless the PAA ~~Order~~ proposes a rate reduction, the utility may implement the rates established in the PAA ~~Order~~ on a temporary basis upon the utility filing a staff assisted rate case application pursuant to Rule 25-30.455, F.A.C., within 21 days of the date the protest is filed.

25-30.458(2): No less than 14 days and no more than 30 days prior to the date of a customer meeting, the utility shall provide, in writing, a customer meeting notice to all customers within its service area and to all persons in the same service area who have filed a written request for service or who have been provided a written estimate for service within the 12 calendar months prior to the month the petition is filed. The customer meeting will be conducted by the Commission's staff ~~no less than 15 days prior to Commission action on the application~~ no more than 45 days after the official filing date of the Utility's request for a limited alternative rate increase.

20040246-WS

STATE OF FLORIDA

COMMISSIONERS:
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J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON



OFFICE OF THE GENERAL COUNSEL
RICHARD D. MELSON
GENERAL COUNSEL
(850) 413-6199

Public Service Commission

November 2, 2004

Mr. John Rosner
Joint Administrative Procedures Committee
Room 120 Holland Building
Tallahassee, FL 32399-1300

Re: Rule 25-30.457, F.A.C., Limited Alternative Rate Increase

Dear Mr. Rosner:

Pursuant to section 120.54(3)(e)(6), Florida Statutes, we are tolling the time to file this rule for adoption. Please do not hesitate to call me if you have any questions.

Sincerely,

Christiana T. Moore
Associate General Counsel

CTM

30-457toll.ctm.doc

**OFFICE OF PUBLIC COUNSEL'S SUGGESTED CHANGES TO NEW
SECTION (14) OF PROPOSED RULE 25-30.457, F.A.C.**

December 13, 2004

(14) To ensure overearnings will not occur due to the implementation of this rate increase, the Commission shall conduct an earnings review of the utility's annual report to determine any potential overearnings for the year the adjustment in rates was implemented. If the Commission determines the utility overearned during the period of time the utility collected the limited alternative rate increase, such overearnings with interest, up to the amount held subject to refund, shall be disposed of for the benefit of the customers as provided in Section 367.081(4)(d), Florida Statutes.

JAMES E. "JIM" KING, JR.
President



Harold McLean
Public Counsel

STATE OF FLORIDA
OFFICE OF PUBLIC COUNSEL

c/o THE FLORIDA LEGISLATURE
111 WEST MADISON ST.
ROOM 812
TALLAHASSEE, FLORIDA 32399-1400
850-488-9330

JOHNNIE BYRD
Speaker



Stephen C. Reilly
Associate Public Counsel

March 4, 2004

Troy Rendell
Public Utilities Supervisor
Division of Economic Regulation
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RECEIVED
04 MAR -5 PM 1:31
FLA PUBLIC SERVICE COM.
OFFICE OF THE
GENERAL COUNSEL

RE: Proposed Rule 25-30.457, F.A.C.

Dear Troy:

Attached is a copy of the Office of Public Counsel's suggested changes to Proposed Rule 25-30.457, F.A.C. I believe the necessary customer input suggested by our office can be achieved with a minimum of additional cost.

Our office looks forward to working with Staff to produce a limited alternative rate setting procedure for Class C water and wastewater utilities that safeguards the interests of the ratepayers.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen C. Reilly".

Stephen C. Reilly
Associate Public Counsel

Attachment

cc: Marshall W. Willis, CPA
Chris Moore, Esquire

SCR/dsb

**OFFICE OF PUBLIC COUNSEL'S
COMMENTS ON PROPOSED RULE 25-30.457**

The Office of Public Counsel makes the following suggestions to improve the language of the Commission's proposed Rule 25-30.457, Florida Administrative Code. Each suggestion is presented by first reciting the existing proposed language of a particular section of the proposed rule; followed by suggested new language for the same section; followed by a brief discussion of the reasons for the suggested new language. Each suggestion is presented in the same order as each applicable section appears in the proposed rule.

1. Proposed Language: (1) As an alternative to a staff assisted rate case as described in Rules 25-30.455 and 25-30.456, F.A.C., water and wastewater utilities whose total gross annual operating revenues are \$150,000 or less for water service or \$150,000 or less for wastewater service, or \$300,000 or less on a combined basis, may petition the Commission for a limited alternative rate increase by submitting a completed application that includes the information required by sections (9) and (10).

Suggested Change: (1) As another staff assisted ~~an~~ alternative to a the staff assisted rate cases as described in Rules 25-30.455 and 25-30.456, F.A.C., water and wastewater utilities whose total gross annual operating revenues are \$150,000 or less for water service or \$150,000 or less for wastewater service, or \$300,000 or less on a combined basis, may petition the Commission for a limited alternative rate increase by submitting a completed application that includes the information required by sections (9) and (10).

Discussion: The suggested language clarifies that the limited alternative rate increase proceeding is a third and less demanding type of staff assisted rate case available to utilities that are willing to accept a rate increase which produces revenues no greater than 20% in excess of test year operating revenues.

2. Proposed Language: (2) Upon filing a petition for limited alternative rate increase, the utility shall mail a copy of the petition to the chief executive officer of the governing body of each municipality and county within the service areas included in the rate request.

Suggested Change: (2) Upon filing a petition for limited alternative rate increase, the utility shall mail a copy of the petition to the chief executive officer of the governing body of each municipality and county within the service areas included in the rate request, and retain a copy of the petition at the utility's business office located in the service territory, so that customers will be able to review the application. The petition and supporting documents shall be available for public inspection during the utility's normal business hours.

Discussion: A copy of the petition and supporting documents should be available for inspection by the customers so they can make an informed judgment about the utility's need for the proposed rate increase.

3. Proposed Language: Section (6) (a) The applicant has filed annual reports as required by Rule 25-30.110 (3), F.A.C., for the historical test year;

Suggested Change: Section (6) (a) The applicant has filed all of its annual reports as required by Rule 25-30.110 (3), F.A.C. ~~for the historic test year;~~

Discussion: The Commission should require that all of the applicant's annual reports, required to be filed by Rule 25-30.110 (3), F.A.C., be on file with the Commission prior to a utility seeking a limited alternative rate increase. In limited alternative rate proceedings staff does not intend to conduct an audit to verify any of the assertions or representations made by the utility in its application or its annual report for the historic test year. At minimum, staff needs to be able to review all of the applicant's past annual reports to help provide some historic reference within which to view the utility's application and annual report for the historic test year. Rule 25-30.456 (8)(b), F.A.C., requires applicants to file all of their annual reports in order to qualify for a staff assisted alternative rate proceeding. Even the existing proposed language to Section (6)(d) of proposed Rule 25-30.457, F.A.C., requires every applicant to comply in a timely manner with all Commission decisions and requirements affecting water and wastewater utilities for two (2) years prior to the filing of the application. Presumably, this includes the requirements of Commission Rule 25-30.110(3), F.A.C.

4. There is no (6) (f) to the rule as currently worded, the subsection after (6) (e) should be designated (6) (f) and the subsequent subsection should be renumbered.

5. Proposed Language: (6) (h) A final order in a rate proceeding has been issued for the Utility within the 7-year period prior to the receipt of the application under review.

Suggested Change: (6) (h) A final order in a rate proceeding, which established the applicant's rate base, capital structure, annual operating expenses and revenues after staff audit of the applicant's books and records, has been issued for the utility within the 7-year period prior to the receipt of the application under review.

Discussion: This subsection of the proposed rule offers little or no protection to the customers unless the final order referred to in the rule is a final order based upon facts tested at least by a full staff audit, rather than merely assertions made by the utility. Otherwise, one rate increase could follow another and still another, which are based upon erroneous or even fraudulent claims repeatedly made by the applicant.

6. Proposed Language: (9) (c) 1. A statement that the utility has applied for a rate change with the Commission.

Suggested Change: (9) (c) 1. A statement that the utility has applied for a rate change with the Commission, and that a copy of the application and accompanying documentation, including the utility's petition, can be reviewed at the utility's business office located in the service territory, during normal business hours.

Discussion: The customer notice should inform the customers where and when they can review the utility's case supporting the proposed rate increase.

7. New Proposed Subsection (9) (c) 4. A statement that the Commission's staff will conduct a customer meeting to receive any comments the customers may wish to make concerning the utility's application. The notice shall state the date, time and location of the meeting. The customer notice required by (9) (c) of this rule shall be furnished to the customers after the Commission has officially accepted the utility's application and at least 21 days prior to the scheduled customer meeting.

Discussion: The customer notice should inform the customers of their opportunity to express their opinions to staff about the utility's request for a rate increase.

8. Proposed Language: (9) (c) 4. A statement that written protests regarding the utility's proposed rates must be addressed to the Director, Division of Commission

Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0870, and that such protest should identify the docket number assigned to the proceeding and must be received prior to the expiration of the protest period;

Suggested Change: New (9) (c) 5. A statement that written protests regarding the utility's proposed rates must be addressed to the Director, Division of Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0870, and that such protest should identify the docket number assigned to the proceeding and must be received prior to the expiration of ~~the protest period;~~ 21 days after the issuance of the notice of the proposed agency action, as provided in Rule 25-22.029, F.A.C.

Discussion: This subsection should be renumbered to follow new subsection (9) (c) 4. The rule should expressly require that the notice state the duration of the protest period, in number of days, to avoid any confusion as to the deadline for filing any protest to the PAA Order.

9. Proposed Language: (11) The utility shall provide an affirmation stating that the figures and calculations upon which the change in rates is based are accurate and that the change will not cause the utility to exceed its last authorized rate of return on equity.

Suggested Change: (11) The utility shall provide an affirmation stating that the figures and calculations upon which the change in rates is based are accurate and that the change will not cause the utility to exceed its last authorized rate of return on equity.

Discussion: Typographical error.

10. Proposed Language: (12) The Commission shall not perform a financial or engineering audit of the utility's financial or engineering books and records in conjunction with the utility's application under review.

Suggested Change: (12) The Commission shall not be required to perform a financial or engineering audit of the utility's financial or engineering books and records in conjunction with the utility's application under review.

Discussion: While it may be the intent of the Commission and its staff to not audit any of the applicant's books or records while processing a limited alternative rate case, the Commission should not bar itself from doing so. The Commission should give its staff the authority to verify aspects of the applicant's limited alternative rate increase request if staff deems it necessary. There may be many reasons staff would want to clarify or verify some assertion made by the utility in its application. Staff may discover inconsistencies within the application itself, inconsistencies between the application and one or more of the company's annual reports or inconsistencies between one or more of the annual reports filed by the applicant. In order for the Commission to meet its statutory obligations to approve only just, reasonable, compensatory and not unfairly discriminatory rates, it should not bar its staff from verifying, when necessary, the accuracy of assertions made by applicants in limited alternative rate proceedings.

11. Proposed Language: (13) The Commission shall not conduct a customer meeting about the utility's application under review.

Suggested Change: The Commission's staff shall ~~not~~ conduct a customer meeting about the utility's application under review prior to making its recommendation to the Commission.

Discussion: The Office of Public Counsel is cognizant of the Commission's desire to simplify and economize its review and processing of rate increase requests. However, the cost of eliminating customer input is greater than any savings that might be realized by the Commission. Economies can be realized by sending only staff to the customer meeting, and only a limited number of staff if budgetary constraints dictate. Without the protection of a staff audit, comments received from customers, who are often familiar with the day-to-day operations of the utility, might be the only way staff can receive information contrary to the unaudited assertions made by the applicant. Involving the customers, even in this limited way, is also good public relations for the applicant and the Commission. It gives the utility an opportunity to explain its case to its customers before they potentially receive notification that their rates have been increased. It is also important for the Commission to give a point of entry and some measure of due process to the customers, prior to imposing a rate increase upon them.

12. Proposed Language (18) In the event of a protest of the PAA Order pursuant to Rule 28-106.201, F.A.C., by a substantially affected party, the utility may implement the rates established in the PAA Order on a temporary basis upon the utility filing a staff assisted rate case application pursuant to Rule 25-30.455, F.A.C., within 14 days of the date the protest is filed.

Suggested Change: (18) In the event of a protest of the PAA Order pursuant to Rule 28-106.201, F.A.C., by a substantially affected party, other than the applicant unless the PAA Order proposes a rate reduction, the utility may implement the rates established in the PAA Order on a temporary basis upon the utility filing a staff assisted

rate case application pursuant to Rule 25-30.455, F.A.C., within 14 days of the date the protest is filed.

Discussion: The rule should make clear that pursuant to the requirements of Section 367.0814(6), Florida Statutes, the Utility can not protest the PAA Order that resolves an application for a limited alternative rate increase, unless the order proposes a rate reduction.

13. Proposed Language: (19) If the utility fails to file a staff assisted rate case application within 14 days, the application for a limited alternative rate increase will be deemed withdrawn.

Suggested Language: (19) If the utility fails to file a staff assisted rate case application within 14 days, the application for a limited alternative rate increase will be deemed withdrawn and any revenue collected during the 14 day period in excess of test year revenues will be refunded to the customers with interest.

Discussion: The proposed language does not protect the customers in the event the utility chooses not to file for a staff assisted rate case but has implemented PAA rates during the 14 day decision period.



St. Johns River Water Management District

Kirby B. Green III, Executive Director • David W. Fisk, Assistant Executive Director
David Dewey, Altamonte Springs Service Center Director

975 Keller Road • Altamonte Springs, FL 32714-1618 • (407) 659-4800

March 4, 2004

Mr. William Troy Rendell
Public Utilities Supervisor
Division of Economic Regulation
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Ms. Chris Moore
Division of Economic Regulation
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Dear Mr. Rendell and Ms. Moore:

Thank you for the opportunity to comment on the Workshop Draft of the proposed revisions to Florida Administrative Code Rule 25-30.457, Limited Alternative Rate Increase. The District applauds the FPSC's efforts to provide for a more simplified process to allow utilities to generate the revenues necessary to provide appropriate service to their customers, including compliance with regulatory criteria.

In order to encourage efficient use of water resources, the St. John's River Water Management District has adopted rule criteria requiring public supply applicants for a consumptive use permit to adopt a water conserving rate structure. In order to assure applicants meet the reasonable-beneficial use criteria of our rule, we are issuing permits with conditions requiring that the permittee implement a water conserving rate structure or provide documentation that the cost of implementing such a rate structure is not justified because it will have little or no effect on reducing water use.

To assist the District in assuring that public supply uses are reasonable-beneficial, we ask that the following addition to the proposed rule be made:

(6) (i). The applicant demonstrates that it complies with Water Management District consumptive use permit requirements regarding the implementation of a water conservation promoting rate structure.

Please note that the District is not interested in having other regulatory compliance criteria included in the rule as qualifying criteria for the limited alternative rate setting.

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FLA PUBLIC SERVICE COMM.
OFFICE OF THE
GENERAL COUNSEL

March 4, 2004

We believe that the proposed limited rate increases may help assist utilities in making necessary improvements to comply with regulatory criteria. We do, however, want assurances that the rate structure is reviewed if the applicant has not yet implemented a rate structure that sends a price signal to customers to conserve water.

Thank you again for the opportunity to comment on the proposed rule. We look forward to continuing to work closely with the FPSC to ensure the efficient and conservative utilization of water resources in Florida.

Sincerely,



Catherine A. Walker, P.E., MBA
Assistant Division Director
Division of Water Use Regulation

cc: Dwight Jenkins, P.G, Division Director, Water Use Regulation
Hal Wilkening, P.E., Department Director, Resource Management



An Equal Opportunity Employer

Southwest Florida Water Management District

Tampa Service Office
7601 Highway 301 North
Tampa, Florida 33637-6759
(813) 985-7481 or
1-800-836-0797 (FL only)
SUNCOM 578-2070

Bartow Service Office
170 Century Boulevard
Bartow, Florida 33830-7700
(863) 534-1448 or
1-800-492-7862 (FL only)
SUNCOM 572-6200

2379 Broad Street, Brooksville, Florida 34604-6899
(352) 796-7211 or 1-800-423-1476 (FL only)
SUNCOM 628-4150 TDD only 1-800-231-6103 (FL only)
On the Internet at: WaterMatters.org

Sarasota Service Office
6750 Fruitville Road
Sarasota, Florida 34240-9711
(941) 377-3722 or
1-800-320-3503 (FL only)
SUNCOM 531-6900

Lecanto Service Office
3600 West Sovereign Path
Suite 226
Lecanto, Florida 34461-8070
(352) 527-8131
SUNCOM 667-3271

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Pasco
- Judith C. Whitehead**
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- David L. Moore**
Executive Director
- Gene A. Heath**
Assistant Executive Director
- William S. Bilenky**
General Counsel

February 10, 2004

Mr. Troy Rendell
Division of Economic Regulation
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0862

Subject: Limited Alternative Rate Increase – Rule 25-30.457

Dear Mr. Rendell:

District staff have reviewed proposed rule 25-30.457, F.A.C. While we applaud the intent of this effort to make minor rate cases more affordable to small utilities, we do have some concerns about how the rule revision, as proposed, may affect our ability to cooperate on matters of mutual interest as laid out in our Memorandum of Understanding dated June 27, 1991. It appears that there will be little if any staff review of the qualifying utilities' proposed rates or rate structures. Currently, we are usually contacted by PSC staff and asked whether there are any water management district permit compliance issues that should be considered in the rate case. In some cases, a change in rate structure or rate level may be required to enable a utility to come into compliance with its District permit conditions. Under the proposed limited alternative rate increase rule, it does not appear that there will be a PSC staff review of the rate structure or rate level, and therefore, no opportunity to address such compliance issues.

One way to address this issue may be to consider those utilities that are out of compliance with water management district permit conditions ineligible for the limited proceedings. In order to minimize the number of utilities that could be affected by such a ruling of ineligibility, only violations of conditions of consequence or those particularly germane to the PSC should be considered. For example, under Section 25-30.457, subsection (8), item (j) could be added that indicates:

(8)(j) The applicant is in compliance with any applicable water management district permit conditions concerning overall pumpage, individual withdrawal point pumpage, per-capita water use and rate structure.

VIA FAX

04 FEB 16 AM 10:26
Division of Economic Regulation
REGULATION

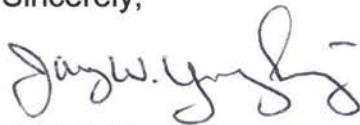
REGISTRATION SERVICE

February 10, 2004
Page 2

We feel that we have been able to accomplish much through our Memorandum of Understanding and hope that our suggestions will be kept in mind in these proceedings. I request that our comments be read into the record at the upcoming rule workshop on February 12, 2004 in Orlando.

If you should have any questions or suggestions concerning our comments, please feel free to call me at (800) 423-1476, extension 4406.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jay W. Yingling".

Jay W. Yingling
Senior Economist
Planning Department

cc: Richard Owen
Ken Weber
Yassert Gonzalez