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| State of Florida  pscSEAL | | 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: | June 26, 2019 | | |
| TO: | Office of Commission Clerk (Teitzman) | | |
| FROM: | Office of the General Counsel (Davis)  Division of Accounting and Finance (Norris) Division of Economics (Guffey) | | |
| RE: | Docket No. 20190055-WS – Proposed amendment of Rule 25-30.420, F.A.C., Establishment of Price Index, Adjustment of Rates; Requirement of Bond; Filings After Adjustment; Notice to Customers. | | |
| AGENDA: | 07/09/19 – Regular Agenda – Rule Proposal – Interested Persons May Participate | | |
| COMMISSIONERS ASSIGNED: | | | All Commissioners |
| PREHEARING OFFICER: | | | Polmann |
| RULE STATUS: | | | Proposal May Be Deferred |
| SPECIAL INSTRUCTIONS: | | | None |

Case Background

Pursuant to Section 367.081(4)(a), Florida Statutes (F.S.), the Commission was given the authority to establish by rule the procedure by which a water and/or wastewater utility may implement an increase or decrease in rates based on the application of the Commission’s price index. The price index is based on changes for major categories of the utility’s operating costs. Rule 25-30.420, Florida Administrative Code (F.A.C.), sets forth the Commission’s price index application procedure. Each year the Commission sends an informational packet to all water and wastewater utilities to notify them of the availability of the price index. Rule 25-30.420(1), F.A.C., is being amended to update and clarify the rule. In particular, staff recommends an amendment to the example form that all water and wastewater utilities may use when applying for index or pass-through rate adjustments.

Notice of the rule development appeared in the September 20, 2018 edition of the Florida Administrative Register, Vol. 44, No. 184. There was no request for a workshop, and no workshop was held. This recommendation addresses the amendment of Rule 25-30.420, F.A.C. The Commission has jurisdiction pursuant to Section 367.081(4)(a), F.S.

Discussion of Issues

Issue :

 Should the Commission propose the amendment of Rule 25-30.420, F.A.C., Establishment of Price Index, Adjustment of Rates; Requirement of Bond; Filings After Adjustment; Notice to Customers?

Recommendation:

 Yes, the Commission should propose the amendment of Rule 25-30.420, F.A.C., as set forth in Attachment A. The Commission should also certify that Rule 25-30.420, F.A.C., is not a rule that the violation of which would be a minor violation pursuant to Section 120.695, F.S. (Davis, Norris, Guffey)

Staff Analysis:

 Staff is recommending that Rule 25-30.420, F.A.C., be amended as set forth in Attachment A, to update and clarify the rule. Below, staff explains in more detail the substantive recommended amendments to the rule.

Rule 25-30.420, F.A.C., currently references Form PSC/AFD 15 (4/99), titled “Index Application,” which can be obtained from the Commission’s Division of Accounting and Finance and may be used by water and wastewater utilities to apply for index and/or pass-through rate adjustments. The form serves as a guideline for calculating the index rate adjustment and provides sample language to assist in meeting rule requirements, such as noticing. The Commission annually approves a package mailed by the Commission Clerk to every regulated water and wastewater utility that includes the “Index Application” form. In an effort to increase the number of water and wastewater utilities taking advantage of the annual price index and pass-through programs, the package also includes a cover letter from the Director of the Division of Accounting and Finance in order to explain the purpose of the index and pass-through applications and to communicate that Commission staff is available to assist them. Using an administrative process, Commission staff reviews all applications submitted by the utilities for completeness and accuracy prior to any index and/or pass-through rate adjustment being approved.   
  
Staff recommends the Commission amend the rule, Attachment A, to update the example application form. The form currently referenced in the rule would be replaced with Form PSC 1022 (9/18), which is included in Attachment B.

Staff is also recommending that an e-mail address be added to the rule, which will give the utility the option to either file the form with the Division of Accounting and Finance by mail or electronically.

Staff also recommends that, in order to reduce the postage burden, utilities need no longer submit five copies of their documents to be reviewed by the Division of Accounting and Finance. Only one copy would be required if the rule is amended, as recommended by staff.

Staff further recommends that subsection (4) of the rule be amended to change the word “may” to “shall.” This is necessary because use of the word “may” does not comport with Sections 120.52(8)(d), F.S., and 120.545(1), F.S., as it vests the Commission with unbridled discretion.

Although no workshop was requested, a comment was filed by the owner of several small water and wastewater utilities. In discussing the “Index Application” form and the suggested language for customer notices that must be mailed out, it was suggested that, in addition to including a customer notice for the price index adjustment and a separate customer notice for the pass-through rate adjustment in the form, there should be combined notices as well. The two customer notices are included for the purpose of providing sample language and may be combined into one notice for a utility filing a combined index and pass-through application. To clarify this practice, staff recommends that a sentence confirming that utilities may combine the notices themselves be included in the yearly application packet cover letter.

Minor Violation Rule Certification

Pursuant to Section 120.695, F.S., beginning July 1, 2017, for each rule filed for adoption the agency head shall certify whether any part of the rule is designated as a rule the violation of which would be a minor violation. Rule 25-30.420, F.A.C., is a not a rule for which a violation would be minor because violation of the rule would result in economic harm to ratepayers. Thus, staff recommends that the Commission certify that Rule 25-30.420, F.A.C., is not a rule that the violation of which would be a minor violation pursuant to Section 120.695, F.S.

Statement of Estimated Regulatory Costs

Pursuant to Section 120.54, F.S., agencies are encouraged to prepare a statement of estimated regulatory costs (SERC) before the adoption, amendment, or repeal of any rule. The SERC is appended as Attachment C to this recommendation. The SERC analysis also includes whether the rule is likely to have an adverse impact on growth, private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate within five years of implementation.

The SERC concludes that the rule will not likely directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate in Florida within one year after implementation. Further, the SERC concludes that the rule will not likely have an adverse impact on economic growth, private sector job creation or employment, private sector investment, business competitiveness, productivity, or innovation in excess of $1 million in the aggregate within five years of implementation. Thus, the rule does not require legislative ratification pursuant to Section 120.541(3), F.S. In addition, the SERC states that the rule will not have an adverse impact on small business and will have no impact on small cities or counties. No regulatory alternatives were submitted pursuant to paragraph 120.541(2)(g), 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 revision.

Conclusion

Staff recommends that the Commission propose the amendment of Rule 25-30.420, F.A.C., as set forth in Attachment A. In addition, the Commission should certify that Rule 25-30.420, F.A.C., is not a rule that the violation of which would be a minor violation pursuant to Section 120.695, F.S.

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

Recommendation:

 Yes, if no requests for hearing or comments are filed the rule should be

filed with the Department of State, and the docket should be closed. (Davis)

Staff Analysis:

 If no requests for hearing or comments are filed by affected persons, the rules should be filed with the Department of State, and the docket should be closed.

**25-30.420 Establishment of Price Index, Adjustment of Rates; Requirement of Bond; Filings After Adjustment; Notice to Customers.**

(1) On or before March 31 of each year, t~~T~~he Commission shall~~, on or before March 31 of each year,~~ establish a price increase or decrease index as required by Section 367.081(4)(a), F.S. The Office of Commission Clerk shall mail each regulated water and wastewater utility a copy of the proposed agency action order establishing the index for the year and a copy of ~~the application.~~ Form PSC 1022 (9/18) ~~PSC/AFD 15 (4/99)~~, entitled “Index Application”, which is incorporated into this rule by reference and may be obtained from [Dept of State hyperlink] and the Commission’s Division of Accounting and Finance. Applications for the newly established price index will be accepted from April 1 of the year the index is established through March 31 of the following year.

(a) The index shall be applied to all operation and maintenance expenses, except for amortization of rate case expense, costs subject to pass-through adjustments pursuant to Section 367.081(4)(b), F.S., and adjustments or disallowances made in a utility’s most recent rate proceeding.

(b) In establishing the price index, the Commission will consider cost statistics compiled by government agencies or bodies, cost data supplied by utility companies or other interested parties, and applicable wage and price guidelines.

(2) Any utility seeking to increase or decrease its rates based upon the application of the index established pursuant to subsection (1) and as authorized by Section 367.081(4)(a), F.S., shall file ~~an original and five copies of~~ a notice of intention and the materials listed in paragraphs (a) through (i) below with the Commission’s Division of Accounting and Finance either by mail at 2540 Shumard Oak Boulevard, Tallahassee, Florida, 32399 or by e-mail at [Applications@psc.state.fl.us](mailto:Applications@psc.state.fl.us) at least 60 days prior to the effective date of the increase or decrease. Form PSC 1022 (9/18) is an example application that may be completed by the applicant to comply with this subsection. The adjustment in rates shall take effect on the date specified in the notice of intention unless the Commission finds that the notice of intention or accompanying materials do not comply with Section 367.081(4), F.S. or this rule ~~the law, or the rules or orders of the Commission~~. The notice shall be accompanied by:

(a) Revised tariff sheets;

(b) A computation schedule showing the increase or decrease in annual revenue that will result when the index is applied;

(c) The affirmation required by Section 367.081(4)(c), F.S.;

(d) A copy of the notice to customers required by subsection (6);

(e) The rate of return on equity that the utility is affirming it will not exceed pursuant to Section 367.081(4)(c), F.S.;

(f) An annualized revenue figure for the test year used in the index calculation reflecting the rate change, along with an explanation of the calculation, if there has been any change in the utility’s rates during or subsequent to the test year;

(g) The utility’s Department of Environmental Protection Public Water System identification number and Wastewater Treatment Plant Operating Permit number;~~.~~

(h) A statement that the utility does not have any active written complaints, corrective orders, consent orders, or outstanding citations with the Department of Environmental Protection ~~(DEP)~~ or the County Health Department(s) or that the utility does have active written complaints, corrective orders, consent orders, or outstanding citations with the Department of Environmental Protection or the County Health Department(s);~~.~~

(i) A copy of any active written complaints, corrective orders, consent orders, or outstanding citations with the Department of Environmental Protection ~~(DEP)~~ or the County Health Department(s).

(3) If the Commission, upon its own motion, implements an increase or decrease in the rates of a utility based upon the application of the index established pursuant to subsection (1) and as authorized by Section 367.081(4)(a), F.S., the Commission will require a utility to file the information required in subsection (2).

(4) Upon a finding of good cause, the Commission shall ~~may~~ require that a rate increase pursuant to Section 367.081(4)(a), F.S., be implemented under a bond or corporate undertaking in the same manner as interim rates. For purposes of this subsection, “good cause” shall include:

(a) Inadequate service by the utility;

(b) Inadequate record-keeping by the utility such that the Commission is unable to determine whether the utility is entitled to implement the rate increase or decrease under this rule.

(5) Prior to the time a customer begins consumption at the rates established by application of the index, the utility shall notify each customer of the increase or decrease authorized and explain the reasons therefore.

(6) No utility shall file a notice of intention pursuant to this rule unless the utility has filed ~~on file~~ with the Commission an annual report as required by subsection 25-30.110(3), F.A.C., for the test year specified in the order establishing the index for the year.

(7) No utility shall implement a rate increase pursuant to this rule within one year of the official date that it filed a rate proceeding, unless the rate proceeding has been completed or terminated.

*Rulemaking Authority 350.127(2), 367.081(4)(a), 367.121(1)(c), (f) FS. Law Implemented 367.081(4), 367.121(1)(c), (g) FS. History–New 4-5-81, Amended 9-16-82, Formerly 25-10.185, Amended 11-10-86, 6-5-91, 4-18-99, 12-11-03, \_\_\_\_\_\_*



























