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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20210122-WS

PROPOSED AMENDMENT OF RULES  
25-30.025, 25-30.4345,  
25-30.445, 25-30.446,  
25-30.455, 25-30.456, AND  
25-30.565, F.A.C., RELATED  
TO WATER AND WASTEWATER  
UTILITIES.

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PROCEEDINGS: COMMISSION CONFERENCE AGENDA  
ITEM NO. 3

COMMISSIONERS  
PARTICIPATING: CHAIRMAN GARY F. CLARK  
COMMISSIONER ART GRAHAM  
COMMISSIONER ANDREW GILES FAY  
COMMISSIONER MIKE LA ROSA  
COMMISSIONER GABRIELLA PASSIDOMO

DATE: Tuesday, October 12, 2021

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

REPORTED BY: ANDREA KOMARIDIS WRAY  
Court Reporter and  
Notary Public in and for  
the State of Florida at Large

PREMIER REPORTING  
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## 1 P R O C E E D I N G S

2 CHAIRMAN CLARK: Item No. 3. Ms. Cowdery will  
3 introduce the item for us, please.

4 MS. COWDERY: Good morning, Commissioners. I  
5 am Kathryn Cowdery with the Office of General  
6 Counsel.

7 Item 3 is the proposed amendment to seven  
8 water and wastewater rules related to applications  
9 in service availability, allowance for funds  
10 prudently invested, limited proceedings, and staff  
11 assistance in rate cases and in -- in alternative  
12 rate settings.

13 The draft amendments include changes to make  
14 these rules consistent with rule amendments  
15 recently adopted by the Commission and other  
16 electric, gas, water, and wastewater utilities;  
17 decrease the number of copies -- paper copies that  
18 utilities are required to file or distribute for  
19 public inspection; require utilities to notify  
20 customers that applications may be accessed on the  
21 Commission's website; change the responsibility for  
22 determining the official date of filing to the  
23 director of the Office of Primary Responsibility;  
24 and update and clarify application-filing  
25 requirements.

1           Ms. Ali Wessling, representing the Office of  
2           Public Counsel, would like to address the  
3           Commission. And Staff is available to answer any  
4           questions.

5           CHAIRMAN CLARK: Thank you, Ms. Cowdery.  
6           Ms. Wessling.

7           MS. WESSLING: Good morning, Commissioners,  
8           and thank you for the opportunity to address you  
9           this morning.

10           OPC has no particular comments about the  
11           majority of the rule changes proposed in this  
12           docket; however, OPC does wish to draw your  
13           attention to one proposed rule change that does  
14           cause some concern. That rule is -- the changes in  
15           Rule 25-30.445(6)(a), which is Page 18, Line 7 of  
16           the staff's recommendation.

17           So, with this particular amendment, it's more  
18           than a substantive change to regulatory procedure  
19           than just making these rules consistent with other  
20           recent rule amendments. This amendment expands the  
21           number of projects and limited proceedings from  
22           four to six. Staff has expressed a belief that  
23           this change will facilitate efficiencies by  
24           reducing the number of staff-assisted rate cases  
25           being filed.

1           At this point, the record does not appear to  
2           support this, and we think a rule hearing would be  
3           the appropriate way to determine if there's a data-  
4           driven need to make this change.

5           We believe the current limit of four projects  
6           already efficiently allows water and wastewater  
7           utilities to make needed repairs in a timely manner  
8           without the need for a staff-assisted rate case,  
9           and there's no need to raise the number of  
10          permissible projects.

11          In fact, it seems like the current limited-  
12          proceedings option is working, as there does not  
13          appear to be a significant number of the current  
14          staff-assisted rate cases. It looks like --  
15          depending on how you count it, it looks like  
16          there's about two or three pending currently.

17          The recommendation does not provide any  
18          historical data or projections about increases in  
19          staff-assisted rate cases, but does appear to be  
20          reducing the number of staff-assisted rate cases as  
21          the use of a limited alternative rate increase  
22          under Rule 25-30.457 of Florida Administrative  
23          Code.

24          OPC submits that there is not an existing  
25          problem that is being addressed by this rule -- or

1 rule change. We would also point out that neither  
2 the notice of rulemaking nor the statement of  
3 estimated regulatory costs, or the SERC, address  
4 the particular rule change.

5 In light of the lack of justification, and to  
6 avoid having a hearing where there doesn't appear  
7 to be a need, OPC asks that you deny this  
8 particular proposed rule change to Rule 25-30.445,  
9 Florida Administrative Code.

10 And, in the alternative, OPC asks that the  
11 Commission -- if you do have concerns about the  
12 overwhelming number of staff-assisted rate cases,  
13 then we propose that you raise the number of  
14 projects to six, but only for utilities that are  
15 already eligible for staff assistance.

16 Thank you.

17 CHAIRMAN CLARK: Thank you, Ms. Wessling.

18 Commissioners, any questions?

19 Staff, response?

20 Mr. Brown?

21 MR. BROWN: Commissioners, Todd Brown with  
22 Commission staff.

23 I'd like to say that the raising from the four  
24 project to six projects -- we were kind of hoping  
25 for some middle ground. I think there was

1 initially some pro- -- proposal or discussion that  
2 we actually go to eight projects, and we thought  
3 that might be a bridge too far.

4 Historically, what we've seen in some of these  
5 limited proceedings is that, even though there may  
6 be four projects, some of those projects could be  
7 large. And there's been interest from OPC to  
8 sometimes break out those pr- -- some of those  
9 subprojects into projects of their own.

10 So, this was a way to kind of keep the -- the  
11 process moving and to -- to keep the efficiency of  
12 the -- of the limited-proceeding process intact for  
13 those utilities.

14 It's -- I just want to add that there's not a  
15 ton of limited proceedings out there. I mean, I  
16 went back and looked from 2016 forward. I -- I  
17 found about five dockets im- -- impacting ten  
18 systems. So, it's not frequently used.

19 One of those systems that was in in 2017 is  
20 going to be back in in 2022 for a rate case, so  
21 they're not avoiding the full-blown rate-case  
22 process.

23 And I'm trying to think if there was anything  
24 else I wanted to add.

25 CHAIRMAN CLARK: Quick question, Mr. Brown, in

1 relation to that. If they've not been in within  
2 seven years, this company would not be eligible  
3 anyway; is that correct?

4 MR. BROWN: That's correct. They -- they  
5 have --

6 CHAIRMAN CLARK: '17 to '22 is five years?

7 MR. BROWN: Correct. Yeah, they have to have  
8 been in for a full-blown rate case within seven  
9 years. Even with the additional projects that  
10 we've -- we put in the rulemaking, there's still a  
11 30-percent cap. So, there are some guardrails in  
12 place to prevent this from, you know, kind of --  
13 kind of going off.

14 CHAIRMAN CLARK: Commissioner Fay.

15 COMMISSIONER FAY: Thank you, Mr. Chairman.

16 I guess my question would be directed to you,  
17 Mr. Brown. So, when we talk about the pro- -- the  
18 rulemaking process, it's not -- it's unique  
19 compared to a lot of dockets because there is input  
20 from all parties as it moves forward.

21 You're saying, at some point, there was a  
22 discussion about eight, but did you hear this  
23 comment from Office of Public Counsel during that  
24 time period?

25 MR. BROWN: I -- I don't remember any comments

1 from OPC during that time. I -- I could be wrong,  
2 but I -- I don't remember input on that  
3 particular -- on that particular number.

4 And the discussion on the eight projects may  
5 have specifically just been on staff's side, but I  
6 do not remember input from OPC during the  
7 rulemaking process.

8 I don't know if Kathryn remembers anything  
9 specifically or --

10 MS. COWDERY: No, I think that was a staff  
11 discussion.

12 COMMISSIONER FAY: Okay. And then -- not to  
13 put you sort of on the defensive, but the idea of  
14 the six is kind of some sort of middle ground.  
15 Is -- is it also substantiated by some of what  
16 you're seeing pre- -- you've previously seen in  
17 dockets that have come forward.

18 MR. BROWN: I just know -- I haven't seen  
19 anything where we've kind of come close to that  
20 sixth project. I mean, I'm -- going back through  
21 the history, I've seen where we've gone to four  
22 projects for water, four projects for wastewater,  
23 but nothing where we've -- where we've had to even  
24 think about kind of, you know, asking for some kind  
25 of a waiver on the rule to exceed the four that



1           are -- that is currently included.

2           But, historically, we've also seen where some  
3           of those projects have been -- subprojects have  
4           been pulled out or, if they haven't been pulled  
5           out, there's been discussion about pulling them out  
6           and possibly exceeding that -- that four-project  
7           limit.

8           COMMISSIONER FAY: Okay. And then do you  
9           know -- so, it looks like the rule was created in  
10          '04. It was amended in 2017.

11          Do you know if that limit that was set -- was  
12          that the original limit in 2004? Or do you know if  
13          it was part of the amendment --

14          MR. BROWN: I -- I don't know what the 2017  
15          amendment was related to.

16          COMMISSIONER FAY: Okay. Okay. Yeah, I  
17          gue- -- I guess that's all, Mr. Chairman. I think  
18          it -- it looks like, from the rules, that that  
19          limit of four was set in 2004 when the rule was  
20          originally put forward. So, I think, if that's the  
21          case, the adjustment seems reasonable, to me.

22          I appreciate Office of Public Counsel bringing  
23          it forward, but I -- I do also think the rulemaking  
24          process is to set out to have that input as we go  
25          along the way so, when it's presented to us, we

1 have the opportunity to know kind of who's weighed  
2 in on it, but my colleagues may feel differently.

3 CHAIRMAN CLARK: Thank you, Commissioner Fay.  
4 Commissioner Graham.

5 COMMISSIONER GRAHAM: Thank you, Mr. Chairman.

6 I -- when I read through this -- the rec, I  
7 saw the difference between four and six. And I  
8 agree with OPC, there was no justification in there  
9 for that, but I didn't see that as a problem.

10 Not being part of some of the meetings that  
11 Mr. Brown had, I didn't know what the input was,  
12 but I saw that there's still the 30-percent cap in  
13 there, so I -- I really couldn't see how this was  
14 going to be detrimental in any way.

15 But I'd like to hear from Mr. Friedman, if I  
16 can, to hear the other side of the story.

17 CHAIRMAN CLARK: Mr. Friedman, you're  
18 recognized.

19 MR. FRIEDMAN: Thank you Mr. Chairman,  
20 Commissioners. Marty Friedman. I represent  
21 Utilities, Inc., of Florida.

22 We support the rule and we support the change  
23 from four to six. I think that the Commission  
24 should do everything they can to encourage limited  
25 proceedings because it does stave off rate -- full

1 rate cases, plus it also allows a utility an  
2 opportunity to -- to mitigate the regulatory lag  
3 between spending a bunch of money and beginning to  
4 get a return on that. So, it helps to support the  
5 financial viability of the utility as well.

6 So, we support the staff recommendation as  
7 written. Thank you.

8 COMMISSIONER GRAHAM: Mr. Chairman, I -- I  
9 agree with that point. I -- I think the focus is  
10 to get more and more people to actually start doing  
11 this. It's very easy, if -- if OPC sees a problem  
12 coming down the pike, for them to throw up a flag  
13 and -- and kind of -- and stop this.

14 So, I don't see this being a problem, but I  
15 think we're going to get the other side of the  
16 story.

17 Mr. Chair, if I could call Mr. Rehwinkel.

18 CHAIRMAN CLARK: Yeah, Ms. Wessling or Mr. --  
19 I was going to add on to Commissioner Graham's  
20 comment by saying, can you give me the specific  
21 danger? What -- what cliff are we about to walk  
22 off here?

23 MR. REHWINKEL: Thank you, Mr. Chairman. And  
24 I want to thank Ms. Wessling for -- for doing such  
25 a good job on this.

1           Let me give you the -- the bigger picture from  
2           Public Counsel's side. We don't -- as -- as  
3           Ms. Wessling has very well explained, we have a  
4           fundamental concern, but we're also offering a  
5           pragmatic solution to the Commission to avoid going  
6           to hearing.

7           Part of our job is to advocate for the  
8           customers. And when you have a full-blown MFR  
9           filing by an "A" or a "B" company, the customers  
10          have a reasonable chance of participating, of  
11          making decisions about whether rate-case expense is  
12          too material or not material, such that they can  
13          advocate and pick their spots.

14          Quite often, in the SARC world, or the LARI  
15          world, you can't intervene because rate-case  
16          expense has an outside impact on the revenue  
17          requirements and it imposes costs even if there are  
18          issues that you want to challenge. So, you try to  
19          make your best shot.

20          We were trying to find a sweet spot where, if  
21          you limited this to a -- to only the SARC-eligible  
22          companies, you're not gonna have that mission creed  
23          that causes the -- what would otherwise be looked  
24          at in a more holistic way with, not only increases,  
25          but offsets in a rate case.

1           We just had a case with UIF where we, quite  
2           frankly, sought to push them into a rate case  
3           rather than do kind of piecemeal litigation. So,  
4           we looked at everything. We looked at their cost  
5           of equity. We looked at their depreciation. We  
6           looked at their increases. We came up with a  
7           solution that, I think, was a good one.

8           If you start to have somewhat semi-single-  
9           issue ratemaking increased in the "A"s and "B"s,  
10          the customers start to lose their opportunity to  
11          have a point of entry and litigate.

12          So, we were asking you to make kind of an  
13          incremental step, not go to hearing and challenge  
14          the factual basis for this, but let's leave this at  
15          the small-company level where it does the most  
16          good, get the most bang for the buck, and leave the  
17          larger companies at the fore.

18          That's what our fundamental concern was. And  
19          we didn't really want to get into that. We thought  
20          we'd give you the compromise and we could move on,  
21          but we, quite frankly, would probably be in a  
22          position to challenge this rule because we see it  
23          as an encroachment upon our ability to advocate on  
24          behalf of those companies.

25                   CHAIRMAN CLARK: Commissioner Fay.

1           COMMISSIONER FAY: Thank you, Mr. Rehwinkel.  
2           Just -- just for clarification -- and I think  
3           Ms. Wessling did a good job of laying out the  
4           issue, itself. So, my question is not targeted  
5           toward that. It's just more an understanding of  
6           what you're stating before us today is that you're  
7           gonna take under consideration a rule challenge  
8           based on the potential decision the Commission  
9           makes.

10                  Why was there no participation earlier in the  
11                  rulemaking process, including the request for  
12                  workshop and notification?

13                  MR. REHWINKEL: Well, Ms. -- Ms. Wessling  
14                  pointed out that this -- the notice here didn't --  
15                  we didn't notice that this was an increase for all  
16                  companies in the threshold. We do believe -- you  
17                  had a little bit of an issue about noticing that  
18                  this change was occurring because this rule really  
19                  was presented as sort of a -- kind of a procedural  
20                  non-substantive rule.

21                  So, we didn't see this until the rec came out  
22                  to be -- to be honest with you.

23                  COMMISSIONER FAY: Okay. Yeah, and I -- I  
24                  just think that part of the rulemaking process --  
25                  and, obviously, you had your structure within the

1 office as to who reviews these things, but part of  
2 that whole process is the idea that it may lead to  
3 the rule challenge at some point, but that's a  
4 decision that you have make related to what you  
5 believe the position is for the consumers.

6 I think, from an efficiency standpoint, all we  
7 can do as a Commission is review the notice that  
8 was provided and the recommendation of the rule  
9 that's before us and decide if that's appropriate.

10 So, I just think you need to give serious  
11 consideration for when those rules are put on  
12 notice. And if there's something that's in there  
13 that you have issue with, I think it's a lot easier  
14 to raise it and allow for the workshop process than  
15 it is to do it this way.

16 So, I appreciate the feedback. I think it's  
17 relevant. It's a relevant issue. I'm just -- I  
18 have concerns about it being raised today.

19 MR. REHWINKEL: Well -- Mr. Chairman, if I may  
20 respond. I mean, I do think that there was a --

21 COMMISSIONER FAY: Mr. Chairman, that's all.

22 CHAIRMAN CLARK: Thank you.

23 Thank you, Mr. Rehwinkel.

24 Any other Commissioners have any questions?

25 All right. I'll entertain a motion.

1           COMMISSIONER FAY: Mr. Chairman, I would move  
2           staff recommendation on this item.

3           COMMISSIONER La ROSA: Second.

4           CHAIRMAN CLARK: Motion and second to approve  
5           staff's recommendation on Item No. 3. Any  
6           discussion?

7           On the motion, all in favor say aye.

8           (Chorus of ayes.)

9           CHAIRMAN CLARK: Opposed?

10          Motion carries.

11          Thank you very much.

12          (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA )  
COUNTY OF LEON )

I, ANDREA KOMARIDIS WRAY, Court Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 26th day of October, 2021.



ANDREA KOMARIDIS WRAY  
NOTARY PUBLIC  
COMMISSION #HH 089181  
EXPIRES February 9, 2025