

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed Adoption of Rules 25-30.444
and Rule 25-30.4445, F.A.C.

Docket. No. 160246-WS
January 06, 2017

**OFFICE OF PUBLIC COUNSEL'S COMMENTS REGARDING
FLORIDA PUBLIC SERVICE COMMISSION STAFF'S
NOTICE OF DEVELOPMENT OF RULEMAKING**

Pursuant to the Florida Public Service Commission ("PSC" or "Commission") Staff's Notice of Development of Rulemaking to create Rules 25-30.444 and 25-30.4445, Florida Administrative Code ("F.A.C."), issued on December 5, 2016, the Office of Public Counsel ("OPC") offers the following comments:

Rule 25-30.444

1. Section 367.081(2)(c), F.S., provides the Commission with authority to create a utility reserve fund for infrastructure repair and replacement for a utility for existing distribution and collection infrastructure. Therefore, there is a concern that there is no statutory authority for the Commission to create a utility reserve fund for additional plant that is not considered distribution and collection infrastructure.
2. One element that should be listed under subsection (1) as a consideration in determining whether a future repair or project is eligible for advance funding is whether the repair or project benefits the ratepayers. For example, if infrastructure improvements are made, should rates be reduced to reflect reductions in operating costs that result?
3. Rule should be revised to clarify that there is a 30% cap annually for all advance funding repairs/projects collectively, not 30% cap for each repair/project.

4. Rule should be revised to clarify how rates would be set. For example, whether surcharge would be the same each month or if it could be varied and how that would be calculated.
5. Rule should be revised to clarify exactly when and how the utility is to discontinue collection of the surcharge.
6. Need to define “capital improvement plan” and “asset management plan” in subsection (2). Rule should also clarify the length of time that the capital improvement plan covers (e.g., 5 years, 10 years, 20 years).
7. Rule should clarify that customers have a point of entry to participate in the approval and review process.
8. Rule should clarify that staff must verify the surcharge funds are being spent by the utility in accordance with the stated purpose.
9. Rule does not specify any pre-qualification conditions that must be met in order to request a surcharge. For example, but not limited to:
 - Water loss or infiltration exceeds 10%;
 - Pipes over 30 years old;
 - Affidavit by licensed engineer that infrastructure should be replaced.
10. Rule should state that, if a surcharge is imposed, the Commission may consider during the utility’s next general base rate proceeding, whether the infrastructure improvements have resulted in any risk being shifted away from investors to customers, thus demonstrating a corresponding reduction in the utility’s authorized return.

Rule 25-30.4445

1. Rule should be revised to clarify that a customer meeting is required for each advance funding repair/project that is requested by the utility.
2. Rule should be revised to clarify that a customer meeting is required before an existing advance funding surcharge may be increased.

CONCLUSION

OPC respectfully requests the Commission consider these comments as it proceeds to review Staff's Notice of Development of Rulemaking to amend Rules 25-30.444 and 25-30.4445, F.A.C.

Please do not hesitate to contact me if you have any questions regarding these comments.

Sincerely,
J.R. Kelly
Public Counsel

/s/ J.R. Kelly

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Dkt. NO. 160246-WS
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **OFFICE OF PUBLIC COUNSEL'S COMMENTS REGARDING FLORIDA PUBLIC SERVICE COMMISSION STAFF'S NOTICE OF DEVELOPMENT OF RULEMAKING** has been furnished by electronic mail to the following parties on this 6th day of January, 2017.

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