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STATE OF FLORIDA



CAPITAL CIRCLE OFFICE CENTER  
2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FL 32399-0850

# Public Service Commission

April 7, 2017

Alexandra Phillips  
Rules Ombudsman in  
The Executive Office of the Governor  
Reg.Reform@eog.myflorida.com

SENT VIA E-MAIL

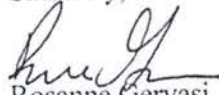
**Re: Docket No. 160239-WS – Proposed amendment of Rule 25-30.445, F.A.C.**

Dear Ms. Phillips:

The Florida Public Service Commission proposed the above-listed rule at its regular agenda conference on April 4, 2017. The Commission has determined that this rule will affect small businesses. Accordingly, pursuant to Section 120.54(3)(b)2.b.(I), Florida Statutes, enclosed is a copy of the Florida Administrative Register (FAR) notice of the proposed rule, which was published in the April 6, 2017 edition of the FAR. Also enclosed is a copy of the statement of estimated regulatory costs (SERC). The SERC concluded that the proposed rule amendment will not have an adverse effect on small business. Pursuant to your instructions, we have filled out and included a copy of the OFARR rulemaking notification form.

If there are any questions with respect to this rule, please contact me at (850) 413-6224 or [rgervasi@psc.state.fl.us](mailto:rgervasi@psc.state.fl.us).

Sincerely,

  
Rosanne Gervasi  
Senior Attorney

Enclosures

cc: Office of the Commission Clerk

RECEIVED-FPSC  
2017 APR - 7 PM 2: 18  
COMMISSION  
CLERK

## Notice of Proposed Rule

### **PUBLIC SERVICE COMMISSION**

#### **RULE NO.: RULE TITLE:**

**25-30.445 General Information and Instructions Required of Water and Wastewater Utilities in an Application for a Limited Proceeding**

**PURPOSE AND EFFECT:** Rule 25-30.445, F.A.C. would be amended to require in an application for a limited proceeding that a water utility must provide copies of all customer complaints that it has received during the past five years regarding secondary water quality standards set by the Department of Environmental Protection, along with its most recent secondary water quality test results. Rule 25-30.445, F.A.C. would also be amended to eliminate the requirement that a limited proceeding application shall not be filed for underearnings in lieu of a general rate case.

**Docket No. 160239-WS**

**SUMMARY:** To promote clarity and consistency among Commission rules, Rule 25-30.445, F.A.C. would be amended to require in an application for a limited proceeding that a water utility must provide copies of all customer complaints that it has received during the past five years regarding secondary water quality standards set by the Department of Environmental Protection, along with its most recent secondary water quality test results. Rule 25-30.445, F.A.C. would also be amended to eliminate the requirement that a water and/or wastewater utility shall not file a limited proceeding application for underearnings in lieu of a general rate case.

#### **SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:**

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has been prepared by the Agency.

The SERC examined the factors required by Section 120.541(2), FS, and concluded that the rule amendment will not have an adverse impact on economic growth, business competitiveness, or small business and that additional transactional costs, if any, to individuals and entities required to comply with the rule are expected to be de minimis. The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: based upon the information contained in the SERC.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

**RULEMAKING AUTHORITY:** 350.127(2), 367.121(a), FS.

**LAW IMPLEMENTED:** 367.081, 367.0812, 367.0822, 367.121(1)(a), 367.145(2), FS.

**IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.**

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS:** Rosanne Gervasi, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850)413-6224, rgervasi@psc.state.fl.us.

#### **THE FULL TEXT OF THE PROPOSED RULE IS:**

**25-30.445 General Information and Instructions Required of Water and Wastewater Utilities in an Application for a Limited Proceeding.**

(1) through (3) No change.

(4) The following minimum filing requirements shall be filed with the utility's application for limited proceeding for a Class A or B water or wastewater utility:

(a) through (l) No change.

(m) If the limited proceeding is being requested to change the current rate structure, provide a copy of all workpapers and calculations used to calculate requested rates and allocations between each customer class. The test year shall should be the most recent 12-month period. In addition, the following schedules, which are incorporated herein by reference, from Form PSC/AFD 19-W (11/93), entitled "Class A Water and/or Wastewater Utilities

Financial, Rate and Engineering Minimum Filing Requirements”, ~~shall~~ should be provided. The schedules can be obtained from the Commission’s Division of Accounting and Finance.

1. Schedule E-2, entitled “Revenue Schedule at Present and Proposed Rates,” is available at [\[hyperlink\]](#).

2. Schedule E-14, entitled “Billing Analysis Schedules,” is available at [\[hyperlink\]](#). Only two copies are required.

(n) Revised tariff sheets should not be filed with the application.

(o) A water utility’s application for limited proceeding shall also include:

1. A copy of all customer complaints that the utility has received regarding DEP secondary water quality standards during the past five years; and

2. A copy of the utility’s most recent secondary water quality standards test results.

(5) In addition to the requirements stated in subsections (1) through (3), the following minimum filing requirements shall be filed with the utility’s application for limited proceeding for a Class C water or wastewater utility:

(a) through (g) No change.

(h) A Class C water utility’s application for limited proceeding shall also include:

1. A copy of all customer complaints that the utility has received regarding DEP secondary water quality standards during the past five years; and

2. A copy of the utility’s most recent secondary water quality standards test results.

(6) through (7) No change.

~~(8) A limited proceeding application shall not be filed for underearnings in lieu of a general rate case.~~

*Rulemaking Authority 350.127(2), 367.121(1)(a) FS. Law Implemented 367.081, 367.0812, 367.0822, 367.121(1)(a), 367.145(2)  
FS. History—New 3-1-04, Amended.*

NAME OF PERSON ORIGINATING PROPOSED RULE: Laura King

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Public Service Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 04, 2017

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: Volume 42, Number 145, July 27, 2016.

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-**

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**DATE:** January 31, 2017  
**TO:** Rosanne Gervasi, Senior Attorney, Office of the General Counsel  
**FROM:** C. Donald Rome, Jr., Public Utility Analyst II, Division of Economics  
**RE:** Statement of Estimated Regulatory Costs (SERC) for Proposed Amendments to Rule 25-30.445, Florida Administrative Code (F.A.C.).

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The purpose of this rulemaking initiative is staff's recommendation of modifications to Commission Rule 25-30.445, F.A.C., General Information and Instructions Required of Water and Wastewater Utilities in an Application for a Limited Proceeding. Specifically, staff is recommending the addition of paragraphs 25-30.445(4)(o) and 25-30.445(5)(h), F.A.C., to require utilities seeking a limited proceeding to provide the following as part of the Minimum Filing Requirements (MFRs) submitted with the application: (a) a copy of all customer complaints that the utility has received regarding Department of Environmental Protection (DEP) secondary water quality standards during the past five years, and (b) a copy of the utility's most recent secondary water quality standards test results. Staff also recommends the elimination of the requirement in subsection 25-30.445(8), F.A.C., that a limited proceeding application shall not be filed for underearnings in lieu of a general rate case.

During the 2014 session, the Florida Legislature enacted Senate Bill 272 which was incorporated into Chapter 2014-68, Laws of Florida. Among other things, the legislation created new Section 367.0812, Florida Statutes (F.S.). Section 367.0812, F.S., requires that in fixing rates, the Commission shall consider the extent to which a utility provides water service that meets secondary water quality standards as established by DEP. In accordance with the 2014 statutory changes, the Commission adopted Rule 25-30.440(11), F.A.C., to require a copy of all customer complaints received by the utility during the past five years regarding secondary water quality standards when a Class A or B utility files for a rate increase. Rule 25-30.440(3), F.A.C., requires the submission of secondary standards test results, and Rule 25-30.443(1), F.A.C., requires Class C utilities to provide the information required by Rule 25-30.440, F.A.C., as part of its MFRs.

To promote clarity and consistency among Commission rules, staff is recommending the above mentioned addition of paragraphs 25-30.445(4)(o) and 25-30.445(5)(h), F.A.C., to require that utilities provide the same information pertaining to secondary water quality standards when filing MFRs with applications for a limited proceeding. This information is currently being collected by staff through data requests after the utility's application is filed. Staff believes that by providing additional clarity to Rule 25-30.445, F.A.C., the number of data requests that would

be necessary during the limited proceeding process should be reduced, thereby streamlining the process for both staff and applicants.

Staff also recommends the elimination of the requirement in subsection 25-30.445(8), F.A.C., that a limited proceeding application shall not be filed for underearnings in lieu of a general rate case. As currently written, the rule potentially could be interpreted to suggest that unless a utility is earning within its authorized range, it would be prohibited from using the limited proceeding process. Staff recommends the elimination of the rule so as not to unnecessarily restrict the use of the limited proceeding process, which was designed to save regulatory costs to utilities, their customers, and the Commission.

The attached SERC addresses the considerations required pursuant to Section 120.541, F.S. No workshop was held in conjunction with the recommended rule revisions. No regulatory alternatives were submitted pursuant to Paragraph 120.541(1)(a), 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 revisions.

cc: (Draper, Daniel, Shafer, King, Cibula, SERC file)

FLORIDA PUBLIC SERVICE COMMISSION  
STATEMENT OF ESTIMATED REGULATORY COSTS  
Rule 25-30.445, F.A.C.

1. Will the proposed rule have an adverse impact on small business?  
[120.541(1)(b), F.S.] (See Section E., below, for definition of small business.)

Yes

No

*For clarification, please see comments in Sections A(3) and E(1), below.*

2. Is the proposed rule likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in this state within 1 year after implementation of the rule? [120.541(1)(b), F.S.]

Yes

No

If the answer to either question above is "yes", a Statement of Estimated Regulatory Costs (SERC) must be prepared. The SERC shall include an economic analysis showing:

A. Whether the rule directly or indirectly:

- (1) Is likely to have an adverse impact on any of the following in excess of \$1 million in the aggregate within 5 years after implementation of the rule?  
[120.541(2)(a)1, F.S.]

Economic growth

Yes  No

Private-sector job creation or employment

Yes  No

Private-sector investment

Yes  No

- (2) Is likely to have an adverse impact on any of the following in excess of \$1 million in the aggregate within 5 years after implementation of the rule?  
[120.541(2)(a)2, F.S.]

Business competitiveness (including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets)

Yes  No

Productivity

Yes  No

Innovation

Yes  No

(3) Is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule? [120.541(2)(a)3, F.S.]

Yes

No

**Economic Analysis:**

A summary of the recommended rule revisions is included in the attached memorandum to Counsel. Specific elements of the associated economic analysis are discussed below in Sections B through F of this SERC.

In accordance with statutory changes enacted during the 2014 legislative session, the Commission adopted Rule 25-30.440(11), Florida Administrative Code (F.A.C.), to implement provisions of Section 367.0812, Florida Statutes (F.S.), regarding the Commission's consideration during ratemaking proceedings of the extent to which a utility has met secondary water quality standards established by the Department of Environmental Protection (DEP). The Commission is required to consider complaints regarding applicable secondary water quality standards filed by customers with the Commission, DEP, the respective local governmental entity, or a county health department during the past five years (paragraph 367.0812(1)(c), F.S.).

To promote clarity and consistency among Commission rules, staff is suggesting amendments to subsections (4) and (5) of Rule 25-30.445, F.A.C., which would require utilities that apply for a limited proceeding to provide: (a) a copy of all customer complaints that the utility has received regarding DEP secondary water quality standards during the past five years, and (b) a copy of the utility's most recent secondary water quality standards test results. This information is currently being collected by staff through data requests during the course of limited proceedings; henceforth under the recommended rule revisions, utilities would provide the information as part of the Minimum Filing Requirements that accompany the utility's application for a limited proceeding.

Staff also recommends the elimination of the requirement in subsection 25-30.445(8), F.A.C., that a limited proceeding application shall not be filed for underearnings in lieu of a general rate case. As currently written, this rule potentially could be interpreted to suggest that unless a utility is earning within its authorized range, it would be prohibited from using the limited proceeding process.

As discussed in Section D below, additional transactional costs, if any, that potentially may be associated with the recommended rule revisions are expected to be de minimis. Therefore, staff believes that none of the impact/cost criteria established in Paragraph 120.541(2)(a), F.S., will be exceeded as a result of the recommended rule revisions.

**B. A good faith estimate of: [120.541(2)(b), F.S.]**

**(1) The number of individuals and entities likely to be required to comply with the rule.**

The recommended amendments to Rule 25-30.445, F.A.C., would affect 145 investor-owned water and wastewater utilities that serve approximately 175,000 Florida customers. Utilities which come under the jurisdiction of the Commission in the future also would be required to comply.

**(2) A general description of the types of individuals likely to be affected by the rule.**

The 145 investor-owned water and wastewater utilities are located in 37 counties.

**C. A good faith estimate of: [120.541(2)(c), F.S.]**

**(1) The cost to the Commission to implement and enforce the rule.**

- None. To be done with the current workload and existing staff.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

**(2) The cost to any other state and local government entity to implement and enforce the rule.**

- None. The rule will only affect the Commission.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

**(3) Any anticipated effect on state or local revenues.**

- None
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.



D. A good faith estimate of the transactional costs likely to be incurred by individuals and entities (including local government entities) required to comply with the requirements of the rule. "Transactional costs" include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used, procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring or reporting, and any other costs necessary to comply with the rule.  
[120.541(2)(d), F.S.]

- None. The rule will only affect the Commission
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

Staff's suggested additions of paragraphs 25-30.445(4)(o) and 25-30.445(5)(h), F.A.C., would require utilities applying for a limited proceeding to include a copy of all customer complaints that the utility has received regarding DEP secondary water quality standards during the past five years and a copy of the utility's most recent secondary water quality standards test results as part of the Minimum Filing Requirements that accompany the limited proceeding application. Currently, staff obtains this information via a data request after the application is filed. Although the timing of providing the secondary water quality standards information would be affected, staff believes that potential additional transactional costs, if any, would be de minimis. Staff notes that since 2010, the Commission has received only six applications for a limited proceeding.

Staff believes that by providing additional clarity to Rule 25-30.445, F.A.C., the number of data requests that would be necessary during the limited proceeding process should be reduced, thereby streamlining the process for both staff and applicants. Utility ratepayers also should benefit from the Commission's consideration of secondary water quality standards prior to allowing a utility to move forward with a rate increase via a limited proceeding.

Staff's suggested deletion of subsection 25-30.445(8), F.A.C., would remove language stating that "a limited proceeding application shall not be filed for underearnings in lieu of a general rate case." As currently written, this rule potentially could be interpreted to suggest that unless a utility is earning within its authorized range, it would be prohibited from using the limited proceeding process. Staff recommends the elimination of this rule so as not to unnecessarily restrict the use of the limited proceeding process, which was designed to save regulatory costs to utilities, their customers, and the Commission. No additional transactional costs are anticipated as a result of this rule change. Staff further believes that subsection 25-30.445(6), F.A.C., provides adequate safeguards to prevent utilities from inappropriately using the limited proceeding process to avoid a general rate case filing in which all costs of the utility would be fully evaluated.

**E. An analysis of the impact on small businesses, and small counties and small cities:  
[120.541(2)(e), F.S.]**

(1) "Small business" is defined by Section 288.703, F.S., as an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.

- No adverse impact on small business. *[See clarification below.]*
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

While it is difficult to estimate the number of affected entities that would meet the definition of "Small Business" as defined in Section 288.703, F.S., it is reasonable to assume that many of the affected entities would meet the statutory definition and, therefore, potentially could incur additional transactional costs as discussed in Section D, above. However, as noted in Section D above, potential additional transactional costs associated with the recommended revisions, if any, are expected to be de minimis.

(2) A "Small City" is defined by Section 120.52, F.S., as any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census. A "small county" is defined by Section 120.52, F.S., as any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

- No impact on small cities or small counties
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

**F. Any additional information that the Commission determines may be useful.  
[120.541(2)(f), F.S.]**

- None.

Additional Information:

**G. A description of any regulatory alternatives submitted and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule. [120.541(2)(g), F.S.]**

**No regulatory alternatives were submitted.**

**A regulatory alternative was received from**

**Adopted in its entirety.**

**Rejected. Describe what alternative was rejected and provide a statement of the reason for rejecting that alternative.**

# Office of Fiscal Accountability and Regulatory Reform

## Rulemaking Notification

*(Executive Order 11-211 requires agencies must submit all rulemaking notices to OFARR at least 1 week prior to publication)*

To: Alexandra Phillips, Director

Submitted By: Rosanne Gervasi, Senior Attorney  
 Florida Public Service Commission  
 (850) 413-6224

Re: Rulemaking Notification for:

Rule Number	Rule Title
25-30.445	General Information and Instructions Required of Water and Wastewater Utilities in an Application for a Limited Proceeding

*List EACH rule singly. Add lines as needed.*

Date: [Date request sent to OFARR] N/A      Date of anticipated publication: N/A

Does this rule qualify for Rules Ombudsman review in accordance with section 120.54(3)(b), F.S.?  
 Yes       No

Please complete this form when submitting rulemaking notification to the Office of Fiscal Accountability and Regulatory Reform (OFARR) pursuant to Executive Order 11-211. **If any information or documents are missing, the notification will be returned without review. OFARR will indicate what is missing, and the completed notification must be resubmitted.**

1. Proposed Rulemaking Activity:

- Notice of Development of Rulemaking – Attach the proposed Notice. If no text is available, give a detailed explanation of the rulemaking, including why it is necessary.
- Notice of Proposed Rule – Attach the proposed Notice, “Is a SERC Required” Checklist, and SERC (if required), all materials incorporated by reference, and all forms referenced or required by the rule.
- Notice of Emergency Rule – Attach the proposed Notice. Explain fully why emergency rulemaking is appropriate.
- Notice of Change – Attach the proposed Notice. Be sure the text is coded correctly according to Rule 1B-30.003(5)(f), F.A.C. Explain why a change is required. Attach any correspondence from JAPC or the public. If no documents exist, summarize any public comment the agency has received or public hearings/workshops the agency has held.
- Notice of Withdrawal – Attach the proposed Notice. Explain why it is necessary to withdraw the rulemaking. Include any JAPC correspondence.
- Other – Attach the proposed Notice. Include detailed information about the rulemaking.

**Notices should be coded according to Rule 1B-30.003(5)(f), F.A.C.**

**Office of Fiscal Accountability and Regulatory Reform**  
**Rulemaking Notification**

*(Executive Order 11-211 requires agencies must submit all rulemaking notices to OFARR at least 1 week prior to publication)*

2. Is this rulemaking included in the agency's Annual Regulatory Plan (ARP)?  X

3. For each rule:

**If the rule decreases regulation, explain in detail how it alleviates unnecessary, disproportionate, or adverse effects to business. You should address all relevant considerations, including: restriction on entry into a profession; effect on availability of services to public; effect on job retention; restriction on employment seekers; imposition of burdensome costs; cost-effectiveness vs. economic impact of rule.**

**If the rule increases regulation, explain in detail what statute or statutes are being implemented and why the rule is necessary to implement the statutory language.**

Rule Number	Detailed Explanation
25-30,445	The rule does not decrease or increase regulation.

*List EACH rule singly. Add lines as needed.*

4. Has the agency received any public comment about this rulemaking, since the last rulemaking notification?  No

If yes, please summarize the comment and the agency's position regarding the comment (i.e. has made or intends to make changes based on the comment, disagrees with the comment, etc.) and attach any documents.

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5. Has the agency received any lower cost regulatory alternatives (LCRA)?  No

If yes, describe in detail what action the agency took in response to the LCRA.

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6. Has the agency received any comment from JAPC, since the last rulemaking notification?  No

If yes, please summarize the comment and attach any documents.

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## Julie Phillips

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**From:** Reform, Reg <Reg.Reform@eog.myflorida.com>  
**Sent:** Friday, April 07, 2017 2:11 PM  
**To:** Rosanne Gervasi  
**Cc:** Julie Phillips  
**Subject:** RE: Public Service Commission's proposed Rule 25-30.445, F.A.C.

Good afternoon Rosanne,

This email serves as confirmation that the Office of Fiscal Accountability and Regulatory Reform has received your Rulemaking Notification. Thank you in advance for your cooperation, and as always, please feel free to contact the office with any questions.

Best,

Alexandra Phillips  
Director, Office of Fiscal Accountability and Regulatory Reform  
Office of Governor Rick Scott  
The Capitol, Suite 209  
Tallahassee, Florida 32399  
(850) 717-9315

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**From:** Rosanne Gervasi [<mailto:RGervasi@PSC.STATE.FL.US>]  
**Sent:** Friday, April 07, 2017 10:58 AM  
**To:** Reform, Reg <Reg.Reform@eog.myflorida.com>  
**Cc:** Phillips, Alexandra <[Alexandra.Phillips@eog.myflorida.com](mailto:Alexandra.Phillips@eog.myflorida.com)>; Julie Phillips <[JPhillip@PSC.STATE.FL.US](mailto:JPhillip@PSC.STATE.FL.US)>  
**Subject:** Public Service Commission's proposed Rule 25-30.445, F.A.C.

Dear Ms. Phillips:

Please see the attached correspondence regarding the Commission's proposed Rule 25-30.445, F.A.C. Please confirm receipt of this e-mail.

Please feel free to contact me further.

Thank you,

Rosanne Gervasi, Senior Attorney  
Florida Public Service Commission  
Office of the General Counsel  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0863  
tel: (850) 413-6224  
fax: (850) 413-6225

Please note: Florida has a very broad public records law. Most written communications to or from state officials regarding state business are considered to be public records and will be made available to the public and the media upon request. Therefore, your e-mail message may be subject to public disclosure.