

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Rule 25-30.433, F.A.C.,
Rate Case Proceedings.

UNDOCKETED

January 5, 2018

**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 amend Rules 25-30.433, Florida Administrative Code ("F.A.C."), issued, as updated, on December 12, 2017, the Office of Public Counsel ("OPC") offers the following initial comments:

1. Paragraph (1) starting on page 1, line 6, states that "The Commission in every rate case shall make a determination of the quality of service provided by the utility...."

The words "rate case" or "rate case proceeding" are not adequately defined in the rule. Rate case proceeding should be interpreted to mean any proceeding in which rates are being set (e.g., file and suspend rate case, staff assisted rate case, limited proceeding, grandfather certificate proceeding or original certificate proceeding with existing rates). The rule should apply to all docketed proceedings in which the Commission sets a utility's rates; otherwise, it does not appear the proposed rule revision will allow the Commission to comply with Section 367.081(2)(a)1., Florida Statutes. That statute states: "The commission shall, either upon request or upon its own motion, fix rates which are just, reasonable, compensatory, and not unfairly discriminatory. In every such proceeding, the commission shall consider the value and quality of the service...." (Emphasis added)

2. The language in paragraph (1)(b), on page 1, line 17, which states “over the preceding 5-year period”, is unclear as to when the 5-year period begins. Does the 5-year period begin on the date a petition is filed, at the end of a test year, or the date of the Commission vote on a petition? As this creates confusion in interpreting the starting point of the timeframe, the language should be revised to alleviate the ambiguity.
3. In paragraph (1)(d), on page 1, line 20, the proposal states the Commission shall consider “The testimony of the utility’s customers and customer complaints.” This rule should be implemented with the customers’ interests in mind. The current language is insufficient to capture the numerous oral and written methods that customers communicate to the Commission. In addition to testifying in customer hearings and filing official customer complaints, customers routinely submit comments at agenda conferences, in customer meetings and in telephone conversations with staff, and customers also file written comments in docketed and undocketed matters. The Commission should consider all customer communications (verbal and written) to the greatest extent possible in recognition of the customers’ intent in its determination of a utility’s quality of service, and the rule should be amended accordingly to encompass the common understanding of what a complaint is. See also, Section 367.0812, Florida Statutes.
4. Paragraph (2) does not specify the rate proceedings to which this requirement applies. For the same reasons as stated in (1) above, this rule section should apply to all docketed proceedings in which the Commission sets a utility’s rates, and the rule should be amended accordingly.
5. Paragraph (2), starting at page 1, line 23, states: “Testimony of DEP and county health department officials; inspections, including sanitary surveys for water systems and

compliance evaluation inspections for wastewater systems; and citations, violations and consent orders or lack thereof for the preceding 5-year period shall be considered for this purpose.” This language is too restrictive in that it does not allow for customers, utility employees or other knowledgeable persons to provide information to the Commission related to the utility’s infrastructure or operational conditions of the plant and facilities. Examples of the type of useful information that would be excluded under the current proposed language would be comments from a customer or a current or former utility employee that address how many times boil water notices were issued and/or received, how long someone witnessed a water line break, line flushing, a flooding manhole, or that wastewater effluent was being discharged inappropriately. These types of operational complaints under the existing rule would not be considered. In addition, using the word “testimony” limits the type of oral or written communications with a DEP or county health department representative that could be considered by staff, specifically with respect to a proposed agency action proceeding in which there is no testimony admitted into the record. OPC also submits that an analysis of operating permits should be considered.

5. Paragraph (2), starting at page 2, line 1, also contains the language “preceding 5-year period”. Please see OPC’s comments included in (2) above.
6. Paragraph (3), starting at page 2, line 3 addresses working capital. This paragraph should be amended to exclude deferred rate case expense in the balance sheet method of working capital and to exclude rate case expense amortization from O&M expenses for purposes of calculating the formula method of working capital for Class B and C utilities. See Section 367.081(9), Florida Statutes, which states: “A utility may not earn a return on the unamortized balance of the rate case expense. Any unamortized balance of rate case

expense shall be excluded in calculating the utility's rate base." The Commission currently follows the practice of Section 367.081(9), and the rule should be amended accordingly to be in compliance with this statute and Commission practice and policy.

7. Paragraph (11), starting at page 3, line 7, addresses proposed changes related to the right to access and continued use of utility treatment facilities. Why is this rule limited to only "treatment" facilities? A utility should be required to have the right of access and continued use of the land upon which all of its facilities and equipment are located, including its water source of supply plant, wastewater disposal, wastewater reuse, water transmission and distribution and wastewater collection lines. The rule should be amended accordingly.

CONCLUSION

OPC respectfully requests the Commission consider these comments as it proceeds to review Staff's Notice of Development of Rulemaking to amend Rule 25-30.433, F.A.C.

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

Sincerely,



J.R. Kelly
Public Counsel

CERTIFICATE OF SERVICE
UNDOCKETED

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 5th day of January, 2018.

Kathryn Cowdery, Esquire
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
kcowdery@psc.state.fl.us



J.R. Kelly
Public Counsel