

STATE OF FLORIDA

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OFFICE OF THE GENERAL COUNSEL  
KEITH C. HETRICK  
GENERAL COUNSEL  
(850) 413-6199

# Public Service Commission

March 5, 2018

Mr. Chris Bailey  
Rules Ombudsman in  
The Executive Office of the Governor  
Reg.Reform@eog.myflorida.com

SENT VIA E-MAIL

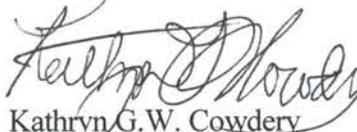
**Re: Docket No. 20180029-WS – Rule 25-30.433, F.A.C., Rate Case Proceedings**

Dear Mr. Bailey:

The Florida Public Service Commission proposed the above-listed rule at their regular agenda conference on March 1, 2018. 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 March 5, 2018 edition of the FAR. Also enclosed is a copy of the statement of estimated regulatory costs (SERC). The SERC concluded that the proposed rule amendments 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) 413-6216 or [kcowdery@psc.state.fl.us](mailto:kcowdery@psc.state.fl.us).

Sincerely,

  
Kathryn G.W. Cowdery  
Senior Attorney

Enclosures  
cc: Office of the Commission Clerk

RECEIVED-PPSC  
2018 MAR -5 PM 12:52  
COMMISSION  
CLERK

To: Chris Bailey, Director

Submitted By: Kathryn G.W. Cowdery, Senior Attorney  
Florida Public Service Commission  
850-413-6216

Re: Rulemaking Notification for:

Rule Number	Rule Title
25-30.433	Rate Case Proceedings

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

Date: March 5, 2018

Date of anticipated publication: March 5, 2018

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)? Yes

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

*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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## Notice of Proposed Rule

### **PUBLIC SERVICE COMMISSION**

RULE NO.: RULE TITLE:

25-30.433 Rate Case Proceedings

**PURPOSE AND EFFECT:** The rule is amended so that the Commission in water and wastewater rate cases evaluates quality of service separately from the infrastructure and operational conditions of utility plant and facilities; codifies existing agency practice, and updates the rule for consistency with current statutes and Commission rules.

Docket No. 20180029-WS

**SUMMARY:** Under the amended rule, the Commission in rate cases evaluates quality of service separately from its evaluation of the infrastructure and operational conditions of the utility plant and facilities. The amended rule codifies the information the Commission considers when evaluating the utility's quality of service and the infrastructure and operational conditions of the utility's plant and facilities; deletes language that conflicts with statutory requirements; and modifies language for consistency with language of other related Commission rules.

### **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 there would likely be minimal transactional costs to the individual and entities, including government entities, required to comply with the rule.

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), 367.0812(5), 367.0814, 367.121, 367.1213, FS.

**LAW IMPLEMENTED:** 367.081, 367.0812(1), 367.0814, 367.0822, 367.1213, 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:** Kathryn G.W. Cowdery, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850)413-6216, [kcowdery@psc.state.fl.us](mailto:kcowdery@psc.state.fl.us).

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

25-30.433 Rate Case Proceedings.

In a rate case proceeding, the following provisions shall apply, ~~unless the applicant or any intervenor demonstrates that these rules result in an unreasonable burden. In these instances, fully supported alternatives will be considered by the Commission. Any alternatives proposed by the utility must be filed with the minimum filing requirements.~~

(1) The Commission in every rate case shall make a determination of the quality of service provided by the utility by evaluating the ~~This shall be derived from an evaluation of three separate components of water and wastewater utility operations: quality of utility's product (water and wastewater); operational conditions of utility's plant and facilities; and the utility's attempt to address customer satisfaction (water and wastewater).~~ In making this determination, the Commission shall consider: Sanitary surveys, outstanding citations, violations and consent orders on file with the Department of Environmental Protection (DEP) and county health departments or lack thereof over

~~the preceding 3-year period shall also be considered. DEP and county health department officials' testimony concerning quality of service as well as the testimony of utility's customers shall be considered.~~

(a) The most recent chemical analyses for each water system as described in Rule 25-30.440(3), F.A.C.;

(b) Any Department of Environmental Protection (DEP) and county health department citations, violations and provisions of consent orders that relate to quality of service;

(c) Any DEP and county health department officials' testimony concerning quality of service;

(d) Any testimony, complaints and comments of the utility's customers and others with knowledge of the utility's quality of service; and

(e) Any utility testimony and responses to the information provided in paragraphs (1)(a) – (d) above.

(2) In order to ensure safe, efficient, and sufficient service to utility customers, the Commission shall consider whether the infrastructure and operational conditions of the plant and facilities are in compliance with Rule 25-30.225, F.A.C. In making this determination, the Commission shall consider:

(a) Any testimony of DEP and county health department officials;

(b) Inspections, including sanitary surveys for water systems and compliance evaluation inspections for wastewater systems; citations, violations and consent orders issued to the utility;

(c) Any testimony, complaints and comments of the utility's customers and others with knowledge of the infrastructure and operational conditions of the utility's plant and facilities; and

(d) Any utility testimony and responses to the information provided in paragraphs (2)(a) – (c) above.

~~(3)(2)~~ Working capital for Class A utilities shall be calculated using the balance sheet approach. Working capital for Class B and C utilities shall be calculated using the formula method (one-eighth of operation and maintenance expenses).

~~(4)(3)~~ Used and useful debit deferred taxes shall be offset against used and useful credit deferred taxes in the capital structure. Any resulting net debit deferred taxes shall be included as a separate line item in the rate base calculation. Any resulting net credit deferred taxes shall be included in the capital structure calculation. No other deferred debits shall be considered in rate base when the formula method of working capital is used.

~~(5)(4)~~ The averaging method used by the Commission to calculate rate base and cost of capital shall be a 13-month average for Class A utilities and the simple beginning and end-of-year average for Class B and C utilities.

~~(6)(5)~~ Non-used and useful adjustments shall be applied to the applicable depreciation expense. Property tax expense on non-used and useful plant shall not be allowed.

~~(7)(6)~~ Charitable contributions shall not be recovered through rates.

~~(8)(7)~~ Income tax expense shall not be allowed for subchapter S corporations, partnerships or sole proprietorships.

~~(9)(8)~~ Non-recurring expenses shall be amortized over a 5-year period unless a shorter or longer period of time can be justified.

~~(10)(9)~~ The amortization period for forced abandonment or the prudent retirement, in accordance with the National Association of Regulatory Utility Commissioners Uniform System of Accounts, of plant assets prior to the end of their depreciable life shall be calculated by taking the ratio of the net loss (original cost less accumulated depreciation and contributions-in-aid-of-construction (CIAC) plus accumulated amortization of CIAC plus any costs incurred to remove the asset less any salvage value) to the sum of the annual depreciation expense, net of amortization of CIAC, plus an amount equal to the rate of return that would have been allowed on the net invested plant that would have been included in rate base before the abandonment or retirement. This formula shall be used unless the specific circumstances surrounding the abandonment or retirement demonstrate a more appropriate amortization period.

~~(11)(10)~~ A utility is required to have the right of access and continued use of own the land upon which the utility treatment facilities are located, ~~or possess the right to the continued use of the land, such as a 99-year lease. Documentation of continued use shall be in the form of a recorded warranty deed, recorded quit claim deed accompanied by title insurance, recorded lease such as a 99-year lease, or recorded easement. The Commission may consider a written easement or other cost-effective alternative.~~

~~(12)(11)~~ In establishing an authorized rate of return on common equity, a utility, in lieu of presenting evidence, may use the current leverage formula adopted by Commission order. The equity return established shall be based on the equity leverage order in effect at the time the Commission decides the case.

(13)(12) Nonutility investment should be removed directly from equity when reconciling the capital structure to rate base unless the utility can show, through competent evidence, that to do otherwise would result in a more equitable determination of the cost of capital for regulatory purposes.

(14)(13) Interest expense to be included in the calculation of income tax expense shall be the amount derived by multiplying the amount of the debt components of the reconciled capital structure times the average weighted cost of the respective debt components. Interest expense shall include an amount for the parent debt adjustment in those cases covered by Rule 25-14.004, F.A.C. Interest shall also be imputed on deferred investment tax credits in those cases covered by 26 CFR Part 1, s. 1.46-6(b)(2)(i), (3) and (4)(ii) issued May 22, 1986 and effective for property constructed or acquired on or after August 15, 1971.

*Rulemaking Authority 350.127(2), 367.0812(5), 367.0814, 367.121, 367.1213 FS. Law Implemented 367.081, 367.0812(1), 367.0814, 367.0822, 367.1213, ~~376.1213~~ FS. History—New 11-30-93, Amended 12-14-93, \_\_\_\_\_.*

NAME OF PERSON ORIGINATING PROPOSED RULE: Kathryn G.W. Cowdery

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 1, 2018

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: Volume 43, Number 230, November 30, 2017.

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:** February 13, 2018

**TO:** Kathryn Gale Winter Cowdery, Senior Attorney, Office of the General Counsel

**FROM:** Sevini K. Guffey, Public Utility Analyst I, Division of Economics *SKG*

**RE:** Statement of Estimated Regulatory Costs (SERC) for Proposed Amendments to Rule 25-30.433, Florida Administrative Code (F.A.C.)

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The purpose of this rulemaking initiative is to: (1) delete language from the rule that conflicts with statutory requirements; (2) move the Commission's consideration of the infrastructure and operational conditions of the plant and facilities from the Commission's evaluation of quality of service to a separate section of the rule; (3) codify the information the Commission considers when evaluating the utility's quality of service; (4) codify the information the Commission considers when evaluating the infrastructure and operational conditions of the utility's plant and facilities; and (5) amend renumbered subsection (11) of the rule to reflect statutory language related to the right of access and continued use of the land upon which utility treatment facilities are located.

The attached SERC addresses the considerations required pursuant to Section 120.541, Florida Statutes (F.S.). A staff rule development workshop was held on December 14, 2017 to solicit input on the proposed rule revisions.

The proposed rule revisions are not imposing any new regulatory requirements. The SERC analysis indicates that the proposed rule amendments will not likely increase regulatory costs, including any transactional costs or have an adverse impact on business competitiveness, productivity, or innovation in excess of \$1 million in the aggregate within five years of implementation. The proposed rule amendment would have no impact on small businesses, would have no implementation cost on the Commission or other state and local government entities, and would have no impact on small cities or counties. None of the impact/cost criteria established in Section 120.541(2)(a), F.S., will be exceeded as a result of the proposed revisions.

Cc: Draper, Daniel, Shafer, King, SERC file

FLORIDA PUBLIC SERVICE COMMISSION  
STATEMENT OF ESTIMATED REGULATORY COSTS  
Rule 25-30.433, 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

If the answer to Question 1 is "yes", see comments in Section E.

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. Staff believes that none of the impacts/cost criteria established in Paragraph 120.541(2)(a), F.S. will be exceeded as a result of the proposed rule revisions. The proposed rule revisions are not imposing any new regulatory requirements, only codifying existing rule requirements. The proposed revisions are intended to make the requirements more specific and reformatting to make the rule consistent with the certification rules.

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.

Potentially affected entities include 132 investor-owned water and wastewater utilities that serve approximately 170,242 Florida customers. Water and wastewater utilities which will 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 132 investor-owned water and wastewater utilities that are located in 38 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. The 132 investor-owned water and wastewater utilities already are required to comply with the rules that are being revised to better align the rule with the certification rules and there are no new regulatory requirements being proposed in the revisions. Staff believes that there would be no additional transactional costs associated with the proposed revisions. If a utility were to incur new costs, staff believes that it will be minimal.
- Other. Provide an explanation for estimate and methodology used.

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.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

(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.

## Kathryn Cowdery

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**From:** Reform, Reg <Reg.Reform@eog.myflorida.com>  
**Sent:** Monday, March 05, 2018 11:00 AM  
**To:** Kathryn Cowdery  
**Subject:** RE: To the Rules Ombudsman

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.

### Chris Bailey, Deputy Policy Coordinator

Executive Office of the Governor

Office of Policy and Budget

O: 850.717.9368

C: 850.322.4047

[christopher.bailey@laspbs.state.fl.us](mailto:christopher.bailey@laspbs.state.fl.us)



**From:** Kathryn Cowdery [<mailto:kcowdery@PSC.STATE.FL.US>]  
**Sent:** Monday, March 5, 2018 9:43 AM  
**To:** Reform, Reg <[Reg.Reform@eog.myflorida.com](mailto:Reg.Reform@eog.myflorida.com)>  
**Subject:** To the Rules Ombudsman

Please see attached. Thank you.