

BEFORE THE PUBLIC SERVICE COMMISSION

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

Docket No.: 20180029-WS

Filed: March 22, 2018

CITIZENS' PETITION FOR A HEARING ON PROPOSED RULE 25-30.433 F.A.C.

Pursuant to Section 120.54(3)(c), Florida Statutes, the Citizens of Florida ("Citizens"), through the Office of the Public Counsel ("OPC") file this request for a hearing on Proposed Rule 25-30.433(1)(d) and 25-30.433(2)(c) as contained in Order No. PSC-20180119-NOR-WS issued on March 5, 2018. In support of this request, the Citizens state as follows:

On March 1, 2018, at a meeting convened to consider, among other matters, proposing adoption of the above-styled Rule, the Florida Public Service Commission ("Commission") heard comments from its Staff, the OPC and counsel for Utilities Inc. of Florida regarding proposed amendments to Rule 25-30.433, F.A.C.

At the meeting, the OPC proposed alternative language to proposed subsections 1(d) and 2(c), as shown in Attachment A. The language was taken directly from the Staff's Recommendation Memorandum. The language was debated and after an objection was raised by a utility, it was not adopted by the Commission.

By Order No. PSC-20180119-NOR-WS, the Commission issued its Notice of Adoption of Rule 25-30.433 in accordance with Section 120.54(3)(a)1. This Citizens object to this Rule to the extent it does not include the clarifying language shown in Attachment A.

Pursuant to Section 120.54(3)(c), Florida Statutes, Citizens request a public hearing so that the Commission can consider the language proposed by Citizens on March 1, 2018 or similar language that guarantees that there is no ambiguity about the types of customer input that the

Commission will commit to consider in making quality of service and infrastructure adequacy determinations.

Because the Commission considered, and then rejected the clarifying language that the Staff used to describe the intent behind the proposed language in subsections (1)(d) and 2(c), a distinct ambiguity has been created in that the Commission has rejected the enumerated types of testimony and comments for consideration in future cases.

The Citizens submit that an expression of intent during a vote to propose a rule, though laudable is ineffective in enforcing Rules. To be effective such intent should be expressed in the rule, especially in an arena where ambiguity has be found in the qualitative nature of customer testimony and other forms of customer input. See, Order No. 15490, 85 FPSC 312, issued December 23, 1985 in Docket No. 850116-TL. (Attachment B). There, the Commission lamented that there “appears to be some inconsistency between our intent and the plain language of the Rule.”

Citizens seek to avoid this circumstance in future proceedings and submit that the language in Attachment A (or similar) would cure this potential problem.

Respectfully Submitted,

J.R. Kelly
Public Counsel



Charles J. Rehwinkel
Deputy Public Counsel
rehwinkel.charles@leg.state.fl.us
Bar No. 527599

Office of the Public Counsel
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400
(850) 488-9330

Public Counsel's Suggested Change to Proposed Rule 25-30.433(1)(c) and 2(d):

Section (1)

(d) Any testimony, complaints and comments of the utility's customers and others with knowledge of the utility's quality of service (e.g., both oral and written statements directly from customers, OPC testimony in its representation of customers, Commission staff testimony regarding customer complaints); and

Section (2)

(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 (e.g., both oral and written statements directly from customers, OPC testimony in its representation of customers, Commission staff testimony regarding customer complaints); and

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Florida Public Service Commission

December 23, 1985

DOCKET NO. 850116-TL; ORDER NO. 15490, 85 FPSC 312

Reporter

1985 Fla. PUC LEXIS 29

In re: Show cause to Southern Bell regarding custom calling features

Core Terms

telephone service, judicial review, show cause, telephone, notice, further proceedings, staff, customer service representative, notice of appeal, seek information, fully informed, plain language, rule violation, reconsider, rulemaking, issuance, withdraw, inquire, custom, train

Panel: The following Commissioners participated in the disposition of this matter: JOHN R. MARKS, III, Chairman; JOSEPH P. CRESSE, GERALD L. GUNTER, MICHAEL McK. WILSON

Opinion

ORDER WITHDRAWING ORDER TO SHOW CAUSE

BY THE COMMISSION:

By **Order No. 14346**, issued May 6, 1985, this Commission **ordered** Southern Bell Telephone and Telegraph Company (Southern Bell or Company) to show cause why it should not be fined for violation of Rule 25-4.107(1), Florida Administrative Code (the Rule). The Rule requires a telephone company, upon initial contact, to inform an applicant for service of the least expensive service available. The **order** was predicated upon a **number** of complainants regarding the failure of the Company to inform the complainant of the least expensive service available as required by the Rule. Southern Bell responded as directed, providing us with information detailing the training, incentives, quotas and policies governing the actions of the Company's customer service representatives when they present information to potential customers. Subsequent to Southern Bell's response, our Staff conducted an investigation by telephoning various Southern Bell business offices throughout the Company's territory and inquiring as to the cost for basic telephone service. The responses given to our Staff's inquiries revealed a wide divergence between the tariffed rates for basic 1 and 2 party rotary service and the prices actually quoted over the telephone.

Southern Bell believes that the plain language of the rule limits the rule's application solely to applications for service. In accordance with that belief, the Company's service **ordering** system is designed to handle only those individuals who actually complete the **ordering** process for telephone service. The Company states that mere inquiries concerning rates for basic telephone service are not applications and that the inquiring party cannot, therefore, be considered an "applicant" within the scope of our Rule. The Company further states that in accordance with its interpretation of the Rule, its customer service representatives are trained to give the full disclosure required by the rule only within the structured format of the application procedure and, therefore, are unable to give adequate rate information outside the context of a full application for service.

We believe, and it was our intent in formulating Rule 25-4.107(1), that each person seeking information about basic telephone service should be fully informed regarding the type and rate for the least expensive telephone service available. However, there appears to be some inconsistency between our intent and the plain language of the Rule. On its face the Rule addresses only "applicants" for service. The questions asked by our Staff during its investigation were not actually applications for service since they did not initiate or complete the service **ordering** process established by Southern Bell.

Upon consideration, we find that there is a sufficient distinction between an inquiry and an application so as to remove our Staff's inquiries from the scope of Rule 25-4.107(1). Since the inquiries were not applications for service, Southern Bell's responses were not sufficient to constitute a willful violation of nor a refusal to comply with Rule 25-4.107(1). Therefore, we find it appropriate to withdraw our outstanding **Order** to Show Cause **No. 14346**.

While our Staff's investigation does not establish a willful rule violation on the part of Southern Bell, it does reveal the inconsistency between the language of the Rule and our belief that every person seeking information about telephone service should be fully informed of the least expensive basic telephone service available. Since the current language in Rule 25-4.107(1) is inadequate to achieve its intended effect, we are hereby directing our Staff to initiate rulemaking to amend Rule 25-4.107(1) consistent with our intent that each person who seeks information regarding basic telephone service shall be informed of the least expensive basic telephone service whether the person is applying for service or merely making a general inquiry.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that **Order** to Show Cause **No. 14346** is hereby withdrawn. It is further

ORDERED that the Commission shall initiate rulemaking to amend Rule 25-4.107(1), Florida Administrative Code, as set forth herein.

By **ORDER** of the Florida Public Service Commission, this 23rd day of DECEMBER, 1985.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes (Supp. 1984), to notify parties of any administrative hearing or judicial review of Commission **orders** that may be available, as well as the procedures and time limits that apply to such further proceedings. This notice should not be construed as an endorsement by the Florida Public Service Commission of any request for further proceedings or judicial review, nor should it be construed as an indication that such request will be granted.

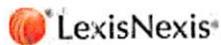
Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Commission Clerk within 15 days of the issuance of this **order** in the form prescribed by Rule 25-22.60, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court by the filing of a notice of appeal with the Commission Clerk and the filing of a copy of the notice and the filing fee with the Supreme Court. This filing must be completed within 30 days after the issuance of this **order**, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

Content Type: Administrative Materials

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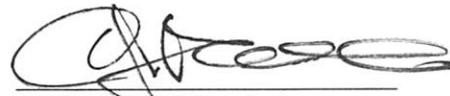
I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail to the following parties on this 22nd day of March, 2017

Martin S. Friedman
Friedman Law Firm
766 N. Sun Drive, Suite 4030
Lake Mary FL 32741
mfriedman@ff-attorneys.com

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

Joint Administrative Procedures Committee
Ken Plante, Coordinator
680 Pepper Building
111 W. Madison St.
Tallahassee FL 32399
joint.admin.procedures@leg.state.fl.us

U.S. Water Services Corporation (18)
Troy Rendell
4939 Cross Bayou Boulevard
New Port Richey FL 34652
trendell@uswatercorp.net



Charles J. Rehwinkel
Deputy Public Counsel