

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:** June 21, 2018  
**TO:** Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk  
**FROM:** Kathryn G. W. Cowdery  Office of the General Counsel  
**RE:** Docket No.20180029-WS

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Please file the attached rule certification packet materials for Rule 25-30.433, F.A.C., in the docket file listed above.

Thank you.

Attachment

RECEIVED-FPSC  
2018 JUN 21 PM 1:48  
COMMISSION  
CLERK

STATE OF FLORIDA

COMMISSIONERS:  
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ANDREW GILES FAY



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

# Public Service Commission

June 21, 2018

Mr. Ernest Reddick  
Florida Department of State  
Administrative Code and Register Section  
Room 701, the Capitol  
Tallahassee, FL 32399-0250

VIA HAND DELIVERY

FILED  
JUL 21 AM 11:17  
OFFICE OF THE GENERAL COUNSEL  
STATE OF FLORIDA

**Re: Rule Certification Packet for Rule 25-30.433, F.A.C., Rate Case Proceedings**

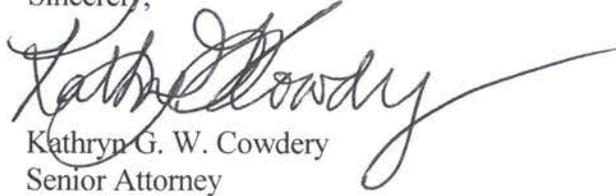
Dear Mr. Reddick:

Enclosed for filing is a complete rule certification packet for Rule 25-30.433, F.A.C., Rate Case Proceedings, consisting of:

- (1) One compact disc containing the coded text of the rule;
- (2) There are no materials incorporated by reference into this rule;
- (3) One original and two copies of the signed rule certification form;
- (4) One original and two copies of the signed designation of minor violation rule certification form required by Rule 1-1.010, F.A.C.;
- (5) One original and two copies of the coded text of the rule, including the legal citations and history notes;
- (6) One original and two copies of the summary of the rule;
- (7) One original and two copies of the detailed written statement of the facts and circumstances justifying the rule; and
- (8) One original and two copies of the summary of the hearings held on the rule.

Please let me know if you have any questions. The contact name and information for this rule are Kathryn G. W. Cowdery, Florida Public Service Commission, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0250, (850) 413-6216, [kcowdery@psc.state.fl.us](mailto:kcowdery@psc.state.fl.us).

Sincerely,

A handwritten signature in black ink, appearing to read "Kathryn G. W. Cowdery", with a long horizontal flourish extending to the right.

Kathryn G. W. Cowdery  
Senior Attorney

Enclosures

CERTIFICATION OF FLORIDA PUBLIC SERVICE COMMISSION  
ADMINISTRATIVE RULES FILED WITH THE DEPARTMENT OF STATE

I hereby certify:

(1) That all statutory rulemaking requirements of Chapter 120, F.S., and all rulemaking requirements of the Department of State have been complied with; and

(2) That there is no administrative determination under Section 120.56(2), F.S., pending on any rule covered by this certification; and

(3) All rules covered by this certification are filed within the prescribed time limitations of Section 120.54(3)(e), F.S. They are filed not less than 28 days after the notice required by Section 120.54(3)(a), F.S.; and

(a) Are filed not more than 90 days after the notice; or

(b) Are filed more than 90 days after the notice, but not more than 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete; or

(c) Are filed more than 90 days after the notice, but not less than 21 days nor more than 45 days from the date of publication of the notice of change; or

(d) Are filed more than 90 days after the notice, but not less than 14 nor more than 45 days after the adjournment of the final public hearing on the rule; or

(e) Are filed more than 90 days after the notice, but within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

(f) Are filed more than 90 days after the notice, but within 21 days after the date the transcript was received by this agency; or

(g) Are filed not more than 90 days after the notice, not including days the adoption of the rule was postponed following notification from the Joint Administrative Procedures Committee that an objection to the rule was being considered; or

(h) Are filed more than 90 days after the notice, but within 21 days after a good faith written proposal for a lower cost regulatory alternative to a proposed rule is submitted which substantially accomplishes the objectives of the law being implemented; or

(i) Are filed more than 90 days after the notice, but within 21 days after a regulatory alternative is offered by the Small Business Regulatory Advisory Committee.

Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule Nos.

25-30.433

Under the provision of Section 120.54(3)(e)6., F.S., the rules take effect 20 days from the date filed with the Department of State or a later date as set out below:

Effective: \_\_\_\_\_  
(month) (day) (year)

Carlotta S. Stauffer  
CARLOTTA S. STAUFFER

Commission Clerk \_\_\_\_\_  
Title \_\_\_\_\_  
Number of Pages Certified 3

**DESIGNATION OF RULE THE VIOLATION OF WHICH IS A MINOR VIOLATION  
CERTIFICATION**

Pursuant to Section 120.695(2)(c)3, Florida Statutes, I certify as agency head, as defined by section 20.05(1)(b), Florida Statutes, that:

All rules covered by this certification are not rules the violation of which would be a minor violation pursuant to Section 120.695, F.S.

The following parts of the rules covered by this certification have been designated as rules the violation of which would be a minor violation pursuant to Section 120.695, F.S.:

Rule No.

25-30.433 (entire rule)

Rules covered by this certification:

Rule No.

25-30.433



\_\_\_\_\_  
Signature of Agency Head

Chairman, Florida Public Service Commission  
Title

### 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,*

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## SUMMARY OF THE RULE

Rule 25-30.433, F.A.C., lists requirements that apply in all water and wastewater rate cases. Three sections of this rule were amended. Section (1) addresses the factors the Commission will consider in determining quality of service. The factors listed in paragraph (1)(d) are any testimony, complaints and comments of the utility's customers and others with knowledge of the utility's quality of service. Section (2) addresses the factors the Commission will consider in determining whether the infrastructure and operational conditions of the plant and facilities are in compliance with Rule 25-30.225, F.A.C. The factors listed in paragraph (2)(c) are 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. Section (11) requires a utility to have the right of access and continued use of the land upon which the utility treatment facilities are located, and specifies what documentation of continued use is required.

## WRITTEN STATEMENT OF THE FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

This rule is amended so that the Commission's evaluation in water and wastewater rate cases of the infrastructure and operational conditions of the plant and facilities is moved to a separate section of the rule from the Commission's evaluation of quality of service. The rationale for this amendment is that the infrastructure and operational condition of the plant does not always affect the quality of service provided to customers by the utility, so it should not be a component in the Commission's evaluation of quality of service to customers. The amended rule codifies the information considered by the Commission in evaluating quality of service and infrastructure and operational conditions of the plant. Language allowing a rate case applicant to propose alternatives to rule requirements is deleted because it conflicts with Section 120.542, F.S., which governs the procedure for obtaining a variance or waiver from rule requirements. The rule requirement concerning documentation of a utility's ownership of the land upon which its treatment facilities are located is updated for consistency with other related Commission rules.

## SUMMARY OF ANY HEARINGS HELD ON THE RULE

Proposed Rule 25-30.433, F.A.C., was published in the March 5, 2018, edition of the F.A.R., Volume 44, Number 44. On March 22, 2018, pursuant to Section 120.54(3)(c), F.S., the Office of Public Counsel (OPC) filed a petition for a hearing on paragraphs (1)(d) and (2)(c) of proposed Rule 25-30.433, F.A.C. A rule hearing was held before the Commission on May 8, 2018, pursuant to notice appearing in the March 13, 2018, edition of the F.A.R., Volume 44,

Number 73. At hearing, OPC argued that examples should be included in the rule language. No other parties participated in the hearing. A second hearing was held on June 5, 2018 pursuant to notice appearing in the May 18, 2018, edition of the F.A.R., Volume 44, Number 98. At the June 5 hearing, the Commission considered the arguments made by OPC and voted to adopt the proposed rule without changes, finding that including examples in the rule language was unnecessary.