

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of assets of exempt utility, amendment of Certificate No. 465-S, and petition for partial variance or waiver of Rule 25-30.030(5)(b), F.A.C. by Utilities, Inc. of Florida.

DOCKET NO. 20170174-SU<sup>s</sup> *CR*  
ORDER NO. PSC-2017-0367-PAA-SU  
ISSUED: October 11, 2017

The following Commissioners participated in the disposition of this matter:

JULIE I. BROWN, Chairman  
ART GRAHAM  
RONALD A. BRISÉ  
DONALD J. POLMANN  
GARY F. CLARK

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING PARTIAL RULE WAIVER

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission (Commission) that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

**Background**

On August 9, 2017, Utilities, Inc. of Florida (UIF or Utility) filed a Petition for Partial Variance or Waiver of Rule 25-30.030(5)(b), F.A.C. (Petition). UIF is a Class A water and wastewater utility currently serving approximately 34,000 water and/or wastewater customers<sup>1</sup> throughout 27 systems in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties. UIF is a wholly owned subsidiary of Utilities, Inc., and its rates and charges were last approved by this Commission in Docket No. 160101-WS. UIF is seeking a waiver in connection with UIF's Application for Transfer of Assets of Exempt Utility and for Amendment of Certificate 465-S in Lake County (Application). The Utility is seeking to add 148 single family connections to UIF's wastewater system in Lake County, and it is seeking a waiver of the provision to notify its current 34,000 customers of the transfer.

Pursuant to Section 120.542(6), Florida Statutes (F.S.), notice of the waiver Petition was published in the Florida Administrative Register on August 21, 2017. In accordance with Rule

<sup>1</sup> Document No. 06847-2017

28-104.003(1), F.A.C., interested persons were given 14 days after the publication of the notice to submit written comments. No written comments were received, and the time for such has expired. On August 22, 2017, Commission staff sent a data request to the Utility, to which responses were received on August 23, 2017.

This Order addresses the Utility's Petition for waiver; issues relating to the Utility's Application will be addressed in a subsequent order. We have jurisdiction in this matter pursuant to Sections 367.071 and 120.542, F.S.

### Decision

On August 9, 2017, UIF filed a Petition seeking a partial waiver of Rule 25-30.030(5)(b), F.A.C., which requires that notice be provided by regular mail or personal service to each customer and owner of property located within the existing service area and the service area to be served, extended, deleted or transferred. The waiver is sought in connection with UIF's application for the transfer of wastewater collection, treatment, and disposal facilities in Lake County. On August 25, 2017, UIF provided notice by regular U.S. mail to all property owners within Barrington Estates Property Holdings Homeowners' Association, Inc.,<sup>2</sup> the territory to be added, and seeks only to waive Rule 25-30.030(5)(b), F.A.C., that requires notice to be provided to all customers and property owners within its existing service area. On August 25, 2017, UIF also published the notice of its Application within the Daily Commercial, a newspaper of general circulation within Leesburg, Lake County, Florida.<sup>3</sup>

Section 120.542(2), F.S., authorizes us to grant variances or waivers from agency rules where the petitioner subject to the rule has demonstrated that the purpose of the underlying statute will be or has been achieved by other means, and that a strict application of the rule would cause the applicant substantial hardship or would violate the principles of fairness. "Substantial hardship" as defined in this section means demonstrated economic, technological, legal, or other hardship. A violation of the "principles of fairness" occurs when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

The underlying statutory provision pertaining to Rule 25-30.030(5)(b), F.A.C., is Section 367.045, F.S. Section 367.045, F.S., requires, in part, that notice of the Utility's application be provided to its consumers who would be substantially affected by the requested amendment. This provision has the effect of alerting current customers of the Utility that additional customers may be added to the system, and of potential impacts that could affect their current rates or quality of service. It also prescribes how and in what manner utility customers may submit objections or request a formal evidentiary hearing on the merits of the application.

In its response to Commission Staff's First Data Request the Utility states that it currently serves over 34,000 equivalent residential connections (ERCs) and the application would only add 148 single family connections to UIF's wastewater system, resulting in an increase in ERC's of

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<sup>2</sup> Document No. 07315-2017

<sup>3</sup> Document No. 07337-2017

less than one-half of one percent. UIF asserts that the impact on rates would be de minimis, and that the customers within the proposed service area are served by wastewater collection, treatment, and disposal facilities not connected to any of UIF's existing wastewater systems. As a result, the Utility argues, the addition of 148 customers will not affect its current customers' quality of service. Additionally, UIF has already provided all other notices required by Rule 25-30.030, F.A.C., including providing notice by regular mail to the governing body of affected counties and municipalities, and the Office of Public Counsel.

UIF also asserts that strict application of Rule 25-30.030(5)(b), F.A.C., would place a substantial economic hardship on the Utility. UIF contends that the personnel, paper, printing, envelopes, and postage required to mail individual notices to its approximately 34,000 customers would cost over \$16,000. The customers to be added to UIF's customer base if its Application is approved would only account for less than half a percent of the Utility's customer base. UIF argues that that the economic cost far outweighs any benefit that the Utility's 34,000 existing customers would receive.

Based on the foregoing analysis and the information provided within UIF's petition and its response to Staff's First Data Request, we find that UIF has met the requirements of Section 120.542, F.S., and has demonstrated that the purpose of the underlying statute will be or has been achieved by other means, and that the strict application of Rule 25-30.030(5)(b), F.A.C., would place a substantial hardship on the Utility.

However, given the number of customers within UIF's customer base, we find it important to maintain transparency and ensure that all customers receive full notice of the Utility's proposed actions. Therefore, we hereby approve the Utility's request for a partial waiver of Rule 25-30.030(5)(b), F.A.C., with the following conditions: UIF shall place a notice of its Application on its website, which shall provide a date certain by when substantially affected persons may timely file an objection to the transfer. This date shall be 30 days from the date the notice is published on the website. This notice shall remain on the Utility's website for a period of 30 days, and customers shall have the right to file an objection with the Office of Commission Clerk until the date specified within the notice. Prior to posting, Commission staff shall approve the location and wording of the notice to be published.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Utilities, Inc. of Florida's Petition for Partial Variance or Waiver of Rule 25-30.030(5)(b), F.A.C., is hereby granted as set forth herein. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall remain open pending the Commission's final decision regarding the Utility's Application for Transfer of Assets of Exempt Utility and for Amendment of Certificate 465-S in Lake County.

By ORDER of the Florida Public Service Commission this 11th day of October, 2017.

*Carlotta S. Stauffer*

CARLOTTA S. STAUFFER  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

KRM

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 1, 2017.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.