

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-

DATE: July 22, 2021

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Engineering (M. Watts) *TB*
Division of Economics (Bethea, Hudson) *JH*
Office of the General Counsel (Trierweiler) *JSC*

RE: Docket No. 20210109-WS – Application for amendment of Certificates 496-W and 465-S to extend territory in Lake County, by Utilities, Inc. of Florida.

AGENDA: 08/03/21 – Regular Agenda – Rule Waiver; Proposed Agency Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 08/30/21 (90-Day Rule Waiver Statutory Deadline)

SPECIAL INSTRUCTIONS: None

Case Background

On June 2, 2021, Utilities, Inc. of Florida (UIF or Utility) filed a Petition for Partial Variance or Waiver of Rule 25-30.030(5)(b), Florida Administrative Code (Petition). UIF is a Class A water and wastewater utility that is a wholly owned subsidiary of Utilities, Inc., and its rates and charges were last approved by the Florida Public Service Commission (Commission) in Docket No. 20200139-WS.¹ UIF is seeking a partial waiver of Rule 25-30.030(5)(b), Florida Administrative Code (F.A.C.), in connection with UIF's application for an amendment of UIF's Certificate Nos. 496-W and 465-S in Lake County, Florida (Application). UIF is seeking to add 92 recreational vehicle (RV) lots (approximately 73 water and wastewater Equivalent Residential

¹ Order No. 0546-2021-FOF-WS, issued June 6, 2021, in Docket 20200139-WS, *In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties by Utilities, Inc. of Florida.*

Connections (ERCs) to UIF's water and wastewater systems, which consist of approximately 35,894 water ERCs, and approximately 32,955 wastewater ERCs. The 92 RV lots will be added on to an existing park already served by UIF, Orlando RV Resort Thousand Trails. Due to the small number of increased ERCs sought by the Utility in its Application, UIF is seeking a waiver of the rule requirement to notify its more than 30,000 customers of the amendment to add 73 ERCs at the substantial cost of approximately \$16,000.

Pursuant to Section 120.542(6), Florida Statutes (F.S.), notice of this rule waiver Petition was published in the Florida Administrative Register on June 8, 2021. In accordance with Rule 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.

This recommendation addresses the Utility's Rule Waiver Petition; issues relating to the Utility's Application will be addressed in a subsequent recommendation. The Commission has jurisdiction in this matter pursuant to Sections 367.071 and 120.542, F.S.

Discussion of Issues

Issue 1: Should the Commission approve Utilities, Inc. of Florida's request for a partial waiver of Rule 25-30.030(5)(b), F.A.C.?

Recommendation: Yes, the Utility has demonstrated that the underlying purpose of the statute will be or has been achieved by other means, and that strict application of Rule 25-30.030(5)(b), F.A.C., would place a substantial hardship on the Utility. Therefore, staff recommends that the Commission approve UIF's request for a partial waiver or waiver of Rule 25-30.030(5)(b), F.A.C. Staff further recommends that the Utility should be required to post notice of its Application on its website to provide all UIF customers notice of the Utility's proposed actions. (Trierweiler)

Staff Analysis: On June 2, 2021, UIF filed a Petition for Partial Variance or Waiver of Rule 25-30.030(5)(b), F.A.C., which requires that notice of an amendment application 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. UIF seeks to waive the portion of Rule 25-30.030(5)(b), F.A.C., that requires notice to be provided to all customers and property owners within its already existing service area. The Commission granted substantially similar requests for waiver by UIF in Order Nos. PSC-2017-0387-PAA-SU and PSC-2020-0054-PAA-WS.²

In its Application, UIF acknowledged its responsibility under the rule to provide notice to governmental entities and other utilities (Rule 25-30.030(5)(a), F.A.C.), the property owner who UIF is requesting to add to its service area (Rule 25-30.030(5)(b), F.A.C.), and to publish the notice in a newspaper of general circulation in the proposed service area (Rule 25-30.030(5)(c), F.A.C.). Staff is working with UIF to make necessary corrections to its notice, maps of the proposed service territory, and the accompanying legal description. Further, UIF has asserted that it will post notice of its Application on its website for a period of not less than 30 days, and the notice shall provide a date certain by when substantially affected persons may timely file an objection to the Application.

Section 120.542(2), F.S., authorizes the Commission 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.

² See Order Nos. PSC-2017-0387-PAA-SU, issued October 11, 2017, in Docket No. 20170174-SU, *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*; Order No. PSC-2020-0054-PAA-WS, issued February 24, 2020, in Docket No. 20190199-WS, *In re: Application for quick-take amendment of Certificate Nos. 278-W and 225-S to add territory in Seminole County, by Utilities, Inc. of Florida*.

The underlying statutory provision pertaining to the above-mentioned rule is Section 367.045, F.S. This statute 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.

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 30,000 customers would cost over \$16,000. The customers to be added to UIF's customer base if its Application is approved would be a de minimis percentage of the Utility's customer base. UIF argues that the economic cost far outweighs any benefit that the Utility's existing customers would receive.

Based on the foregoing analysis and the information provided within UIF's Petition, staff believes that UIF has met the requirements of Section 120.542, F.S. UIF has demonstrated that strict application of Rule 25-30.030(5)(b), F.A.C., would place a substantial hardship on the Utility, through the cost it would incur to notice its existing customers of the de minimis addition of ERCs in its Application. UIF has further demonstrated that the purpose of the underlying statute will be or has been achieved by other means, because notice of UIF's Application will be provided to its existing customer base via its website, and notice will be provided to all other entities through the traditional means required by the rule. Therefore, staff recommends that UIF's Petition for a partial rule waiver of Rule 25-30.030(5)(b), F.A.C., should be granted.

Pursuant to other provisions of Rule 25-30.030, F.A.C., UIF is required to provide notice of its Application to governmental entities, other utilities, the property owner who UIF is requesting to add to its service area, and to publish the notice in a newspaper of general circulation in the proposed service area. In order to promote awareness of the Utility's Application to UIF's existing customers without requiring the expense of traditional noticing, staff recommends approval of the Utility's request for partial waiver of Rule 25-30.030(5)(b), F.A.C., with the following conditions: UIF should place a notice of its Application on its website, which should provide a date certain by when substantially affected persons may timely file an objection to the Application. This date should be 30 days from the date the notice is published on the website. This notice should remain on the Utility's website for a period of 30 days, and customers should 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 should approve the location and wording of the notice to be published.

Issue 2: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued. This docket should remain open pending the Commission's final decision regarding the Utility's Application for an amendment of UIF's Certificates 496-W and 465-S in Lake County, Florida. (Trierweiler)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued. This docket should remain open pending the Commission's final decision regarding the Utility's Application for an amendment of UIF's Certificates 496-W and 465-S in Lake County, Florida.