

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: January 25, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Engineering (Watts)
Office of the General Counsel (Janjic) *TJW*
JSC

RE: Docket No. 20170155-WU – Application for grandfather water certificate in Leon County and application for pass through increase of regulatory assessment fees, by Seminole Waterworks, Inc.

AGENDA: 02/06/18 – Regular Agenda – Rule Waiver; Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: 02/12/18 (90-Day Rule Waiver Statutory Deadline)

SPECIAL INSTRUCTIONS: None

Case Background

On November 14, 2017, Seminole Waterworks, Inc. (Seminole Waterworks or Utility) filed a Petition for Variance or Waiver of Rule 25-30.120, Florida Administrative Code (F.A.C.). Rule 25-30.120, F.A.C., states that a utility is obligated to remit regulatory assessment fees for any year in which it is subject to the Florida Public Service Commission's (Commission) jurisdiction on or before December 31 of that year. The waiver is sought in connection with the Utility's Application for grandfather water certificate in Leon County and application for pass through increase of regulatory assessment fess (Application) in the instant docket.

On June 20, 2017, the Board of County Commissioners of Leon County (County) passed and adopted Resolution No. R17-12 (Resolution), transferring regulation of the privately-owned, for-profit water and wastewater utilities in the County to the Commission.

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The Utility consists of six water systems under franchises within Leon County. Seminole Waterworks provides water service to approximately 690 residential customers consisting of single family residential homes, mobile homes, and duplexes. All of the service areas are fully built out.

Pursuant to Section 120.542(5), Florida Statutes (F.S.), notice of this Petition was published in the Florida Administrative Register on January 9, 2018. In accordance with Rule 28-104.003(1), F.A.C., interested persons are given 14 days after the publication of the notice to submit written comments. No written comments were received, and the time for such comments expired on January 23, 2018.

This recommendation addresses the Utility's 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 Seminole Waterworks, Inc.’s request for waiver or variance of Rule 25-30.120, 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 the rule would place a substantial hardship on the Utility. Therefore, staff recommends that the Commission approve Seminole Waterworks Inc.’s request for a waiver or variance of Rule 25-30.120, F.A.C., until such time as the Utility is authorized to increase its rates pursuant to Section 367.081(4)(b), F.S., or within three months of the Commission’s vote, whichever occurs first. (Janjic)

Staff Analysis: On November 14, 2017, Seminole Waterworks filed a Petition seeking a waiver or variance of a requirement of Rule 25-30.120, F.A.C., which requires that Regulatory Assessment Fees (RAFs) be paid for any year during which a utility is subject to the Commission’s jurisdiction as of December 31 of that year. The Utility requests the waiver or variance of Rule 25-30.120, F.A.C., until such time as the Utility is authorized to increase its rates pursuant to Section 367.081(4)(b), F.S. Rule 25-30.120(2), F.A.C., provides that “[t]he obligation to remit the regulatory assessment fees for any year shall apply to any utility that is subject to this Commission’s jurisdiction on or before December 31 of that year or for any part of that year.” The effect of this request would be to permanently waive any RAFs that would have been otherwise due for 2017 up until the Application is considered by this Commission.

Section 120.542(2), F.S., authorizes the Commission to grant waivers or variances 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.

As acknowledged in Order No. PSC-2017-0357-FOF-WS,¹ issued September 20, 2017, the Board of County Commissioners of Leon County on June 20, 2017 passed and adopted Resolution No. R17-12, transferring regulation of the privately-owned, for profit water and wastewater utilities in the County to the Florida Public Service Commission. Effective upon the adoption of the resolution, all non-exempt water and wastewater systems in the Leon County became subject to the provisions of Chapter 367, F.S.

On July 19, 2017, Seminole Waterworks Inc. filed its application for a grandfather certificate pursuant to Section 367.171(2), F.S. and Rule 25-30.035, F.A.C. Also, in the same filing the Utility filed its request for approval of a pass through increase for regulatory assessment fees

¹ Order No. PSC-2017-0357-FOF-WS, issued September 20, 2017, in Docket No. 20170171-WS, *In re: Order Acknowledging Resolution of the Board of County Commissioners of Leon County Declaring Leon County Subject to the Provisions of Chapter 367, Florida Statutes.*

pursuant to Section 367.081(4)(b), F.S. That portion of the request was in relation to the regulatory assessment fees required under Section 367.145, F.S. and Rule 25-30.120, F.A.C.

Section 367.081(4)(b), F.S. states that:

[t]he approved rates of any utility shall be automatically increased or decreased without hearing, upon verified notice to the commission 45 days prior to its implementation of the increase or decrease that the utility's costs for any specified expense item have changed. . . . The new rates authorized shall reflect, on an amortized or annual basis, as appropriate, the cost of or the amount of change in the cost of the specified expense item. The new rates, however, shall not reflect the costs of any specified expense item already included in a utility's rates. Specified expense items that are eligible for automatic increase or decrease of a utility's rates include, but are not limited to: . . . [t]he regulatory assessment fees imposed upon the utility by the commission.

The underlying statutory provision pertaining to RAFs and Rule 25-30.120, F.A.C., are Sections 367.145(1) and (3), F.S., which state that:

(1) The commission shall set by rule a regulatory assessment fee that each utility must pay in accordance with s. 350.113(3);

....

(3) Fees collected by the commission pursuant to this section may only be used to cover the cost of regulating water and wastewater systems. Fees collected by the commission pursuant to chapters 364 and 366 may not be used to pay the cost of regulating water and wastewater systems.

The Commission's RAFs are not included in the Utility's current rates. Pass through items authorized by Section 367.081(4)(b), F.S., cannot be approved without "approved rates" by the Commission. Further, the Commission's regulatory assessment fees are not included in the current existing rates for Seminole Waterworks since the Utility was not regulated by the Commission prior to June 2017. The Utility notes that a pass through of the regulatory assessment fees is not permissible until such time as the Utility receives its Grandfather Certificate and its rates are approved (grandfathered) in. For that reason, the Utility argues it is placed at an unfair financial disadvantage due to its inability to collect those regulatory assessment fees in its rates.

The Utility contends that there have been minimal to no costs of regulating Seminole Waterworks under Chapter 367, F.S., absent the review of its grandfather application. The Utility also notes that it has paid the applicable filing fee of \$1,000 as required by Section 367.145(2), F.S., and Rule 25-30.020, F.A.C., for the processing of its grandfather filing.

Based on the foregoing analysis and the information provided within the Utility's petition, staff believes that Seminole Waterworks has met the requirements of Section 120.542, F.S., and has

demonstrated that the purpose of the of the underlying statute will be or has been achieved by other means, because minimal regulation has been required at this point and the Utility has been very cooperative with staff's requests. Further, the strict application of Rule 25-30.120, F.A.C., would place a substantial hardship on the Utility by requiring the Utility to pay regulatory expenses for which it is not compensated through rates. Therefore, staff recommends that the Commission approve the Utility's requested waiver or variance of Rule 25-30.120, F.A.C., until such time as the Utility is authorized to increase its rates pursuant to Section 367.081(4)(b), F.S., or within three months of the Commission's vote, whichever occurs first.

Issue 2: Should this docket be closed?

Recommendation: This docket should remain open pending the Commission's final decision regarding the Utility's Application for grandfather water certificate in Leon County and application for pass through increase of regulatory assessment fees. If no person whose substantial interests are affected by the proposed agency action for the rule waiver files a protest within 21 days of the issuance of the order, a consummating order should be issued. (Janjic)

Staff Analysis: This docket should remain open pending the Commission's final decision regarding the Utility's Application for grandfather water certificate in Leon County and application for pass through increase of regulatory assessment fees. If no person whose substantial interests are affected by the proposed agency action for the rule waiver files a protest within 21 days of the issuance of the order, a consummating order should be issued.