

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 23, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Lherisson) *BL*
Division of Engineering (Wooten, Ellis) *HW* *JSC* *POE*

RE: Docket No. 20190199-WS – Application for quick-take amendment of Certificate Nos. 278-W and 225-S to add territory in Seminole County, by Utilities, Inc. of Florida.

AGENDA: 02/04/20 – Regular Agenda – Proposed Agency Action – Rule Waiver – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 03/09/20 (90-Day Rule Waiver Statutory Deadline)

SPECIAL INSTRUCTIONS: None

Case Background

On November 5, 2019, 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 currently serving approximately 34,000 water and/or wastewater customers¹ 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 the Florida Public Service Commission (Commission) in Docket No. 20160101-WS.² UIF is seeking a waiver of Rule 25-

¹ Document No. 10737-2019.

² Order No. PSC-2017-0361-FOF-WS, issued September 25, 2017, in Docket 20160101-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.*; amended by Order No. PSC-2017-0361A-FOF-WS, issued

30.030(5)(b), Florida Administrative Code (F.A.C.), in connection with UIF's Application for Quick Take Amendment³ of Certificates 278-W and 225-S in Seminole County (Application). The Utility is seeking to add 24 single family connections to UIF's water and wastewater systems in Seminole County, and is seeking a waiver of the rule requirement to notify its current 34,000 customers of the quick-take amendment.

Pursuant to Section 120.542(6), Florida Statutes (F.S.), notice of this rule waiver Petition was Published in the Florida Administrative Register on November 20, 2019. 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. On December 26, 2019, Commission staff sent a data request to the Utility, to which responses were received on that same day.

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.

October 4, 2017; see also remanded Order No. PSC-2019-0363-PAA-WS, issued August 27, 2019; consummated by Order No. PSC-2019-0388-CO-WS, issued September 20, 2019.

³ A quick take amendment is designed to provide water and/or wastewater service quickly for areas that serve less than 25 equivalent residential connections (ERCs), there is no other utility in the area of the proposed territory that is able to provide reasonably adequate service, the customer has demonstrated to the utility that service is necessary, and the utility has filed an application to extend its service area. See 25-30.036(3), F.A.C.

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 Utilities, Inc. of Florida'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 place a notice of its quick take application on its website to provide all UIF customers notice of the Utility's proposed actions. (Lherisson)

Staff Analysis: On November 5, 2019, UIF filed a Petition seeking a partial waiver of Rule 25-30.030(5)(b), F.A.C., which requires that notice of the quick take amendment 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 a quick take amendment of UIF's Certificates 278-W and 225-S in Seminole County, Florida, to add 24 single family connections to UIF's water and wastewater systems. On December 9, 2019, UIF provided notice by regular U.S. mail to water and wastewater utilities in Seminole County, governmental agencies in Seminole County, the Office of Public Counsel, and the Commission.⁴ On December 30, 2019, UIF filed an affidavit that notice of UIF's Application was published twice weekly in the Sanford Herald, a newspaper of general circulation within Seminole County, Florida.⁵ UIF seeks 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.

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.

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.

⁴ Document No. 11251-2019.

⁵ Document No. 11497-2019.

In its response to Commission Staff's First Data Request, the Utility states that its water and wastewater systems consist of over 34,000 customers and the application would only add 24 single family residences to the systems. UIF asserts that the impact of adding only 24 single family residences would be de minimis, and would have an insignificant impact on existing customers of UIF. 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 affected governing body of Seminole County and municipalities therein, 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 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 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, staff believes 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, staff believes it is important to maintain transparency and ensure that all customers receive full notice of the Utility's proposed actions. Therefore, 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 quick take amendment. 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.⁶

⁶ See Order No. 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.*

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 quick take amendment of Certificate Nos. 278-W and 225-S to add territory in Seminole County. (Lherisson)

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 quick take amendment of Certificate Nos. 278-W and 225-S to add territory in Seminole County.