

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: May 28, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Trierweiler, J. Crawford) *JSC*
Division of Accounting and Finance (Fletcher, Norris) *ALM BT*
Division of Economics (Hudson) *JCH*

RE: Docket No. 20200139-WS – 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.

AGENDA: 06/09/2020 – Regular Agenda –Proposed Agency Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Fay

CRITICAL DATES: July 20, 2020 – 90-day deadline to address petition for rule waiver pursuant to Section 120.542(8), F.S.

SPECIAL INSTRUCTIONS: None

Case Background

On April 20, 2020, Utilities, Inc. of Florida (UIF or Utility), a Class A utility providing water and wastewater service to systems located in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties, Florida, filed a notice of its intent to submit an application for general rate relief for these systems to the Florida Public Service Commission. The Utility intends to submit the minimum filing requirements (MFRs) on or before July 31, 2020. On May 7, 2020, the Chairman approved the Utility's historic test year ended December 31, 2019, and requested the filing of the complete petition, MFRs, and full filing fee no later than July 31, 2020.

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The Utility's last rate proceeding occurred in Docket No. 20160101-WS utilizing a historic December 31, 2015, test year.¹ That proceeding culminated in Order No. PSC-2017-0361-FOF-WS, issued September 25, 2017, as amended by Order No. PSC-2017-0361A-FOF-WS, issued October 4, 2017. On remand from the First District Court of Appeal, Order No. PSC-2019-0363-PAA-WS was issued on August 27, 2019.

Upon its request, the Office of Public Counsel (OPC) was added as an interested person to this docket on April 20, 2020.

On April 21, 2020, UIF filed a Petition for Variance or Waiver of a specific provision from Rule 25-30.437(3), Florida Administrative Code (F.A.C.). The portion of the rule from which the Utility is requesting waiver addresses the requirement to provide additional detailed billing analyses for each rate change period in the test year. Pursuant to Section 120.542, Florida Statutes (F.S.), notice of the petition for waiver was published in the Florida Administrative Register on April 24, 2020. No written comments to the notice were received, and the time for filing written comments expired on May 8, 2020. The 90-day statutory deadline for the Commission to address the Utility's request pursuant to Section 120.542(8), F.S., is July 20, 2020.

This recommendation addresses UIF's petition for variance or wavier of a specific provision from Rule 25-30.437(3), F.A.C. The Commission has jurisdiction pursuant to Sections 367.081 and 120.542, F.S..

¹ *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.*

Discussion of Issues

Issue 1: Should the Commission grant the Utility's Petition for Waiver or Variance of Schedule E-14, of Commission Form PSC/AFD 19-W (11/93), as incorporated by reference in Rule 25.30-437, F.A.C.?

Recommendation: Yes. The Commission should grant UIF's Petition for Waiver of the Rule. (Trierweiler, Hudson)

Staff Analysis: Section 120.542(2), F.S., authorizes the Commission to grant variances or waivers from the requirements of its rules where the person subject to the rules has demonstrated that the underlying purpose of the statute has been or will be achieved by other means, and strict application of the rules would cause the person substantial hardship or would violate principles of fairness. "Substantial hardship" as defined in this section may include a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver.

On April 21, 2020, UIF filed a Petition for Variance or Waiver of one specific requirement of Commission Form PSC/AFD 19-W (11/93), which is incorporated by reference in Rule 25-30.437, F.A.C. The rule requires the Utility to create billing analyses throughout the test year that capture the data for each class of service by meter size and reflect all rate changes throughout the test year. Each billing analysis must show the bills, gallons, and rates. One of the goals is to provide the Commission with the data necessary to annualize test year revenue if there was a rate change during the test year.

UIF asserts that the requested waiver or variance is needed because providing the detailed billing analyses with billing changes would result in a substantial hardship as defined in Section 120.542(2), F.S. The Utility had three rate changes during the test year, which by rule would require a billing analysis for each of the three rate periods. UIF would incur an inordinate amount of time to prepare these detailed billing analysis schedules which would result in an additional 700 to 900 individual billing schedules due to the size of its customer base. Commission staff agrees that these detailed rate change billing analyses do not provide any meaningful information which would facilitate the Commission's review of UIF's rate request. Commission staff needs the billing analysis, which reflects the total number billing determinants for purposes of annualizing revenues, if necessary, and designing rates. UIF intends to provide the billing analysis (which by nature are the total test year billing determinants); it does not intend to provide separate billing analyses which coincide with each period of rate change during the test year. UIF contends that the application of this specific MFR requirement in this docket would lead to an unreasonable, unfair and unintended result, and that the purpose of this specific MFR requirement will be achieved through the billing analysis schedules to be filed by UIF.

The Commission evaluated a similar motion by UIF in its prior rate case in Docket No. 20160101-WS and issued Order No. PSC-2016-0530-PAA-WS, granting the Petition. There has been no change in the rate case requirements since that time. Finally, UIF represents that OPC takes no position on UIF's Petition for Rule Waiver.

Section 367.081, F.S., provides that the Commission shall fix rates which are just, reasonable, compensatory and not unfairly discriminatory. The underlying purpose for gathering the information required by Rule 25-30.437, F.A.C., is to provide sufficient information for the Commission to set appropriate rates for a utility. The Utility will provide the information in its MFRs that will permit the staff, parties, and Commission to examine revenues for the test year period. The information the Utility is seeking to waive is not necessary for that determination. Therefore, the underlying purpose of the statute can still be met if the waiver is granted. Staff also believes the Utility has sufficiently alleged that compliance with the rule would result in substantial hardship. Preparing an additional 700 to 900 billing schedules, which would not materially assist the parties, staff, or Commission in processing the case, would result in the expenditure of not only an inordinate amount of time and resources on the part of the Utility, but would also generate additional - and unnecessary - rate case expense.

Staff therefore recommends that the Commission grant the waiver of the rule. By granting this waiver, UIF will avoid incurring a substantial hardship without adversely impacting the Commission's ability to determine annualized test year revenues.

Issue 2: Should this docket be closed?

Recommendation: The docket should remain open pending the Commission's final action on the Utility's requested rate increase. If no timely protest is filed, this matter becomes final upon the issuance of a consummating order. (Trierweiler)

Staff Analysis: The docket should remain open pending the Commission's final action on the Utility's requested rate increase. With respect to Issue 1, a Consummating Order should be issued unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action portion of the order.