

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Request by Florida Community Water  
Systems, Inc. for a revenue-neutral rate restructuring      Docket No. 20220201-WU  
in Brevard, Lake, and Sumter Counties

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SUPPLEMENT TO APPLICATION FOR REVENUE-NEUTRAL RATE RESTUCTURING,  
AND SUPPLEMENT TO PETITION FOR WAIVER OF RULE 25-30.445(6)(c), FLORIDA  
ADMINISTRATIVE CODE

FLORIDA COMMUNITY WATER SYSTEMS, INC., (“FCWS”) by and through its undersigned attorneys hereby supplements its Application for a Revenue-Neutral Rate Restructuring and its Petition for a waiver of the requirement of Rule 25-30.445(6)(c), Florida Administrative Code, as specifically set forth below.

Effective January 1, 2022, Black Bear Waterworks, Inc., Brendenwood Waterworks, Inc., Brevard Waterworks, Inc., Harbor Waterworks, Inc., Jumper Creek Utility Company, Inc., Lake Idlewild Utility Company, Inc., Lakeside Waterworks, Inc., Pine Harbor Waterworks, Inc., Raintree Waterworks, Inc., The Woods Utility Company, Inc., merged into Florida Community Water Systems, Inc., which merger and name changes were approved by this Commission in Order No. PSC-2022-0095-FOF-WS. This Commission has a long-standing policy of encouraging the consolidation of smaller systems. The natural progression from the consolidation of systems is the consolidation of rates. This Commission has previously noted the benefits to customers and to the utility of consolidated rates. See, Order Nos., 12084 (Sunshine Utilities) and PSC-2017-0361-FOF-WS (Utilities, Inc. of Florida)<sup>1</sup>. In the Utilities, Inc. of Florida Order this Commission stated at page 189:

We have approved consolidated rates for water and wastewater systems in the past, based on criteria unique to those systems. For example, in a rate case for Sunshine

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1. Rate consolidation was a hotly contested issue in the Utilities, Inc. of Florida case.

Utilities, Inc., we approved consolidated rates for 16 separate water systems. Prior to approval of the uniform rates, the utility's rates differed from system to system and included flat rates, declining block rates, and a base facility charge (BFC) with a uniform gallonage charge. We found that consolidated rates with a BFC and a uniform gallonage charge should be used uniformly throughout the company, and that the uniform rate structure would provide customers with greater control of their water bills and provide the utility with a less complicated and expensive billing procedure. [footnote omitted]

The Commission in that Order further noted the following testimony of staff witness Daniel: "For customers in lower cost systems, consolidated rates will result in a disproportionate share of the revenue requirements being included in their rates in the short term, although as previously mentioned, this may be offset in the future if significant capital improvements are needed in the lower cost systems." The Commission also set forth the criteria to assure that there was not unreasonable subsidization.

#### Revenue-Neutral Rate Restructuring

The Staff has questioned whether a Limited Proceeding is the appropriate method for requesting a revenue-neutral rate restructuring.<sup>2</sup> The Commission does not have a specific Rule which addresses a revenue-neutral rate restructuring. However, it is clear that a limited proceeding pursuant to Section 367.0822, Florida Statutes is an appropriate procedure. Pursuant to Section 367.0822(1), Florida Statutes, "the commission may conduct a limited proceeding to consider, and act upon, *any matter* within its jurisdiction" (e.s.). It is undisputed that rate structure and rate consolidation are within the Commission's jurisdiction. The Commission's Water & Wastewater Reference Manual for Utility Companies, Chapter 12, specifically mentions rate restructuring as an issue that a limited proceeding would address. This Commission in at least two limited

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2. It is interesting to note that while the Application filed by FCWS referenced this as a limited proceeding, the Staff and Clerk removed that reference from the Docket name [Document Nos. 11920-2022 and 12014-2022].

proceedings granted revenue-neutral rate restructuring, plus rate case expense. Order Nos. PSC-1995-0967-FOF-SU and PSC-2010-0219-PAA-WS.

Specifically, in Order No. PSC-2010-0219-PAA-WS, the Commission stated, “a revenue-neutral rate restructuring for a Class B utility is tantamount to a limited proceeding rate case with no revenue increase.” In that case, the Commission considered the need for a conservation-oriented rate structure in making its decision. As previously stated in its Application, FCWS also needs a conservation-oriented rate structure in order to comply with its water pumping requirements in Harbor’s Consumptive Use Permit.

Harbor’s CUP states, that the permittee must implement the Water Conservation Plan submitted to the District on June 23, 2014 in accordance with the schedule contained therein. The Water Conservation Plan states, “The applicant must submit a written proposal and implement a water conservation promoting rate structure...”

FCWS has filed all required documentation either in its initial Application or in response to the deficiency letter. Thus, the question shifts to the four criteria in Rule 25-30.445(6), F.A.C. The only criteria which FCWS does not meet is that two of the 10 systems have not had a rate case within seven years of FCWS filing its Application.

Waiver of Rule 25-30.445(6)(c), Florida Administrative Code

As pointed out in the Application, the fact that two of the ten systems have not had a rate case in the past seven years would not have required a Rule waiver prior to the December 2021 amendment. The Legislature, recognizing that the “application of uniformly applicable rule

requirements can lead to unreasonable, unfair, and unintended results in particular instance”<sup>3</sup> provided for a procedure for requesting a waiver of the requirements of a Rule and the information required.<sup>4</sup> The threshold standard is why the waiver would serve the purpose of the underlying statute. The underlying statute implemented by Rule 25-445(6)(c), F.A.C. is Section 367.0822, Florida Statutes. The obvious intent of the Statute is to afford the Commission broad discretion as to matters that are appropriate for a limited proceeding in order to alleviate the time and expense of full proceedings. It is through the implementation of the Statute that the seven-year requirement was originally established as a criteria for the Commission to consider, and more recently a requirement for a limited proceeding. The seven-year requirement, although there is nothing magic about seven years, was intended to assure that when a limited proceeding rate increase was considered by the Commission that the utility’s overall financial information had been vetted in recent years by the Commission. However, when the limited proceeding doesn’t seek a revenue increase (other than for rate case expense) that vetting is not necessary. Through routine review of FCWS Annual Reports the Commission can assure that FCWS does not overearn.

Although Order No. PSC-2010-0219-PAA-WS does not specifically address the issue of the seven year criteria in the Rule, the Docket reflects that the Consummating Order for the utility’s prior rate case was issued on July 19, 2000, and the rate restructuring limited proceeding was not filed until May 30, 2008, past the seven year deadline.

If the rule waiver is denied FCWS will have to file a full rate case to consolidate rates, even though seeking no revenue increase. In a recent similar case (Docket No. 20200139-WS) the

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4. Section 120.542(1), Florida Statutes

4. Section 120.542(5), Florida Statutes and Rule 28-104.002, Florida Administrative Code

Commission granted rate case expense in excess of \$1 million. While that amount was not substantial in light of the total amount of the revenue increase granted, if FCWS filed such a case, albeit revenue neutral, the total amount of the rate increase would be the rate case expense which would likely be substantial. That might be hard to explain to the customers who ultimately bear that expense. The purpose of the limited proceeding statute would be thwarted by such an outcome.

Pursuant to Rule 28-104.002(1), Florida Administrative Code, a copy of the Petition has been sent to the Joint Administrative Procedures Committee.

WHEREFORE, FLORIDA COMMUNITY WATER SYSTEMS, INC. requests this Commission grant a waiver of Rule 25-30.445(6)(c), Florida Administrative Code, and subsequently grant a revenue-neutral rate restructuring with the addition of rate case expense.

Respectfully submitted on this 6<sup>th</sup> day of  
January, 2023, by:

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by

E-mail to the following parties this 6th day of January, 2023:

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*/s/ Martin S. Friedman*  
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