

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of TOPEKA GROUP, INC., to acquire control of DELTONA CORPORATION'S utility subsidiaries in Citrus, Marion, St. Johns, Washington, Collier, Volusia and Hernando Counties)	DOCKET NO. 881501-WS
)	ORDER NO. 20652
)	ISSUED: 1-24-89

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, CHAIRMAN
 THOMAS M. BEARD
 GERALD L. GUNTER
 JOHN T. HERNDON

ORDER DENYING REQUEST FOR RULE WAIVER

BY THE COMMISSION:

In its application for approval to acquire majority organizational control of the utility subsidiaries of the Deltona Corporation (Deltona), the Topeka Group, Inc. (Topeka) has requested that this Commission waive the requirements of Rule 25-30.040, Florida Administrative Code. Topeka is a Minnesota corporation and a wholly-owned subsidiary of Minnesota Power, located in Duluth, Minnesota. Topeka's application states that the Deltona subsidiaries serve approximately 54,000 water customers and 23,000 sewer customers under the Commission's jurisdiction. Topeka intends to exercise warrants it owns to purchase 10,000 shares of common stock in each of the three Deltona subsidiaries operating in Citrus, Marion, St. Johns, Washington, Collier, Volusia and Hernando counties.

Topeka states that the "voluminous information required and the extensive notice requirements of Rule 25-30.040, Florida Administrative Code, would not be appropriately applied in this proceeding." The company cites the telephone case of Docket No. 871009-TI, entitled In Re Application of SouthernNet, Inc. for Approval of Acquisition of Southland Communications Corporation (SouthernNet), specifically Order No. 18436, issued on November 18, 1987, as precedent for its request. In that Order, we granted waiver of Rule 25-30.040, Florida Administrative Code. Topeka states that the reasons for the waiver request and approval in that case are analogous to its request in this instance.

We do not believe that the circumstances involved in the SouthernNet case were similar enough to the circumstances involved in this application to warrant the waiver of Rule 25-30.040, Florida Administrative Code. Specifically, in the water and sewer industry, notice requirements are regularly demanded of utilities involved in any major transaction that could affect the ownership or operation of those utilities. The notice requirements for the telephone industry that we waived in the SouthernNet case only apply to local exchange companies, not to the far more numerous categories of telephone companies that include the interexchange companies and the private pay telephone (PATS) providers. In the water and sewer

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industry, however, notice requirements are necessary for any size utility involved in such transactions.

The only reason stated by Topeka to justify such a waiver is that the information required is "voluminous" and the notice requirements are "extensive." Also, the company states that the change in organizational control will not affect the rates, tariffs or manner of service being rendered by the Deltona subsidiaries. However, we have consistently enforced the notice requirements of Rule 25-30.040, Florida Administrative Code, for companies that intend to acquire majority organizational control of utilities of any size. The circumstances in this case, specifically the large number of customers and utilities involved, do not warrant a waiver of this Rule that is regularly applied to companies with significantly lesser resources and sophistication. Accordingly, we hereby deny Topeka's request for a waiver. The balance of the company's application will be addressed in a later order.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that the request by Topeka Group, Inc., for waiver of Rule 25-30.040, Florida Administrative Code, is hereby denied.

By ORDER of the Florida Public Service Commission,
 this 24th day of JANUARY, 1989.


 STEVE TRIBBLE, Director
 Division of Records and Reporting

(S E A L)

SFS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme

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Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or sewer utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.