

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for limited alternative rate increase in Hardee, Manatee, Marion, Polk, and Pasco Counties, by Charlies Creek Utilities, LLC, Crestridge Utilities, LLC, East Marion Utilities, LLC, Heather Hills Utilities, LLC, Holiday Gardens Utilities, LLC, Lake Yale Utilities, LLC, McLeod Gardens Utilities, LLC, Orange Land Utilities, LLC, Sunny Shores Utilities, LLC, Sunrise Water, LLC and West Lakeland Wastewater, LLC.

DOCKET NO. 20220185-WS
ORDER NO. PSC-2023-0064-PAA-WS
ISSUED: January 30, 2023

The following Commissioners participated in the disposition of this matter:

ANDREW GILES FAY, Chairman
ART GRAHAM
GARY F. CLARK
MIKE LA ROSA
GABRIELLA PASSIDOMO

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING PETITION FOR TEMPORARY WAIVER OF
RULE 25-30.020(2)(f), F.A.C., BY FLORIDA UTILITY SERVICES 1, LLC

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

Background

Florida Utility Services 1, LLC (FUS1) is a service company that owns multiple Commission-regulated water and wastewater utilities. On November 4, 2022, FUS1 filed an application for a limited alternative rate increase proceeding (LARI) pursuant to Rule 25-30.457, F.A.C, for the following eleven utilities: Charles Creek Utilities, LLC; Crestridge Utilities, LLC; East Marion Utilities, LLC; Heather Hills Utilities, LLC; Holiday Gardens Utilities, LLC; Lake Yale Utilities, LLC; McLeod Gardens Utilities, LLC; Orange Land Utilities, LLC; Sunny Shores Utilities, LLC; Sunrise Water, LLC; and, West Lakeland Wastewater. FUS1 allocates common costs to its Commission-regulated utilities.

Rule 25-30.457(4), F.A.C., requires payment of a filing fee as required by Rule 25-30.020(2)(f), F.A.C., or the application is deemed denied. Pursuant to Rule 25-30.020(1), F.A.C., the utility must pay a separate filing fee for water services and wastewater services. In this docket, there are eleven utilities with fourteen separate water and wastewater systems. Therefore, our staff determined and subsequently notified FUS1 that the filing fees under Rule 25-30.020(2)(f), F.A.C., for these fourteen systems totaled \$13,000. The following table reflects the associated fee for each water and wastewater system at issue.

Table 1 – Filing Fees for Systems Included in the LARI

Utility	W/WW	Design Capacity	Equivalent Residential Connection (ERC)	Filing Fee
Charlie Creek Utilities, LLC	W	133,000	380	\$1,000
Crestridge Utilities, LLC	W	432,000	1234	\$1,000
East Marion Utilities, LLC	W	180,000	514	\$1,000
	WW	50,000	179	\$500
Heather Hills Utilities, LLC	W	N/A	355	\$1,000
	WW	N/A	355	\$1,000
Holiday Gardens Utilities, LLC	W	342,000	977	\$1,000
Lake Yale Utilities, LLC	W	468,000	1337	\$1,000
	WW	55,000	196	\$500
McLeod Gardens Utilities, LLC	W	712,800	2037	\$1,000
Orange Land Utilities, LLC	W	100,000	286	\$1,000
Sunny Shores Utilities, LLC	W	N/A	262	\$1,000
Sunrise Water, LLC	W	792,000	2263	\$1,000
West Lakeland Wastewater, LLC	WW	70,000	250	\$1,000
			Total:	\$13,000

On November 7, 2022, FUS1 filed a petition pursuant to Section 120.542, F.S., for waiver of Rule 25-30.020(2)(f), F.A.C. (Petition), requesting that we waive the \$13,000 in filing fees required by the rule and enable FUS1 to instead pay a single filing fee of \$1,000.

On December 6, 2022, our staff notified FUS1 that the application had met the initial requirements imposed by Rule 25-30.457, F.A.C. However, our staff could not move forward with the application until after the disposition of the rule waiver. In addition, our staff confirmed that the filing fees under Rule 25-30.020(2)(f), F.A.C., for these fourteen systems totaled \$13,000, as shown in the table above.

We have jurisdiction pursuant to Section 120.542 and Chapters 120 and 367, Florida Statutes (F.S.).

Decision

Rule 25-30.020(2)(f), F.A.C.

Subsection 120.542(2), F.S., provides a procedure for agencies to provide relief to persons when strict application of uniformly applicable rule requirements leads to unreasonable, unfair, and unintended results in particular instances. In this case, FUS1 requests that we grant it a waiver of Rule 25-30.020(2)(f), F.A.C., to remit a single \$1,000 filing fee instead of the \$13,000 in filing fees which was calculated pursuant to the rule for each of the fourteen systems operated by the eleven individual utilities. FUS1 argues the rule waiver is appropriate because by filing a LARI for common costs only, we will only have to make one calculation and apply that calculation eleven times.

An agency must grant variances or waivers from agency rules when the person subject to the rule demonstrates both (1) that the purpose of the underlying statute will be or has been achieved by other means, and (2) that an application of the rule would either cause the person substantial hardship or violate principles of fairness. Subsection 120.542(2), F.S. “Substantial hardship” as defined as a demonstrated economic, technological, legal, or other type of hardship.

The underlying statute at issue in this case is Section 367.145, F.S. Specifically, Subsection 367.145(2), F.S., requires that each utility requesting rate relief must pay an application fee to the Commission. The Legislature intended for us to create a filing fee to be paid by each utility to compensate us for our work on LARIs, and we have done so with our implementation of Rule 25-30.020, F.A.C., which sets forth how the filing fee is calculated based on the capacity of each water or wastewater system to serve a specific number of ERCs. Accordingly, we find that a modification or waiver of this rule requirement would be inconsistent with the statute.

In its petition, FUS1 claims “By filing a LARI for common costs only, commission staff will have to make one calculation and apply that calculation 11 times, as they would do anyway.” However, because these are not consolidated systems, an individual assessment of each individual utility and system is needed, that is we must conduct a review of each of the fourteen individual systems that are shown in Table 1 above. The purpose of the filing fee is to defray some of the costs of processing these applications thereby allowing us to assist small water and wastewater systems. As such, a filing fee for each system is consistent with the applicable statutes and rules. Furthermore, Section 367.145(2), F.S., states that the filing fee is to be based upon the capacity of the system, not on the amount of the work performed by the Commission.¹ For these reasons, we find that FUS1’s petition failed to demonstrate how a waiver of filing fees will meet the purpose of the underlying statute.

¹ This is consistent with our prior practice. See Docket No. 20200152-WS, where we accepted a fee of \$4,500 for processing a LARI for Alturas Water, LLC, Sunrise Water, LLC, Pinecrest Utilities, LLC, and East Marion Utilities, LLC.

Moreover, we find that FUS1's Petition failed to demonstrate how the application of Rule 25-30.020(2)(f), F.A.C., would create a substantial hardship for the utilities and their customers. While FUS1 argues the application fees would limit the utilities' cash reserves and inhibit the ability to deal with emergencies in a proper manner, we find the filing fees are highly predictable and incurred as a regular cost of doing business. Therefore, FUS1 failed to adequately show it meets the requirements for a rule waiver pursuant to Subsection 120.542, F.S.

Conclusion

Based on the above, we deny FUS1's Petition for a waiver of Rule 25-30.020(2)(f), F.A.C., to allow FUS1 to file a single filing fee for fourteen separate systems.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Utility Services 1, LLC's petition for waiver of Rule 25-30.020(2)(f), F.A.C., is denied for the reasons set forth in the body of this Order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that this docket shall remain open pending our decision on the application for a Limited Alternative Rate Increase.

By ORDER of the Florida Public Service Commission this 30th day of January, 2023.



ADAM J. TEITZMAN
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

MJJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Subsection 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, 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 will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on February 20, 2023.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.