



August 2, 2024

Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 20240106-WU - Petition for Variance or Waiver of Rule 25-30.445, Florida Administrative Code by North Florida Community Water Systems, Inc. in Alachua, Duval, Leon, Okaloosa, and Washington Counties

Dear Commission Clerk,

North Florida Community Water Systems, Inc. (NFCWS) hereby petitions the Florida Public Service Commission for a partial variance or waiver of a requirement of Rule 25-30.445, Florida Administrative Code (F.A.C.) pursuant to Section 120.542, Florida Statutes (F.S.). In support of this Petition, NFCWS asserts the following:

1. The name and address of the Petitioner is:

North Florida Community Water Systems, Inc.
4939 Cross Bayou Blvd.
New Port Richey, FL 34652
Telephone: (727) 848-8292

2. The name, address and telephone number of the authorized representative to contact concerning this Petition is:

Troy Rendell
U.S. Water Services Corporation, Inc.
4939 Cross Bayous Blvd.
New Port Richey, FL 34652
Telephone: (727) 848-8292

3. This Petition is related to Docket No. 20240106-WU, Request by Florida Community Water Systems, Inc. for a revenue-neutral rate restructuring in Alachua, Duval, Leon, Okaloosa, and Washington Counties.
4. 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.

5. Rule 25-30.445, Florida Administrative Code (F.A.C.) provides general instructions and requirements for water and wastewater utilities filing for a limited proceeding.
6. The underlying statute implemented by Rule 25-445, 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.
7. The majority of Rule 25-30.445, F.A.C. is related to requests for an *increase* in rates for either recovery of capital items or operating expenses.
8. In the instant docket, NFCWS is not requesting an increase in revenues or recovery of capital items or operating expenses. NFCWS is merely requesting a revenue neutral rate restructuring based upon existing historical revenues. 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.”
9. 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.
10. Section 25-30.445(6), F.A.C. states that a limited proceeding will not be allowed if the utility has not had a rate case within seven years of the date the petition for limited proceeding is filed with the Commission.
11. The fact that four of the six 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. Prior to the most recent amendment to Rule 25-30.455, section (6)(b) previously read, “In evaluating whether the utility’s request is improper for a limited proceeding, the Commission will consider factors such as: Whether the utility has not had a rate case in more than seven years and the requested rate increase exceeds 30 percent.” (emphasis added) Again, NFCWS is not requesting an increase in revenues.
12. The seven-year requirement, although there is nothing magical 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.
13. Two of NFCWS systems have had rate cases within the past seven years.

14. Lake Talquin, Okaloosa, and Seminole rates and rate structure have been in existence since being certificated, with the exception of minor index increases.
15. NFCWS is not requesting a revenue requirement be set by the Commission.
16. NFCWS believes that the provision in Section 25-30.445(6), F.A.C. is related to the Commission previously approving a utility's rate base and operating expenses. NFCWS is not requesting establishment of rate base or the prudence of operating expenses. This is a request for a rate restructuring based upon existing annualized water service revenues.
17. The Commission still retains its right to conduct an audit in this LIMP, as well as its continued oversight in earnings surveillance in review of the NFCWS's Annual Reports. Through routine review of NFCWS Annual Reports the Commission can assure that NFCWS does not overearn. Thus, the purpose of the underlying statute will still be achieved by other means.
18. Section 120.542(2), F.S. states that, "Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when the application of the rule would create a substantial hardship or would violate the principles of fairness."
19. Section 120.542(5), F.S. states that, "A person who is subject to regulation by an agency rule may file a petition with that agency, with a copy to the committee, requesting a variance or waiver from the agency's rule."
20. Denying a limited proceeding for a rate restructuring would require NFCWS to file for a full rate case. This would involve the compilation and filing of six separate sets of Minimum Filing Requirements.
21. This revenue neutral water rate restructuring represents a significant reduction in rates and water bills to approximately seventy-four percent (74%) of the water residential customers. If NFCWS were required to obtain outside legal counsel or file six sets of MFRs, this reduction in rates would be diminished due to the additional costs involved.
22. This would create a substantial hardship and additional cost for both the utility and the customers, as well as violate the principles of fairness as defined in Section 120.542(2), F.S.
23. This request for partial variance or waiver is consistent with a recent Commission decision for NFCWS affiliated sister utility, Florida Community Water Systems by Order No. PSC-2023-0113-PAA-WS, issued March 24, 2023.

WHEREAS, 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, and

WHEREAS, The Florida Legislature, through Section 120.542(1), F.S., recognized that the “application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instance” provided for a procedure for requesting a waiver of the requirements of a Rule and the information required. The threshold standard is why the waiver would serve the purpose of the underlying statute.

WHEREFORE, NORTH FLORIDA COMMUNITY WATER SYSTEMS, INC. requests this Commission grant a partial waiver or variance of the provisions of Section 25-30.445(6), F.A.C., and subsequently grant a revenue-neutral water rate restructuring with the addition of rate case expense.

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

Respectfully Submitted,



Troy Rendell
Vice President
Investor Owned Utilities
// for North Florida Community Water Systems, Inc.