

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by United Water
Florida Inc. for emergency
temporary variance from Rule 25-
30.030(4)(c), F.A.C.

DOCKET NO. 991660-WS
ORDER NO. PSC-99-2422-PAA-WS
ISSUED: December 9, 1999

The following Commissioners participated in the disposition of
this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.

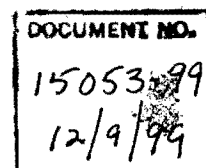
NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING UNITED WATER'S PETITION FOR
EMERGENCY TEMPORARY VARIANCE FROM
RULE 25-30.030(4)(C), FLORIDA ADMINISTRATIVE CODE

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.

BACKGROUND

United Water Florida Inc., (United Water or utility) formerly
Jacksonville Suburban Utilities Corporation (Jacksonville Suburban)
is a Class A utility located in Duval, Nassau, and St. Johns
Counties and serves approximately 30,425 water and 22,909
wastewater customers. Jacksonville Suburban was issued Water
Certificate No. 236-W and Wastewater Certificate No. 179-S pursuant
to Order No. 13672, in Docket No. 840177-WS, issued September 11,
1984. United Water Resources Inc. (UWR) is the corporate
grandparent of United Water. An application for transfer of
majority organizational control from GWC Corporation to UWR was
approved by Order No. PSC-95-0215-FOF-WS, in Docket No. 940743-WS,
issued February 16, 1995. Subsequently, UWR submitted an
application for a name change of the utility to United Water



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Florida Inc., which was approved by Order No. PSC-95-0604-FOF-WS, issued May 16, 1995, in Docket No. 950386-WS. The utility's 1998 annual report lists total operating revenues of \$27,825,635 and total income of \$1,744,078.

PETITION FOR EMERGENCY TEMPORARY VARIANCE

On November 1, 1999, United Water filed a petition requesting an emergency temporary variance from Rule 25-30.030(4)(c), Florida Administrative Code, which relates to its forthcoming Application for Transfer of Majority Organizational Control. Lyonnaise American Holding, Inc. is currently a 30% shareholder of UWR and is seeking to become the sole shareholder through a pending merger.

Rule 25-30.030(4)(c), Florida Administrative Code, states that notice shall include a description, using township, range and section references, of the territory proposed to be either served, added, deleted, or transferred.

United Water's petition requests that it be allowed to provide a one page notice (with a map of its territories) of its application by mail, to customers, agencies, and utilities. The map to be included is titled United Water Florida Service Areas and has been designed to visually communicate the territories of United Water by showing the following: counties, the St. Johns River, county boundaries, major highway arteries, and territory names which relate to commonly known areas of the city. In addition, United Water requests that it be allowed to use the one page notice (with a map of its territories) of its application to fulfill the newspaper publication notice requirement.

Rule 28-104.004(2), Florida Administrative Code, provides that a petition for an emergency waiver shall specify, in addition to the other requirements of Section 120.542(5), Florida Statutes (1999), the following:

(a) The specific facts that make the situation an emergency; and

(b) The specific facts to show that the petitioner will suffer an immediate adverse effect unless the variance or waiver is issued more expeditiously than the time frames provided in Section 120.542, Florida Statutes.

Section 120.542, Florida Statutes, allows the Commission 90 days to grant or deny a non-emergency petition for variance or waiver after it is deemed complete. In this case, the 90 day grant or deny period precedes the filing of the application because the request for relief pertains to a procedural noticing requirement. In addition to the 90 day process, we will need time to review and act upon the forthcoming Application for Transfer of Majority Organizational Control. United Water's petition states that an emergency variance is needed because the two time periods taken together would not allow United Water to secure the timely approval of the Commission which must be coordinated with the approvals of the shareholders and other state public service commissions. Also, United Water's petition states that the utility anticipates that all regulatory approvals will be secured by March 2000 and that it is unreasonable for United Water to expend the necessary funds in the other regulatory entities before proceeding in Florida because of the 90 day delay. Therefore, the 90 day delay prior to filing the application for transfer will have an immediate and adverse result, unless the variance is issued more expeditiously.

United Water's Petition also states that there are significant transaction costs associated with the merger and that it would be unreasonable to require this one billion dollar merger to be delayed 90 days in Florida while the Petition is processed pursuant to Section 120.542, Florida Statutes.

We recognize that the 90 day process of the non-emergency rule waiver or variance procedure would in fact cause United Water to suffer adverse and immediate effects by not being able to coordinate the regulatory approval with other state public service commissions because of the merger's timetable. In this instance, we may act pursuant to Rule 28-104.005, Florida Administrative Code, which expressly provides for a 30 day review in emergency situations. Therefore, we will treat this Petition as an emergency petition because United Water has specifically stated the necessary facts to establish that it would suffer immediate and adverse effects in the event of a 90 day time delay.

Furthermore, United Water has met the additional requirements of Section 120.542(5), Florida Statutes as required by Rule 28-104.004(2), Florida Administrative Code. Section 120.542(5), Florida Statutes, states in pertinent part that

In addition to any requirements mandated by the uniform rules, each petition shall specify:

- (a) The rule from which the variance or waiver is sought.
- (b) The type of action sought.
- (c) The specific facts that would justify a waiver or variance for the petitioner.
- (d) The reason why the variance or the waiver requested would serve the purposes of the underlying statute.

United Water's petition states specific facts which demonstrate a substantial hardship and justify its variance request. United Water contends that it is an economic hardship to require it to adhere to the rule because "with 34,000 mailings, even 6 to 10 pages of printed legals would significantly enhance the postage and clerical costs associated with this process." In addition, United Water states that "a breakout by Sections, Townships, and Ranges, without the rest of the legal descriptions would inevitably produce inaccuracies and would be incomprehensible." Moreover, United Water's territories have been the subject of over 60 separate orders since 1974 in which territories and parts of territories have been added, deleted, transferred, and corrected as the result of business activity. The territory descriptions in the 60-plus orders are difficult to clearly and simply describe because they involve descriptions of parts of a Section, and multiple Sections or multiple parts of a Section. If United Water is required to strictly adhere to Rule 25-30.030(4)(c), Florida Administrative Code, United Water estimates that it will incur an additional \$22,281 dollars in materials and postage. United Water will also incur additional labor expenses on top of the materials and postage expenses. Furthermore, United Water would be handicapped by not being allowed to present its customers and the public with a clear description of its territories.

We find that United Water has demonstrated a hardship by showing the unnecessary \$22,281 dollar increase in cost and that the Rule prevents it from being able to clearly describe its territories to customers and to the public at large. Therefore, United Water's request for an emergency temporary variance from Rule 25-30.030(4)(c), Florida Administrative Code, shall be granted, to allow the utility to publish and to provide a one page

notice of its forthcoming application for transfer of majority control, as described herein.

Additionally, United Water will satisfy the underlying purposes of the statutes by using a one-page notice (with a map of United Water's territories) of its application for transfer of majority organizational control. The underlying statutes pertaining to the Rule in this instance are Sections 367.071 and 367.045, Florida Statutes (1999). Section 367.071(1), Florida Statutes, requires Commission approval for a transfer of majority organizational control. Section 367.071(4), Florida Statutes, requires that this type of application be disposed of as provided in Section 367.045, Florida Statutes. Section 367.045(1)(a), Florida Statutes, states that a utility shall "Provide notice of the actual application filed by mail or personal delivery to the governing body of the county or city affected, to the Public Counsel, to the commission, and to such other persons and in such other manner as may be prescribed by commission rule." The purpose of Sections 367.071 and 367.045, Florida Statutes, is to ensure that the utility's actions are in the public interest and that the utility has provided notice as prescribed by statute and the Commission's rules. In order to satisfy the purpose of the statutes, the abbreviated notice and map will be included in the monthly billing statements of each customer, published in the newspaper, and sent to all other required persons or bodies.

In support of its petition for an emergency temporary waiver, United Water cites to Order No. PSC-94-1236-FOF-WS, issued October 11, 1994, in Docket No. 940743-WS; In re: Joint Application for Transfer of Majority Organizational Control of Jacksonville Suburban Utilities Corporation in Duval County from GWC Corporation to United Water Resources Inc., as an example of the Commission granting a temporary variance of the same rules that United Water is requesting a temporary variance from in this instance. In that matter, the Commission stated that "Instead of providing a full territory description to each customer, the utility shall mail a notice to each customer which simply identifies each county that has been affected by the notice." Moreover, the Commission allowed newspaper publication under the same reasoning. The distinguishing factor in this instance is that the Commission granted that particular variance prior to the adoption of the Chapter 28-104, Florida Administrative Code, and Section 120.542, Florida Statutes, rule waiver processes.

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Nevertheless, we believe that United Water's proposed notice is the best way to provide actual notice of application and the territories affected. Therefore, the underlying purposes of the statutes will be met by providing a one page notice which clearly and simply conveys a "warning" to all the required persons and bodies.

For the foregoing reasons, United Water's Petition for emergency temporary variance is hereby granted because it meets the requirements of Rule 28-104.004(2), Florida Administrative Code, as set forth above.

This docket shall remain open to dispose of United Water's forthcoming Application for Transfer of Majority Organizational Control.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that United Water Florida Inc.'s petition for an emergency temporary variance from Rule 25-30.030(4)(c), Florida Administrative Code, is granted. It is further

ORDERED that United Water Florida Inc. shall provide by mail, to customers, agencies, and utilities a one page notice (with a map of its territories) of its application for transfer. The map to be included shall be titled United Water Florida Service Areas and visually communicate the territories of United Water Florida Inc. by showing the following: counties, the St. Johns River, county boundaries, major highway arteries, and territory names which relate to commonly known areas of the city. It is further

ORDERED that United Water Florida Inc. shall publish a one page notice (with a map of its territories) of its application in a newspaper of general circulation pursuant to Rule 25-30.030(7), Florida Administrative Code. The map to be included shall be titled United Water Florida Service Areas and visually communicate the territories of United Water Florida Inc. by showing the following: counties, the St. Johns River, county boundaries, major highway arteries, and territory names which relate to commonly known areas of the city. It is further

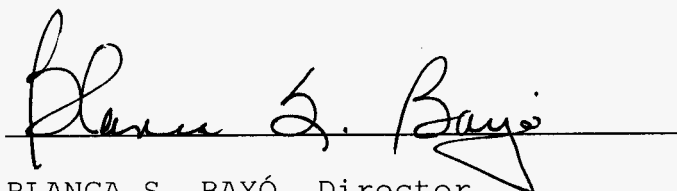
ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form

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provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 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 to dispose of United Water Florida Inc.'s forthcoming Application for Transfer of Majority Organizational Control.

By ORDER of the Florida Public Service Commission this 9th day of December, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 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.

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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 Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 30, 1999.

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 docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.