

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for approval of the merger of Utilities, Inc. and Nuon Acquisition Sub, Inc., an Illinois corporation, for determination of Commission's jurisdiction of such merger, and for the transfer of majority organizational control to nvNuon, a Netherlands corporation.

DOCKET NO. 010887-WS
ORDER NO. PSC-01-2316-FOF-WS
ISSUED: November 27, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER APPROVING TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL OF UTILITIES, INC. TO nvNUON, A NETHERLANDS CORPORATION

BY THE COMMISSION:

BACKGROUND

Utilities, Inc. (UI or parent), is an Illinois corporation which owns approximately 80 utility subsidiaries throughout 16 states including 16 water and wastewater utilities within the State of Florida. UI itself does not operate any water or wastewater utilities. As of September 30, 2001, UI's Florida subsidiaries were serving 36,081 residential and 1,163 non-residential water customers and 37,788 residential and 1,131 non-residential wastewater customers. According to the 2000 Annual Reports, UI's Florida subsidiaries had total revenues of \$5,927,020 for water and \$9,981,314 for wastewater with total operating income of \$1,630,891 for water and \$2,173,010 for wastewater.

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PSC-01-2316-FOF-WS CLERK

On June 25, 2001, UI filed an Application for Approval of Merger and Jurisdictional Determination, along with an accompanying petition requesting emergency temporary waiver or variance from Rules 25-30.030(4)(c), (5), (6), and (7), and 25-30.037(3)(i), (j), and (k), Florida Administrative Code.

UI is seeking to merge with Nuon Acquisition Sub, Inc. (Nuon), another Illinois corporation. Nuon is a wholly owned subsidiary of nvNuon, a Netherlands corporation. The Agreement and Plan of Merger (Merger Agreement) was executed on March 21, 2001. Closing is contingent upon obtaining the required multi-state regulatory approvals. According to the Merger Agreement, Nuon was established solely for the purpose of accomplishing the merger. Subsequent to the merger, UI will be the surviving corporation under 100% majority organizational control by nvNuon.

By Order No. PSC-01-1647-PAA-WS, issued August 13, 2001, in this docket, we determined that the pending merger between UI and Nuon was subject to our jurisdiction and required UI to proceed with an application for transfer of majority organizational control pursuant to Section 367.071, Florida Statutes, and Commission rules. We also granted UI's petition for emergency temporary rule waiver or variance of Rules 25-30.030(4)(c), (5), (6), and (7), and 25-30.037(3)(i), (j), and (k), Florida Administrative Code. This order addresses the transfer of majority organizational control of UI to nvNuon pursuant to our determination of our jurisdiction under Section 367.071, Florida Statutes.

TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL

Merger The closing on the merger is intended to occur in the first quarter of 2002, and is contingent upon securing the required multi-state regulatory approvals. According to the Merger Agreement, subsequent to the merger of UI and Nuon, UI will be the surviving corporation under 100% majority organizational control by nvNuon.

By Order No. PSC-01-1647-PAA-WS, issued August 13, 2001, we asserted our jurisdiction over the merger but granted UI's request for emergency temporary waiver or variance of Commission rules as requested in its petition. The order also instructed UI to proceed

with an application for transfer of majority organizational control pursuant to Section 367.071, Florida Statutes.

The application as filed and amended is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code, and contained the correct filing fee prescribed for such filings by Rule 25-30.020, Florida Administrative Code.

Noticing The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code, and the variance approved by Order No. PSC-01-1647-PAA-WS which simplified the noticing format by not requiring a full legal description for all of UI's Florida subsidiaries. Four letters were timely received in response to the notices given to all the customers of UI's Florida utility subsidiaries. However, none of the customers specifically requested a hearing. The predominant concern in the letters was the potential effect of the transfer on rates and charges. Our legal staff sent each customer a follow-up letter describing how the filing may be accessed on the Commission's website and explaining that rates and charges will not change as a result of the transfer of majority organizational control. The follow-up letters also asked for a response by September 21, 2001, if the customers wished to pursue an objection to the application and request a hearing. No response to any of the follow-up letters has been received. Therefore, there are no pending objections to the application.

Financing Rules 25-30.037(3)(e) and (g), Florida Administrative Code, require the application to contain a statement describing the financing of the purchase, a list of entities providing funding to the buyer, and an explanation of the manner and amount of such funding. According to the application, nvNuon has on hand and available all funds necessary to purchase the shares of UI. Therefore, there are no entities upon which nvNuon is relying for funding.

The actual value of the stock transfer is based on the price-per-share information identified in the Merger Agreement. Pursuant to Order No. PSC-01-1686-CFO-WS, issued August 21, 2001, in this docket, we granted UI's request for Confidential Classification of the price-per-share information. Given that confidential

treatment, UI did not have any objections to disclosure of the estimated value of the stock transfer which amount is \$404,529,000 U.S. dollars. However, since the stock transfer is based on the acquisition of 80 utilities, there is no way to assign a specific acquisition value to the 16 Florida utility subsidiaries.

Proof of Ownership, Tariffs, Certificates Rules 25-30.037(3) (i), (j), and (k), Florida Administrative Code, require evidence that the utility owns or has continued use of the land upon which the utility treatment facilities are located, tariff sheets reflecting the change in ownership, and the return of utility certificates for modification. By Order No. PSC-01-1647-PAA-WS, we granted UI's petition for variance from these rules since no changes are taking place at the utility subsidiary level.

Annual Reports and Regulatory Assessment Fees (RAFs) Since the utility facilities are not transferred in transfers of majority organizational control, Rule 25-30.037(3), Florida Administrative Code, does not require a statement regarding disposition of annual reports or Regulatory Assessment Fees (RAFs). However, for informational purposes, our staff has verified that UI's Florida utility subsidiaries are current on annual reports and RAFs through 2000 and that there are no outstanding fees, penalties, or refunds due.

Environmental Compliance Pursuant to Rule 25-30.037(3) (h), Florida Administrative Code, the application contained a statement that, after reasonable investigation, the utility systems operated by the Florida utility subsidiaries of UI appear to be in satisfactory condition and in compliance with all applicable standards set by the Florida Department of Environmental Protection.

Public Interest Pursuant to Rule 25-30.037(3) (f), Florida Administrative Code, the application contains a statement describing how the transfer is in the public interest, including a summary of the buyer's experience in water or wastewater utility operations, a showing of the buyer's financial ability to provide service, and a statement that the buyer will fulfill the commitments, obligations and representations of the seller with regard to utility matters.

While nvNuon does not currently own any water or wastewater systems in Florida, since 1997 it has owned an Ohio provider of natural gas and has equity interest in an Austin, Texas company that provides energy from environmentally friendly sources for residential, commercial and industrial customers. In addition, nvNuon is the largest energy distributor in The Netherlands, serving approximately 2,600,000 customers, or 38% of The Netherlands' market. NvNuon's water division holds a 10% share of The Netherlands' water market serving approximately 700,000 customers. In addition to electricity and water, nvNuon provides gas and heat to residential and business customers.

NvNuon also develops and markets products and services related to energy and water products. The application indicates that nvNuon is a leader in developing renewable "green" energy projects, such as small scale hydroelectricity, wind and solar energy technologies. Specific to the water and wastewater industry, nvNuon has a 50% stake in Pacques, a Netherlands provider of biological wastewater treatment solutions. In early 2000, nvNuon, together with the United Kingdom water firm Biwater, created the international water company, Cascad. In late 2000, nvNuon acquired Norit which is one of Europe's leading providers of water purification solutions for the food and beverage industry and which has offices in Texas and Oklahoma.

According to the application, the acquisition of majority organizational control of UI by nvNuon will not result in any change in management of UI and the expertise of the existing UI management will remain in place. In addition, the application states that nvNuon's expertise in water distribution technologies will provide UI with operational efficiencies to fuel its growth strategy of acquiring and managing water and wastewater utility systems across the United States. By combining UI's management approach and regulatory expertise with the financial resources and support of nvNuon, the application states that UI will provide a strong platform for growth in the United States water market.

With regard to nvNuon's financial ability, nvNuon had a net income in 2000 of approximately \$321,000,000 on revenues of \$3,400,000,000. As of December 31, 2000, nvNuon's total assets were approximately \$7,500,000,000. With regard to utility commitment, the application contained a statement that nvNuon

intends to fulfill the commitments, obligations and representations of UI with regard to utility matters.

Rate Base It has been Commission practice not to establish rate base for transfers of majority organizational control in which stock is publicly traded because such stock has no regulatory relationship to rate base. Moreover, since rate base is not affected by such stock transfers, it is not part of the consideration of public interest. Similarly, it has also been Commission practice that an acquisition adjustment for such stock transfers is not part of the consideration of public interest.

In this case, UI's stock is privately held and not publicly traded. However, as we have already acknowledged in Order No. PSC-01-1647-PAA-WS, as a parent corporation, UI does not own any utilities. Instead, the utility facilities are held by UI's subsidiary utility corporations. Since there are no changes in ownership or control at the subsidiary utility level as a result of the transfer of majority organizational control at the parent level, there is no effect on rate base for any of the regulated utilities. Therefore, we make no findings regarding rate bases at the time of the transfer or regarding acquisition adjustments.

Rates and Charges Normally in a transfer of majority organizational control, we would address whether the rates and charges approved for the utility should be continued pursuant to Rule 25-9.044(1), Florida Administrative Code. However, as noted above, UI does not own any utilities and, therefore, does not have any rates and charges. However, in the abundance of caution, we note that the rates and charges approved for UI's Florida utility subsidiaries shall be continued until we authorize a change in a subsequent proceeding.

Conclusion Based on all the above, we find that the transfer of majority organizational control of Utilities, Inc. to nvNuon is in the public interest and it is approved. The rates and charges approved for Utilities, Inc.'s Florida utility subsidiaries shall be continued until authorized to change by this Commission in a subsequent proceeding.

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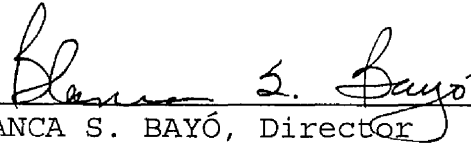
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of majority organizational control of Utilities, Inc. to nvNuon, a Netherlands corporation, is approved. It is further

ORDERED that the rates and charges approved for Utilities, Inc.'s Florida utility subsidiaries shall be continued until authorized to change by this Commission in a subsequent proceeding. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 27th day of November, 2001.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

LDH

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 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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.