

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for authority to transfer majority organizational control of Utilities, Inc. from Nuon Global Solutions USA, B.V. to Hydro Star, LLC.	DOCKET NO. 050499-WS ORDER NO. PSC-05-1155-PAA-WS ISSUED: November 18, 2005
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The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman  
J. TERRY DEASON  
RUDOLPH "RUDY" BRADLEY  
LISA POLAK EDGAR  
ISILIO ARRIAGA

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING RULE WAIVER

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

On July 25, 2005, Utilities, Inc. (Utilities, Inc. or company) filed an Application for authority to transfer majority organizational control of the company from Nuon Global Solutions USA, B.V. (Nuon) to Hydro Star, LLC. (Hydro Star). The application proposes the transfer of the issued stock of Utilities, Inc., which controls the stock of 16 utilities certificated by the Commission to provide water and wastewater service in Florida, from Nuon to Hydro Star by early 2006, after all regulatory approvals have been obtained. A list of the Utilities, Inc. regulated utilities in Florida that will be affected by the stock transfer is appended to this Order as Attachment A. Utilities, Inc. asserts that the acquisition of Nuon's stock by Hydro Star does not entail any change in direct ownership or control of the Florida utilities and will not cause any change in management or loss of operational expertise.

With its application, Utilities, Inc. also filed a Petition for variance or waiver of Rules 25-30.037(3)(i), (j) and (k), and 25-30.030(4)(c), (5), (6) and (7), Florida Administrative Code, our rules governing transfers. Initially Utilities, Inc. asked for expedited treatment of the petition, but withdrew that request by letter dated August 18, 2005. Notice of the rule waiver request was published in the August 26, 2005, Florida Administrative Weekly. No comments on the rule

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waiver petition were filed. As explained below, we grant this rule waiver request. We granted Utilities, Inc. a similar waiver of Rules 25-30.037(3)(i), (j) and (k), and 25-30.030(4)(c), (5), (6) and (7), Florida Administrative Code, when Nuon acquired majority organizational control of Utilities, Inc. in 2001.<sup>1</sup> We have jurisdiction over this matter by Sections 367.071, and 120.542, Florida Statutes.

### DECISION

The rule provisions in question govern the information and notice that an applicant must provide to receive the Commission's approval of a transfer of majority organizational control.

Rule 25-30.030(4)(c), Florida Administrative Code, requires the applicant to provide notice of the proposed transfer that includes "a description using township, range and section reference" of the territory being transferred. Utilities, Inc. requests that it be permitted to send an identical, one-page notice to all of the customers of each of its 16 subsidiary utilities, without reference to a detailed territory description for each one. The notice would list the names of the individual utilities and their county of operation. Utilities, Inc. states that this abbreviated notice is appropriate in this case, because the application requests approval only for the transfer of the shares of stock of the parent companies, and no specific territory will be affected. Utilities, Inc. asserts that the underlying statutory purpose, to provide adequate notice to customers who wish to participate in the administrative process, is accomplished by the proposed abbreviated notice.

Rule 25-30.030(5), (6) and (7), Florida Administrative Code, requires that notice be sent to customers and published in newspapers of general circulation in the affected area within certain timeframes. Utilities, Inc. requests that it be permitted to mail and publish its abbreviated notice within 10 days of the date the Commission approves the notice.

Rule 25-30.037(3)(i), Florida Administrative Code, requires an applicant for approval of the transfer of majority organizational control to file evidence of ownership of the land upon which utility facilities are located. Utilities, Inc. requests a waiver of this provision because the proposed stock transfer of parent companies does not affect the title to any real estate held by the operational utility subsidiaries. Evidence of title would serve no purpose in this proceeding, and the operational utilities have provided evidence of ownership of land in other Commission certification proceedings.

Rule 25-30.037(3)(j), Florida Administrative Code, requires an applicant for approval of the transfer of majority organizational control to file an original and two copies of tariff sheets reflecting the change in ownership. Utilities, Inc. requests a waiver of this rule, because the transfer of ownership involves only the transfer of the stock of the parent company. Utilities, Inc. will retain ownership of its operational subsidiaries, and no tariff changes will be necessary.

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<sup>1</sup> See, Order No. PSC-01-1647-PAA-WS, issued August 13, 2001, in Docket No. 010887-WS, In re: Application for approval of merger of Utilities, Inc. and Nuon Acquisition Sub, Inc., an Illinois Corporation, and for determination of the Commission's jurisdiction of such merger.

Rule 25-30.037(3)(k), Florida Administrative Code, requires an applicant for approval of the transfer of majority organizational control to file the applicable certificates with the Commission. Utilities, Inc. explains that it is not the holder of any water or wastewater certificates. Its regulated operational subsidiaries hold the certificates, and since there will not be any change in ownership of the operational subsidiaries, filing certificates will not serve any useful purpose.

Section 120.542, Florida Statutes, authorizes the Commission to grant variances or waivers to the requirements of its rules where the person subject to the rules has demonstrated that the underlying purpose of the statute has been or will be achieved by other means, and that strict application of the rules would cause the person substantial hardship or would violate principles of fairness. "Substantial hardship" as defined in this section means demonstrated economic, technological, legal, or other hardship.

The underlying statutes that govern the Commission's approval of the transfer of majority organizational control are sections 367.071 and 367.045, Florida Statutes. Section 367.071(1) requires Commission approval of such a transfer. Section 367.071(4) requires that the transfer application comport with the requirements of section 367.045. Section 367.045(1)(a) requires a utility to "[p]rovide notice of the actual application filed by mail or personal delivery to the governing body of the county or city affected, 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 these statutes is to ensure that the utility's actions are in the public interest and that the utility has provided timely and adequate notice of those actions to those entities that may have an interest in them. We believe that Utilities, Inc. will fulfill the underlying purpose of these statutes by providing notice and otherwise complying with the Commission's applicable rules as it has proposed. Strict compliance with the rules would serve no useful purpose and would cause unnecessary expense in this proceeding to approve the transfer of a parent company's stock. For these reasons we approve the petition for waiver or variance of Rules 25-30.037(3)(i), (j) and (k), and 25-30.030(4)(c), (5), (6) and (7), Florida Administrative Code.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Utilities, Inc.'s Petition for variance or waiver of Rules 25-30.037(3)(i), (j) and (k), and 25-30.030(4)(c), (5), (6) and (7), Florida Administrative Code, is granted. 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 Director, Division of the Commission Clerk and Administrative Services, 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 the Commission's decision on the substantive aspects of the application.

By ORDER of the Florida Public Service Commission this 18th day of November, 2005.

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

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

( S E A L )

MCB

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.

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 the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 9, 2005.

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.

**EXHIBIT "A"**

**Utilities, Inc.  
List of Subsidiaries - 100% wholly-owned**

Subsidiary Name	County of Operations	Certificate No.
Alafaya Utilities, Inc.	Seminole	379-S
Bayside Utility Services, Inc.	Bay	None
Cypress Lakes Utilities, Inc.	Polk	509-S; 592-W
Eastlake Water Service, Inc.	Hillsborough	None
Labrador Utilities, Inc.	Pasco	530-S; 616-W
Lake Placid Utilities, Inc.	Highlands	414-W; 347-S
Lake Utility Services, Inc.	Lake	465-S; 496-W
Mid-County Services, Inc.	Pinellas	081-S
Miles Grant Water and Sewer Company	Martin	352-W; 308-S
Pebble Creek Utilities, Inc.	Hillsborough	None
Sandy Creek Utility Services, Inc.	Bay	None
Sanlando Utilities, Inc.	Seminole	189-S; 247-W
South Gate Utilities, Inc.	Sarasota	None
Tierra Verde Utilities, Inc.	Pinellas	058-S
Utilities, Inc. of Eagle Ridge	Lee	369-S
Utilities, Inc. of Florida	Seminole Pasco Marion Pinellas Orange	278-W; 225-S 229-S; 107-W 305-S; 410-W 204-W 040-W
Utilities, Inc. of Hutchinson Island	Martin	291-S; 336-W
Utilities, Inc. of Longwood	Seminole	232-S
Utilities, Inc. of Pennbrooke	Lake	400-S; 466-W
Utilities, Inc. of Sandalhaven	Charlotte	495-S
Wedgfield Utilities, Inc.	Orange	341-S; 404-W