

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for grandfather water  
certificate in Leon County by Lake Talquin  
Water Company, Inc.

DOCKET NO. 20170253-WU  
ORDER NO. PSC-2018-0441-PAA-WU  
ISSUED: August 29, 2018

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman  
JULIE I. BROWN  
DONALD J. POLMANN  
GARY F. CLARK  
ANDREW GILES FAY

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 (F.A.C.).

Background

On June 20, 2017, the Board of County Commissioners of Leon County (County) passed and adopted Resolution No. R17-12 (Resolution), transferring regulation of the privately-owned, for-profit water and wastewater utilities in Leon County to the Florida Public Service Commission (Commission). Effective upon the adoption of the Resolution, all non-exempt water and wastewater systems in the County became subject to the provisions of Chapter 367, Florida Statutes (F.S.). We acknowledged the Resolution in Order No. PSC-2017-0357-FOF-WS.<sup>1</sup>

Lake Talquin Water Company, Inc. (Lake Talquin or Utility) consists of 4 water systems located within in Leon County. On November 30, 2017, Lake Talquin filed an application for a certificate under grandfather rights to provide water service in Leon County (application) pursuant to Section 367.171(2)(b), F.S., and Rule 25-30.035, F.A.C. On June 4, 2018, Lake Talquin filed a petition seeking a variance or waiver of Rule 25-30.120, F.A.C., which requires water and wastewater utilities under our jurisdiction remit an annual regulatory assessment fee (RAF).

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<sup>1</sup>Order No. PSC-2017-0357-FOF-WS, issued September 20, 2017, in Docket No. 20170171-WS, In re: Resolution of the Board of County Commissioners of Leon County declaring Leon County subject to the provisions of Section 367, Florida Statutes.

Pursuant to Section 120.542(6), F.S., notice of this Petition was published in the Florida Administrative Register on June 8, 2018. In accordance with Rule 28-104.003(1), F.A.C., interested persons were given 14 days after the publication of the notice to submit written comments. No written comments were received, and the time for such has expired.

This Order addresses Lake Talquin's petition for a variance or waiver of Rule 25-30.120, F.A.C. Lake Talquin's application for grandfather certificate will be addressed in a subsequent order. We have jurisdiction in this matter pursuant to Sections 120.542, 367.145, and 367.171, F.S.

### Decision

On June 4, 2018, Lake Talquin filed a petition seeking a waiver of Rule 25-30.120, F.A.C., which requires that RAFs be paid for any year during which a utility is subject to the Commission's jurisdiction as of December 31 of that year. The Utility requests the waiver or variance of Rule 25-30.120, F.A.C., until such time as the Utility is authorized to increase its rates. Rule 25-30.120(2), F.A.C., provides that "[t]he obligation to remit the regulatory assessment fees for any year shall apply to any utility that is subject to this Commission's jurisdiction on or before December 31 of that year or for any part of that year." The effect of this request would be to permanently waive any RAFs that would have been otherwise due for 2017 up until the application is considered by this Commission.

Section 120.542(2), F.S., gives us the authority to grant waivers or variances 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.

As acknowledged in Order No. PSC-2017-0357-FOF-WS,<sup>2</sup> issued September 20, 2017, the Board of County Commissioners of Leon County on June 20, 2017, passed and adopted Resolution No. R17-12, transferring regulation of the privately-owned, for-profit water and wastewater utilities in the County to this Commission. Effective upon the adoption of the resolution, all non-exempt water and wastewater systems in Leon County became subject to the provisions of Chapter 367, F.S.

On November 30, 2017, Lake Talquin filed its application for a grandfather certificate pursuant to Section 367.171(2), F.S. and Rule 25-30.035, F.A.C. Subsequently on June 4, 2018, Lake Talquin filed the instant petition seeking a variance or waiver of Rule 25-30.120, F.A.C. The underlying statutory provision pertaining to RAFs and Rule 25-30.120, F.A.C., are Sections 367.145(1) and (3), F.S., which state that:

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<sup>2</sup> Id.

(1) The commission shall set by rule a regulatory assessment fee that each utility must pay in accordance with s. 350.113(3);

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(3) Fees collected by the commission pursuant to this section may only be used to cover the cost of regulating water and wastewater systems. Fees collected by the commission pursuant to chapters 364 and 366 may not be used to pay the cost of regulating water and wastewater systems.

RAFs are not included in the Utility's current rates because Lake Talquin was not regulated by us prior to June 2017. For that reason, the Utility argues it is placed at an unfair financial disadvantage due to its inability to collect those regulatory assessment fees in its rates.

The purpose of assessing RAFs is to defray the cost of utility regulation. The Utility contends that there have been minimal to no costs of regulating Lake Talquin under Chapter 367, F.S., absent the review of its grandfather application. The Utility also notes that it has paid the applicable filing fee of \$200 as required by Section 367.145(2), F.S., and Rule 25-30.020, F.A.C., for the processing of its grandfather filing. Additionally, the Commission has previously granted a waiver of RAFs for a similarly situated utility prior to its receipt of a grandfather certificate.<sup>3</sup>

Based on the foregoing analysis and the information provided within the Utility's petition, we find that Lake Talquin has met the requirements of Section 120.542, F.S., and has demonstrated that the purpose of the of the underlying statute will be or has been achieved by other means, because minimal regulation has been required at this point. Further, the strict application of Rule 25-30.120, F.A.C., would place a substantial hardship on the Utility by requiring the Utility to pay regulatory expenses for which it is not compensated through rates. Therefore, we hereby approve Lake Talquin's requested waiver or variance of Rule 25-30.120, F.A.C., for a period of one year from the date of our vote, or until we grant the Utility's grandfather certificate and rates are approved, whichever occurs first.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Lake Talquin Water Company, Inc.'s petition for a variance or waiver of Rule 25-30.120, Florida Administrative Code, is hereby approved. It is further

ORDERED that Rule 25-30.120, F.A.C., shall be waived for a period of one year from the date of our vote, or until we grant the Utility's grandfather certificate and rates are approved, whichever occurs first. It is further

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<sup>3</sup> Order No. PSC-2018-0075-PAA-WU, issued February 12, 2018, in Docket No. 20170155-WU, In re: Application for grandfather water certificate in Leon County and application for pass through increase of regulatory assessment fees, by Seminole Waterworks, Inc.

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 in the event this Order becomes final, this docket shall remain open upon the issuance of a consummating, pending our decision on Lake Talquin Water Company Inc.'s application for a grandfather certificate and rates are approved.

By ORDER of the Florida Public Service Commission this 29th day of August, 2018.



CARLOTTA S. STAUFFER

Commission Clerk

Florida Public Service Commission

2540 Shumard Oak Boulevard

Tallahassee, Florida 32399

(850) 413-6770

[www.floridapsc.com](http://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.

KRM

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 Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 19, 2018.

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.