

FLORIDA PUBLIC SERVICE COMMISSION
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M E M O R A N D U M

APRIL 16, 1998

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FPSC: Records/Reporting

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER & WASTEWATER (KYLE, MERCHANT) ^{OK}
DIVISION OF LEGAL SERVICES (OTTINOT, GERVASIO) ^{TRSM}

RE: DOCKET NO. 980112-WS - UNITED WATER FLORIDA, INC.
APPLICATION FOR TARIFF REVISION AND PETITION FOR WAIVER
OF OR VARIANCE FROM RULE 25-30.320(2)(g), FLORIDA
ADMINISTRATIVE CODE
COUNTIES: DUVAL, NASSAU & ST. JOHNS

AGENDA: APRIL 28, 1998 - REGULAR AGENDA - PROPOSED AGENCY ACTION
- INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: 90 DAYS STATUTORY TIME LIMIT - JUNE 1, 1998
(WAIVED)

SPECIAL INSTRUCTIONS: I:\PSC\WAW\WP\980112rc.RCM

CASE BACKGROUND

United Water Florida Inc. (UWF or utility) is a Class A utility providing water and wastewater service to approximately 29,000 customers in Duval, Nassau, and St. Johns counties. According to its 1996 annual report, the utility's operating revenues were \$7,274,333 for its water service and \$14,584,266 for its wastewater service. The utility serves an area that has been designated by the St. Johns River Water Management District as a critical use area. The utility's current rates were approved pursuant to Order No. PSC-97-0618-FOF-WS, issued May 30, 1997, in Docket No. 960451-WS.

On January 23, 1998, the utility filed an application for tariff revision, petition for waiver or variance from Rule 25-30.320 (2)(g), Florida Administrative Code, and request for Commission approval of a proposed agreement between the utility and the City of Jacksonville (City) whereby each entity would discontinue water service to customers who are delinquent in payment for wastewater service provided by the other entity. The utility seeks to revise its tariff to include the proposed agreement.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

DOCKET NO. 980112-WS
DATE: APRIL 16, 1998

By Order No. PSC-98-0448-PCO-WS, issued March 30, 1998, the Commission suspended the proposed tariff filed by the utility pursuant to Section 367.091(5), Florida Statutes. This recommendation will address the utility's application for tariff revision, petition for waiver or variance of Rule 25-30.320(2)(g), Florida Administrative Code, and request for approval of the proposed agreement between the utility and the City.

DOCKET NO. 980112-WS
DATE: APRIL 16, 1998

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant UWF's Petition for Waiver or Variance of Rule 25.30.320(2)(g), Florida Administrative Code, request for approval of the agreement between the utility and the City of Jacksonville, and request for approval of a proposed tariff revision?

RECOMMENDATION: Yes, the Commission should grant UWF's Petition for Variance or Waiver of Rule 25-30.320(2)(g), Florida Administrative Code, because the petition does meet the requirements of Section 120.542, Florida Statutes. The Commission should also approve the agreement between the utility and City of Jacksonville and the application for tariff revision. (OTTINOT, KYLE)

STAFF ANALYSIS: On January 23, 1998, UWF filed an application for tariff revision and petition for variance or waiver of Rule 25-30.320(2)(g), Florida Administrative Code. The utility seeks a variance or waiver so that it can revise its tariff to implement a proposed agreement between the utility and the City whereby each entity would discontinue water service to customers who are delinquent in payment for wastewater service provided by the other entity.

Rule 25-30.320(2)(g), Florida Administrative Code, states that a utility may discontinue service

for nonpayment of bills or noncompliance with the utility's rules and regulations in connection with the same or different type or a different class of utility service furnished to the same customer at the same premises by the same or affiliated utility only after there has been a diligent attempt to have the customer comply, including at least 5 working days' written notice to the customers. (emphasis added)

In its petition, the utility states that the City and the utility will work together to enforce payment of wastewater charges by using the termination of water service by the water service provider. The utility asserts that it is seeking a permanent variance. The utility argues that a strict application of the rule would impose a substantial hardship on its ability to terminate water service for nonpayment of bills for wastewater service because the City provides water service to certain customers. The utility states that denying the waiver or variance would frustrate the purpose of the underlying statutes. The utility also states that the City's authority to enter into contracts pursuant to Section 159.18(2), Florida Statutes, will be null and ineffective if the variance or waiver is not granted.

DOCKET NO. 980112-WS
DATE: APRIL 16, 1998

In particular, Section 159.18(2), Florida Statutes, provides the following:

Any municipality shall have power to enter into valid and legally binding contracts with any person, public or private corporation, board or other body supplying water to any premises served by the sewer system or charges of municipality by the owners of the water facilities at the same time water charges are billed and collected by such owners of the water facilities.

Procedural Background

Pursuant to Section 120.542(6), Florida Statutes, on February 11, 1998, the Commission provided notice to the Department of State, which published notice of the waiver request in the Florida Administrative Weekly. After reviewing the petition, staff found no deficiencies. The Commission did not receive any comments regarding the utility's petition. Pursuant to Section 120.542(8), Florida Statutes, the Commission is required to issue an order in writing granting or denying the petition for waiver or variance stating the relevant facts and reasons supporting the Commission's decision within ninety days after receipt of the original petition. By letter dated March 17, 1998, the utility waived the ninety-day statutory period.

Statutory Requirements

Section 120.542(2), Florida Statutes, in pertinent parts, provides 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 that application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, substantial hardship means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver".

The Underlying Statute

The underlying statute pertaining to the rule in this instance is Section 367.121, Florida Statutes, which provides that the Commission shall have the power to prescribe fair and reasonable rates and charges, classifications, standards of quality and measurements, and to prescribe service rules to be observed by each utility. This statute does not explicitly address the issue of termination for nonpayment of bills. However, Rule 25-30.320 (2)(g), provides that the same or affiliated utility may terminate service for the nonpayment of bills. This rule implements Section 367.121, Florida Statutes. (emphasis added)

DOCKET NO. 980112-WS
DATE: APRIL 16, 1998

While staff notes that the utility and the City are not affiliated utilities, staff agrees with the utility that the purpose of the underlying statute will be promoted by granting the variance or waiver of Rule 25-30.320(2)(g), Florida Administrative Code. Staff believes that the utility should have the ability to collect its approved rates prescribed by the Commission pursuant to Section 367.121, Florida Statutes. Staff also agrees with the utility that the purpose of Section 159.18, Florida Statutes, would be frustrated unless the variance or waiver is granted.

By Order No. PSC-97-1362-FOF-WU, issued October 28, 1997, in Docket No. 961529-WU, Request for approval of agreement with City of Fernandina Beach, which will revise tariff to allow for discontinuance of water service to any customer owing unpaid sewer bills to City pursuant to Section 159.18(2), F.S., by Florida Public Utilities Company, the Commission approved a similar agreement between Florida Public Utilities Company and the City of Fernandina Beach. In the same Order, the Commission found that it was appropriate to initiate rulemaking proceedings to amend Rule 25-30.320(2)(g), Florida Administrative Code, because of the apparent conflict with Section 159.18(2), Florida Statutes. Therefore, staff believes that approving the agreement between this utility and the City is consistent with Commission's past decision in Docket No. 961529-WU. As a point of information, staff has begun the rulemaking process to modify Rule 25-30.320(2)(g), Florida Administrative Code.

Substantial Hardship

Staff also believes that the application of the rule would create a substantial hardship for the utility. The utility states that it would have to sue each delinquent customer for nonpayment of bills if it does not have a cost effective manner to require that customers pay for service. The utility further states that its bad debt expense will be adversely affected if it does not have an economical or practical method to terminate its delinquent wastewater customers who receive water service from the City. Therefore, staff believes that the application of the rule would create a substantial economic hardship on the utility.

Regarding the provision of the agreement which allows the City to terminate water service of customers who are delinquent in paying the utility's wastewater charges, the City is not subject to the Commission's regulation pursuant to Section 367.022, Florida Statutes. Therefore, no ruling is necessary concerning the City's authority to terminate water service to customers who are delinquent in paying the utility's wastewater bills. The proposed tariff also contains the provision which allows the City to terminate water service of customers who are delinquent in paying the utility's wastewater charges. Staff believes that this provision in the tariff will provide notice to customers that for

DOCKET NO. 980112-WS
DATE: APRIL 16, 1998

nonpayment of the utility's wastewater bills the City may terminate their water service.

Based on the foregoing, staff believes that UWF's petition for variance or waiver should be granted because the utility has demonstrated that a variance or waiver from Rule 25-30.320(2)(g), Florida Administrative Code, would serve the underlying purpose of Section 367.121, Florida Statutes, and the application of the rule would create a substantial hardship for the utility. The proposed agreement and application for tariff revision should be approved also.

DOCKET NO. 980112-WS
DATE: APRIL 16, 1998

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. This docket should be closed if no person whose interests are substantially affected by the proposed action, files a protest within the 21-day protest period. (OTTINOT)

STAFF ANALYSIS: This docket should be closed if no person whose interests are substantially affected by the proposed action, files a protest within the 21-day protest period.