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DIVISION OF WATER & WASTEWATER
CHARLES H. HILL
DIRECTOR
(850) 413-6900

Public Service Commission

September 28, 1998

Mr. F. Marshall Deterding, Esquire
Rose, Sundstrom & Bentley
2548 Blairstone Pines Drive
Tallahassee, Florida 32301

Re: Docket No. 981180-SU; Application for Amendment of Certificate No. 168-S by K.W. Resort Utilities Corporation in Monroe County.

Dear Mr. Deterding:

After reviewing the application in the above referenced docket, the staff has identified the following deficiencies. Please correct and/or provide additional information as requested.

1. As required by Rule 25-30.036(3)(e), Florida Administrative Code (FAC), provide a description of the territory proposed to be served, using township, range and section references as specified in Rule 25-30.030(2), FAC. The description submitted does not comply with the rule, and the utility will have to renounce. However, if this causes substantial hardship, Section 120.542, Florida Statutes (attached) sets forth the conditions for obtaining relief from rule requirements.

2. As required by Section 367.045(1)(a), Florida Statutes, and Rule 25-30.030, FAC, the utility must provide notice of the application and provide affidavits that the notice was given. The notice must be given to the governmental entities, all utilities in the county, and all cities located in the county. The notice must be published in a newspaper. The affidavit for the notice to the utilities and the governmental entities has been filed. Please file the newspaper affidavit from the newspaper when the noticing is complete.

3. As required by Rule 25-30.036(3)(b), FAC, the utility must include a summary of the utility's technical ability to provide service. The statement, "The Utility has the financial and technical ability to provide service to the proposed territory..." is inadequate. Please provide information which shows that the utility has technical ability.

Also, please review the composite territory description (Attachment A), and advise if it is correct. This description includes the new area and the territory already granted to the utility. This description simplifies the utility's service area.

ACK _____
AFA _____
APP _____
CAF _____
CMU _____
CTR _____
EAG _____
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SEC 1 _____
WAS _____
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DOCUMENT NUMBER 981180-SU

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FPSC-RECORDS/REPORTING

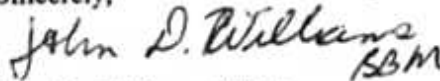
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In light of the fact Hurricane Georges hit the Florida Keys, please describe the extent of damage the utility received.

Please file an original and twelve copies of the requested information no later than October 30, 1998 with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399.

If you have any questions please call Mr. Richard Redemann at (850) 413-6999, Ms. Samantha McRae at (850) 413-6202 or Mr. Ralph Jaeger at (850) 413-6234.

Sincerely,



John D. Williams, Chief
Bureau of Policy and Industry Structure

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cc: Division of Legal Services (McRae, Jaeger)
Division of Water and Wastewater (Hill, Lowe)
Division of Records and Reporting (Bayo, Security File)

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ATTACHMENT A

K W RESORT UTILITIES CORPORATION
WASTEWATER TERRITORY DESCRIPTION
MONROE COUNTY

Docket No. 750149-S (AP), Order No. 6803, issued July 28, 1975

and

Docket No. 820363-S (TC), Order No. 11319, issued November 16, 1982

and

Docket No. 981180-SU, Order No. , issued

Township 67 South, Range 25 East
Section 35

All that portion of Stock Island South of U.S. Highway No. 1 (State Road No. 5) as now constructed.

Docket No. 830390-S (EX), Order No. 12618, issued October 18, 1983

Township 67 South, Range 25 East
Sections 26 and 35

All that area of said sections bounded on the North, East and West by the centerline of Jr. College road as now constructed and on the South by the centerline of U.S. Highway No. 1 (State Road No. 5) as now constructed.

120.54(3)(a), may submit to an agency a good faith written proposal for a lower cost regulatory alternative to a proposed rule which substantially accomplishes the objectives of the law being implemented. The proposal may include the alternative of not adopting any rule, so long as the proposal explains how the lower costs and objectives of the law will be achieved by not adopting any rule. If such a proposal is submitted, the 90-day period for filing the rule is extended 21 days.

(b) Upon the submission of the lower cost regulatory alternative, the agency shall prepare a statement of estimated regulatory costs as provided in subsection (2), or shall revise its prior statement of estimated regulatory costs, and either adopt the alternative or give a statement of the reasons for rejecting the alternative in favor of the proposed rule. The failure of the agency to prepare or revise the statement of estimated regulatory costs as provided in this paragraph is a material failure to follow the applicable rulemaking procedures or requirements set forth in this chapter. An agency required to prepare or revise a statement of estimated regulatory costs as provided in this paragraph shall make it available to the person who submits the lower cost regulatory alternative and to the public prior to filing the rule for adoption.

(c) No rule shall be declared invalid because it imposes regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives, and no rule shall be declared invalid based upon a challenge to the agency's statement of estimated regulatory costs, unless:

1. The issue is raised in an administrative proceeding within 1 year after the effective date of the rule; and

2. The substantial interests of the person challenging the agency's rejection of, or failure to consider, the lower cost regulatory alternative are materially affected by the rejection; and

3. The agency has failed to prepare or revise the statement of estimated regulatory costs as required by paragraph (b); or

b. The challenge is to the agency's rejection under paragraph (b) of a lower cost regulatory alternative submitted under paragraph (a).

(2) A statement of estimated regulatory costs shall include:

(a) A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.

(b) A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.

(c) A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. As used in this paragraph, "transactional costs" are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed

or used or procedures required to be employed in complying with the rule, additional operating costs including the cost of monitoring and reporting.

(d) An analysis of the impact on small business as defined by s. 288.703, and an analysis of the impact on small counties and small cities as defined in s. 120.52.

(e) Any additional information that the agency determines may be useful.

(f) In the statement or revised statement, wherever applicable, a description of any good faith written proposal submitted under paragraph (1)(a) and either a statement adopting the alternative or a statement of reasons for rejecting the alternative in favor of the proposed rule.

History.—s. 11, ch. 80-102 & 4, ch. 87-175.

120.542 Variances and waivers.—

(1) Strict application of uniformly applicable requirements can lead to unreasonable, unfair, or unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt procedure for agencies to provide relief to persons subject to regulation. A public employee is not a person subject to regulation under this section for the purpose of petitioning for a variance or waiver to a rule that affects that public employee in his or her capacity as a public employee. Agencies are authorized to grant variances and waivers to requirements of their rules consistent with this section and with rules adopted under the authority of this section. An agency may fix the duration of any grant of a variance or waiver or otherwise impose conditions on the grant only to the extent necessary for the purpose of the underlying statute to be achieved. This section does not authorize agencies to grant variances or waivers to statutes or to rules required by the Federal Government for the agency's implementation or retention of any federally approved or delegated program, except as allowed by the program or when the variance or waiver is also approved by the appropriate agency of the Federal Government. This section is supplemental to, and does not abrogate the variance and waiver provisions in any other statute.

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that compliance with the purpose of the underlying statute will be or has been achieved by other means by the person and the application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated 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.

(3) The Governor and Cabinet, sitting as the Administration Commission, shall adopt uniform rules of procedure pursuant to the requirements of s. 120.54(8) establishing procedures for granting or denying petitions for variances and waivers. The uniform rules shall include procedures for the granting, deny

employed in computing costs incurred, including small businesses and the impact defined by s.

that the agency

statement, which is a written procedure (a) and either a statement of the favor of the pro-

applicable rule is fair, and reasonable. The Legislature may elect to adopt a rule if a person is not a person for the purpose of a rule that her capacity as a person is limited to grant variances or waivers of their rules or rules adopted by the agency may limit the agency's authority to deny or otherwise to rules the agency's

generally approved by the prior is also approved by the general Government. The Legislature does not abrogate, amend, or any other statute. A variance may be granted when the Legislature states that the rule shall be or has been repealed or when the Legislature asserts that the rule is not authorized by law or by rule of the affected agency, the agency shall proceed, at the petitioner's written request, to process the petition.

It, sitting as the court, shall review the uniform rules and shall contain a statement of the relevant facts and reasons supporting the agency's action. The agency shall provide notice of the disposition of the petition to the Department of State, which shall publish the notice in the next available issue of the Florida Administrative

ing, or revoking of emergency and temporary variances and waivers. Such provisions may provide for expedited timeframes, waiver of or limited public notice, and limitations on comments on the petition in the case of such temporary or emergency variances and waivers.

(4) Agencies shall advise persons of the remedies available through this section and shall provide copies of this section, the uniform rules on variances and waivers, and, if requested, the underlying statute, to persons who inquire about the possibility of relief from rule requirements.

(5) A person who is subject to regulation by an agency rule may file a petition with that agency, with a copy to the committee, requesting a variance or waiver from the agency's rule. In addition to any requirements mandated by the uniform rules, each petition shall specify:

(a) The rule from which a variance or waiver is requested.

(b) The type of action requested.

(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.

(6) Within 15 days after receipt of a petition for variance or waiver, an agency shall provide notice of the petition to the Department of State, which shall publish notice of the petition in the first available issue of the Florida Administrative Weekly. The notice shall contain the name of the petitioner, the date the petition was filed, the rule number and nature of the rule from which variance or waiver is sought, and an explanation of how a copy of the petition can be obtained. The uniform rules shall provide a means for interested persons to provide comments on the petition.

(7) Except for requests for emergency variances or waivers, within 30 days after receipt of a petition for a variance or waiver, an agency shall review the petition and request submittal of all additional information that the agency is permitted by this section to require. Within 30 days after receipt of such additional information, the agency shall review it and may request only that information needed to clarify the additional information or to answer new questions raised by or directly related to the additional information. If the petitioner asserts that any request for additional information is not authorized by law or by rule of the affected agency, the agency shall proceed, at the petitioner's written request, to process the petition.

(8) An agency shall grant or deny a petition for variance or waiver within 90 days after receipt of the original petition, the last item of timely requested additional material, or the petitioner's written request to finish processing the petition. A petition not granted or denied within 90 days after receipt of a completed petition is deemed approved. A copy of the order granting or denying the petition shall be filed with the committee and shall contain a statement of the relevant facts and reasons supporting the agency's action. The agency shall provide notice of the disposition of the petition to the Department of State, which shall publish the notice in the next available issue of the Florida Administrative

Weekly. The notice shall contain the name of the petitioner, the date the petition was filed, the rule number and nature of the rule from which the variance or waiver is sought, a reference to the place and date of publication of the notice of the petition, the date of the order denying or approving the variance or waiver, the general basis for the agency decision, and an explanation of how a copy of the order can be obtained. The agency's decision to grant or deny the petition shall be supported by competent substantial evidence and is subject to ss. 120.569 and 120.57. Any proceeding pursuant to ss. 120.569 and 120.57 in regard to a variance or waiver shall be limited to the agency action on the request for the variance or waiver, except that a proceeding in regard to a variance or waiver may be consolidated with any other proceeding authorized by this chapter.

(9) Each agency shall maintain a record of the type and disposition of each petition, including temporary or emergency variances and waivers, filed pursuant to this section. On October 1 of each year, each agency shall file a report with the Governor, the President of the Senate, and the Speaker of the House of Representatives listing the number of petitions filed requesting variances to each agency rule, the number of petitions filed requesting waivers to each agency rule, and the disposition of all petitions. Temporary or emergency variances and waivers, and the reasons for granting or denying temporary or emergency variances and waivers, shall be identified separately from other waivers and variances.

1997—S. 12, CH. 90-122 & S. 97-172

120.545 Committee review of agency rules.—

(1) As a legislative check on legislatively created authority, the committee shall examine each proposed rule, except for those proposed rules exempted by s. 120.81(1)(d) and (2), and its accompanying material, and each emergency rule, and may examine any existing rule, for the purpose of determining whether:

(a) The rule is an invalid exercise of delegated legislative authority.

(b) The statutory authority for the rule has been repealed.

(c) The rule reiterates or paraphrases statutory material.

(d) The rule is in proper form.

(e) The notice given prior to its adoption was sufficient to give adequate notice of the purpose and effect of the rule.

(f) The rule is consistent with expressed legislative intent pertaining to the specific provisions of law which the rule implements.

(g) The rule is necessary to accomplish the apparent or expressed objectives of the specific provision of law which the rule implements.

(h) The rule is a reasonable implementation of the law as it affects the convenience of the general public or persons particularly affected by the rule.

(i) The rule could be made less complex or more easily comprehensible to the general public.

(j) The rule does not impose regulatory costs on the regulated person, county, or city which could be