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 H ADAM GREENE
 JOHN L. GREENE
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May 4, 1999

Ms. Blanca S. Bayo
Director of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

Re: Docket No. 981913-WS-Petition for Waiver of Rule 25-30.110(3), F.A.C. by
CHC, VII, Ltd. in Polk County

Dear Ms. Bayo:

Pursuant to your request, enclosed is the original letter that we transmitted by facsimile to former Staff Attorney, Cleveland Ferguson, III. I have been advised by Linda Williams, in your office, to send the enclosed to your attention.

Thank you for your attention to this matter. If you have any questions with respect to anything referenced herein, or if I could provide you with any additional information, please do not hesitate to contact me.

Best personal regards.

Sincerely,



David A. Greene

DAG/jlb

Enclosure

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April 28, 1999

Cleveland Ferguson, III, Esquire
Staff Attorney
Florida Public Service Commission
Division of Water and Waste Water
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

VIA FACSIMILE
(850) 487-1716

Re: Docket No. 981913-WS-Petition for Waiver of Rule 25-30.110(3), F.A.C. by
CHC, VII, Ltd. in Polk County

Dear Mr. Ferguson:

As you will recall, this law firm represents the Petitioner in the above-referenced matter. I would like to take this opportunity to thank the Commission for its favorable ruling with respect to the Petitioner's request for a waiver of the application of Rule 25-30.110(3), F.A.C. It is clear that the Commission's ruling in this respect complies with principles of fairness and works to avoid a substantial hardship.

At this time, I would like to request that the Commission make a determination that the Petitioner became subject to the jurisdiction of the Commission on December 1, 1998. Such a determination would cause December 1, 1998 to be the beginning date of the Petitioner's obligation to pay regulatory assessment fees pursuant to Rule 25-30.120, F.A.C., and Section 367.145, Florida Statutes. As discussed below, the requested determination would promote principles of fairness and avoid a substantial hardship, without avoiding the purpose of any rule or statute. Billie Messer has previously indicated to David Greene, an attorney in my office, that the Commission has the discretion to determine the date that the Petitioner became subject to its jurisdiction.

As we have previously discussed, prior to May of 1996, the Petitioner was under the jurisdiction of Polk County, Florida, rather than the Commission. When Polk County no longer asserted jurisdiction, it was unclear as to whether or not the Petitioner had become subject to the jurisdiction of the Commission. In light of this uncertainty, on September 12, 1996, the Petitioner filed its Application for Declaratory Statement Relating to Exemption from Regulation or Nonjurisdictional Finding on Behalf of CHC, VII, Ltd. This Application was timely filed and sought a determination as to whether or not the Petitioner would be deemed exempt from the

Commission's jurisdiction for the same reasons that the Petitioner had previously been exempt from Polk County's jurisdiction. The Petitioner received neither a response, nor any further correspondence, from the Commission with respect to this matter until August 10, 1998. At that time, the Commission provided the Petitioner with a correspondence indicating that the Application had been misplaced, causing a delay of nearly two years for the Petitioner to receive a response to its Application. The Commission then required the Petitioner to file an Application for Certificates by October 16, 1998. The Petitioner complied with this requirement on October 14, 1998. Subsequently, the Commission required the Petitioner to file annual reports and to remit regulatory assessment fees for the years 1996 and 1997 within sixty days of October 21, 1998. On December 21, 1998, the Petitioner timely filed its Petition for Waiver of Rule 25-30.110(3), as well as a response to the Commission's prior correspondence to the Petitioner. The Petition requested that the Commission determine that the Petitioner be exempted from the requirement of filing annual reports for the years of 1996 and 1997, based upon substantial hardship to the Petitioner and a violation of principles of fairness. The Petitioner's response dealt with this same issue, and included a request that the Commission not require the Petitioner to remit regulatory assessment fees for the years of 1996 and 1997.

At the Agenda Conference held on March 16, 1999, the Commission considered the issue of whether or not it would waive the application of Rule 25-30.110(3), F.A.C., with respect to the Petitioner. After due consideration of the issues, the Commission determined that requiring the Petitioner to create and submit annual reports for the years of 1996 and 1997 would, in fact, create a substantial hardship and violate principals of fairness. Accordingly, the Commission ruled that the Petitioner is not required to submit annual reports for the years of 1996 and 1997.

At this time, the issue remains as to the date upon which the Petitioner became subject to the jurisdiction of the Commission. This issue impacts whether or not the Petitioner will be required to pay regulatory assessment fees for the years of 1996 and 1997. Based upon the same reasons that the Commission waived the annual report requirement, the Commission should determine that the date upon which the Petitioner became subject to the Commission's jurisdiction should be December 1, 1998. As indicated above, the Petitioner complied with all requirements in a timely manner. Specifically, the Petitioner acted conscientiously by filing its Application for Declaratory Statement. Unfortunately, the Application was misplaced and, through no fault of the Petitioner, a determination was not made for nearly two years. At all times throughout this matter, the Petitioner has provided its full cooperation to the Commission, by timely providing requested information and filing appropriate documentation. As a direct result of the two-year delay in the determination with respect to the Petitioner's Application for Declaratory Statement, it is not possible for the Petitioner to recoup the cost of regulatory assessment fees for the years of 1996 and 1997. It should be noted that, when it became clear that the Petitioner would become subject to the jurisdiction of the Commission, on October 16, 1998, the Petitioner filed its Notice of Intention to Implement the Regulatory Assessment Fee Pass-Through Rate Adjustment.

Cleveland Ferguson, III, Esquire
April 28, 1999
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While the recently implemented rate adjustment will provide a means for the Petitioner to pay the regulatory assessment fees prospectively, there is no avenue for the Petitioner to obtain the funds that would be necessary to pay prior years' regulatory assessment fees if the Commission determines that the Petitioner has been subject to its jurisdiction prior to December 1, 1998. A determination that the Petitioner has been subject to the jurisdiction of the Commission for any time period prior to the effective date of its rate adjustment would place an undue financial hardship upon the Petitioner. Similarly, because the delay in this determination was based upon no fault of the Petitioner, a finding that the Petitioner has been subject to the jurisdiction of the Commission prior to that time would violate principals of fairness. Such a finding would ignore, and would be a direct contradiction of, the Commission's findings and ruling with respect to the Petitioner's Petition for Waiver of Rule 25-30.110(3).

For the reasons stated above, to avoid imposing a substantial hardship, and in accordance with principles of fairness, the Petitioner respectfully requests that the Commission determine that the Petitioner became subject to its jurisdiction as of December 1, 1998, and that the requirement that the Petitioner pay regulatory assessment fees begin on or after that date.

Thank you for your consideration of this matter. If you have any questions with respect to anything referenced herein, or if I could provide you with any additional information, please do not hesitate to contact me.

Best personal regards.

Sincerely,



Ronald L. Clark

cc: Billie Messer
Norman Mears
client