



Public Service Commission
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

RECEIVED-FPSC
NOV - 7 AM 11:25
COMMISSION CLERK

DATE: NOVEMBER 7, 2001

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF REGULATORY OVERSIGHT (BRADY) *BBM*
DIVISION OF LEGAL SERVICES (HARRIS) *pb of Anna*
J.M. Kelly

RE: DOCKET NO. 010887-WS - APPLICATION FOR APPROVAL OF THE MERGER OF UTILITIES, INC. AND NUON ACQUISITION SUB, INC., AN ILLINOIS CORPORATION, FOR DETERMINATION OF COMMISSION'S JURISDICTION OF SUCH MERGER, AND FOR THE TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL TO nuNUON, A NETHERLANDS CORPORATION.

AGENDA: 11/19/01 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\RGO\WP\010887.RCM

CASE BACKGROUND

Utilities, Inc. (UI or parent), is an Illinois corporation which owns approximately 80 utility subsidiaries throughout 16 states including 16 water and wastewater utilities within the State of Florida. UI itself does not operate any water or wastewater utilities. As of September 30, 2001, UI's Florida subsidiaries were serving 36,081 residential and 1,163 non-residential water customers and 37,788 residential and 1,131 non-residential wastewater customers. According to the 2000 Annual Reports, UI's Florida subsidiaries had total revenues of \$5,927,020 for water and \$9,981,314 for wastewater with total operating income of \$1,630,891 for water and \$2,173,010 for wastewater.

DOCUMENT NUMBER-DATE
14140 NOV-7 01
FPSC-COMMISSION CLERK

DOCKET NO. 010887-WS
DATE: NOVEMBER 7, 2001

On June 25, 2001, UI filed an Application for Approval of Merger and Jurisdictional Determination, along with an accompanying petition requesting emergency temporary waiver or variance from Rules 25-30.030(4)(c), (5), (6), and (7), and 25-30.037(3)(i), (j), and (k), Florida Administrative Code.

UI is seeking to merge with Nuon Acquisition Sub, Inc. (Nuon), another Illinois corporation. Nuon is a wholly owned subsidiary of nvNuon, a Netherlands corporation. The Agreement and Plan of Merger (Merger Agreement) was executed on March 21, 2001. Closing is contingent upon obtaining the required multi-state regulatory approvals. According to the Merger Agreement, Nuon was established solely for the purpose of accomplishing the merger. Subsequent to the merger, UI will be the surviving corporation under 100% majority organizational control by nvNuon.

By Order No. PSC-01-1647-PAA-WS, issued August 13, 2001, in this docket, the Commission determined that the pending merger between UI and Nuon was subject to its jurisdiction and required UI to proceed with an application for transfer of majority organizational control pursuant to Section 367.071, Florida Statutes, and Commission rules. The Commission also granted UI's petition for emergency temporary rule waiver or variance of Rules 25-30.030(4)(c), (5), (6), and (7), and 25-30.037(3)(i), (j), and (k), Florida Administrative Code. This recommendation addresses the transfer of majority organizational control of UI to nvNuon pursuant to the Commission's determination of its jurisdiction under Section 367.071, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the transfer of majority organizational control of Utilities, Inc. to nvNuon be approved?

RECOMMENDATION: Yes. The transfer of majority organizational control of Utilities, Inc. to nvNuon is in the public interest and should be approved. The rates and charges approved for Utilities, Inc.'s Florida utility subsidiaries should be continued until authorized to change by the Commission in a subsequent proceeding. (BRADY, HARRIS)

STAFF ANALYSIS: As discussed in the case background, on June 25, 2001, UI filed an Application for Approval of Merger and Jurisdictional Determination along with a petition requesting emergency temporary waiver or variance from Rules 25-30.030(4)(c), (5), (6), and (7), and 25-30.037(3)(i), (j), and (k), Florida Administrative Code. The Merger Agreement was executed March 21, 2001. The closing, which is contingent upon securing the required multi-state regulatory approvals, is intended to occur in the first quarter of 2002. According to the Merger Agreement, subsequent to the merger of UI and Nuon, UI will be the surviving corporation under 100% majority organizational control by nvNuon.

By Order No. PSC-01-1647-PAA-WS, issued August 13, 2001, the Commission asserted its jurisdiction over the merger but granted UI's request for emergency temporary waiver or variance of Commission Rules as requested in its petition. The order also instructed UI to proceed with an application for transfer of majority organizational control pursuant to Section 367.071, Florida Statutes.

The application as filed and amended is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code, and contained the correct filing fee prescribed for such filings by Rule 25-30.020, Florida Administrative Code. For informational purposes, a list of UI's Florida utility subsidiaries is appended to this memorandum as Attachment A.

Noticing The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code, and the variance approved by Order No. PSC-01-

1647-PAA-WS which simplified the noticing format by not requiring a full legal description for all of UI's Florida subsidiaries. Four letters were timely received in response to the notices given to all the customers of UI's Florida utility subsidiaries. However, none of the customers specifically requested a hearing. The predominant concern in the letters was the potential effect of the transfer on rates and charges. Legal staff sent each customer a follow-up letter describing how the filing could be accessed on the Commission's website and explaining that rates and charges will not change as a result of a transfer of majority organizational control. The follow-up letters also asked for a response by September 21, 2001, if the customers wished to pursue an objection to the application and request a hearing. No response to any of the follow-up letters has been received. Therefore, there are no pending objections to the application.

Financing Rules 25-30.037(3)(e) and (g), Florida Administrative Code, require the application to contain a statement describing the financing of the purchase, a list of entities providing funding to the buyer, and an explanation of the manner and amount of such funding. According to the application, nvNuon has on hand and available all funds necessary to purchase the shares of UI. Therefore there are no entities upon which nvNuon is relying for funding.

The actual value of the stock transfer is based on the price-per-share information identified in the Merger Agreement. Pursuant to Order No. PSC-01-1686-CFO-WS, issued August 21, 2001, in this docket, the Commission granted UI's request for Confidential Classification of the price-per-share information. On the other hand, UI did not have any objections to staff disclosing the estimated value of the stock transfer in the public domain, which amount is \$404,529,000 million U.S. dollars. However, since the stock transfer is based on the acquisition of 80 utilities, there is no way to assign a specific acquisition value to the 16 Florida utility subsidiaries.

Proof of Ownership, Tariffs, Certificates Rules 25-30.037(3)(i), (j), and (k), Florida Administrative Code, require evidence that the utility owns or has continued use of the land upon which the utility treatment facilities are located, tariff sheets reflecting the change in ownership, and the return of utility certificates for modification. Order No. PSC-01-1647-PAA-WS, issued August 13, 2001, in this docket, granted UI's petition for

variance from these rules since no changes are taking place at the utility subsidiary level.

Annual Reports and Regulatory Assessment Fees (RAFs) Since the utility facilities are not transferred in transfers of majority organizational control, Rule 25-30.037(3), Florida Administrative Code, does not require a statement regarding disposition of annual reports or RAFs. However, for informational purposes staff has verified that UI's Florida utility subsidiaries are current on annual reports and RAFs through 2000 and that there are no outstanding fees, penalties, or refunds due.

Environmental Compliance Pursuant to Rule 25-30.037(3)(h), Florida Administrative Code, the application contained a statement that, after reasonable investigation, the utility systems operated by the Florida utility subsidiaries of UI appear to be in satisfactory condition and in compliance with all applicable standards set by the Florida Department of Environmental Protection.

Public Interest Pursuant to Rule 25-30.037(3)(f), Florida Administrative Code, the application contains a statement describing how the transfer is in the public interest, including a summary of the buyer's experience in water or wastewater utility operations, a showing of the buyer's financial ability to provide service, and a statement that the buyer will fulfill the commitments, obligations and representations of the seller with regard to utility matters.

While nvNuon does not currently own any water or wastewater systems in Florida, since 1997 it has owned an Ohio provider of natural gas and has equity interest in an Austin, Texas company that provides energy from environmentally friendly sources for residential, commercial and industrial customers. In addition, nvNuon is the largest energy distributor in The Netherlands, serving approximately 2,600,000 customers, or 38% of The Netherlands' market. NvNuon's water division holds a 10% share of The Netherlands' water market serving approximately 700,000 customers. In addition to electricity and water, nvNuon provides gas and heat to residential and business customers.

NvNuon also develops and markets products and services related to energy and water products. The application indicates that nvNuon is a leader in developing renewable "green" energy projects,

such as small scale hydroelectricity, wind and solar energy technologies. Specific to the water and wastewater industry, nvNuon has a 50% stake in Pacques, a Netherlands provider of biological wastewater treatment solutions. In early 2000, nvNuon, together with the United Kingdom water firm, Biwater, created the international water company, Cascad. In late 2000, nvNuon acquired Norit which is one of Europe's leading providers of water purification solutions for the food and beverage industry and which has offices in Texas and Oklahoma.

According to the application, the acquisition of majority control of UI by nvNuon will not result in any change in management of UI and the expertise of the existing UI management will remain in place. In addition, the application states that nvNuon's expertise in water distribution technologies will provide UI with operational efficiencies to fuel its growth strategy of acquiring and managing water and wastewater utility systems across the United States. By combining UI's management approach and regulatory expertise with the financial resources and support of nvNuon, the application states UI will provide a strong platform for growth in the United States water market.

With regard to nvNuon's financial ability, nvNuon had a net income in 2000 of approximately \$321,000,000 on revenues of \$3,400,000,000. As of December 31, 2000, nvNuon total assets were approximately \$7,500,000,000. With regard to utility commitment, the application contained a statement that nvNuon intends to fulfill the commitments, obligations and representations of UI with regard to utility matters.

Rate Base It has been Commission practice not to establish rate base for transfers of majority organizational control in which stock is publicly traded because such stock has no regulatory relationship to rate base. Moreover, since rate base is not affected by such stock transfers, it is not part of the consideration of public interest. Similarly, it has also been Commission practice that an acquisition adjustment for such stock transfers is not part of the consideration of public interest.

In this case, UI's stock is privately held and not publicly traded. However, as the Commission has already acknowledged in Order No. PSC-01-1647-PAA-WS, as a parent corporation, UI does not own any utilities. Instead, the utility facilities are held by UI's subsidiary utility corporations. Since there are no changes

DOCKET NO. 010887-WS
DATE: NOVEMBER 7, 2001

in ownership or control at the subsidiary utility level as a result of the transfer of majority organizational control at the parent level, there can be no effect on rate base for any of the regulated utilities. Therefore, staff's recommendation does not include issues regarding the establishment of rate bases at the time of transfer or acquisition adjustments.

Rates and Charges Normally in a transfer of majority organizational control, staff would include an issue recommending that the rates and charges approved for the utility should be continued pursuant to Rule 25-9.044(1), Florida Administrative Code. However, as noted above, UI does not own any utilities and, therefore, does not have any rates and charges. However, in the abundance of caution, staff recommends it should be noted that the rates and charges approved for UI's Florida utility subsidiaries be continued until authorized to change by the Commission in a subsequent proceeding.

Conclusion Based on all the above, staff recommends that the transfer of majority organizational control of Utilities, Inc. to nvNuon is in the public interest and should be approved. The rates and charges approved for Utilities, Inc.'s Florida utility subsidiaries should be continued until authorized to change by the Commission in a subsequent proceeding.

DOCKET NO. 010887-WS
DATE: NOVEMBER 7, 2001

ISSUE 2: Should the docket be closed?

RECOMMENDATION: Yes. There are no issues remaining and the docket should be closed upon the issuance of the Final Order. (HARRIS)

STAFF ANALYSIS: There are no issues remaining and the docket should be closed upon the issuance of the Final Order.

LIST OF UTILITIES, INC. FLORIDA SUBSIDIARIES

Alafaya Utilities, Inc.	Seminole County
Bayside Utility Services, Inc.	Bay County
Cypress Lakes Utilities, Inc.	Polk County
Lake Groves Utilities, Inc.	Lake County
Lake Placid Utilities, Inc.	Highlands County
Lake Utility Services, Inc.	Lake County
Mid-County Services, Inc.	Pinellas County
Miles Grant Water & Sewer Company	Martin County
Sandy Creek Utility Services, Inc.	Bay County
Sanlando Utilities Corporation	Seminole County
Tierra Verde Utilities, Inc.	Pinellas County
Utilities, Inc. of Eagle Ridge	Lee County
Utilities, Inc. of Florida	Seminole, Orange, Pasco, Marion, Pinellas Counties
Utilities, Inc. of Longwood	Seminole County
Utilities, Inc. of Sandalhaven	Charlotte County
Wedgefield Utilities, Inc.	Orange County