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Public Service Commission

August 5, 2002

Ms. Annabelle Closson, Board Member
Palm Valley Home Owners Association
31931 Carlelder
Beverly Hills, MI 48025

Re: Docket No. 010823-WS - Application for staff-assisted rate case in Seminole County by CWS Communities LP d/b/a Palm Valley.

Dear Ms. Closson:

I am sorry to have accidentally omitted the copy of Rule 28-106.201, Florida Administrative Code, from my letter of July 26, 2002. A copy is included herein, along with copies of Section 367.0816, Florida Statutes and Rule 25-30.4705, Florida Administrative Code, regarding rate case expense, as you requested.

As I mentioned by telephone today, the Order resulting from the Commission's July 23, 2002 vote will be issued Monday, August 12, 2002; you will receive a copy by mail. Also, as mentioned in my previous correspondence, the Florida Office of Public Counsel (800-342-0222) may be an excellent resource in answering any questions you have about the Commission's vote, the protest process, and other questions regarding your rights as a customer of the utility, including explanation of rate case expense recovery by a utility after a protest.

Sincerely,

Larry D. Harris
Senior Attorney

LDH/dm

cc: Division of the Commission Clerk and Administrative Services
Division of Economic Regulation (Willis, Rendell, Fitch, Edwards, Lingo)
Rich Reynolds
Renee Aaronson

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FPSC-COMMISSION CLERK

Specific Authority 120.54(5) FS. Law Implemented 120.569, 120.57 FS. History--New 4-1-97.

28-106.110 Service of Papers.

Unless the presiding officer otherwise orders, every pleading and every other paper filed in a proceeding, except applications for witness subpoenas, shall be served on each party or the party's representative at the last address of record.

Specific Authority 120.54(5) FS. Law Implemented 120.569, 120.57 FS. History--New 4-1-97.

28-106.111 Point of Entry into Proceedings and Mediation.

(1) The notice of agency decision shall contain the information required by Section 120.569(1), F.S. The notice shall also advise whether mediation under Section 120.573, F.S., is available as an alternative remedy, and if available, that pursuit of mediation will not adversely affect the right to administrative proceedings in the event mediation does not result in a settlement.

(2) Unless otherwise provided by law, persons seeking a hearing on an agency decision which does or may determine their substantial interests shall file a petition for hearing with the agency within 21 days of receipt of written notice of the decision.

(3) An agency may, for good cause shown, grant a request for an extension of time for filing an initial pleading. Requests for extension of time must be filed with the agency prior to the applicable deadline. Such requests for extensions of time shall contain a certificate that the moving party has consulted with all other parties, if any, concerning the extension and that the agency and any other parties agree to said extension. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

(4) Any person who receives written notice of an agency decision and who fails to file a written request for a hearing within 21 days waives the right to request a hearing on such matters.

(5) The agency may publish, and any person who has timely requested mediation may, at the person's own expense, cause the agency to publish, a notice of the existence of the mediation proceeding in the *Florida Administrative Weekly* or in a newspaper of general circulation in the affected area. The mediation notice can be included in the notice of intended agency action.

(a) The notice of the mediation proceeding shall include:

1. A statement that the mediation could result in a settlement adopted by final agency action;

2. A statement that the final action arising from mediation may be different from the intended action set forth in the notice which resulted in a timely request for mediation;

3. A statement that any person whose substantial interests may be affected by the outcome of the mediation shall within 21 days of the notice of mediation proceeding file a request with the agency to participate in the mediation; and

4. An explanation of the procedures for filing such a request.

(b) The notice shall also advise that in the absence of a timely request to participate in the mediation, any person whose substantial interests are or may be affected by the result of the mediation waives any right to participate in the mediation, and that waiver of participation in the mediation is also a waiver of that person's ability to challenge the mediated final agency action pursuant to Chapter 120, F.S.

Specific Authority 120.54(5) FS. Law Implemented 120.569, 120.57, 120.573 FS. History--New 4-1-97, Amended 3-18-98.

PART II HEARINGS INVOLVING DISPUTED ISSUES OF MATERIAL FACT

(1) Unless otherwise provided by statute, initiation of proceedings shall be made by written petition to the agency responsible for rendering final agency action. The term "petition" includes any document that requests an evidentiary proceeding and asserts the existence of a disputed issue of material fact. Each petition shall be legible and on 8 1/2 by 11 inch white paper. Unless printed, the impression shall be on one side of the paper only and lines shall be double-spaced.

(2) All petitions filed under these rules shall contain:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

(e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action; and

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

(3) Upon receipt of a petition involving disputed issues of material fact, the agency shall grant or deny the petition, and if granted shall, unless otherwise provided by law, refer the matter to the Division of Administrative Hearings with a request that an administrative law judge be assigned to conduct the hearing. The request shall be accompanied by a copy of the petition and a copy of the notice of agency action.

~~(4) A petition shall be dismissed if it is not in substantial compliance with subsection (2) of this rule or it has been untimely filed.~~ Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured.

(5) The agency shall promptly give written notice to all parties of the action taken on the petition, shall state with particularity its reasons if the petition is not granted, and shall state the deadline for filing an amended petition if applicable.

Specific Authority 120.54(3), (5) FS. Law Implemented 120.54(5), 120.569, 120.57 FS. History—New 4-1-97, Amended 9-17-98.

28-106.202 Amendment of Petitions.

The petitioner may amend the petition prior to the designation of the presiding officer by filing and serving an amended petition in the manner prescribed for filing and serving an original petition. The petitioner may amend the petition after the designation of the presiding officer only upon order of the presiding officer.

Specific Authority 120.54(5) FS. Law Implemented 120.569, 120.57 FS. History—New 4-1-97

28-106.203 Answer.

A respondent may file an answer to the petition.

Specific Authority 120.54(5) FS. Law Implemented 120.569, 120.57 FS. History—New 4-1-97.

28-106.204 Motions.

(1) All requests for relief shall be by motion. All motions shall be in writing unless made on the record during a hearing, and shall fully state the action requested and the grounds relied upon. The original written motion shall be filed with the presiding officer. When time allows, the other parties may, within 7 days of service of a written motion, file a response in opposition. Written motions will normally be disposed of after the response period has expired, based on the motion, together with any supporting or opposing memoranda. The presiding officer shall conduct such proceedings and enter such orders as are deemed necessary to dispose of issues raised by the motion.

(2) Unless otherwise provided by law, motions to dismiss the petition shall be filed no later than 20 days after service of the petition on the party.

(3) Motions, other than a motion to dismiss, shall include a statement that the movant has conferred with all other parties of record and shall state as to each party whether the party has any objection to the motion.

(4) Any party may move for summary final order whenever there is no genuine issue as to any material fact. The motion may be accompanied by supporting affidavits. All other parties may, within seven days of service, file a response in opposition, with or without supporting affidavits. A party moving for summary final order later than twelve days before the final hearing waives any objection to the continuance of the final hearing.

(5) Motions for extension of time shall be filed prior to the expiration of the deadline sought to be extended and shall state good cause for the request.

Specific Authority 120.54(5) FS. Law Implemented 120.569, 120.57 FS. History—New 4-1-97.

28-106.205 Intervention.

Persons other than the original parties to a pending proceeding whose substantial interest may be determined in the proceeding and who desire to become parties may petition the presiding officer for leave to intervene. Except for good cause shown, petitions for leave to intervene must be filed at least 20 days before the final hearing. The petition shall conform to Rule 28-106.201(2), and shall include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to agency rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding. The presiding officer may impose terms and conditions on the intervenor to limit prejudice to other parties.

Specific Authority 120.54(5) FS. Law Implemented 120.569, 120.57 FS. History—New 4-1-97.

28-106.206 Discovery.

After commencement of a proceeding, parties may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure. The presiding officer may issue appropriate orders to effectuate the purposes of discovery and to prevent delay, including the imposition of sanctions in accordance with the Florida Rules of Civil Procedure, except contempt.

Specific Authority 120.54(5) FS. Law Implemented 120.569, 120.57 FS. History—New 4-1-97.

Select Year:



The 2001 Florida Statutes

[Title XXVII](#)

[Chapter 367](#)

[View Entire Chapter](#)

Railroads And Other Regulated Utilities Water And Wastewater Systems

367.0816. Recovery of rate case expenses. The amount of rate case expense determined by the commission pursuant to the provisions of this chapter to be recovered through a public utilities rate shall be apportioned for recovery over a period of 4 years. At the conclusion of the recovery period, the rate of the public utility shall be reduced immediately by the amount of rate case expense previously included in rates.

History.--s. 9, ch. 89-353; s. 1, ch. 90-192; s. 4, ch. 91-429; s. 6, ch. 99-319; s. 3, ch. 2001-145.

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Specific Authority 350.127(2), 367.121 FS. Law Implemented 367.081, 367.121 FS. History--New 11-30-93.

25-30.4705 Calculation of Rate Reduction After Rate Case Expense is Amortized

To calculate the rate reduction to be made four years after a rate case as required by Section 367.0816, F.S., the following methodology shall be used. The annual amount of rate case expense, which is equal to one-fourth of the total allowed rate case expense, shall be divided by the regulatory assessment fee gross up factor. The resulting number shall then be divided by the revenue requirement to determine the percentage of the rate reduction. The percentage is then multiplied against the new rates to determine the amount of the future rate reduction. Revised tariff sheets implementing the reduction shall be filed no later than one month before the end of the fourth year.

Specific Authority 350.127(2), 367.121 FS. Law Implemented 367.0816, 367.121 FS. History--New 2-24-02.

25-30.475 Effective Date of Approved Tariffs.

Effective dates shall be as follows unless otherwise authorized by the Commission:

(1) For recurring rates or charges:

(a) Metered or flat recurring rates shall be effective for service rendered as of the stamped approval date on the tariff sheets provided customers have received notice. The tariff sheets will be approved upon staff's verification that the tariffs are consistent with the Commission's decision, that the proposed customer notice is adequate, and that any required security has been provided.

(b) If the effective date of the new rates falls within a regular billing cycle, the initial bills at the new rate may be prorated. The old charge shall be prorated based on the number of days in the billing cycle before the effective date of the new rates. The new charge shall be prorated based on the number of days in the billing cycle on and after the effective date of the new rates.

(c) In no event shall the rates be effective for service rendered prior to the stamped approval date.

(2) Non-recurring charges (such as service availability, guaranteed revenue charges, allowance for funds prudently invested, miscellaneous services) shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets provided customers have received notice. The tariff sheets will be approved upon staff's verification that the tariffs are consistent with the Commission's decision and that the proposed customer notice is adequate. In no event shall the rates be effective for service rendered prior to the stamped approval date.

Specific Authority 367.121 FS. Law Implemented 367.121 FS. History--New 11-30-93.

PART VI SERVICE AVAILABILITY - WATER AND WASTEWATER SYSTEMS - SERVICE AVAILABILITY CHARGES

25-30.510 Applicability.

The provisions of this part, Rules 25-30.510 through 30.585, F.A.C., shall apply to a utility when it files for a change in its service availability policy or charges or when the Commission initiates a show cause proceeding to require the utility to change such policy or charges. The provisions are not applicable to policies implemented and contracts entered into prior to the effective date of this part.

Specific Authority 367.121(1), 367.101 FS. Law Implemented 367.101 FS. History--New 6-14-83, Formerly 25-30.51, 25-30.051.

25-30.515 Definitions.

When used in this part or in service availability policies or in service availability contracts or agreements, the following terms have the following meanings:

(1) Active Connection means a connection to the utility's system at the point of delivery of service, whether or not service is currently being provided.

(2) Customer Connection Charge means any payment made to the utility for the cost of installing a connection from the utility's water or wastewater lines, including but not limited to the cost of piping and the meter installation fee.

(3) Contribution-in-aid-of-construction (CIAC) means any amount or item of money, services, or property received by a utility, from any person or governmental agency, any portion of which is provided at no cost to the utility, which represents an addition or transfer to the capital of the utility, and which is utilized to offset the acquisition, improvement, or construction costs of the utility's property, facilities, or equipment used to provide utility services to the public. The term includes, but is not limited to, system capacity charges, main extension charges and customer connection charges.

(4) Contributor means a person, builder, developer or other entity who makes a contribution-in-aid-of-construction.

(5) Customer Installation means all the facilities on the customer's side of the point of delivery.

(6) Developer's Agreement means a written agreement setting forth in detail the terms and conditions under which a utility will render service to a developer's property.

(7) Economic Feasibility means a test by which the operating income of a utility to be earned from prospective customers within the area to be served by a proposed extension of facilities is divided by the investment in such facilities to determine if the utility will earn a fair return on its investment in the proposed extension.

(8) Equivalent Residential Connection (ERC) means