

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application of **UTILITIES  
INC.**, for authority to transfer  
majority organizational control  
to **HYDRO STAR, LLC**

Docket No. 050499-WS

EMERGENCY PETITION FOR VARIANCE OR WAIVER OF  
RULES 25-30.037(3)(i), (j) and (k), and 25-30.030(4)(c),(5), (6) and (7),  
FLORIDA ADMINISTRATIVE CODE

UTILITIES, INC., by and through its undersigned attorneys and pursuant to Section 120.542, Florida Statutes, hereby petitions the Florida Public Service Commission for a variance or waiver of certain requirements of Rules 25-30.030 and 25-30.037, Florida Administrative Code, as specifically identified below. In support of this Petition, Utilities, Inc., asserts the following:

1. The name and address of the Petitioner is:

Utilities, Inc.  
2335 Sanders Road  
Northbrook, IL 60062-6196  
Telephone: (847) 498-6440

2. The name, address and telephone number of the person to contact concerning this Application is:

Martin S. Friedman, Esquire  
Valerie L. Lord, Esquire  
Rose, Sundstrom & Bentley, LLP  
600 S. North Lake Blvd., Ste. 160  
Altamonte Springs, Florida 32701  
Telephone: (407) 830-6331  
Facsimile: (407) 830-8522  
[mfriedman@rsbattorneys.com](mailto:mfriedman@rsbattorneys.com)  
[vlord@rsbattorneys.com](mailto:vlord@rsbattorneys.com)

3. The transfer of majority organizational control of the Petitioner will be accomplished by a transfer of all of the issued and outstanding shares of the stock of Nuon

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Global Solutions USA, B.V., which owns all of the all of the issued and outstanding shares of the stock of Nuon Global Solutions USA, Inc., which, in turn, owns all of the issued and outstanding shares of the stock of the Petitioner. The Petitioner's utility operations are conducted through its subsidiary companies, thus the utility operations will not be affected by the transfer. Because the transfer will not affect utility operations, a number of provisions of the Florida Administrative Code are inapplicable.

4. The requested waiver or variance is needed because the statutory time period to consider a waiver or variance, when added to the time within which the Commission has to act upon a transfer of majority organizational control may delay the closing on the transfer. Regulatory approvals are required for over 80 subsidiary operating companies in 17 states and it is unreasonable for the Petitioner to expend the necessary funds in other regulatory jurisdictions before proceeding in Florida. The emergency and immediate and adverse result unless the variance or waiver is granted is similar to that which this Commission found as sufficient in Order No. PSC-99-2422-PAA-WS.

5. Rule 25-30.030(4)(c), Florida Administrative Code.

This provision requires that the notice of the transfer application include "a description using township, range and section reference" of the territory being transferred. The territory which is affected by this proceeding is not certificated to the Petitioner, but is certificated to 16 subsidiaries operating in 10 Florida counties. The Petitioner requests that it be allowed to send an identical one page notice to all of the customers of each subsidiary without reference to a territory description. The proposed notice would be substantially in the form attached hereto. This waiver or variance of this Rule is justified since this is a

proceeding for the approval of the transfer of the shares of stock of the parent company of the parent company of the parent company of the utility subsidiaries regulated by this Commission. The customer knows the name of the utility subsidiary providing service which is the important fact, not a lengthy legal description. The purpose of the underlying rule is to provide customers with notice of a point of entry to protest a proposed transfer. This is accomplished by the attached notice. This Commission approved a similar notice in Order No. PSC-99-2422-PAA-WS.

6. Rule 25-30.030(5), (6) and (7), Florida Administrative Code.

Further, in order for the Petitioner to go forward with the filing of its Application pending approval of a waiver or variance, the Petitioner requests a waiver or variance from the time requirements of Rule 25-30.030(5), (6) and (7), Florida Administrative Code. The Petitioner requests it be allowed to mail the notices within ten (10) days of the Commission's approval of the Notice.

7. Rule 25-30.037(3)(i), Florida Administrative Code.

This Rule requires an applicant for approval of the transfer of majority organizational control to file evidence that it owns the land upon which the treatment plants are located. Since the proposed transfer does not affect the title to real estate, providing this documentation will serve no useful purpose. Evidence of ownership of such land has been provided in connection with various proceedings by each of the subsidiaries. This Commission reached a similar result in Order No. PSC-00-0475-FOF-WS.

8. Rule 25-30.037(3)(j), Florida Administrative Code.

An applicant for approval of a change in majority organizational control pursuant to

this Rule must file the original and two copies of tariff sheets reflecting the change in ownership. Because this transaction involves the transfer of ownership of the shares of stock of the ultimate parent company, not of the Petitioner, which is the owner of the regulated utilities, there are no tariff changes necessary and refile existing tariffs would serve no useful purpose.

9. Rule 25-30.037(3)(k), Florida Administrative Code.

This Rule requires a utility seeking approval of the change in majority organizational control to file the Certificates. The Petitioner does not hold any Certificates. Since there are no changes in ownership of the regulated subsidiaries as a result of the transfer of the shares of the Petitioner, filing the Certificates would serve no useful purpose.

WHEREFORE, UTILITIES, INC., requests this Commission, on an emergency basis pursuant to Rule 28-10.004(2), Florida Administrative Code, grant a waiver or variance of the provisions of Rules 25-30.030(4)(c), (5), (6) and (7), and 25-30.037(3)(I), (j) and (k), Florida Administrative Code, and permit it to comply with the requirements of Rule 25-30.030(5), (6) and (7), Florida Administrative Code by mailing the required notices within ten (10) days of the Commission's approval of the form of the Notice.

Respectfully submitted on this 25<sup>TH</sup> day of July, 2005, by:

ROSE, SUNDSTROM & BENTLEY, LLP  
600 S. North Lake Blvd., Ste. 160  
Altamonte Springs, Florida 32701  
Telephone: (407) 830-6331

BY:

  
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MARTIN S. FRIEDMAN  
VALERIE L. LORD

NOTICE OF APPLICATION FOR A TRANSFER  
OF MAJORITY ORGANIZATIONAL CONTROL  
LEGAL NOTICE

Notice is hereby given on July \_\_\_\_, 2005, pursuant to Section 367.071, Florida Statutes, of the application for transfer of majority organizational control of Utilities, Inc. To Hydro Star, LLC. THIS APPLICATION IS NOT A REQUEST TO CHANGE THE RATES OF ANY OF THE BELOW LISTED SUBSIDIARIES. The following are the wholly owned subsidiaries of Utilities, Inc. which are certificated by the Florida Public Service Commission and their counties of operation:

- Alafaya Utilities, Inc. . . . . Seminole
- Cypress Lakes Utilities, Inc. . . . . Polk
- Labrador Utilities, Inc. . . . . Pasco
- Lake Placid Utilities, Inc. . . . . Highlands
- Lake Utility Services, Inc. . . . . Lake
- Mid-County Services, Inc. . . . . Pinellas
- Miles Grant Water & Sewer Company . . . . . Martin
- Sanlando Utilities Corporation . . . . . Seminole
- Tierra Verde Utilities, Inc. . . . . Pinellas
- Utilities, Inc. of Eagle Ridge . . . . . Lee
- Utilities, Inc. of Florida . . . . . Seminole, Orange  
Pasco, Marion,  
Pinellas
- Utilities, Inc. of Hutchinson Island . . . . . Martin
- Utilities, Inc. of Longwood . . . . . Seminole
- Utilities, Inc. of Pennbrooke . . . . . Lake
- Utilities, Inc. of Sandalhaven . . . . . Charlotte
- Wedgfield Utilities, Inc. . . . . Orange

Any objection to the said application must be made in writing and filed within thirty (30) days from this date to the Director, Division of Commission Clerk and Administrative Services, Florida Public Service Commission, 2540 Shumard Oaks Boulevard, Tallahassee, FL 32399-0850. A copy of said objection may be mailed to the attorney for the applicant who is: Martin S. Friedman, Esquire, Rose, Sundstrom & Bentley, LLP, 600 S. North Lake Blvd., Ste. 160, Altamonte Springs, Florida, 32701.