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February 8, 2018

Office of Commission Clerk  
Florida Public Service Commission  
Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399

RECEIVED-PPSC  
2018 FEB 13 PM 12:20  
COMMISSION CLERK

Re: Petition for Variance or Waiver of Rule 25-30.120, Florida Administrative Code by Deer Creek RV Golf & Country Club, Inc. ("Deer Creek"), in Polk County

Dear Commission Clerk:

Deer Creek RV Golf & Country Club, Inc., (Deer Creek) hereby petitions the Florida Public Service Commission for a partial variance or waiver of a requirement of Rule 25-30.120, Florida Administrative Code (FAC) pursuant to Section 120.542, Florida Statutes (F.S.), and in support hereof asserts the following:

1. The name and address of the Petitioner is:  
Deer Creek RV Golf & Country Club, Inc.,  
42749 U.S. Highway 27, Davenport, FL 33837  
Telephone: (863) 424-2839
2. The name, address and telephone number of the authorized representative to contact concerning this Petition is:  
Gerald T. Buhr, P.A.  
1015 Wyndham Lakes Drive  
Odessa, FL 33556  
Telephone: (813) 610-8108
3. On December 23, 2016, Deer Creek filed an application for original water and wastewater certificates pursuant to Section 367.031, F.S. and Rule 25-30.034, F.A.C. with the required \$3,000 filing fee.
4. On November 17, 2017, Order No. PSC-2017-0440-FOF-WS, approved deer Creek's application and set rates effective with the issuance of said order.

5. As part of its application for certificates, Deer Creek sought only such rates as were presently used to receive sufficient payment from residents to pay the bulk water and sewer bills from Polk County. At such time, the rates requested, by necessity, could not and did not include a request to compensate Deer Creek for the known increase in Polk County rates which was implemented by Polk County as of October 1, 2017 or to recover the associated Regulatory Assessment Fees required pursuant to Rule 25-30.120 F.A.C.
6. Deer Creek's application for certificates were approved at the Commission Agenda Conference on November 7, 2017. On November 15, 2017, Deer Creek proactively applied for a pass-through rate increase to allow the utility to adopt rates compensatory for the Polk County bulk rate increases and to recover the associated Regulatory Assessment Fees from its customers. Deer Creek's pass-through application was approved effective for service provided on or after December 30, 2017.
7. Section 367.081(4)(b), F.S. provides that "The approved rates of any utility which is subject to an increase or decrease in the rates or fees that is charged for ..... or the regulatory assessment fees imposed upon it by the commission shall be increased or decreased by the utility, without action by the commission, upon verified notice to the commission 45 days prior to its implementation of the increase or decrease that ..... the regulatory assessment fees imposed upon it by the commission have changed. The new rates authorized shall reflect the amount of the ..... regulatory assessment fees imposed upon it by the commission."
8. Commission staff has stated that the pass-through provision of Section 367.081(4)(b), F.S. could not be approved without "approved rates" by the Commission.
9. Rule 25-30.120(2), F.A.C. states that "The obligation to remit regulatory assessment fees for any year shall apply to any utility that is subject to the Commission's jurisdiction on or before December 31 of that year or any part of that year."
10. Regulatory assessment fees were not included in Deer Creek's existing rate structure until they were approved in its pass-through application with an effective date of December 30, 2017.
11. This places Deer Creek at a financial disadvantage and places a financial hardship on the utility due to its inability to collect these regulatory assessment fees in the existing rates prior to December 30, 2017.
12. Section 120.542(2), F.S., states that, " Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when the application of the rule would create a substantial hardship or would violate the principles of fairness."



13. Section 120.542(5), F.S. states that, "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."
14. Section 367.145(3), states that the "Fees collected by the commission pursuant to this section may only be used to cover the cost of regulating water and wastewater systems."
15. Deer Creek contends that there have been minimal costs of regulating Deer Creek under Section 367, F.S. during 2017.
16. Prior to coming under the Commissions jurisdiction, Deer Creek was operated as a non-profit division seeking only to recover the costs expended to pay Polk County for the bulk water and wastewater services provided to its customers, and as such, has not sought rates compensatory for capital investments, annual operations or a fair rate of return.
17. Application of Section 367.145, F.S. and Rule 25-30.120, F.A.C. to Deer Creek would create a substantial hardship for the utility that has been losing money since its inception, and would violate the principles of fairness as defined in Section 120.542(2), F.S. without the concurrent opportunity to automatically increase the existing rates pursuant to Section 367.081(4)(b), F.S.

WHEREAS, Section 120.542(2), F.S., authorizes the Commission to grant variances or waivers from agency rules where the petitioner subject to the rule has demonstrated that the purpose of the underlying statute will be or has been achieved by other means, and that a strict application of the rule would cause the applicant substantial hardship or would violate the principles of fairness. "Substantial hardship" as defined in this section means demonstrated economic, technological, legal, or other hardship. A violation of the "principles of fairness" occurs 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.

WHEREFORE, Deer Creek RV Golf & Country Club, Inc., requests this Commission grant a partial waiver or variance of the provisions of Rule 25-30.120, F.A.C. until such time as Deer Creek was authorized to increase its rates pursuant to Section 367.081(4)(b), F.S.

Sincerely,

By:   
Gerald T. Buhr, for Deer Creek

- cc. Aleena Morris, Corporate Manager of Deer Creek RV Gold & Country Club, Inc.  
Mike Caruso, President of Deer Creek RV Golf & Country Club, Inc.  
Jeffery Small, OCBOA Consulting, LLC