

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for quick-take amendment of Certificate Nos. 278-W and 225-S to add territory in Seminole County, by Utilities, Inc. of Florida.

DOCKET NO. 20190199-WS
ORDER NO. PSC-2020-0054-PAA-WS
ISSUED: February 24, 2020

The following Commissioners participated in the disposition of this matter:

GARY F. CLARK, Chairman
ART GRAHAM
JULIE I. BROWN
DONALD J. POLMANN
ANDREW GILES FAY

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING PETITION FOR PARTIAL VARIANCE OR WAIVER OF
RULE 25-30.030(5)(b), F.A.C.

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

Background

On November 5, 2019, Utilities, Inc. of Florida (UIF or Utility) filed a Petition for Partial Variance or Waiver of Rule 25-30.030(5)(b), Florida Administrative Code (Petition). UIF is a Class A water and wastewater utility currently serving approximately 34,000 water and/or wastewater customers¹ throughout 27 systems in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties. UIF is a wholly owned subsidiary of Utilities, Inc., and its rates and charges were last approved by this Commission in Docket No. 20160101-WS.² UIF is seeking a waiver of Rule 25-30.030(5)(b), F.A.C., in connection with

¹ Document No. 10737-2019.

² Order No. PSC-2017-0361-FOF-WS, issued September 25, 2017, in Docket 20160101-WS, *In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties by Utilities, Inc. of Florida.*; amended by Order No. PSC-2017-0361A-FOF-WS, issued October 4, 2017; see also remanded Order No. PSC-2019-0363-PAA-WS, issued August 27, 2019; consummated by Order No. PSC-2019-0388-CO-WS, issued September 20, 2019.

UIF's Application for Quick Take Amendment³ of Certificates 278-W and 225-S in Seminole County (Application). The Utility is seeking to add 24 single family connections to UIF's water and wastewater systems in Seminole County, and is seeking a waiver of the rule requirement to notify its current 34,000 customers of the quick-take amendment.

Pursuant to Section 120.542(6), Florida Statutes (F.S.), notice of this rule waiver Petition was Published in the Florida Administrative Register on November 20, 2019. In accordance with Rule 28-104.003(1), F.A.C., interested persons were given 14 days after the publication of the notice to submit written comments. No written comments were received, and the time for such has expired. On December 26, 2019, Commission staff sent a data request to the Utility, to which responses were received on that same day.

This Order addresses the Utility's Rule Waiver Petition; issues relating to the Utility's Application will be addressed in a subsequent order. We have jurisdiction in this matter pursuant to Sections 367.071 and 120.542, F.S.

Decision

On November 5, 2019, UIF filed a Petition seeking a partial waiver of Rule 25-30.030(5)(b), F.A.C., which requires that notice of the quick take amendment be provided by regular mail or personal service to each customer and owner of property located within the existing service area and the service area to be served, extended, deleted, or transferred. The waiver is sought in connection with UIF's application for a quick take amendment of UIF's Certificates 278-W and 225-S in Seminole County, Florida, to add 24 single family connections to UIF's water and wastewater systems. On December 9, 2019, UIF provided notice by regular U.S. mail to water and wastewater utilities in Seminole County, governmental agencies in Seminole County, the Office of Public Counsel, and this Commission.⁴ On December 30, 2019, UIF filed an affidavit that notice of UIF's Application was published twice weekly in the Sanford Herald, a newspaper of general circulation within Seminole County, Florida.⁵ UIF seeks to waive Rule 25-30.030(5)(b), F.A.C., that requires notice to be provided to all customers and property owners within its existing service area.

Section 120.542(2), F.S., authorizes us 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.

³ A quick take amendment is designed to provide water and/or wastewater service quickly for areas that serve less than 25 equivalent residential connections (ERCs), there is no other utility in the area of the proposed territory that is able to provide reasonably adequate service, the customer has demonstrated to the utility that service is necessary, and the utility has filed an application to extend its service area. See 25-30.036(3), F.A.C.

⁴ Document No. 11251-2019.

⁵ Document No. 11497-2019.

The underlying statutory provision pertaining to the above-mentioned rule is Section 367.045, F.S. This statute requires, in part, that notice of the Utility's application be provided to its consumers who would be substantially affected by the requested amendment. This provision has the effect of alerting current customers of the Utility that additional customers may be added to the system, and of potential impacts that could affect their current rates or quality of service. It also prescribes how and in what manner utility customers may submit objections or request a formal evidentiary hearing on the merits of the application.

In its response to Commission staff's First Data Request, the Utility states that its water and wastewater systems consist of over 34,000 customers and the application would only add 24 single family residences to the systems. UIF asserts that the impact of adding only 24 single family residences would be de minimis, and would have an insignificant impact on existing customers of UIF. Additionally, UIF has already provided all other notices required by Rule 25-30.030, F.A.C., including providing notice by regular mail to the affected governing body of Seminole County and municipalities therein, and the Office of Public Counsel.

UIF also asserts that strict application of Rule 25-30.030(5)(b), F.A.C., would place a substantial economic hardship on the Utility. UIF contends that the personnel, paper, printing, envelopes, and postage required to mail individual notices to its approximately 34,000 customers would cost over \$16,000. The customers to be added to UIF's customer base if its Application is approved would be a de minimis percentage of the Utility's customer base. UIF argues that the economic cost far outweighs any benefit that the Utility's 34,000 existing customers would receive.

Based on the foregoing analysis and the information provided within UIF's petition and its response to Commission staff's First Data Request, we find that UIF has met the requirements of Section 120.542, F.S., and has demonstrated that the purpose of the underlying statute will be or has been achieved by other means, and that the strict application of Rule 25-30.030(5)(b), F.A.C., would place a substantial hardship on the Utility.

However, given the number of customers within UIF's customer base, we find that it is important to maintain transparency and ensure that all customers receive full notice of the Utility's proposed actions. Therefore, we hereby approve the Utility's request for partial waiver of Rule 25-30.030(5)(b), F.A.C., with the following conditions: UIF shall place a notice of its Application on its website, which shall provide a date certain by when substantially affected persons may timely file an objection to the quick take amendment. This date shall be 30 days from the date the notice is published on the website. This notice shall remain on the Utility's website for a period of 30 days, and customers shall have the right to file an objection with the Office of Commission Clerk until the date specified within the notice. Prior to posting, Commission staff shall approve the location and wording of the notice to be published.⁶

⁶ See Order No. PSC-2017-0387-PAA-SU, issued October 11, 2017, in Docket No. 20170174-SU, *In re: Application for transfer of assets of exempt utility, amendment of Certificate No. 465-S, and petition for partial variance or waiver of Rule 25-30.030(5)(b), F.A.C. by Utilities, Inc. of Florida.*

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Utilities, Inc. of Florida's Petition for Partial Variance or Waiver of Rule 25-30.030(5)(b), F.A.C., is hereby granted as set forth herein. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall remain open pending the Commission's final decision regarding the Utility's Application for Quick-Take Amendment of Certificate Nos. 278-W and 225-S to add territory in Seminole County.

By ORDER of the Florida Public Service Commission this 24th day of February, 2020.



ADAM J. FEITZMAN
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

BYL

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 16, 2020.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.