

OKALOOSA WATERWORKS, INC.

June 10, 2020

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

Re: Docket No. 20200155-WU - Application for water certificate in existence in Okaloosa County by Okaloosa Waterworks, Inc. - Petition for Variance or Waiver of Rule 25-30.120, Florida Administrative Code by Okaloosa Waterworks, Inc. in Okaloosa County

Dear Commission Clerk,

Okaloosa Waterworks, Inc. (Okaloosa) 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.). In support of this Petition, Okaloosa asserts the following:

1. The name and address of the Petitioner is:

Okaloosa Waterworks, Inc.
4939 Cross Bayou Blvd.
New Port Richey, FL 34652
Telephone: (727) 848-8292

2. The name, address and telephone number of the authorized representative to contact concerning this Petition is:

Troy Rendell
U.S. Water Services Corporation, Inc.
4939 Cross Bayous Blvd.
New Port Richey, FL 34652
Telephone: (727) 848-8292

3. On March 31, 2020, Okaloosa purchased the water utility assets of Blackman Community Water System (BCWS).
4. BCWS was a not-for-profit corporation formed as a Co-Op on December 13, 2004. BCWS was granted authority to provide water service by Okaloosa County in March 2007.

5. On June 2, 2020, Okaloosa filed its application for a Certificate pursuant to Sections 367.031; 367.045; and 367.081 Florida Statutes (F.S.), and Chapter 25-30.034, Florida Administrative Code (F.A.C.) in the above referenced docket.
6. Simultaneously in the same filing Okaloosa filed its request for approval of a pass through increase for regulatory assessment fees pursuant to Section 367.081(4)(b), F.S. This request was in relation to the required regulatory assessment fees required under Section 367.145, F.S. and Rule 25-30.120, F.A.C.
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 change. The new rates authorized shall reflect the amount of the ... regulatory assessment fees imposed upon it by the commission.”
8. However, the Commission Staff has previously 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. The Commission’s regulatory assessment fees are not included in the current existing rates for Okaloosa since the utility was not regulated by the Commission.
11. This places Okaloosa at a financial disadvantage and places a financial hardship on the utility due to its inability to collect these regulatory assessment fees in its rates.
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.”

Request of Variance or Waiver – Okaloosa Waterworks, Inc.

15. Okaloosa contends that there have been minimal to no costs of regulating Okaloosa under Section 367, F.S. Absent the review of its recent certificate application, there have been no regulatory costs to the Commission caused by Okaloosa.
16. Okaloosa paid the applicable filing fee of \$1,500 as required by Section 367.145(2), F.S., and Rule 25-30.020, F.A.C. for the processing of its Certificate filing.
17. Application of Section 367.145, F.S. and Rule 25-30.120, F.A.C. to Okaloosa would create a substantial hardship for the utility and 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, OKALOOSA WATERWORKS, 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 Okaloosa is authorized to increase its rates pursuant to Section 367.081(4)(b), F.S.

Respectfully Submitted,



Troy Rendell
Vice President
Investor Owned Utilities
// for Okaloosa Waterworks, Inc.