

ORIGINAL FILE COPY

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Application by United)
Water Resources Inc., and Jackson-)
ville Suburban Utilities Corporation))
for Transfer of Majority Organiza-)
tional Control)

DOCKET NO. 940743-WS
DATE SUBMITTED FOR FILING:
July 11, 1994

MOTION FOR WAIVER

United Water Resources Inc. ("UWR"), and Jacksonville Suburban Utilities Corporation ("Jacksonville Suburban"), (hereinafter sometimes collectively referred to as "Applicants"), pursuant to Rule 1.100(b), Florida Rules of Civil Procedure, and Rules 25-22.037(2) and 25-30.011(2), Florida Administrative Code ("FAC"), by their undersigned counsel, hereby move the Florida Public Service Commission ("Commission") to waive the requirements of Rule 25-30.030, FAC, and as grounds therefore state:

General Information

1. Rule 25-30.011(2), FAC, states that the Commission has the authority to waive its rules.

In any case where compliance with any of these rules introduces unusual hardship, or if unreasonable difficulty is involved in immediate compliance with any particular rule, application may be made to the Commission for modification of the rule or for temporary exemption from its requirements, provided that the utility shall submit with such application a full and complete statement of reason therefor.

Rule 25-30.011(2), FAC.

2. The Joint Application by UWR and Jacksonville Suburban for Transfer of Majority Organizational Control submitted for filing by Applicants on July 11, 1994, involves a merger of GWC

Corporation, Jacksonville Suburban's corporate grandparent, into UWR with UWR being the surviving corporation.

3. As shown by paragraphs A, B, and C of Part III of the Commission's form for Application for Transfer of Majority Organizational Control, pursuant to Section 367.071, Florida Statutes, Form PSC/WAS 15 (Rev.12/93), Rule 25-30.030, FAC, requires the following three different types of publications of the notice of application:

- (a) By regular mail to the governing body of the municipality, county, or counties in which the system or the territory proposed to be served is located; the privately owned water and wastewater utilities that hold a certificate granted by the Commission and that are located within the county in which the utility or the territory proposed to be served is located, and, if any portion of the proposed territory is within one mile of a county boundary, the privately owned utilities located in the bordering counties and holding a certificate granted by the Commission; the regional planning council; the Office of Public Counsel; the Commission's Director of Records and Reporting; the appropriate regional office of the Department of Environmental Protection; and the appropriate Water Management District (hereinafter sometimes

collectively referred to as the "Type I Notice")
(See Rule 25-30.030(5), FAC);

(b) By regular mail or personal delivery to each customer of the system being transferred (hereinafter sometimes referred to as the "Type II Notice") (See Rule 25-30.030(6), FAC); and

(c) Publication of the notice once in a newspaper of general circulation in the territory (hereinafter sometimes referred to as the "Type III Notice") (See Rule 25-30.030(7), FAC).

4. Section 367.045(1)(a), Florida Statutes (1993), states that:

When a utility applies for an initial certificate of authorization from the commission, it shall:

(a) Provide notice of the actual application filed by mail or personal delivery to the governing body of the county or city affected, to the Public Counsel, to the commission, and to such other persons and in such other manner as may be prescribed by commission rule.

5. Because the application is for a transfer of majority organizational control and not an "initial certificate of authorization," Applicants should not be required to provide notice pursuant to Section 367.045(1)(a), Florida Statutes (1993), except as may be prescribed by the Commission rule, and the Commission should waive the rule requirements for the reasons set forth in this Motion for Waiver.

Waiver of Type I Notice

6. Applicants respectfully request that the Commission waive the requirements for the Type I Notice for the reasons set forth in paragraphs 8 through 17.

7. In the event the Commission determines that Applicants are required by Section 367.045(1)(a), Florida Statutes (1993), to provide notice to the parties specifically listed in the statute (i.e., the governing body of the county or city affected, the Public Counsel, and the Commission), the providing of such Type I Notice should be limited to the parties set forth in the statute and the requirements of (i) providing a Type I Notice to the other parties in Rule 25-30.030(5), FAC, (ii) including a legal description of the service area in the notice, and (iii) requiring the utility company to enclose a legal description in its request for a list pursuant to Rule 25-30.030(2), FAC, should be waived.

8. Rule 25-30.030(4), FAC, requires the notice to contain a copy of the legal description of the territory proposed to be transferred.

9. Rule 25-30.030(2), FAC, requires the utility company to request a list of names and addresses for providing the Type I Notice. The request must include a complete legal description of the territory to be requested in the application.

10. The legal descriptions of Jacksonville Suburban's water and wastewater service areas are very lengthy. The sections of Jacksonville Suburban's tariff containing the legal descriptions of the water and wastewater service areas comprise 70 and 64 pages,

respectively. Because the water and wastewater service areas are not identical, the number of pages in each individual notice for the legal description of the service area alone will likely require more than one hundred thirty (130) pages.

11. Because the transfer of majority organizational control in this matter is not a simple transfer at the utility company level, the information set forth in the notice may be very confusing to its recipients, including the customers of Jacksonville Suburban and not overly useful. The change in majority organizational control involved in this Application is not the typical situation envisioned by Rule 25-30.037(3), FAC, involving a change in the direct ownership of a utility company.

The change in the direct ownership of a utility company is more likely to result in a change in the operation of the utility company than a change in the ownership of a corporate grandparent of a utility company. The change in majority organizational control involved in this Application is more similar to a request for a name change or a grandfather certificate than a transfer of majority organization control in that there will be no change in the operation and immediate ownership of the utility company. Rule 25-30.030, FAC, does not apply to applications for grandfather certificates filed under Section 367.171, Florida Statutes, or to name changes. See Rule 25-30.030(9), FAC.

12. The costs of preparing, photocopying, and mailing such notice will be excessive.

13. The service territory of Jacksonville Suburban is not being transferred to another utility company.

14. The merger does not contemplate any changes in the direct ownership, direct control or operation of Jacksonville Suburban. Jacksonville Suburban's customers will continue to be Jacksonville Suburban's customers. Jacksonville Suburban will continue as a wholly owned subsidiary of General Waterworks Corporation, which is now a wholly owned subsidiary of UWR rather than GWC.

15. The merger does not seek any changes in the rates charged by Jacksonville Suburban to its customers, or in any of its policies with respect to service, employees, operations, financing, accounting, capitalization, depreciation, or other matters affecting the public interest or utility operations.

16. Copies of Jacksonville Suburban's tariffs containing the legal description of its service area are on file with the Commission and available for review at Jacksonville Suburban's office.

17. For the reasons set forth above, it will be unreasonably difficult for Applicants to provide a Type I Notice and requiring the provision of such notice will introduce unusual hardship on Applicants.

18. Applicants request that the Commission waive its requirements for a Type I Notice. In the event that the Commission determines that Applicants are required by statute to provide the notice described in Section 367.045(1)(a), Florida Statutes (1993), Appli-

cants request in the alternative that the Commission waive the following requirements:

- (a) That the notice required by Rule 25-30.030(5), FAC, be provided to parties other than the governing body of the county or city affected, the Public Counsel, and the Commission;
- (b) That the notice to be provided pursuant to Rule 25-30.030, FAC, be required to contain a legal description of the service area; and
- (c) That the request by the utility company for a list pursuant to Rule 25-30.030(2), FAC, include a legal description of the service area.

Waiver of Type II Notice

19. Applicants respectively request that the Commission waive the requirements for a Type II Notice for the reasons set forth in paragraphs 8 through 16 and 20 through 23.

20. Most of Jacksonville Suburban's customers are billed on a quarterly cycle, therefore, Jacksonville Suburban can not utilize its billings to provide notice to its customers in the 28 day time period required by Rule 25-30.030(6), FAC. Therefore, a separate mailing to Jacksonville Suburban's customers would be required to comply with Rule 25-30.030(6), FAC.

21. Jacksonville Suburban has over 27,000 customers.

22. The cost of postage alone for such a mailing would be very expensive. Even if only a one page notice will be sent to Jacksonville Suburban's customers, the mailing will require

approximately \$7,830.00 in postage costs alone (27,000 customers x \$0.29 per envelope). Such postage costs will be greatly increased if the notice is over one hundred thirty (130) pages in length. There also will be costs for photocopying, stationery (paper and envelopes), labels, and the physical preparation and mailing of over 27,000 pieces of mail.

23. For the reasons set forth above, it will be unreasonably difficult for Applicants to provide a Type II Notice and requiring the provision of such notice will introduce unusual hardship on Applicants.

24. Applicants request that the Commission waive its requirements for a Type II Notice.

Waiver of Type III Notice

25. Applicants respectfully request that the Commission waive the requirements for a Type III Notice for the reasons set forth in paragraphs 8 through 16 and 26 through 27.

26. It will be very expensive to publish the notice in a newspaper, especially when the notice includes over one hundred (100) pages of legal descriptions.

27. For the reasons set forth above, it will be unreasonably difficult for Applicants to provide a Type III Notice and requiring the provision of such notice will introduce unusual hardship on Applicants.

28. Applicants request that the Commission waive its requirements for a Type III Notice.

Request for Relief

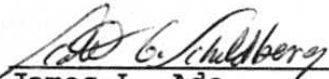
WHEREFORE, Applicants hereby request the Commission to enter an order which waives the requirements of Rule 25-30.030, FAC, for this Application. In the alternative, Applicants hereby request the Commission to enter an order which waives the following:

1. The requirement that the notice given pursuant to Rule 25-30.030, FAC, contain a description of the territory proposed to be transferred (Rule 25-30.030(4)(c));
2. The requirement that the Applicants provide the Commission with a complete legal description of the territory in their request for a list of names and addresses pursuant to Rule 25-30.030(2), FAC;
3. The requirement that Applicants provide copies of the notice by regular mail to:
 - (i) the regional planning council designated by the Clean Water Act, 33 U.S.C. 1288(2);
 - (ii) all water and wastewater utilities contained on the list(s) obtained pursuant to Rule 25-30.030(2), FAC;
 - (iii) the appropriate regional office of the Department of Environmental Protection; and
 - (iv) the appropriate Water Management District,Rule 25-30.030(2), FAC.
4. The requirements of Rule 25-30.030(6), FAC; and
5. The requirements of Rule 25-30.030(7), FAC.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and seven copies of the foregoing Motion for Waiver have been furnished to Blanco Bayo, Director, Division of Records and Reporting, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, FL 32399-0850 by certified mail, return receipt requested this 11th day of July, 1994.



Attorney