

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of Utilities, Inc. for authority to transfer majority organizational control of Hydro Star, LLC to Corix Utilities (Illinois), LLC.

DOCKET NO. 120084-WS
ORDER NO. PSC-12-0340-PAA-WS
ISSUED: June 28, 2012

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman
LISA POLAK EDGAR
ART GRAHAM
EDUARDO E. BALBIS
JULIE I. BROWN

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING IN PART RULE WAIVER REQUEST

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 April 13, 2012, Utilities, Inc. (Utilities, Inc. or Utility) filed an Application for authority to transfer majority organizational control of Hydro Star, LLC (Hydro Star) to Corix Utilities (Illinois), LLC (Corix). The application proposes the transfer of 100 percent of the issued and outstanding membership interests in Hydro Star to Corix. Hydro Star owns Hydro Star Holdings Corporation, which, in turn, owns 100 percent of the issued and outstanding shares of Utilities, Inc. (the regulated entity). A list of Utilities, Inc.'s Commission-regulated utilities in Florida (regulated entities) that will be affected by the stock transfer is appended to this Order as Exhibit A. Utilities, Inc. asserts that the acquisition of Hydro Star's stock by Corix does not entail any change in direct ownership or control of the regulated entities and will not cause any change in management or loss of operational expertise.

With its application, Utilities, Inc. also filed a Petition for variance or waiver of Rules 25-30.030(4)(c), (5), (6), and (7), F.A.C., governing noticing requirements, and Rules 25-30.037(3)(i), (j), and (k), F.A.C., governing transfers. Notice of the rule waiver request was published in the May 11, 2012, Florida Administrative Weekly. No comments on the rule waiver petition have been filed, and the time for filing such has expired.

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Also, although the Utility requested a waiver of the time for noticing its customers and the other appropriate entities, it did timely notice its customers and the appropriate entities of the proposed transfer of majority organizational control. In response to these notices, several customers filed letters with this Commission expressing their concern over the proposed transfer. These letters will be addressed when we address the transfer request.

In this Order, we address only the Utility's request for rule waivers. We have jurisdiction over this matter through Sections 367.045, 367.071, and 120.542, Florida Statutes (F.S.).

Rule Waiver Request

The rule provisions in question govern the notice and information that an applicant must provide to receive our approval of a transfer of majority organizational control. We have previously determined that mergers or transfer of majority organizational control at the corporate parent or grandparent level require our approval pursuant to Section 367.071, F.S.¹

This rule waiver request is almost identical to the rule waiver request filed when Hydro Star acquired majority organizational control of Utilities, Inc. from Nuon Global Solutions USA, B.V. in 2005.² In that case, we granted Utilities, Inc.'s request for waiver of Rules 30.030(4)(c), (5), (6), and (7) and 25-30.037(3)(i), (j), and (k), F.A.C.

Waivers of the Noticing Rule

Rule 25-30.030(4)(c), F.A.C., requires the applicant to provide notice of the proposed transfer that includes "a description using township, range and section reference" of the territory being transferred. Utilities, Inc. requests that it be permitted to send an identical, one-page notice (abbreviated notice) to all of the customers of each of its 11 regulated entities, without reference to a detailed territory description for each one. The notice would list the names of the individual regulated entities and their county of operation. Utilities, Inc. states that this abbreviated notice is appropriate in this case because the application requests approval only for the transfer of the shares of stock of the parent companies, and no specific territory will be affected. Utilities, Inc. asserts that the underlying statutory purpose, to provide adequate notice to customers or entities who wish to participate in the administrative process, is accomplished by the proposed abbreviated notice. We agree.

Rules 25-30.030(5) and (7), F.A.C., require that notice be sent to local governing bodies, utilities, as well as published once in a newspaper of general circulation in the affected area within seven days of the filing of the application. Also, Rule 25-33.030(6), F.A.C., requires that the utility notify its customers no sooner than 21 days before filing the application and no later

¹ See Order No. PSC-01-1647-PAA-WS, issued August 13, 2001, in Docket No. 010887-WS, In re: Application for approval of merger of Utilities, Inc. and Nuon Acquisition Sub, Inc., an Illinois corporation, and for determination of Commission's jurisdiction of such merger.

² See Order No. PSC-05-1155-PAA-WS, issued November 18, 2005, in Docket No. 050499-WS, In re: Application for transfer of majority organizational control of Utilities, Inc. from Nuon Global Solutions USA, B.V. to Hydro Star, LLC.

than 7 days after filing the application. Utilities, Inc. originally requested that it be allowed to provide these notices and publish within ten (10) days of our approval of the abbreviated notice.

The application included a copy of Utilities, Inc.'s proposed abbreviated notice, which reflected a transfer of majority organization control of Utilities, Inc., to Corix. However, instead of waiting for our approval of variance or waiver of the part of the noticing rule governing timing of the required notices, Utilities, Inc., using the abbreviated notice, noticed all required entities of the application within the timeframes prescribed by the rule. Therefore, if we agree that the abbreviated notice is appropriate, then the request for waiver of Rule 25-30.030(5), (6), and (7), F.A.C., is moot, as those provisions have effectively been complied with by the Utility, and there will be no need to do any further noticing.

Waivers of the Transfer Rule

Rule 25-30.037(3)(i), F.A.C., requires an applicant for approval of the transfer of majority organizational control to file evidence of ownership of the land upon which utility facilities are located. Utilities, Inc. requests a waiver of this provision because the proposed stock transfer of parent companies does not affect the title to any real estate held by the operational utility subsidiaries. Therefore, evidence of title would serve no purpose in this proceeding, and the operational utilities have provided evidence of ownership of land in other Commission certification proceedings. We agree.

Rule 25-30.037(3)(j), F.A.C., requires an applicant for approval of the transfer of majority organizational control to file an original and two copies of tariff sheets reflecting the change in ownership. Utilities, Inc. requests a waiver of this rule, because the transfer of ownership involves only the transfer of the stock of the parent company. Utilities, Inc. states that it will retain ownership of its operational subsidiaries, and no tariff changes will be necessary.

We agree that there will be no change in the issuing officer at the regulated entity level. Therefore, the requirement for filing new tariffs reflecting the change in ownership shall be waived. However, if an order is issued granting the transfer of majority organizational control, the tariff sheet which lists certificate orders, Tariff Sheet 3.0, will need to be updated in each of the regulated entities' water and wastewater tariffs. This tariff sheet cannot be revised until after an order is issued. Based on the above, a waiver shall be granted in regards to all tariff sheets except Tariff Sheet 3.0. The revision of this tariff sheet will be addressed in a subsequent order addressing the transfer of majority organizational control in this docket.

Rule 25-30.037(3)(k), F.A.C., requires an applicant for approval of a transfer of majority organizational control to file the applicable certificates with us. Utilities, Inc. explains that it is not the holder of any water or wastewater certificates. Its regulated operational subsidiaries hold the certificates, and since there will not be any change in ownership of the operational subsidiaries, the Utility argues that filing certificates will not serve any useful purpose.

While the regulated entities' certificates will be affected by this application, we find there is no need for the certificates to be returned as a result of a change in our practice. Instead of issuing paper certificates which need to be returned for updating, revised certificates are now

attached to our orders.³ Therefore, there is no need for paper certificates to be returned for updating. For this reason, the waiver of this rule shall be granted.

Statutory Compliance

Section 120.542, F.S., authorizes us to grant variances or waivers to the requirements of our rules where the person subject to the rules has demonstrated that the underlying purpose of the statute has been or will be achieved by other means, and that strict application of the rules would cause the person substantial hardship or would violate principles of fairness. "Substantial hardship" as defined in this section means demonstrated economic, technological, legal, or other hardship.

The underlying statutes that govern our approval of the transfer of majority organizational control are sections 367.071 and 367.045, F.S. Section 367.071(1), F.S., requires our approval of such a transfer before a transfer is finalized. Section 367.071(4), F.S., requires that the transfer application comport with the requirements of Section 367.045, F.S. Section 367.045(1)(a), F.S., requires a utility to "[p]rovide notice of the actual application filed by mail or personal delivery to the governing body of the county or city affected, the Public Counsel, to the commission, and to such other persons and in such other manner as may be prescribed by commission rule."

The purpose of these statutes is to ensure that the utility's actions are in the public interest and that the utility has provided timely and adequate notice of those actions to those entities that may have an interest in them. Except in one instance, we find that Utilities, Inc. will fulfill the underlying purpose of these statutes by providing notice as it has done and otherwise complying with our applicable transfer rules as it has proposed. The one exception is the Utility's request for waiver of Rule 25-30.037(3)(j), F.A.C. This rule requires the original and two copies of sample tariff sheets reflecting the transfer of majority organizational control. Tariff Sheet 3.0 lists the orders affecting ownership of a utility. If we do approve transfer of majority organizational control, then this tariff sheet would have to be revised so as to keep a record of this transfer of majority organizational control. Therefore, because all other tariffs remain the same, the Utility's request for waiver of Rule 25-30.037(3)(j), F.A.C., shall be granted as to all tariff sheets, except for Tariff Sheet 3.0. Other than the above, we find that strict compliance with the rules would serve no useful purpose and would cause unnecessary expense in this proceeding to approve the transfer of a parent company's stock. Further, we find that the Utility has shown that it will suffer a hardship and that strict adherence to the rule would violate principles of fairness if the Utility were to have to incur significant additional expenses to provide needless legal descriptions in the notices, proofs of ownership, multiple certificates, and tariffs, if the waiver is not granted.

Commission Conclusion

Based on the above, we shall grant Utilities, Inc.'s Petition for Waiver of Rules 25-30.030(4)(c), and 25-30.037(3)(i) and (k), F.A.C. Because we are approving waiver of Rule 25-

³ Our staff is in the process of initiating rulemaking on certificate rules, including the deletion of this requirement.

30.030(4)(c), F.A.C., which would have otherwise required a full legal description, a waiver of Rules 25-30.030(5), (6), and (7), F.A.C., becomes moot and is not required. The Utility's request for waiver of Rule 25-30.037(3)(j), F.A.C., except for Tariff Sheet 3.0, shall also be granted.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Utilities, Inc.'s Petition for Waiver of Rules 25-30.030(4)(c), and 25-30.037(3)(i) and (k), F.A.C., is granted. It is further

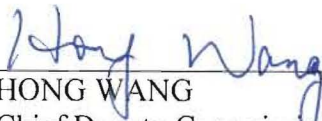
ORDERED that because we are approving waiver of Rule 25-30.030(4)(c), F.A.C., a waiver of Rules 25-30.030(5), (6), and (7), F.A.C., is moot and is not required. It is further

ORDERED that the Utility's request for waiver of Rule 25-30.037(3)(j), F.A.C., except for Tariff Sheet 3.0, shall also be granted. 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 the docket shall remain open pending our decision on the substantive aspects of the application.

By ORDER of the Florida Public Service Commission this 28th day of June, 2012.



HONG WANG
Chief Deputy 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.

RRJ

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 July 19, 2012.

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.

Utilities, Inc.
List of Subsidiaries – 100% wholly-owned

<u>Subsidiary Name</u>	<u>County of Operations</u>	<u>Certificate No.</u>
Cypress Lakes Utilities	Polk	509-S; 592-W
Labrador Utilities, Inc.	Pasco	530-S; 616-W
Lake Placid Utilities, Inc.	Highlands	414-W; 347-S
Lake Utility Services, Inc.	Lake	465-S; 496-W
Mid-County Services, Inc.	Pinellas	081-S
Sanlando Utilities Corp.	Seminole	189-S; 247-W
Tierra Verde Utilities, Inc.	Pinellas	058-S
Utilities, Inc. of Eagle Ridge	Lee	369-S
Utilities, Inc. of Florida	Seminole Pasco Marion Pinellas Orange	278-W; 225-S 229-S; 107-W 305-S; 410-W 204-W 040-W
Utilities, Inc. of Longwood	Seminole	232-S
Utilities, Inc. of Pennbrooke	Lake	400-S; 466-W