

State of Florida



## Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** September 21, 2017

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Office of the General Counsel (Mapp) *Ken JSC*  
Division of Engineering (Wooten, Ellis) *OW* *TJR*  
*POE*

**RE:** Docket No. 20170174-SU – 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.

**AGENDA:** 10/03/17 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Polmann

**CRITICAL DATES:** 11/21/17 (90-Day Rule Waiver Statutory Deadline)

**SPECIAL INSTRUCTIONS:** None

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### Case Background

On August 9, 2017, 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). The waiver is sought in connection with UIF's Application for Transfer of Assets of Exempt Utility and for Amendment of Certificate 465-S in Lake County (Application). The Utility is seeking to add 148 single family connections to UIF's wastewater system in Lake County, and it is seeking a waiver of the provision to notify its current 34,000 customers of the transfer. UIF is a Class A water and wastewater utility currently serving approximately 34,000 water and/or wastewater customers<sup>1</sup> 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

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<sup>1</sup> Document No. 06847-2017

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and charges were last approved by the Florida Public Service Commission (Commission) in Docket No. 160101-WS. Pursuant to Section 120.542(6), Florida Statutes (F.S.), notice of this Petition was published in the Florida Administrative Register on August 21, 2017. In accordance with Rule 28-104.003(1), Florida Administrative Code (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 August 22, 2017, Commission staff sent a data request to the Utility, to which responses were received on August 23, 2017.

This recommendation addresses the Utility's Petition; issues relating to the Utility's Application will be addressed in a subsequent recommendation. The Commission has jurisdiction in this matter pursuant to Sections 367.071 and 120.542, F.S.

## Discussion of Issues

**Issue 1:** Should the Commission approve Utilities, Inc. of Florida's request for a partial waiver of Rule 25-30.030(5)(b), F.A.C.?

**Recommendation:** Yes, the Utility has demonstrated that the underlying purpose of the statute will be or has been achieved by other means, and that strict application of the rule would place a substantial hardship on the Utility. Therefore, staff recommends that the Commission approve Utilities, Inc. of Florida's request for a partial waiver or waiver of Rule 25-30.030(5)(b), F.A.C. (Mapp)

**Staff Analysis:** On August 9, 2017, UIF filed a Petition seeking a partial waiver of Rule 25-30.030(5)(b), F.A.C., which requires that notice 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 the transfer of wastewater collection, treatment and disposal facilities in Lake County. On August 25, 2017, UIF provided notice by regular U.S. mail to all property owners within the territory to be added, Barrington Estates Property Holdings Homeowners' Association, Inc.,<sup>2</sup> and seeks only 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. On August 25, 2017, UIF also published the notice of its Application within the Daily Commercial, a newspaper of general circulation within Leesburg, Lake County, Florida.<sup>3</sup>

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.

The underlying statutory provision pertaining to the above-mentioned rule is Section 367.045, F.S. Section 367.045, F.S., 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 (data request) the Utility states that it currently serves over 34,000 equivalent residential connections (ERCs) and the application would only add 148 single family connections to UIF's wastewater system, resulting in an increase in ERC's of less than one-half of one percent. UIF asserts that the impact on rates would

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<sup>2</sup> Document No. 07315-2017

<sup>3</sup> Document No. 07337-2017

be de minimis, and that the customers within the proposed service area are served by wastewater collection, treatment and disposal facilities not connected to any of UIF's existing wastewater systems. As a result, the Utility argues, the addition of 148 customers will not affect its current customers' quality of service. 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 governing body of affected counties and municipalities, 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 only account for less than half a percent of the Utility's customer base. UIF argues that 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 Staff's First Data Request, staff believes 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. Therefore, staff recommends that the Commission approve the Utility's requested partial waiver or variance of Rule 25-30.030(5)(b), F.A.C.

**Issue 2:** Should this docket be closed?

**Recommendation:** If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued. This docket should remain open pending the Commission's final decision regarding the Utility's Application for Transfer of Assets of Exempt Utility and for Amendment of Certificate 465-S in Lake County. (Mapp)

**Staff Analysis:** If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued. This docket should remain open pending the Commission's final decision regarding the Utility's Application for Transfer of Assets of Exempt Utility and for Amendment of Certificate 465-S in Lake County.