

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: July 26, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Mapp) *WCM JSC*
Division of Engineering (M. Watts) *MA*

RE: Docket No. 20170253-WU – Application for grandfather water certificate in Leon County by Lake Talquin Water Company, Inc.

AGENDA: 08/07/18 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Polmann

CRITICAL DATES: 09/03/18 (Statutory Rule Waiver Deadline)

SPECIAL INSTRUCTIONS: None

Case Background

On June 20, 2017, the Board of County Commissioners of Leon County (County) passed and adopted Resolution No. R17-12 (Resolution), transferring regulation of the privately-owned, for-profit water and wastewater utilities in Leon County to the Florida Public Service Commission (Commission). Effective upon the adoption of the Resolution, all non-exempt water and wastewater systems in the County became subject to the provisions of Chapter 367, Florida Statutes (F.S.). The Commission acknowledged the Resolution in Order No. PSC-2017-0357-FOF-WS.¹

¹Order No. PSC-2017-0357-FOF-WS, issued September 20, 2017, in Docket No. 20170171-WS, In re: Resolution of the Board of County Commissioners of Leon County declaring Leon County subject to the provisions of Section 367, Florida Statutes.

Lake Talquin Water Company, Inc. (Lake Talquin or Utility) consists of 4 water systems located within in Leon County. On November 30, 2017, Lake Talquin filed an application for a certificate under grandfather rights to provide water service in Leon County (application) pursuant to Section 367.171(2)(b), F.S., and Rule 25-30.035, Florida Administrative Code (F.A.C.). On June 4, 2018, Lake Talquin filed a petition seeking a variance or waiver of Rule 25-30.120, F.A.C., which requires water and wastewater utilities under Commission jurisdiction remit an annual regulatory assessment fee (RAF).

Pursuant to Section 120.542(6), F.S., notice of this Petition was published in the Florida Administrative Register on June 8, 2018. 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.

This recommendation addresses Lake Talquin's petition for a variance or waiver of Rule 25-30.120, F.A.C. Lake Talquin's application for grandfather certificate will be addressed in a subsequent recommendation. The Commission has jurisdiction in this matter pursuant to Sections 120.542, 367.145, and 367.171, F.S.

Discussion of Issues

Issue 1: Should the Commission grant Lake Talquin Water Company, Inc.'s request for variance or waiver of Rule 25-30.120, 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 create a substantial hardship. Therefore, staff recommends that the Commission grant Lake Talquin's request for waiver of Rule 25-30.120, F.A.C., for a period of one year from the date of the Commission's vote, or until the Commission grants the Utility's grandfather certificate and rates are approved, whichever occurs first. (Mapp)

Staff Analysis: On June 4, 2018, Lake Talquin filed a petition seeking a waiver of Rule 25-30.120, F.A.C., which requires that Regulatory Assessment Fees (RAFs) be paid for any year during which a utility is subject to the Commission's jurisdiction as of December 31 of that year. The Utility requests the waiver or variance of Rule 25-30.120, F.A.C., until such time as the Utility is authorized to increase its rates. Rule 25-30.120(2), F.A.C., provides that "[t]he obligation to remit the regulatory assessment fees for any year shall apply to any utility that is subject to this Commission's jurisdiction on or before December 31 of that year or for any part of that year." The effect of this request would be to permanently waive any RAFs that would have been otherwise due for 2017 up until the application is considered by the Commission.

Section 120.542(2), F.S., authorizes the Commission to grant waivers or variances 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.

As acknowledged in Order No. PSC-2017-0357-FOF-WS,² issued September 20, 2017, the Board of County Commissioners of Leon County on June 20, 2017 passed and adopted Resolution No. R17-12, transferring regulation of the privately-owned, for profit water and wastewater utilities in the County to the Commission. Effective upon the adoption of the resolution, all non-exempt water and wastewater systems in the Leon County became subject to the provisions of Chapter 367, F.S.

On November 30, 2017, Lake Talquin filed its application for a grandfather certificate pursuant to Section 367.171(2), F.S. and Rule 25-30.035, F.A.C. Subsequently on June 4, 2018, Lake Talquin filed the instant petition seeking a variance or waiver of Rule 25-30.120, F.A.C. The underlying statutory provision pertaining to RAFs and Rule 25-30.120, F.A.C., are Sections 367.145(1) and (3), F.S., which state that:

² Id.

(1) The commission shall set by rule a regulatory assessment fee that each utility must pay in accordance with s. 350.113(3);

.....

(3) Fees collected by the commission pursuant to this section may only be used to cover the cost of regulating water and wastewater systems. Fees collected by the commission pursuant to chapters 364 and 366 may not be used to pay the cost of regulating water and wastewater systems.

The Commission's RAFs are not included in the Utility's current rates because Lake Talquin was not regulated by the Commission prior to June 2017. For that reason, the Utility argues it is placed at an unfair financial disadvantage due to its inability to collect those regulatory assessment fees in its rates.

The purpose of assessing RAFs is to defray the cost of utility regulation. The Utility contends that there have been minimal to no costs of regulating Lake Talquin under Chapter 367, F.S., absent the review of its grandfather application. The Utility also notes that it has paid the applicable filing fee of \$200 as required by Section 367.145(2), F.S., and Rule 25-30.020, F.A.C., for the processing of its grandfather filing. Additionally, the Commission has previously granted a waiver of RAFs for a similarly situated utility prior to its receipt of a grandfather certificate.³

Based on the foregoing analysis and the information provided within the Utility's petition, staff believes that Lake Talquin has met the requirements of Section 120.542, F.S., and has demonstrated that the purpose of the of the underlying statute will be or has been achieved by other means, because minimal regulation has been required at this point. Further, the strict application of Rule 25-30.120, F.A.C., would place a substantial hardship on the Utility by requiring the Utility to pay regulatory expenses for which it is not compensated through rates. Therefore, staff recommends that the Commission approve the Utility's requested waiver or variance of Rule 25-30.120, F.A.C., for a period of one year from the date of the Commission's vote, or until the Commission grants the Utility's grandfather certificate and rates are approved, whichever occurs first.

³ Order No. PSC-2018-0075-PAA-WU, issued February 12, 2018, in Docket No. 20170155-WU, In re: Application for grandfather water certificate in Leon County and application for pass through increase of regulatory assessment fees, by Seminole Waterworks, Inc.

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 grandfather water certificate and rates are approved.

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 grandfather water certificate and rates are approved.