

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-**

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**DATE:** December 28, 2022

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

**FROM:** Office of the General Counsel (Harper, Jones) *AEH*  
Division of Economics (Bruce, Hudson) *JGH*  
Division of Engineering (Davis, Ellis) *TB*  
Division of Accounting & Finance (Richards, Higgins) *ALM*

**RE:** Docket No. 20220185-WS – Application for limited alternative rate increase in Hardee, Manatee, Marion, Polk, and Pasco Counties, by Charlies Creek Utilities, LLC, Crestridge Utilities, LLC, East Marion Utilities, LLC, Heather Hills Utilities, LLC, Holiday Gardens Utilities, LLC, Lake Yale Utilities, LLC, McLeod Gardens Utilities, LLC, Orange Land Utilities, LLC, Sunny Shores Utilities, LLC, Sunrise Water, LLC and West Lakeland Wastewater, LLC.

**AGENDA:** 01/10/23 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** La Rosa

**CRITICAL DATES:** 02/06/23 (Petition for Temporary Waiver Deemed Approved if Not Granted or Denied by this Date pursuant to Section 1~~x~~20.542(8), Florida Statutes (F.S.))  
*At 12/28/22*

**SPECIAL INSTRUCTIONS:** None

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## Case Background

Florida Utility Services 1, LLC (FUS1) is a service company that owns multiple Commission-regulated utilities. On November 4, 2022, FUS1 filed an application for a limited alternative rate increase proceeding (LARI) pursuant to Rule 25-30.457, Florida Administrative Code (F.A.C),

for the following eleven utilities: Charles Creek Utilities, LLC; Crestridge Utilities, LLC; East Marion Utilities, LLC; Heather Hills Utilities, LLC; Holiday Gardens Utilities, LLC; Lake Yale Utilities, LLC; McLeod Gardens Utilities, LLC; Orange Land Utilities, LLC; Sunny Shores Utilities, LLC; Sunrise Water, LLC; and, West Lakeland Wastewater. FUS1 allocates common costs to its Commission-regulated utilities.

Rule 25-30.457(4), F.A.C., requires payment of a filing fee as required by Rule 25-30.020(2)(f), F.A.C., or the application is deemed denied. Pursuant to Rule 25-30.020(1), F.A.C., the utility must pay a separate filing fee for water services and wastewater services. In this docket, there are eleven utilities with fourteen separate water and wastewater systems. Therefore, staff determined and subsequently notified FUS1 that the filing fees under Rule 25-30.020(2)(f), F.A.C., for these fourteen systems totaled \$13,000. The following table reflects the associated fee for each water and/or wastewater system at issue.

**Table CB-1 – Filing Fees for Systems Included in the LARI**

Utility	W/WW	Design Capacity	Equivalent Residential Connection (ERC)	Filing Fee
Charlie Creek Utilities, LLC	W	133,000	380	\$1,000
Crestridge Utilities, LLC	W	432,000	1234	\$1,000
East Marion Utilities, LLC	W	180,000	514	\$1,000
	WW	50,000	179	\$500
Heather Hills Utilities, LLC	W	N/A	355	\$1,000
	WW	N/A	355	\$1,000
Holiday Gardens Utilities, LLC	W	342,000	977	\$1,000
Lake Yale Utilities, LLC	W	468,000	1337	\$1,000
	WW	55,000	196	\$500
McLeod Gardens Utilities, LLC	W	712,800	2037	\$1,000
Orange Land Utilities, LLC	W	100,000	286	\$1,000
Sunny Shores Utilities, LLC	W	N/A	262	\$1,000
Sunrise Water, LLC	W	792,000	2263	\$1,000
West Lakeland Wastewater, LLC	WW	70,000	250	\$1,000
			Total:	<b>\$13,000</b>

On November 7, 2022, FUS1 filed a petition pursuant to Section 120.542, F.S., for waiver of Rule 25-30.020(2)(f), F.A.C., (Petition), requesting that the Commission waive the \$13,000 in filing fees required by the rule and enable FUS1 to instead pay a single filing fee of \$1,000.

On December 6, 2022, staff notified FUS1 that the application had met the initial requirements imposed by Rule 25-30.457, F.A.C. However, staff could not move forward with the application until after the disposition of the rule waiver. In addition, staff confirmed that the filing fees under Rule 25-30.020(2)(f), F.A.C., for these fourteen systems totaled \$13,000, as shown in the table above.

### **Applicable Law**

Section 120.542, F.S., provides a procedure for agencies to provide relief to persons subject to regulation where the strict application of uniformly applicable rule requirements leads to “unreasonable, unfair, and unintended results in particular instances.” *See* Subsection 120.542(1), F.S. “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 application of a rule would create a substantial hardship or would violate principles of fairness.” Subsection 120.542(2), F.S.

Section 367.145, F.S., addresses the filing fees required for LARIs for water and wastewater companies. Specifically, Subsection 367.145(2), F.S., states, in pertinent part, “Each utility shall pay an application fee, established by the commission, for . . . a request for rate relief in accordance with s. 367.081 or s. 367.0814.” Accordingly, the Florida Statutes require utilities to submit an application fee when applying for a LARI.

Rule 25-30.020(2)(f), F.A.C., requires filing fees to be paid by water and wastewater utilities to the Commission for various types of staff-assisted rate cases. In pertinent part, the rule states:

For an application for a limited proceeding pursuant to Section 367.0814, F.S., the amount of the fee shall be as follows:

1. For utilities with the existing capacity to serve up to 100 ERCs, \$200;
2. For utilities with the existing capacity to serve up to 101 to 200 ERCs, \$500;
3. For utilities with the existing capacity to serve more than 200 ERCs, \$1,000. . .

### **FUS1 Application for LARI**

FUS1 filed an application pursuant to Rule 25-30.457, F.A.C. The application requests increases to recover the authorized rate of returns or operating margins that were approved in the utilities’ respective last rate case proceedings and to recover pro forma operation and maintenance, depreciation, and taxes other than income expenses. In addition to the application, FUS1 filed its Petition for a waiver of the filing fees required under Rule 25-30.020, F.A.C.

### **FUS1 Petition for Rule Waiver**

In its Petition, FUS1 recognizes its obligation to comply with the filing requirements of Rule 25-30.020(2)(f), F.A.C., but argues that the filing requirement of \$13,000 will create a substantial economic hardship for the utilities and their customers.

FUS1 argues that the \$13,000 in filing fees greatly places a limit on the utilities’ cash reserves and inhibits the ability to deal with emergencies in a proper manner. Further, the utilities may have to borrow money to pay the filing fees, which would lead to additional costs for customers.

As for the customers, FUS1 asserts that the excess filing fees will have to be paid back through rate case expense and in some cases with the utilities' allowed rate of return. FUS1 alleges that because it filed a single petition for the eleven individual utilities, customers should be paying the Commission to do the work of one system, rather than paying "[ten] times the amount for the work [done]". FUS1 further states, by filing a LARI for common costs only, Commission staff will only "have to make one calculation and apply that calculation eleven times."

### **Request for Waiver of Filing Fee**

Pursuant to Subsection 120.542(6), F.S., a Notice of Variance or Waiver was published in the December 5, 2022 edition of the Florida Administrative Register. The time for filing comments, provided by Rule 28-104.003, F.A.C., expired on December 19, 2022.

This recommendation addresses FUS1's Petition for Rule Waiver only.<sup>1</sup> Pursuant to Subsection 120.542(8), F.S., the Commission must grant or deny a request for waiver within 90 days after receipt of the original petition, the last item of timely requested additional material, or the petitioner's written request to finish processing the petition. As such, the statutory deadline for this proceeding is February 6, 2023.

The Commission has jurisdiction under Section 120.542, F.S., and Chapters 120 and 367, F.S.

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<sup>1</sup> The merits of the LARI petition will be addressed once the Commission rules on the rule waiver petition.

## Discussion of Issues

**Issue 1:** Should the Commission grant FUS1's Petition for a waiver of Rule 25-30.020(2)(f), F.A.C.?

**Recommendation:** No, the Commission should deny FUS1's Petition for a waiver of Rule 25-30.020(2)(f), F.A.C. (Jones, Hudson, Davis, Richards)

**Staff Analysis:** Subsection 120.542(2), F.S., provides a procedure for agencies to provide relief to persons when strict application of uniformly applicable rule requirements leads to unreasonable, unfair, and unintended results in particular instances. In this case, FUS1 requests that the Commission grant it a waiver of Rule 25-30.020(2)(f), F.A.C., to remit a single \$1,000 filing fee instead of the \$13,000 in filing fees which was calculated pursuant to the rule for each of the fourteen systems operated by the eleven individual utilities. FUS1 argues the rule waiver is appropriate because by filing a LARI for common costs only, the Commission staff will only have to make one calculation and apply that calculation eleven times.

An agency shall grant variances or waivers from agency rules when the person subject to the rule demonstrates both (1) that the purpose of the underlying statute will be or has been achieved by other means, and (2) that an application of the rule would either cause the person substantial hardship or violate principles of fairness. Subsection 120.542(2), F.S. That subsection goes on to define "substantial hardship" to mean a demonstrated economic, technological, legal, or other type of hardship.

The underlying statute at issue in this case is Sections 367.145, F.S. Specifically, Subsection 367.145(2), F.S., requires that each utility requesting rate relief must pay an application fee to the Commission. The Legislature intended for the Commission to create a filing fee to be paid by each utility to compensate the Commission for its work on LARIs, and the Commission has done so with its implementation of Rule 25-30.020, F.A.C., which sets forth how the filing fee is calculated based on the capacity of each water or wastewater system to serve a specific number of ERCs. Accordingly, staff believes that a modification or waiver of this rule requirement would be inconsistent with the statutes and inappropriate.

In its petition FUS1 claims, "By filing a LARI for common costs only, commission staff will have to make one calculation and apply that calculation 11 times, as they would do anyway." However, because these are not consolidated systems, an individual assessment of each individual utility and system is needed, i.e., staff must conduct a review of each of the fourteen individual systems that are shown in Table CB-1 above. The purpose of the filing fee is to defray some of the costs of processing these applications thereby allowing the Commission staff the ability to assist small water and wastewater systems. As such, a filing fee for each system is consistent with the applicable statutes and rules. Furthermore, Section 367.145(2), F.S., states that the filing fee is to be based upon the capacity of the system, not on the amount of the work

performed by the Commission.<sup>2</sup> For these reasons, staff believes that FUS1's petition failed to demonstrate how a waiver of filing fees will meet the purpose of the underlying statute.

Moreover, staff believes that FUS1's Petition failed to demonstrate how the application of Rule 25-30.020(2)(f), F.A.C., would create a substantial hardship for the utilities and their customers. While FUS1 argues the application fees would limit the utilities' cash reserves and inhibit the ability to deal with emergencies in a proper manner, staff believes the filing fees are highly predictable and incurred as a regular cost of doing business. Therefore, FUS1 failed to adequately show it meets the requirements for a rule waiver pursuant to Subsection 120.542, F.S.

### **Conclusion**

Based on the above, staff recommends that the Commission deny FUS1's Petition for a waiver of Rule 25-30.020(2)(f), F.A.C., to allow FUS1 to file a single filing fee for fourteen separate systems.

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<sup>2</sup> This is consistent with prior Commission practice. *See* Docket No. 20200152-WS, where the Commission accepted a fee of \$4,500 for processing a LARI for Alturas Water, LLC, Sunrise Water, LLC, Pinecrest Utilities, LLC, and East Marion Utilities, LLC.

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

**Recommendation:** No. The docket should remain open. (Jones)

**Staff Analysis:** With respect to Issue 1, a Consummating Order should be issued unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action portion of the order. Moreover, the docket should remain open to address the Utility's application for a limited alternative rate increase.