

MEMORANDUM

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February 20, 1998

FEB 27 1998

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FPSC - Records/Reporting

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (FLEMING, CROSBY) *JFR*

RE: DOCKET NO. 971204-WU - APPLICATION FOR AMENDMENT OF
CERTIFICATE NO. 401-W TO ADD TERRITORY IN HIGHLANDS
COUNTY BY PLACID LAKES UTILITIES, INC.

98-0341-FOF-WU

Attached is a NOTICE OF PROPOSED AGENCY ACTION ORDER GRANTING
PETITION FOR VARIANCE OF RULE 25-30.036(3)(E), FLORIDA
ADMINISTRATIVE CODE, to be issued in the above-referenced docket.
(Number of pages in order - 5)

SRF/dr

Attachment

cc: Division of Water and Wastewater (Redemann)

I:971204or.srf

1/0

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for amendment of Certificate No. 401-W to add territory in Highlands County by Placid Lakes Utilities, Inc. DOCKET NO. 971204-WU
ORDER NO. PSC-98-0341-FOF-WU
ISSUED: February 27, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION
ORDEP GRANTING PETITION FOR VARIANCE OF
RULE 25-30.036(3)(E), FLORIDA ADMINISTRATIVE CODE

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.

BACKGROUND

On September 15, 1997, Placid Lakes Utilities, Inc. (Placid Lakes or utility) filed an application for amendment of Certificate No. 401-W to include additional territory in Highlands County. Placid Lakes is a Class C utility which provides water service to 2,840 customers. The utility is 100% owned by Lake Placid Holding Company, which is the primary developer of the Placid Lake Subdivision.

DOCUMENT NUMBER-DATE

02730 FEB 27 88

FPSC-RECORDS/REPORTING

Pursuant to Rule 25-30.036(3)(e), Florida Administrative Code, a utility is required to provide a description of the additional territory it proposes to serve using township, ranges, sections, metes and bounds, with its application for amendment. The utility did not use metes and bounds in a portion of its description. The description submitted by Placid Lakes was in the form of township, section, range, streets, lots and blocks. Therefore, Placid Lakes' application for amendment of certificate was deficient. The utility was informed that it had two options. One was to change the format and renote, and the second was to file a petition for a variance of rule 25-30.036(3)(e), Florida Administrative Code.

PETITION FOR VARIANCE OF RULE 25-30.036(3)(e)

On December 1, 1997, Placid Lakes filed a petition for variance of Rule 25-30.036(3)(e), Florida Administrative Code, pursuant to Section 120.542, Florida Statutes. Section 120.542, Florida Statutes, authorizes agencies to grant variances and waivers to the requirements of their rules, if petitions for such variances and waivers are consistent with the requirements of the statute. That Section states, in part, "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 . . . and when application of a rule would create a substantial hardship or would violate principles of fairness." The statute defines "substantial hardship" as a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. In addition, according to the statute, "principles of fairness" are violated 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 subject to the rule.

As required by Section 120.542, Florida Statutes, Placid Lakes provided a statement explaining why the purpose of the underlying statute would be achieved by the utility's requested variance. According to Placid Lakes' statement, a variance of Rule 25-30.036(3)(e), Florida Administrative Code, serves the purpose of the underlying statute because property descriptions shown on the real estate taxes bills received by the customers are in the form of County section, township and range; and, therefore, customers would more readily recognize that form over a metes and bounds

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description. Further, Placid Lakes stated that it would be cost prohibitive to survey 1,000 acres of property to provide the metes and bounds description required by Rule 25-30.036(3)(e), Florida Administrative Code, and expensive to solicit the expertise of lawyers and engineers to determine where the property begins and ends.

Pursuant to Section 120.542(6), Florida Statutes, we provided notice to the Department of State, which published notice of the variance request in the Florida Administrative Weekly. No comments were received during the 14-day comment period.

The underlying statute pertaining to the rule in this instance is Section 367.045, Florida Statutes, which sets forth the application procedures for an amendment of certificate. Upon consideration, we find that requiring Placid Lakes to provide a territory description with strict adherence to Rule 25-30.036(3)(e), Florida Administrative Code, would create a substantial hardship. We believe that the customers will be able to ascertain whether they are affected or not, by the description submitted by the utility. Thus, we find that territory description provided by Placid Lakes achieves the purpose of Section 367.045, Florida Statutes.

We further find that Placid Lakes has met its statutory burden in order to be granted a rule variance under Section 120.542, Florida Statutes. Accordingly, we find it appropriate to grant Placid Lakes' petition for variance of Rule 25-30.036(3)(e), Florida Administrative Code.

Based on the foregoing, it is,


ORDERED by Florida Public Service Commission that Placid Lakes Utilities, Inc.'s Petition for Variance of Rule 25-30.036(3)(e), Florida Administrative Code, is granted. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

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ORDERED that in the event this Order becomes final, this docket shall remain open pending further review of Placid Lake Utilities, Inc.'s application for amendment of Certificate No. 401-W.

By ORDER of the Florida Public Service Commission this 27th day of February, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

SRF

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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review 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.

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The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 20, 1998.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.