

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application by United Water Florida Inc. for tariff revision and petition for waiver of or variance from Rule 25-30.320(2)(g), F.A.C., in Duval County.

DOCKET NO. 980112-WS  
ORDER NO. PSC-98-0685-FOF-WS  
ISSUED: May 18, 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  
ORDER GRANTING PETITION FOR WAIVER OR VARIANCE  
OF RULE 25-30.320(2)(g)

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein, granting petition for waiver or variance, 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

United Water Florida Inc. (UWF or utility) is a Class A utility providing water and wastewater service to approximately 29,000 customers in Duval, Nassau, and St. Johns Counties. According to its 1996 annual report, the utility's operating revenues were \$7,274,333 for its water service and \$14,584,266 for its wastewater service. The utility serves an area that has been designated by the St. Johns River Water Management District as a critical use area. The utility's current rates were approved pursuant to Order No. PSC-97-0618-FOF-WS, issued May 30, 1997, in Docket No. 960451-WS.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

On January 23, 1998, the utility filed an application for tariff revision, petition for waiver or variance from Rule 25-30.320 (2)(g), Florida Administrative Code, and request for Commission approval of a proposed agreement between the utility and the City of Jacksonville (City) whereby each entity would discontinue water service to customers who are delinquent in payment for wastewater service provided by the other entity. The utility seeks to revise its tariff to include the proposed agreement.

By Order No. PSC-98-0448-PCO-WS, issued March 30, 1998, we suspended the proposed tariff filed by the utility pursuant to Section 367.091(5), Florida Statutes.

PETITION FOR WAIVER OR VARIANCE

In its petition, the utility seeks a variance or waiver of Rule 25-30.320(2)(g) so that it can revise its tariff to implement a proposed agreement between the utility and the City whereby each entity would discontinue water service to customers who are delinquent in payment for wastewater service provided by the other entity.

Rule 25-30.320(2)(g), Florida Administrative Code, states the following:

a utility may discontinue service for nonpayment of bills or noncompliance with the utility's rules and regulations in connection with the same or different type or a different class of utility service furnished to the same customer at the same premises by the same or affiliated utility only after there has been a diligent attempt to have the customer comply, including at least 5 working days' written notice to the customers. (emphasis added)

In its petition, the utility states that the City and the utility will work together to enforce payment of wastewater charges by using the termination of water service by the water service provider. The utility asserts that it is seeking a permanent variance. The utility argues that a strict application of the rule would impose a substantial hardship on its ability to terminate water service for nonpayment of bills for wastewater service because the City provides water service to certain customers. The utility states that denying the waiver would frustrate the purpose of the underlying statutes. The utility also states that the

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City's authority to enter into contracts pursuant to Section 159.18(2), Florida Statutes, will be null and ineffective if the variance or waiver is not granted.

In particular, Section 159.18(2), Florida Statutes, provides the following:

Any municipality shall have power to enter into valid and legally binding contracts with any person, public or private corporation, board or other body supplying water to any premises served by the sewer system or charges or facilities of the municipality for the shutting off and discontinuing of the supply of water to such premises as long as any charges for the sewer services or terms and conditions as shall be mutually agreed upon, including provisions for billing and collecting of the sewer charges of the municipality by the owners of the water facilities at the same time water charges are billed and collected by such owners of the water facilities.

#### Statutory Requirements

Pursuant to Section 120.542(6), Florida Statutes, on February 11, 1998, the Commission provided notice to the Department of State, which published notice of the waiver request in the Florida Administrative Weekly. After reviewing the petition, we found no deficiencies. We did not receive any comments regarding the utility's petition. Pursuant to Section 120.542(8), Florida Statutes, we are required to issue an order in writing granting or denying the petition for waiver or variance stating the relevant facts and reasons supporting our decision within ninety days after receipt of the original petition. By letter dated March 17, 1998, the utility waived the ninety-day statutory period.

Section 120.542(2), Florida Statutes, in pertinent parts, provides that "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 that application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, substantial hardship means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver".

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### The Underlying Statute

The underlying statute pertaining to the rule in this instance is Section 367.121, Florida Statutes, which provides that the Commission shall have the power to prescribe fair and reasonable rates and charges, classifications, standards of quality and measurements, and to prescribe service rules to be observed by each utility. This statute does not explicitly address the issue of termination for nonpayment of bills. However, Rule 25-30.320 (2)(g), provides that the same or affiliated utility may terminate service for the nonpayment of bills. This rule implements Section 367.121, Florida Statutes. (emphasis added)

While we note that the utility and the City are not affiliated utilities, we agree with the utility that the purpose of the underlying statute will be promoted by granting the variance or waiver of Rule 25-30.320(2)(g), Florida Administrative Code. We believe that the utility should have the ability to collect its approved rates prescribed by the Commission pursuant to Section 367.121, Florida Statutes. We also agree with the utility that the purpose of Section 159.18, Florida Statutes, would be frustrated unless the variance or waiver is granted.

By Order No. PSC-97-1362-FOF-WU, issued October 28, 1997, in Docket No. 961529-WU, we approved a similar agreement between Florida Public Utilities Company and the City of Fernandina Beach. In the same Order, we found that it was appropriate to initiate rulemaking proceedings to amend Rule 25-30.320(2)(g), Florida Administrative Code, because of the apparent conflict with Section 159.18(2), Florida Statutes. Therefore, we believe that approving the agreement between this utility and the City is consistent with our past decision in Docket No. 961529-WU. As a point of information, we have begun the rulemaking process to modify Rule 25-30.320(2)(g), Florida Administrative Code.

### Substantial Hardship

We believe that the application of the rule would create a substantial hardship for the utility. The utility states that it would have to sue each delinquent customer for nonpayment of bills if it does not have a cost effective manner to require that customers pay for service. The utility further states that its bad debt expense will be adversely affected if it does not have an economical or practical method to terminate its delinquent wastewater customers who receive water service from the City.

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Therefore, we believe that the application of the rule would create a substantial economic hardship on the utility.

Regarding the provision of the agreement which allows the City to terminate water service of customers who are delinquent in paying the utility's wastewater charges, the City is not subject to the Commission's regulation pursuant to Section 367.022, Florida Statutes. Therefore, no ruling is necessary concerning the City's authority to terminate water service to customers who are delinquent in paying the utility's wastewater bills. The proposed tariff also contains the provision which allows the City to terminate water service of customers who are delinquent in paying the utility's wastewater charges. We believe that this provision in the tariff will provide notice to customers that for nonpayment of the utility's wastewater bills the City may terminate their water service.

Based on the foregoing, we find it appropriate to grant UWF's petition for variance or waiver because the utility has demonstrated that a waiver of Rule 25-30.320(2)(g), Florida Administrative Code, would serve the underlying purpose of Section 367.121, Florida Statutes, and the application of the rule would create a substantial hardship for the utility. Accordingly, we find that UWF has satisfied the statutory requirements of Section 120.542(2), Florida Statutes. Accordingly, the proposed agreement and application for tariff revision are approved.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that United Water Florida Inc.'s Petition for Waiver or Variance of Rule 25-30.320(2)(g), Florida Administrative Code, is hereby granted. It is further

ORDERED that application for tariff revision filed by United Water Florida Inc., is hereby approved. It is further

ORDERED that the agreement between United Water Florida Inc. and the City of Jacksonville is hereby approved. 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,

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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

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 18th day of May, 1998.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

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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.

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 June 8, 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.