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November 1, 1999

VIA FEDERAL EXPRESS

Joint Administrative Procedures Committee
Room 120, Holland Building
Tallahassee, FL 32399-1300

991660-WS

Re: Petition for Emergency Temporary Variance from Rule

Dear Sir:

Enclosed you will find the Petition for Emergency Temporary Variance from Rule filed with the Florida Public Service Commission by United Water Florida, Inc. This Petition seeks a variance from Rule 25-30.030(4)(c) which would require the Petitioner's notice to its customers to include a 125 page legal description of its territories. United Water of Florida, Inc. will be sending an Application for Transfer of Majority Organizational Control of its corporate grandparent, United Water Resources, Inc. to Lyonnaise American Holding, Inc. to approximately 34,000 customers in Florida. The request for variance seeks to reduce the description of territories to a single page which would be more manageable and more understandable.

In addition to requesting a variance from the Rule, United Water Florida has requested that this variance be considered on an emergency basis. The proposed \$1 billion transaction is being coordinated in multiple jurisdictions. The statute which would allow a 90 day review by the Commission for this procedural matter would delay the application on the primary transaction and ultimately result in an unreasonable and harmful delay in the consummation of the merger transaction. This Notice is provided to the Joint Administrative Procedures Committee pursuant to Fla. Admin. Code r. 28-104.002(1).

Sincerely,



Daniel D. Richardson

DDR:ch
cc: Ms. Blanca Bayo (w/out encl.)

DOCUMENT NUMBER-DATE

13538 NOV-3 99

FPSC-RECORDS/REPORTING

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of United Water)
Florida, Inc. for Transfer of Majority)
Organizational Control of its)
Corporate Grandparent, United)
Water Resources, Inc. to Lyonnaise)
American Holding, Inc.)
_____)

PETITION FOR EMERGENCY TEMPORARY VARIANCE FROM RULE

1. This Petition for Emergency Temporary Variance of Rules is filed pursuant to Fla. Admin. Code r. 25-30.011(2) (1999), Fla. Admin. Code r. 28-104.004 (1999), Fla. Admin. Code r. 28-104.002 (1999), and Fla. Stat. §120.542(5) (1997).

INTRODUCTION

2. The Petitioner, UNITED WATER FLORIDA, INC. ("United Water FL"), hereby petitions the Florida Public Service Commission ("Commission") for an emergency temporary variance of Fla. Admin. Code r. 25-30.030(4)(C) (1999) which relates to the form of notice to be provided for an unfiled Application for Transfer of Majority Organizational Control. United Water Resources, Inc. ("United Water") is the corporate grandparent of United Water FL. Lyonnaise American Holding, Inc. ("Lyonnaise") is currently a 30% shareholder of United Water and will seek to become the sole shareholder through a pending merger. This one billion dollar transaction, which involves both water and wastewater operations and will require the approval of the shareholders of United Water and numerous state public service commissions.

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FPSC-RECORDS/REPORTING

Petitioner is actively preparing an Application to the Commission for Transfer of Majority Organizational Control pursuant to Fla. Admin. Code r. 25-30.037 (1999), together with the appropriate notices required by rule. This Petition seeks emergency relief from certain notice requirements.

3. The provisions of Fla. Admin. Code r. 25-30.030(4)(c) (1999) would require that the full legal description of the territories of United Water FL be included in the public notice. Fla. Admin. Code r. 25-30.030(6) (1999) and Fla. Admin. Code r. 25-30.030(7) (1999) require that the notice be mailed to each customer and published in a newspaper of general circulation in the territory proposed to be served. The current legal descriptions of United Water FL territories fill approximately 125 pages. The 34,000+ customers of United Water FL could not reasonably be expected to benefit from such a voluminous and cumbersome notice. On the contrary, such customers likely would be confused or even reluctant to read such a lengthy notice. The distribution and publication of the complete legal descriptions would also present an unusual hardship and unreasonable difficulty for the Petitioner.

When this issue was addressed by the Commission in 1994, the Commission concurred and granted the requested relief. See, In re: Jacksonville Suburban Utilities Corporation (Fla. P.S.C.) Docket 940745WS PSC-94-1236-FOF-WS. In that instance, the Petitioner, a predecessor of United Water FL, was allowed to reduce the description of its territories to a one-page description. This Petition requests the same relief previously granted. In 1994 it was argued that a merger of a corporate grandparent did not even require Commission action. The Commission did

not agree. In this Petition, the jurisdiction of the Commission is not contested. However, the form of Notice presents the very same issue previously addressed. The only difference is that instead of 130 pages, the legal description is approximately 125 pages. An approximate 125-page legal description is still too voluminous to be manageable by the Petitioner or the public.

EMERGENCY NATURE OF RELIEF REQUESTED

4. Pursuant to Fla. Stat. §120.542 (1997), the process for requesting variances allows the Commission 90 days to grant or deny a Petition after it is deemed complete. In this instance, because the request for relief relates to a procedural matter related to the notice requirements, that 90 days would have to precede the filing of the Application for Transfer of Majority Organizational Control which, itself, will require time for Commission review and final action. The two time requirements taken together will not allow the Petitioner to secure the timely approval of the Commission which must be coordinated with the approvals of the shareholders and other state public service commissions. A 90-day delay prior to filing the Application for Transfer of Majority Organizational Control would result in an immediate and material adverse effect upon the Petitioner.

5. The transaction costs associated with the proposed merger are very significant. It is unreasonable to require United Water to expend the funds necessary to proceed with all other regulatory entities before proceeding in Florida due to a 90-

day procedural delay related to the form of notice. In prior applications, Florida's review process has taken seven months from the date of application, longer than any other jurisdiction. A 90-day delay before the Application can be filed would have a significant negative impact on the coordination of reviews. It was anticipated that all regulatory approvals would be secured by March 2000. Given the very limited nature of the relief sought herein by the grandparent of the regulated utility in Florida and the fact that this relief has been previously granted by the Commission in similar circumstances, it would be unreasonable to require this one billion dollar transaction to be delayed for 90 days in Florida while this Petition for Variance is processed pursuant to the rule. Fla. Admin. Code r. 28-104.005 (1999) expressly provides for a 30-day Commission review in emergency situations.

6. The name, address, telephone number and facsimile number of Petitioner is as follows:

United Water Florida, Inc.
1400 Millcoe Road
Post Office Box 8004
Jacksonville, FL 32225
Telephone: (904) 721-4601
Facsimile: (904) 721-4658

7. The name, address, telephone number and facsimile number of the attorneys for the Petitioner is as follows:

Daniel D. Richardson, Esq.
M. Gayle Holm, Esq.
LeBoeuf, Lamb, Greene & MacRae, L.L.P.
50 N. Laura Street, Suite 2800
Jacksonville, FL 32202
Telephone: (904) 354-8000

Facsimile: (904) 353-1673

8. The applicable rule or portion of the rule from which a variance is sought:

Fla. Admin. Code r. 25-30.030(4)(c) (1999)

9. The citation to the statute the rule is implementing is:

Fla. Stat. §367.071 (1997)

10. The type of action requested is:

Emergency Temporary Variance to allow an abbreviated form of territory description of United Water FL to be provided by mail to customers, agencies and utilities as well as in the newspaper publication of notice of the Petitioner's Application for Transfer of Majority Organizational Control

11. The specific facts that demonstrate a substantial hardship or a violation of principle of fairness that would justify a variance for the Petitioner are:

- a. The notice involves a merger of the grandparent corporation of the Florida corporation holding Certificates from the Commission.
- b. The legal descriptions of United Water FL's multiple territories consumes approximately 125 pages.
- c. United Water FL currently services approximately 34,000 customers who are to receive a mailed notice of the subject merger.
- d. The costs of photocopying and mailing a 125-page notice to 340,000 customers will be excessive and unreasonable.

The cost of publishing such an extensive description in the newspaper is, likewise, excessive and unreasonable.

- e. The receipt of a 125-page legal description by a customer would be confusing and overwhelming. Such a requirement would frustrate the intent of the rule.
- f. In addition to utility customers, numerous governmental agencies and other utilities are to receive mailed notices pursuant to Fla. Admin. Code r. 25-30.030 (1999).
In addition to mailed notices, a published notice is prescribed.
- g. The territories of United Water FL can be described in a much shorter and understandable manner by listing Florida counties effected. A general map of the effected territories is available if the Commission desires (copy attached).
Such a notice could be reduced to a single page in the individually mailed notices and a single newspaper page in the published notice.
- h. The Commission has previously determined that the proposed variance will provide reasonable notice to customers, agencies and the public and is consistent with the purpose and intent of the rule.

- i. The full legal description of the territories of United Water Florida will be filed with the Commission pursuant to Fla. Admin. Code r. 25.30.030(2)

12. The reason this variance would serve the purpose of the underlying statute was articulated in the prior opinion of the Commission:

The applicants argue that the full territory description may be confusing and not overly useful to the customers. They further argue that the costs of preparing, photocopying, and mailing a notice of 130 or more pages to 27,000 customers will be excessive. We agree. Therefore, we hereby exercise our authority under Rule 25-30.011(2), Florida Administrative Code, to temporarily exempt the utility from full compliance with Rule 25-30.030(4)(c), Florida Administrative Code, with respect to its customer notice mailings for purposes of this application only. Instead of providing a full territory description to each customer, the utility shall mail a notice to each customer which simply identifies each county that has been affected by the transfer. This should reduce the length of the notice from 130 pages to only one page per customer address, which will greatly reduce the burden on the utility to comply with Rule 25-30.030(6), Florida Administrative Code. REQUEST FOR WAIVER OF RULE 25-30.030(7), FLORIDA ADMINISTRATIVE CODE, AND REQUEST FOR WAIVER OF RULE 25-30.030(4)(c), FLORIDA ADMINISTRATIVE CODE, AS APPLIED TO NOTICING BY PUBLICATION. PSC Docket No. 940743WS, PSC-94-1256-FOF-WS Re: Jacksonville Suburban Utilities Corporation October 11, 1994

* * * * *

We agree that it would be unreasonable to require the utility to publish 100 or more pages. However, we do not believe it unreasonable to require the utility to publish a one-page newspaper notice. According to the Mullane Court, "publication traditionally has been acceptable as notification supplemental to other action which in itself may reasonably be expected to convey a warning." 339 U.S. at 316. By ordering the utility to mail a one-page notice to each customer address, we are, in effect, saying that we reasonably expect such notice to adequately convey the "warning." It would follow that the newspaper publication, being merely a supplemental notice, need not convey more information than that which the principal notice conveys. PSC Docket No. 940743WS, PSC -94-1256-FOF-WS Re: Jacksonville Suburban Utilities Corporation October 11, 1994

13. The Variance requested is temporary in that it applies only to the Petitioner's notice associated with its Application for Transfer of Majority Organizational Control.

WHEREFORE, Petitioner requests an emergency temporary variance from the Public Service Commission's rules which will grant (a) a thirty-day decision with regard to this Petition, (b) permission to provide a one-page notice to customers, agencies and utilities and (c) permission to publish a one-page notice in the newspaper with the same information as the mailed notice.

Respectfully Submitted,

LEBOEUF, LAMB, GREENE & MACRAE,
L.L.P.

By: 

Daniel D. Richardson

Florida Bar No. 164706

M. Gayle Holm

Florida Bar No. 909297

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Jacksonville, FL 32202

Telephone: 904/354-8000

Facsimile: 904/353-1673

Attorneys for Petitioner

United Water Florida, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by
Federal Express this 29 th day of October 1999 to Ms. Blanca Bayo, Director of
Records and Reporting, Florida Public Service Commission, 2540 Shumard Oak
Boulevard, Tallahassee, FL 32399-0850.


Attorney

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DUVAL COUNTY

CLAY COUNTY

ST. JOHNS COUNTY

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Yulee

Riverside

Bon Air

Lake Forest

Mag Garden

Arlington

Westwood

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