

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: December 22, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Osborn, Crawford) *JSC*
Division of Engineering (Kistner, Ellis, Thompson) *TB*

RE: Docket No. 20200226-SU – Application for certificate to provide wastewater service in Charlotte County, by Environmental Utilities, LLC.

AGENDA: 01/05/21 – Regular Agenda – Rule Waiver and Proposed Agency Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: 01/12/21 (90-Day Statutory Deadline to Address Rule Waiver)

SPECIAL INSTRUCTIONS: None

Case Background

On October 13, 2020, Environmental Utilities, LLC. (EU or Utility) filed its application for an original wastewater certificate in Charlotte County. The area is in the Southwest Florida Water Management District (SWFWMD). There are 1,164 existing equivalent residential connections (ERCs) and 1,683 potential ERCs in the proposed service area. Virtually all are single family residences. These properties are all currently being served by septic tanks. The Utility intends to begin serving customers by December 2022.

The Utility's initial application was found to be deficient and the Utility is in the process of correcting the deficiencies. On October 14, 2020, the Utility filed a petition for temporary waiver of portions of Rule 25-30.033, Florida Administrative Code (F.A.C.), so that the Utility's initial rates and charges might be set at a date subsequent to the granting of the certificate of authorization. The

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Commission has 90 days to grant or deny the waiver pursuant to Section 120.542(8), Florida Statutes (F.S.). Thus, the Commission has until January 12, 2021 to rule on the request for a waiver.

The owners of the Utility also own Little Gasparilla Water Utility, Inc., which has been in operation since 1986 and certificated by this Commission originally in 2000 until Charlotte County took over jurisdiction; and then again in 2013 after Charlotte County ceded jurisdiction back to the Commission. Potable water service to various parts of the proposed service area is provided by Charlotte County, Little Gasparilla Water Utility, Inc., Bocilla Utilities, Inc., and Knight Island Utilities, Inc. The proposed wastewater service will be provided by the Utility pursuant to a Bulk Sewer Treatment Agreement entered into on July 14, 2020 with Charlotte County.

Staff's recommendation addresses EU's request for a temporary rule waiver of Rule 25-30.033(1)(p) and (q), F.A.C. A separate recommendation will be filed, for a subsequent Commission Conference, addressing EU's request for a certificate of authorization. If the rule waiver addressed herein is granted, an additional, separate recommendation would be filed in 2022 addressing EU's initial rates and charges. The Commission has jurisdiction pursuant to Sections 367.031, 367.045, and 120.542, F.S.

Discussion of Issues

Issue 1: Should the Commission grant Environmental Utilities LLC.'s petition for a temporary waiver of Rule 25-30.033(1)(p) and (q), F.A.C.?

Recommendation: Yes. The Utility has met the requirements found in Section 120.542, F.S., and the Commission should grant EU's petition for temporary waiver of Rule 25-30.033(1)(p) and (q) until the Utility has completed its permitting and is closer to the commencement of its operations. EU should file the information required to set initial rates and charges in the first quarter of 2022. EU should also be required to send a status update to the Commission every six months from the date of the order as to the status of the Utility's permitting with DEP and SWFWMD, and the anticipated date of the commencement of its operations. (Osborn, Crawford)

Staff Analysis: Rule 25-30.033(1)(p) and (q), F.A.C., directs the applicant for an original certificate to file information necessary for setting initial rates and charges, including: the filing of the existing and projected cost of the system and associated depreciation by year, the existing and projected annual contributions-in-aid-of-construction and associated amortization by year, the projected capital structure, current and projected annual operating expenses, a schedule showing how the proposed rates were developed, a schedule showing how the proposed service availability policy and charges were developed, a schedule showing how the customer deposits and miscellaneous service charges were developed, and a draft of the proposed tariff for the Utility. EU has asked for a temporary waiver of these rules so that it may receive its certificates from the Commission and then proceed with other permitting. When EU has received its permits, it will then be able to provide accurate cost estimates, schedules, and cost studies to support initial rates and charges.

Section 120.542, F.S., authorizes the Commission to grant variances or waivers to the requirements of its rules where the person subject to the rules has demonstrated that the underlying purpose of the statute has been or will be achieved by some other means, and that strict application of the rules would cause the person substantial hardship or would violate principles of fairness. "Substantial hardship" as defined in this section means demonstrated economic, technological, legal, or other hardship.

Section 367.031, F.S., requires each utility seeking to provide water and wastewater service to obtain a certificate of authorization from the Commission prior to obtaining permits from the Department of Environmental Protection (DEP) and the state's water management districts. Further, Section 367.045(5)(a), F.S., states that the Commission may grant a certificate of authorization if it is in the public interest. The purpose of Sections 367.031 and 367.045, F.S., is to ensure that a utility has the financial and technical ability to provide service and that there is a need for service in the proposed service area.

EU states that although it does not expect to provide service until 2022, Section 367.031, F.S., requires the Utility obtain certificates from the Commission prior to DEP issuing construction permits. Until such permits are issued, the Utility will not have the financial information required for the Commission to set initial rates. Trying to accurately establish initial rates in the absence

of such necessary information presents an undue hardship to EU, should the provisions of Rule 25-30.033, F.A.C., be strictly applied.¹

The Commission has previously granted a temporary waiver of the rules regarding establishment of initial rates and charges and bifurcated the two parts (granting the certificate, and setting rates) of original certification proceedings.² The underlying statutory provisions pertaining to the above-mentioned rules are Sections 367.031 and 367.045, F.S. Section 367.031, F.S., requires each utility seeking to provide water and wastewater service to obtain a certificate of authorization from the Commission prior to obtaining permits from the DEP and water management districts. Section 367.045(5)(a), F.S., states that the Commission may grant a certificate of authorization if it is in the public interest. The purpose of Sections 367.031 and 367.045, F.S., is to ensure that a utility has the financial and technical ability to provide service, that there is a need for service in the proposed service area, and to determine the existence or nonexistence of service from other sources within geographical proximity to the proposed service area. Waiver of the parts of the rule that require information to be filed that is needed to set rates will not prevent the Commission from determining whether the Utility is financially or technically able to provide service, whether the service is needed, or whether service can be provided from other sources when the application for original certificate is before the Commission. Rates can be set at a later date, and often are.³ Therefore, staff believes that the public interest can still be served, the Commission's mandate can still be fulfilled, and the long range and short term planning of the Utility can still be facilitated without requiring the utility to comply with the rate setting portion of the rule at this time, concurrent with the certificate portion of its application.

EU has requested this waiver until it receives its other permits and is closer to commencing operations. EU states that it will file its proposed tariffs and other required financial schedules to set initial rates sufficiently in advance of beginning operations so that the Commission would have sufficient time to review and to establish initial rates and charges. EU expects to file the information required to set initial rates and charges in the first quarter of 2022, which will be at least nine months prior to the December 2022 date EU plans to commence service to customers.

Staff recommends that the Utility has met the requirements found in Section 120.542, F.S., and the Commission should grant EU's petition for temporary waiver of Rule 25-30.033(1)(p) and

¹ Motion to Bifurcate and for Temporary Rule Wavier, filed 10/14/2020, Document No. 11172-2020.

² See, e.g.: Order Nos. PSC-13-0324-FOF-WS, issued July 15, 2013, in Docket No. 20130105-WS, *In re: Application for certificates to provide water and wastewater service in Hendry and Collier Counties, by Consolidated Services of Hendry & Collier, LLC.*; PSC-2017-0059-PAA-WS, issued February 24, 2017, in Docket No. 160220-WS, *In re: Application for original water and wastewater certificates in Sumter County by South Sumter Utility Company, LLC.*; PSC-2020-0473-PAA-WS, issued November 24, 2020, in Docket No. 2020015-WS, *In re: Application for certificates to provide water and wastewater service in Lake and Sumter Counties, by Gibson Place Utility Company, LLC.*

³ See, e.g., Order No. PSC-06-1015-PAA-WS, issued December 11, 2006, in Docket No. 060601-WS, *In re: Application for certificates to provide water and wastewater service in Okeechobee County by Grove Utilities, Inc.*; Order No. PSC-06-0835-PAA-WS, issued November 9, 2006, in Docket No. 060276-WS, *In re: Applications for certificates to provide water and wastewater service in Putnam County by Mariposa Utilities Company, LLC.*; Order No. PSC-05-0844-PAA-WS, issued August 18, 2005, in Docket No. 050192-WS, *In re: Application for certificates to provide water and wastewater service in Sumter County by Central Sumter Utility Company, LLC.*

(q) until it has completed its permitting and is closer to commencement of operations. EU should file the information required to set initial rates and charges in the first quarter of 2022. EU should also be required to send a status update to the Commission every six months from the date of the order as to the status of the Utility's permitting with DEP and SWFWMD, and the anticipated date of the commencement of its operations.

Issue 2: Should this docket be closed?

Recommendation: No. If no timely protest is received to the proposed agency action, the Order will become final upon the issuance of a Consummating Order. However, the docket should remain open pending the Commission's action on the Utility's application for an original wastewater certificate, and setting initial rates and charges. (Osborn, Crawford)

Staff Analysis: If no timely protest is received to the proposed agency action, the Order will become final upon the issuance of a Consummating Order. However, the docket should remain open pending the Commission's action on the Utility's application for an original wastewater certificate, and setting initial rates and charges.