

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: June 3, 2021

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Osborn, Crawford) *JSC*
Division of Engineering (Kistner, Ellis, Thompson) *TB*
Division of Accounting and Finance (Norris, Thurmond) *ALM*
Division of Economics (Bruce, Hudson) *JCH*

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

AGENDA: 06/15/21 – Regular Agenda – Decision on Motion for Reconsideration – Oral argument not requested; participation is at the Commission’s discretion

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham

CRITICAL DATES: None

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. With its application, EU 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. This petition for temporary rule waiver was denied by Order No. PSC-2021-0066-PAA-SU, issued February 2, 2021.

Pursuant to Rule 25-30.030, F.A.C., EU both published notice in the proposed service area, and provided notice by mail to property owners in the service area EU proposes to serve. Timely objections to EU’s application have been filed with the Commission; therefore, this matter will

be set for an administrative hearing. One of the objectors who has requested a hearing is Ms. Linda Cotherman, a resident in the area EU proposes to provide wastewater service.

As part of the information required to support its certificate application, EU filed certain financial information, together with a request for confidential classification of that information, on October 14, 2020. Pursuant to Section 367.156(1), Florida Statutes (F.S.), confidential treatment of the information was granted by Order No. PSC-2021-0087-CFO-SU (Order), issued February 19, 2021, for a period of 18 months from the date of the Order. On March 1, 2021, Ms. Cotherman timely filed a Motion for Reconsideration (Motion) of the Order. EU responded to Ms. Cotherman's Motion on March 8, 2021, and Ms. Cotherman filed an Amended Motion for Reconsideration on March 12, 2021.

Ms. Cotherman did not request oral argument regarding her Motion for Reconsideration, as amended. Pursuant to Rule 25-22.0022, F.A.C., the Commission may hear argument from the parties at its discretion.¹

The Commission has jurisdiction pursuant to Sections 367.031, 367.045, 367.081, and 367.156, F.S.

¹ Rule 25-22.0022(1) and (7)(a), F.A.C., provides that the failure to timely request oral argument on dispositive motions (including motions for reconsideration) constitutes waiver thereof. However, Rule 25-22.0022(1) and (7)(b), F.A.C., provides that the Commission has the discretion to request oral argument on a dispositive motion, if it decides that oral argument would aid the Commission in its understanding and disposition of the underlying matter. If the Commission wishes to hear oral argument on this item, staff recommends that the Commission allow three minutes per side.

Discussion of Issues

Issue 1: Should the Commission grant Ms. Cotherman’s Motion for Reconsideration, as amended, of Order No. PSC-2021-0087-CFO-SU?

Recommendation: No. The Motion for Reconsideration, as amended, should be denied because Ms. Cotherman has failed to identify a point of fact or law that was overlooked or that the Prehearing Officer failed to consider in rendering the Order. (Osborn, Crawford)

Staff Analysis:

Standard of Review

The appropriate standard of review in a motion for reconsideration is whether the motion identifies a point of fact or law that was overlooked or that the Commission failed to consider in rendering its Final Order. Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3d DCA 1959), citing State ex rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted “based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review.” Stewart Bonded Warehouse, 294 So. 2d at 317.

Motion for Reconsideration

In her March 1, 2021 Motion for Reconsideration, Ms. Cotherman argues that there are disputed factual issues about EU’s financial ability to provide service to the proposed service area. She claims that EU has not demonstrated sufficient financial resources to handle the business of a public utility and states the Utility has not provided any information as to the cost to residents of installation or service. Ms. Cotherman also claims that, “Depriving the public of the knowledge about the financial health/wherewithal of Environmental Utilities, LLC, places the parties of record at a disadvantage of being able to gauge one of the central requirements for the proposed utility’s ability to satisfy the elements necessary to obtain a certificate.” Ms. Cotherman argues that these claims show good cause for the Commission to reconsider its Order and publish the financial information the Order protects.

Ms. Cotherman subsequently filed an Amended Motion for Reconsideration on March 12, 2021, in which she again asserts that there are disputed factual issues about EU’s financial ability to provide service to the proposed service area and the lack of any information of the cost to residents of installation or service. Ms. Cotherman adds that she was a party in a similar case with some of the same parties (Docket No. 20020745-SU) and prevailed in her arguments to the Commission. She also maintains that just because EU has reached a Confidentiality Agreement with another party does not mean she would have access to the confidential documents because of her relationship with that party.

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Utility's Response to Motion for Reconsideration

In its March 8, 2021 response, EU argues that Ms. Cotherman has no legitimate need for the confidential financial information. The response also claims that Ms. Cotherman is a member of the Board of Directors of the Palm Island Estates Association, Inc. (Palm Island). Palm Island is the homeowners association for the Palm Island Estates community, whose individual residents reside in the area where EU proposes to provide wastewater service. Palm Island timely objected to EU's application and requested an administrative hearing. EU entered into a Confidentiality Agreement with Palm Island's attorney, Brad Kelsky, and provided him with the confidential financial information. EU also provided the confidential information to the Office of Public Counsel, an interested party, after their request, based on their assurance that it would be treated as confidential. EU is not willing to enter into a Confidentiality Agreement with Ms. Cotherman "since she suffers no adverse consequences from breaching that confidentiality."

EU also argues that financial statements of persons and entities that are not the regulated utility have been recognized by the Commission many times as confidential and that there is no factual or legal basis to support Ms. Cotherman's Motion.

Analysis

Ms. Cotherman's Motion for Reconsideration, as amended, does not cite to any point of fact or law that was overlooked, or that the Prehearing Officer failed to consider in rendering his decision to grant EU's Request for Confidential Classification. Her motion argues that she and the public need to see the financial information to determine EU's financial ability to provide service to the proposed service area. Her motion also argues that there has been a lack of any information regarding installation or service costs. As already considered by the Prehearing Officer, EU provided the confidential information for the specific and limited purposes of satisfying the requirements of Rule 25-30.033(1)(h), F.A.C., and to enable the Commission to determine the ability of the owners to provide the necessary financial support to the Applicant. The confidential financial information of the owner is not related to any ratemaking function with regard to the Utility, but will be used to determine the owner's financial viability to run the utility. The Commission, its staff, and parties with executed nondisclosure agreements have access to the financial information, and will be able to use that information to help determine EU's financial ability to provide service as part of its application, per Rule 25-30.033, F.A.C.

Conclusion

Staff recommends that Ms. Cotherman's Motion for Reconsideration, as amended, should be denied because it does not meet the required standard for a motion for reconsideration. Ms. Cotherman has failed to identify a point of fact or law that was overlooked or that the Prehearing Officer failed to consider in rendering Order No. PSC-2021-0087-CFO-SU, Order Granting Request for Confidential Classification.

Issue 2: Should this docket be closed?

Recommendation: No. The docket should remain open pending the Commission's action on the Utility's application for an original wastewater certificate. (Osborn, Crawford)

Staff Analysis: The docket should remain open pending the Commission's action on the Utility's application for an original wastewater certificate.