

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for certificates to provide water and wastewater service in Glades County and water service in Highlands County by Silver Lake Utilities, Inc.	DOCKET NO. 060726-WS ORDER NO. PSC-07-0328-PAA-WS ISSUED: April 16, 2007
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The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman  
MATTHEW M. CARTER II  
KATRINA J. McMURRIAN

NOTICE OF PROPOSED AGENCY ACTION  
ORDER GRANTING VARIANCE FROM RULE 25-30.033(1)(I),  
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 November 3, 2006, Silver Lake Utilities, Inc. (Silver Lake, utility, or applicant) filed an application for original water and wastewater certificates in Glades County and for an original water certificate in Highlands County, Florida. The utility's proposed service territory consists of approximately 350,000 acres, comprising the Lykes Bros. Inc. (LBI) Ranch, a proposed Muse Village development in Glades County, and an existing West Glades School campus. LBI primarily uses this land for cattle ranching, citrus, timber, and sugar cane production, employee housing and recreation. This proposed service territory is located in the South Florida Water Management District, and part of it is in a critical water supply problem area.

According to the certificate application, ranching and farming operations will continue and expansion of these activities is anticipated. Residential developments, like the proposed Muse Village, are also planned for the area. A need to establish the proposed utility exists due to the existing water uses associated with employee housing and company offices located on the ranch property; the request for water and wastewater service by the West Glades School campus; and the need for water and wastewater service by the proposed residential developments. Upon certification, the utility will begin providing service to the West Glades School campus. The

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communities and developments will be constructed on a phased basis over the period of 15 to 20 years, with the first phase involving the provision of water service to Muse Village in 2008, or sometime shortly thereafter. The development of bulk water rates are also proposed in order to supply raw and treated bulk water to meet demands outside of the proposed service area. Numerous areas surrounding the proposed service area will require potable and non-potable water in the near future as growth and development continues.

On December 29, 2006, Silver Lake filed a Motion for Rule Variance from the strict requirements of Rule 25-30.033(1)(l), Florida Administrative Code (F.A.C.). Notice of the Motion for Rule Variance was published in the Florida Administrative Weekly on January 19, 2007, pursuant to section 120.542, Florida Statutes (F.S.). No written comments to the publication were received and the time for filing such has expired.

This Order addresses the Motion for Rule Variance. The issues of the granting of certificates and the setting of appropriate rates and charges will be addressed at a later date. We have jurisdiction pursuant to sections 367.031 and 367.045, F.S.

#### Motion for Rule Variance

Rule 25-30.033(1)(l), F.A.C., directs the applicant for an original certificate to file “[a] description of the territory to be served, using township, range, and section references as specified in subsection 25-30.030(2), F.A.C.” Rule 25-30.030(2), F.A.C., specifies that in addition to township, range, section, and county references, a complete and accurate legal description of the territory must be provided in one of two specific formats. The applicant must either 1) identify any subsections included or excluded if the territory includes partial sections; or 2) provide a metes and bounds description, including all bearings and distances necessary to provide a continuous description if the territory includes partial sections. Moreover, the legal description may not rely on references to, among other things, government lots or recorded instruments.

Within the perimeter of the proposed territory are properties conveyed to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (Board of Trustees) in Glades County, along Fisheating Creek, and to the South Florida Water Management District (SFWMD) in Highlands County, along the Kissimmee River. The applicant has asked for a rule variance because the length of these territory descriptions make it unworkable for the utility to provide them in accordance with the strict requirements of the rule, and because the information is otherwise available on the Glades and Highlands Counties’ websites and will be provided to our staff at its request. The legal descriptions in these two conveyances consist of 66 pages each, of primarily metes and bounds descriptions.

Section 120.542, F.S., authorizes us to grant variances or waivers from the requirements of our rules where the person subject to the rules has demonstrated that the underlying purpose of the statute has been or will be achieved by other means, and 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.

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 this Commission prior to obtaining permits from the Department of Environmental Protection and water management districts. Paragraph 367.045(5)(a), F.S., states that this 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.

This Commission must know the geographic boundaries within which a utility requests to serve in order to determine whether the utility is financially and technically able to provide service to the area at issue, whether the service is needed, and whether service can be provided from other sources when the application for original certificate is before us. Nevertheless, the underlying statutes do not require a specific methodology to legally describe a service territory. Silver Lake proposes to describe the excluded property by reference to ownership by the Board of Trustees and SFWMD. The excluded property in Highlands County was acquired by the SFWMD as a part of its Kissimmee River restoration project, and the excluded property in Glades County was acquired by the Board of Trustees for the protection of Fisheating Creek and its watershed. Neither of these governmental projects will involve development to the extent that central water and/or wastewater services will be required. We agree that the legal description as proposed is an adequate territory description under the circumstances of this case. Therefore, granting the requested rule variance will not affect the underlying purpose of the statutes in this instance. Moreover, the hardship created by this circumstance is the unworkability of providing 132 pages of legal descriptions which would require many hours on the part of the utility and on the part of our staff to verify, and which can, in this instance, be adequately described by other means.

When a utility has met the criteria set forth in section 120.542, F.S., this Commission has granted a waiver of or variance from the applicable rules.<sup>1</sup> In this case, the applicant has met the underlying purpose of sections 367.031 and 367.045, F.S. Moreover, the applicant has shown that it will suffer substantial hardship if Rule 25-30.033(1)(1), F.A.C., is strictly applied. Therefore, we find that the utility has met the requirements found in section 120.542, F.S., and we hereby grant the applicant's Motion for Rule Variance from the strict requirements of Rule 25-30.033(1)(1), F.A.C. The utility shall provide a website reference where the full legal description can be found.

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<sup>1</sup> See, e.g., Order No. PSC-01-1248-PAA-WU, issued June 5, 2001, in Docket No. 001219-WU, In Re: Request for approval of revisions to water tariff in Lee County by MHC-DeAnza Financing Limited Partnership d/b/a Buccaneer Water Service; and Order No. PSC-00-1748-PAA-EI, issued September 26, 2000, in Docket No. 000868-EI, In Re: Petition by Florida Power & Light Company for approval of standard offer contract.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Silver Lake Utilities, Inc.'s Motion for Rule Variance from Rule 25-30.033(1)(l), Florida Administrative Code, is granted. It is further

ORDERED that Silver Lake Utilities, Inc. shall provide this Commission with a website reference where the full legal description of the requested territory can be found. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Office of Commission Clerk, 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

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission this 16th day of April, 2007.



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ANN COLE  
Commission Clerk

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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 that is available under Section 120.57, 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 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. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Commission Clerk, Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 7, 2007.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

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