

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for certificates to provide water and wastewater service in Hendry and Collier Counties, by Consolidated Services of Hendry & Collier, LLC.

DOCKET NO. 130105-WS  
ORDER NO. PSC-13-0324-PAA-WS  
ISSUED: July 15, 2013

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman  
LISA POLAK EDGAR  
ART GRAHAM  
EDUARDO E. BALBIS  
JULIE I. BROWN

NOTICE OF PROPOSED AGENCY ACTION  
ORDER GRANTING TEMPORARY RULE WAIVER

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 (F.A.C.).

BACKGROUND

On April 29, 2013, Consolidated Services of Hendry & Collier, LLC (applicant or utility), submitted an application for original water and wastewater certificates in Hendry and Collier Counties, Florida, along with a Petition for Variance from or Waiver of Rules 25-30.033(1)(h), (m), (o), (t), (u), (v) and (w), F.A.C. The utility is a wholly owned subsidiary of Consolidated Citrus Limited Partnership (Consolidated Citrus), which is one of the largest citrus growers in the United States. The primary owner of Consolidated Citrus is King Ranch, one of the largest family-owned land owners in the United States. The utility's proposed service territory comprises approximately 12,400 acres which transverses Hendry and Collier Counties. These properties have traditionally been used for agricultural purposes. This area is located in the South Florida Water Management District (SFWMD) which is considered a critical water supply problem area.

Pursuant to Section 120.542, Florida Statutes (F.S.), notice of the petition for waiver was published in the Florida Administrative Weekly on May 17, 2013. No written comments to the notice were received and the time for filing such has expired.

This order addresses the utility's Petition for Variance from or Waiver of Rules 25-30.033(1)(h), (m), (o), (t), (u), (v) and (w), F.A.C. 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.

### DECISION

Rule 25-30.033(1)(h), (m), (o), (t), (u), (v) and (w), F.A.C., directs the applicant for an original certificate to file information necessary for the granting of certificates and for setting initial rates and charges, including: the number and type of equivalent residential connections (ERCs); the filing of a detailed system map showing the proposed lines, treatment facilities, and the territory to be served; a statement regarding the separate capacities of the proposed lines and treatment facilities in terms of ERCs and gallons per day; a cost study including customer growth projections supporting the proposed rates, charges and service availability charges; a schedule showing the projected costs of the systems; a schedule showing projected operating expenses; and a schedule showing the projected capital structure. The applicant has asked for a temporary waiver of these parts of the rule for a period of 36 months from the granting of the certificate to enable the utility to continue to engage in active planning with respect to the area proposed for certification, continue the dialogue with governmental entities regarding the provision of service, and negotiate with developers and other non-related customers.

Section 120.542, F.S., authorizes us 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 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 may include a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver.

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 Department of Environmental Protection (DEP) and water management districts. Section 367.045(5)(a), F.S., states that we 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 us 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 this Commission. Rates can be set at a later date, and often are.<sup>1</sup> Therefore, we agree with the applicant that the public interest can still be

---

<sup>1</sup> 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.; and Order No. PSC-06-0835-PAA-WS, issued October 9, 2006, in Docket No. 060276-WS, In re: Application for

served, our 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.

Moreover, the applicant asserted that the utility is still engaged in the early planning stages of development of the land identified in the application and as such the imposition of the rate setting portions of the rule at this time would result in rates, fees, and charges that are based, at best, upon estimated and projected expenses. Thus the utility argued that the application of the requirements of the rate setting requirements of the rule at this time would result in an economic hardship as the generation of the estimated and projected rates, fees, or charges would be expensive and onerous, occupying the time and resources of the utility as well as the time and resources of our staff. The utility further argued that the deferral of the rate setting portion of this case for three years will avoid the unreasonable commitment of money and resources; and will lead to more reliable and accurate rates; and may avoid the possibility that a second application for adjusted, modified, or different rates would need to be filed prior to operation or in the first few years of operations of the utility. Thus, we find that the temporary waiver of the applicable portions of the rule will enable the applicant to defer incurring a substantial economic hardship until such time that the utility is able to provide accurate information to support the setting of initial rates and charges at a future date closer to the commencement of operations.

When a utility has met the criteria set forth in Section 120.542, F.S., we have granted a temporary waiver of the rules regarding establishment of initial rates and charges and bifurcated the two parts of its certification proceedings.<sup>2</sup> In this case, we find that the applicant has met the underlying purpose of Sections 367.031 and 367.045, F.S. Moreover, we find that the applicant has shown that it will suffer substantial hardship if all of the provisions of Rule 25-30.033, F.A.C., are strictly applied.

The applicant has requested a waiver of the above-noted subsections of Rule 25-30.033(1), F.A.C., to ensure that the information provided in conjunction with the initial setting of rates and charges is based on contemporaneous costs, plans for service, and current economic conditions. The utility asserted that it will file its proposed tariffs and other required financial schedules to set initial rates sufficiently in advance of providing service, so that we will have sufficient time for review. Therefore, we find that the utility has met the requirements found in Section 120.542, F.S., and as such we hereby grant the applicant's Petition for Variance from or Waiver of Rules 25-30.033(1)(h), (m), (o), (t), (u), (v) and (w), F.A.C., for a period not to exceed 36 months, until it is closer to the commencement of operations.

---

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.

<sup>2</sup> Id.



Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Consolidated Services of Hendry & Collier, LLC's Petition for Variance from or Waiver of Rules 25-30.033(1)(h), (m), (o), (t), (u), (v) and (w), F.A.C., is granted as set forth in the body of this Order. 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 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" attached hereto. It is further

ORDERED that this docket shall remain open pending Commission action on the utility's application for original water and wastewater certificates, and the granting of appropriate rates and charges.

By ORDER of the Florida Public Service Commission this 15th day of July, 2013.



---

ANN COLE  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

CMK

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 Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 5, 2013.

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.