

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for certificate to provide
wastewater service in Charlotte County, by
Environmental Utilities, LLC.

DOCKET NO. 20200226-SU
ORDER NO. PSC-2021-0240-FOF-SU
ISSUED: July 1, 2021

The following Commissioners participated in the disposition of this matter:

GARY F. CLARK, Chairman
ART GRAHAM
ANDREW GILES FAY
MIKE LA ROSA
GABRIELLA PASSIDOMO

ORDER DENYING RECONSIDERATION

BY THE COMMISSION:

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 us; 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., we may hear argument from the parties at our discretion.¹

We have jurisdiction pursuant to Sections 367.031, 367.045, 367.081, and 367.156, F.S.

Decision

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 we failed to consider in rendering our 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 us to reconsider our 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 us. 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.

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 we have the discretion to request oral argument on a dispositive motion, if we decide that oral argument would aid us in our understanding and disposition of the underlying matter. If we wish to hear oral argument on this item, Commission staff recommends that we allow three minutes per side.

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 us 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 us 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. We, our 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

Ms. Cotherman's Motion for Reconsideration, as amended, is hereby 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.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Ms. Cotherman's Motion for Reconsideration, as amended, of Order No. PSC-2021-0087-CFO-SU is hereby 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. It is further

ORDERED that the docket shall remain open pending our action on the Utility's application for an original wastewater certificate.

By ORDER of the Florida Public Service Commission this 1st day of July, 2021.



ADAM J. TEITZMAN
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida

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Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.