

State of Florida



Public Service Commission

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COMMISSION
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DATE: JANUARY 10, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF ECONOMIC REGULATION (CLAPP, WALDEN) *Walden*
OFFICE OF THE GENERAL COUNSEL (HARRIS) *Harris*

RE: DOCKET NO. 010859-WS - APPLICATION FOR ORIGINAL
CERTIFICATE TO OPERATE WATER AND WASTEWATER UTILITY IN
SUMTER COUNTY BY NORTH SUMTER UTILITY COMPANY, L.L.C.
COUNTY: SUMTER

AGENDA: 01/22/02 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: JANUARY 23, 2002 - STATUTORY DEADLINE FOR
ORIGINAL CERTIFICATES PURSUANT TO SECTION
367.031, FLORIDA STATUTES

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\RGO\WP\010859WS.RCM

CASE BACKGROUND

On June 18, 2001, North Sumter Utility Company, L.L.C. (NSU or utility) filed its application for original water and wastewater certificates in Sumter County. The area is in the Southwest Florida Water Management District (SWFWMD) but is not in a water use caution area. The utility anticipates serving a total of approximately 17,504 equivalent residential connections (ERCs) when it reaches buildout in approximately 10 years.

The utility's initial application was found to be deficient. The utility corrected the deficiencies on October 25, 2001, making this the official filing date of the completed application. Pursuant to Section 367.031, Florida Statutes, the Commission shall grant or deny an application for a certificate of authorization.

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within 90 days after the official filing date of the completed application. Therefore, this application must be ruled upon by January 23, 2001.

The affiliated developer, The Villages of Lake-Sumter, Inc. (developer or VLS), will be developing the proposed service territory as a Planned Unit Development resulting from the expansion of The Villages of Sumter Development of Regional Impact (DRI) Master Plan. Many of the VLS investors are also investors in NSU. The developer plans to construct single family detached and attached conventionally built retirement homes, recreational and mail pickup facilities, golf course clubhouses, neighborhood shopping centers, hotel, theaters, convention/performing arts center, institutional/educational uses and office space.

NSU was formed on February 6, 2001. Its application indicates that the utility will be built in two phases. Construction on Phase I is scheduled to commence in 2002 and will be substantially complete in 2004. Phase II construction is scheduled to commence in 2007 and be completed in 2008. VLS plans to construct approximately 6,675 dwelling units during the first phase and 6,024 dwelling units during the second phase with the total build out expected by 2014. The developer and NSU anticipate that the first residents will be moving into the service area in 2004, with the system operating at 80% of design capacity in 2011.

Two water plants will be constructed. The water treatment plant designed for Phase I will be comprised of four wells, providing 2.8 million gallons per day (mgd); a 0.5 million gallon elevated storage tank; and, a mechanical building. Due to the good water quality from the Upper Floridan Aquifer, disinfection with chlorine is the only treatment anticipated. The second phase water treatment plant will provide an additional capacity of 2.8 mgd.

The wastewater treatment plant will be constructed in two phases, with each phase being permitted at 1.125 mgd maximum month average daily flow (MMADF), with a total capacity at build out of 2.25 mgd MMADF. The plant will be an aeration facility, using an oxidation ditch design. Treated effluent will be applied to golf courses and landscaped areas within the development.

The application asserts that there are no other utilities in close proximity to the area which might be able to provide service to this territory or which have the ready ability to expand their

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capacity to meet the immediate and anticipated needs of this area. The two utilities which are closest to the service area are Little Sumter Utility Company (LSU), which is also regulated by the Commission, and the City of Wildwood (City). LSU was granted water and wastewater certificates by Order No. PSC-96-1132-FOF-WS, issued September 10, 1996, in Docket No. 960305-WS. This same developer established LSU in 1996 to serve the VLS development which is nearing build out. LSU and VLS have determined that due to LSU's limited capacities and remote location from the proposed service area, it is more financially feasible to construct new water and wastewater plants than to expand those of LSU. According to the application, the City has indicated that it will not provide service in the proposed service territory.

NSU believes it is in a position, because of its affiliated party's experience and its available land and resources, to construct the necessary facilities to provide the least costly service to the proposed service territory. Throughout the application process staff has raised questions concerning the rates and rate structure for this utility. While the applicant has been responsive to these inquiries, there are still several outstanding questions which must be addressed prior to staff making a recommendation concerning the initial rates and charges. The applicant agrees with bifurcating the certification and rate setting process. Therefore, staff is requesting that the certificate process be bifurcated so that certificates can be issued within 90 days as required by Section 367.031, Florida Statutes, with rates to be determined at a later date. The Commission has jurisdiction pursuant to Sections 367.031 and 367.045, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the application of North Sumter Utility Company, L.L.C., for water and wastewater certificates be granted?

RECOMMENDATION: Yes, North Sumter Utility Company, L.L.C., should be granted Water Certificate No. 618-W and Wastewater Certificate No. 532-S to serve the territory described in Attachment A. The utility should file an executed and recorded copy of the warranty deeds within 30 days of the issuance date of the Order granting the certificates. (CLAPP, WALDEN, HARRIS)

STAFF ANALYSIS: On June 18, 2001, NSU filed its application for original water and wastewater certificates to provide service in Sumter County. The application is in compliance with the governing statute, Section 367.045, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for original certificates. The application contains a check in the amount of \$6,000, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code.

The applicant has not provided evidence that the utility owns the land upon which the utility's facilities will be located. However, Rule 25-30.033(1)(j), Florida Administrative Code, allows an applicant who does not own the land to submit a contract for the purchase and sale of the land with an unexecuted copy of the warranty deed, provided the applicant files an executed and recorded copy of the deed, or executed copy of the lease, within 30 days after the Order granting the certificates. Accordingly, the applicant has submitted a copy of the contract for the purchase and sale of the land and an unexecuted copy of the warranty deed. Counsel for the utility has assured staff that the closing will take place and a copy of the executed and recorded warranty deed will be filed with the Commission within 30 days of the Commission granting Certificates to the utility.

Adequate service territory and system maps and a territory description have been provided as prescribed by Rule 25-30.033(1)(l), (m) and (n), Florida Administrative Code. A description of the territory requested by the applicant is appended to this memorandum as Attachment A. In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. No objections to

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the notice of application have been received and the time for filing such has expired.

The applicant appears to have the financial and technical ability to provide water and wastewater service to the proposed service area. Regarding financial ability, the application states that the developer will provide necessary startup funding as well as funds sufficient to cover operation shortfalls during NSU's initial years. The applicant provided a letter from Mr. John F. Wise, Vice President of Finance for VLS, informing the Commission that VLS will make the financial and operating commitment necessary for NSU to be successful in its endeavor to provide water and wastewater services to the residents of the development within the NSU territory. The applicant also provided consolidated financial statements for VLS for the years 1999 and 2000. Staff has reviewed the financial statements of VLS and it appears that there are adequate resources to support the utility during the initial years of operation.

Regarding the applicant's technical ability, VLS indicated that it will make the financial and operating commitment necessary for NSU to be successful in its endeavor to provide water and wastewater facilities to the residents within the NSU service territory. Towards that end, the applicant has retained licensed professionals for construction, operation, and regulation of the utility systems.

The application asserts that there is currently a need for water and wastewater service within the proposed service territory. As discussed in the case background, the developer anticipates that the construction of the Phase I water and wastewater facilities will commence in 2002 and be substantially complete in 2004. Phase I of the development will consist of 6,675 dwelling units to be developed in 2003 through 2007. Further, the applicant believes there are no other utilities near the proposed service area which can provide the necessary water and wastewater service, and construction of NSU is the only viable alternative. The application states that the provision of service in the proposed service territory, as outlined in the application, is consistent with the water and wastewater sections of the local comprehensive plan for Sumter County, as approved by the Department of Community Affairs (DCA). Further, the application contains a letter from a planner employed by VLS, which states that the Sumter County comprehensive plan requires the provision of central water and

wastewater service by the developer. The Withlacoochee Planning Council was provided notice of the application and did not file an objection.

A review of the application by the DCA revealed that a portion of the service area requested was outside the original DRI boundary and the underlying comprehensive plan amendment supporting the DRI. As a result, the DCA could not certify that the granting of certificates would be in compliance with the Sumter County comprehensive plan.

When this DCA information was referred to the company for response, the utility's consultant indicated that the entire 4,677 acre DRI is consistent with the County's comprehensive plan. Additionally, it was explained that the portions of service area requested outside the DRI are smaller areas on the fringe of the DRI. These areas are included in an application now pending before DCA for substantial deviation to the Villages of Sumter DRI. These fringe areas include about 780 acres, and are lands zoned either agricultural or medium density residential. These additional lands are owned by partners of NSU or related parties. The utility's consultant concluded that the County's policies do not prohibit extension of water and wastewater facilities into agricultural areas of the County, but rather require that extension when a need for service is dictated.

Section 367.045(5)(b), Florida Statutes, states that the Commission need not consider whether the issuance of a certificate is inconsistent with the local comprehensive plan unless a timely objection has been made. In this case, although no objection to this certificate application was timely filed, staff has worked with both the DCA and the utility to determine whether the granting of certificates would be in compliance with the Sumter County comprehensive plan. Although there appears to be an inconsistency with the current DRI, there is an application now pending before DCA to resolve this inconsistency. Further, VLS owns the majority of the property in question. Therefore, staff believes that the pending application for substantial deviation to the Villages of Sumter DRI will resolve any inconsistencies with the comprehensive plan.

Based on the above information, staff believes it is in the public interest to grant the application for original certificates. Accordingly, staff recommends that North Sumter Utility Company be

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granted Water Certificate No. 618-W and Wastewater Certificate No. 532-S to serve the territory described in Attachment A. The utility should be required to file an executed and recorded copy of the warranty deed within thirty days of the issuance date of the Order granting the certificates.

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ISSUE 2: Should initial water and wastewater rates, charges, and return on equity be approved at this time?

RECOMMENDATION: No, initial water and wastewater rates, charges, and return on equity should not be approved at this time. (CLAPP, WALDEN, HARRIS)

STAFF ANALYSIS: As discussed in Issue 1, the Commission must grant or deny the Utility's Application for Original Certificates within 90 days of the filing date of the Application. However, the Utility's proposed rate structure is sufficiently complex that additional time is needed to analyze the proposed inclining block rate structure and bring a recommendation before the Commission.

Reviewing the rates and charges at a later date does not conflict with the requirement in Section 367.045, Florida Statutes, to approve or deny certificate applications within 90 days. There should be no harm in bifurcating the rates and charges portion to a later date because the utility will not be operational until 2004. Further, counsel for the utility has agreed to bifurcation of the rates and charges portion of the recommendation until a later date.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: No, the docket should be held open to allow the utility to file an executed copy of a warranty deed to the land as required by Rule 25-30.033(1)(j) and to allow for the setting of initial rates, charges, and return on equity. (HARRIS)

STAFF ANALYSIS: The Utility has not filed proof of ownership of the land upon which the Utility's facilities will be located. Rule 25-30.033(1)(j) gives the Utility 30 days from the issuance of the final order to file such proof. This docket should be held open for staff to verify that the utility has complied with the Rule.

Further, as discussed in Issue 2, staff is recommending that initial rates, charges, and return on equity should be established after staff has had further time to analyze the information provided by the company. Therefore, staff recommends that the docket should remain open for the setting of initial rates, charges, and return on equity at a later date. After staff has completed its analysis of the utility's information, a recommendation regarding the establishment of initial rates, charges, and return on equity will be filed, and after which the docket may be closed.

ATTACHMENT A

NORTH SUMTER UTILITY COMPANY, LLC

WATER AND WASTEWATER TERRITORY

SUMTER COUNTY

Township 19 South, Range 23 East

Sections 13, 14, 15, 16, 17, 22, 23, 24, 26, 27, 28, 33, 34 and 35

A parcel of land lying within Sections 13, 14, 15, 16, 17, 22, 23, 24, 26, 27, 28, 33, 34 and 35, Township 18 South, Range 23 East, and within Sections 2, 3 and 4, Township 19 South, Range 23 East, Sumter County, Florida, described as follows:

Begin at the intersection of the North right-of-way line of County Road 466-A with the West line of the East 3/4 of Section 3, Township 19 South, Range 23 East, Sumter County, Florida; thence run Easterly along the North right-of-way line of County Road 466-A to the West line of the SE 1/4 of the NE 1/4 of Section 3; thence run Northerly to the Northwest corner of said SE 1/4 of the NE 1/4; thence run Easterly to the Northeast corner of said SE 1/4 of the NE 1/4; thence along the East line of said SE 1/4 of the NE 1/4 run Southerly to the North right-of-way line of County Road 466-A; thence along said right-of-way line run Easterly to the West line of the East 70 yards of the SW 1/4 of the NW 1/4 of Section 2; thence run Northerly to the Northwest corner of the South 140 yards of the SW 1/4 of the NW 1/4 of Section 2; thence along the North line of said South 140 yards of SW 1/4 of the NW 1/4 run Easterly to the East line of said SW 1/4 of the NW 1/4; thence along said East line run Southerly to the North right-of-way line of County Road 466-A; thence along said right-of-way line run Easterly to the East line of the NW 1/4 of Section 2; thence run Northerly to the Southeast corner of the West 1/2 of Section 35; thence continue Northerly to the Southeast corner of the West 1/2 of Section 26; thence continue Northerly to the Southwest corner of the SE 1/4 of Section 23; thence run Easterly to the Southwest corner of Section 24; thence continue Easterly to the Southeast corner of the West 1/2 of the SW 1/4 of Section 24; thence along the East Line of said West 1/2 of the SW 1/4 run Northerly to the North line of old dirt road; thence along said North line run Northeasterly to the East line of the West 1/2 of the SE 1/4 of the SW 1/4 of Section 24;

thence run Northerly to the Southwest corner of the East 1/2 of the NE 1/4 of the SW 1/4 of Section 24; thence run Easterly to the Southeast corner of said East 1/2 of the NE 1/4 of the SW 1/4; thence run Northerly to the Southwest corner of the SW 1/4 of the NW 1/4 of the NE 1/4 of Section 24; thence run Easterly to the Southeast corner of the East 1/2 of the NW 1/4 of the NE 1/4 of Section 24; thence run Northerly to the Northeast corner of said East 1/2 of the NW 1/4 of the NE 1/4 of Section 24; thence run Easterly along the South line of the SE 1/4 of Section 13 to the Southwesterly right-of-way line of County Road 466; thence along said right-of-way line run Northwesterly and Westerly to the East line of Section 14; thence continuing along said right-of-way line run Westerly to the West line of Section 14; thence continuing along said right-of-way line run Westerly, Northwesterly and Westerly to the West line of Section 15; thence continuing along the South right-of-way line of County Road 466, run Westerly to the West line of the East 1/2 of the SW 1/4 of the NE 1/4 of Section 16; thence along said West line run Southerly to the North line of the NW 1/4 of the SW 1/4 of Section 16; thence run Westerly to the East 1/4 Section corner of Section 17; thence North along section line 218.50 feet; thence West parallel with East-West mid-section line to the East line of the West 660 feet of the NE 1/4 of Section 17; thence South 218.50 feet; thence West along section line 660 feet to the Northwest corner of the SE 1/4 of Section 17; thence South to the Southwest corner of the SE 1/4 of Section 17; thence run Easterly to the Southwest corner of Section 16; thence continue Easterly to the Northwest corner of Section 22; thence along the West line of Section 22 run Southerly to the waters on the Northerly edge of Lake Miona; thence run Southwesterly to the intersection of the West line of Government Lot 1 of Section 28 with the waters on the Southerly edge of Lake Miona; thence run Southerly to the Southwest corner of Government Lot 1; thence run Easterly to the Southeast corner of Government Lot 1; thence run Southerly to the Northeast corner of the South 1/4 of Section 28; thence along the North line of said South 1/4 run Westerly to the East right-of-way line of County Road 121; thence run Southerly along said right-of-way line to the South line of Section 28; thence run Easterly to the Northeast corner of Section 33; thence run Southerly to the Northeast corner of the East 1/2 of the SE 1/4 of Section 33; thence run Westerly to the Northwest corner of said East 1/2 of the SE 1/4; thence run Southerly to the Southwest corner of said East 1/2 of the SE 1/4; thence run Easterly to the Northwest corner of the East 1/2 of the NE 1/4 of the NE 1/4 of Section 4; thence run Southerly to the Southwest corner of said

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East 1/2 of the NE 1/4 of the NE 1/4 of Section 4; thence run Easterly to the Southeast corner of the NW 1/4 of the NW 1/4 of Section 3; thence along the West line of the East 3/4 of Section 3 run Southerly to the Point of Beginning.

Together with the following-described parcel:

That portion of the North 1/2 of the South 1/2 of Section 28, Township 18 South, Range 23 East, Sumter County, Florida, lying Easterly of and adjoining the following-described line:

Commence at the Southeast corner of Lot 88, the Fairways at Rolling Hills, First Addition, as recorded in Plat Book 4, Pages 126 and 126-A, Public Records of Sumter County, Florida; thence along the South line of aforesaid North 1/2 of South 1/2 run N 89°57'01" E, 70.00 feet to the Point of Beginning; thence N 46°03'58" E, 185.55 feet; thence N 07°00'05" E, 90.00 feet to the Southeasterly corner of Lot 87 of aforesaid plat of the Fairways at Rolling Hills, First Addition; thence along said platted boundary with the following courses: N 07°00'05" E, 122.81 feet; thence N 09°52'33" E, 212.94 feet; thence N 12°06'54" E, 94.30 feet; thence N 19°58'25" E, 95.90 feet; thence N 22°49'24" E, 100.04 feet; thence N 36°40'10" E, 92.46 feet to the most Easterly corner of Lot 81 of the Fairways at Rolling Hills, First Addition; thence departing said platted boundary run N 47°44'56" E, 170.00 feet; thence N 00°04'19" W, 310.00 feet to the North line of aforesaid North 1/2 of Section 28 to end of description line. Less that portion lying within the North 10 feet of the NW 1/4 of the SE 1/4 of said Section 28.