

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for certificates to provide water and wastewater service in Putnam County by Mariposa Utility Company, LLC. | DOCKET NO. 060276-WS
| ORDER NO. PSC-06-0835-PAA-WS
| ISSUED: October 9, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW

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.

Background

On March 23, 2006, Mariposa Utility Company, LLC (Mariposa) submitted an application for original certificates to operate a water and wastewater utility in Putnam County, Florida, along with a petition requesting a temporary variance from or a temporary waiver of Rule 25-30.033(1)(k), (m), (r), (t), (u), (v) and (w), Florida Administrative Code. On May 31, 2006, the utility filed an amended petition requesting a temporary variance from or temporary waiver of Rule 25-30.033(1)(j), Florida Administrative Code, in addition to the above-mentioned rule.

The affiliated developer plans to construct single family detached and attached homes, and multi-family residences. The primary commercial facilities that will be constructed include offices, retail stores, restaurants, institutional/educational uses, medical facilities and recreational facilities. Mariposa was formed on March 10, 2006. Its application indicates that construction will begin in 2008.

On April 19, 2006, Putnam County (County) filed an objection to Mariposa's application for an original certificate to provide water and wastewater service. On May 25, 2006, the County withdrew its objection relating to the wastewater service. The parties are currently negotiating a settlement on the water service certificate.

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FPSC-COMMISSION CLERK

Pursuant to Section 120.542, Florida Statutes, notice of the petition for waiver was published in the Florida Administrative Weekly on August 18, 2006. No written comments were received and the time for filing such has expired. We have jurisdiction pursuant to Sections 367.031 and 367.045, Florida Statutes.

Rule Waiver

Rule 25-30.033(1)(j), (k), (m), (r), (t), (u), (v), and (w), Florida Administrative Code, directs the applicant for an original certificate to file information necessary for setting initial rates and charges, including: evidence that the utility owns the land upon which the utility facilities are or will be located, the filing of the original and two copies of tariffs, the filing of a detailed system map showing the proposed lines, treatment facilities, and the territory to be served, a detailed financial statement, a cost study supporting proposed rates and charges, a schedule showing the projected costs of the systems, a schedule showing projected operating expenses, and a schedule showing the projected capital structure. Mariposa has asked for a temporary waiver of these parts of the rule so that it may receive its certificates and then proceed with water use permitting and wastewater treatment plant permitting. When Mariposa has received its permits it will be able to provide accurate cost estimates, schedules and cost studies to support initial rates and charges.

Section 120.542, Florida Statutes, authorizes this Commission 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 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, Florida Statutes. Section 367.031 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 and water management districts. Section 367.045(5)(a), Florida Statutes, states that the Commission may grant a certificate of authorization if it is in the public interest. The purpose of Sections 367.031 and 367.045, Florida Statutes, 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.¹

¹ See, Order No. PSC-98-1644-FOF-WS, issued December 7, 1998, in Docket No. 980876-WS, In re: Application for certificate to operate water and wastewater facility in Marion County by Ocala Springs Utilities, Inc. and 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, L.L.C.

The development planned for the Mariposa territory will need water and wastewater service in 2008. The development will consist of 3,046 residential ERCs and 320 commercial ERCs. Mariposa states that although it does not expect to provide service for three years, Section 367.031, Florida Statutes, requires that a utility obtain a certificate from the Commission before the Department of Environmental Protection and the Water Management District may issue construction and operating permits. As such, Mariposa cannot procure a water use permit and wastewater treatment plant construction permit until it procures a Commission certificate. A waiver is necessary because the utility will not be able to determine the size, location and the associated costs it needs for its treatment facilities until certain threshold issues are determined. First, the utility's wells must be tested. The results of the tests will determine the type and size of the water treatment equipment selected. The water treatment equipment will, in turn, determine the type and size of wastewater treatment equipment selected. Once the utility's treatment facilities are selected and sized, the utility may complete its application for the necessary permits and will be able to determine how much land it requires for its treatment facilities. If we do not temporarily waive our rules, however, Mariposa cannot pursue obtaining a certificate without providing detailed facility cost information, but it cannot calculate detailed facility cost information until it receives its water use permit and wastewater treatment plant construction permit. The hardship created by this circumstance is Mariposa's inability to determine the size and location of its facilities and costs until the permits are obtained and its inability to proceed with the development of its water and wastewater facilities to serve the proposed service area if the waiver is not granted.

When a utility has met the criteria set forth in Section 120.542, Florida Statutes, 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.² In this case, Mariposa has met the underlying purpose of Sections 367.031 and 367.045, Florida Statutes. Mariposa has shown that it will suffer substantial hardship if all of the provisions of Rule 25-30.033, Florida Administrative Code, are strictly applied.

Mariposa has requested a waiver of the rules until it receives its other permits and is closer to commencing operations. Mariposa states 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. Under these circumstance, we find that the utility has met the requirements found in Section 120.542, Florida Statutes, and we grant Mariposa's petition for temporary waiver of Rules 25-30.033 (1)(j), (k), (m), (r), (t), (u), (v), and (w), Florida Administrative Code, until it has completed its permitting and is closer to commencement of operations.

² See, 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, L.L.C.

Based on the foregoing, it is

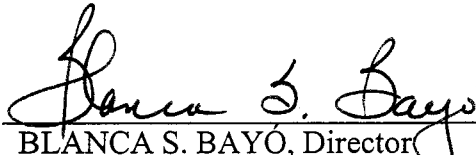
ORDERED by the Florida Public Service Commission that Mariposa Utility Company, LLC's petition for waiver Rule 25-30.033(1)(j), (k), (m), (r), (t), (u), (v), and (w), Florida Administrative Code, is granted as set forth herein. It is further

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 Director, Division of the Commission Clerk and Administrative Services, 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 if no timely protest is received, the Order will become final upon the issuance of a Consummating Order. It is further

ORDERED that this docket shall remain open pending Commission action on Mariposa Utility Company, LLC's application for original water and wastewater certificates and the filing of the information necessary to establish rates and charges.

By ORDER of the Florida Public Service Commission this 9th day of October, 2006.



BLANCA S. BAYO, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

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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 Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 30, 2006.

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.