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State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

COMMISSION
CLERK

-M-E-M-O-R-A-N-D-U-M-

DATE: September 8, 2011

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Jones-Alexis, Walden, Davis, Marsh)
Office of the General Counsel (Jaeger)

Handwritten notes: ALM, JS, CRB, AU, [unclear]

RE: Docket No. 110020-WS – Application for certificates to provide water and wastewater service in Marion County by OB Utility Systems, L.L.C.
County(ies): Marion

AGENDA: 09/20/11 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brisé

CRITICAL DATES: 09/26/11 (Statutory Deadline for Original Certificates Pursuant to Section 367.031, Florida Statutes)

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\110020.RCM.DOC

Case Background

On January 7, 2011, Equity LifeStyle Properties, Inc. (ELPI) filed an application for original water and wastewater certificates in Marion County on behalf of its subsidiary, OB Utility Systems, L.L.C. (OB Utility or Utility). Since approximately 1981, the Utility has been providing potable water and wastewater service to the Oak Bend Mobile Home Park (Oak Bend MHP), which is located east of Interstate 75 near the city of Ocala. The Oak Bend MHP is in the St. Johns River Water Management District (SJRWMD) in a Water Resource Caution Area.

OB Utility currently serves approximately 262 residential connections in addition to a clubhouse, pool, laundry facilities, and fitness center. Based on projected revenues, the Utility

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will be a Class C water and wastewater utility. ELPI currently includes the cost of water and wastewater service in customers' lot rental fees. Therefore, ELPI is exempt from the Commission's regulation, pursuant to Section 367.022(5), Florida Statutes (F.S.). If the Commission approves the Utility's application, ELPI intends to offset the establishment of rates and charges with appropriate decreases in lot rental fees.

ELPI has also requested certificates and initial rates and charges for three additional wholly-owned utilities, including COL Utility Systems, L.L.C. (COL Utility, Docket No. 110021-WS), HV Utility Systems, L.L.C. (HV Utility, Docket No. 110022-WU), and MFL Utility Systems, L.L.C. (MFL Utility, Docket No. 110023-WS). Staff's recommendation regarding COL Utility's application was addressed at the September 8, 2011 Commission Conference. Staff's recommendation regarding MFL Utility's application will be addressed at the September 20, 2011 Commission Conference. By Order No. PSC-11-0333-PCO-WU, issued on August 5, 2011, the Commission granted HV Utility an extension of time until September 15, 2011, to file a Motion to Dismiss the objections to its application.¹

Pursuant to Section 367.031, F.S., the Commission shall grant or deny an application for a certificate of authorization within 90 days after the official filing date of the completed application. OB Utility's application was completed on June 27, 2011; therefore, the Commission must grant or deny the Utility's application by September 26, 2011. The purpose of this recommendation is to address the Utility's application for original water and wastewater certificates. The Commission has jurisdiction pursuant to Sections 367.031, 367.045, 367.081, 367.091, and 367.101, F.S. Additional time is needed for staff to conduct a customer meeting, in order to allow customers to provide input regarding the Utility's quality of service and to answer customers' questions about the Utility's proposed rates and charges. A recommendation addressing initial rates and charges will be brought to a subsequent agenda.

¹ In 2004, the Commission granted the transfer of a wastewater certificate to HV Utility Systems, L.L.C. See Order No. PSC-04-1148-PAA-SU, issued November 18, 2004, in Docket No. 030747-SU, In re: Application for transfer of assets and Certificate No. 285-S in Pasco County to HV Utility Systems, L.L.C., by Hacienda Utilities, Ltd.

Discussion of Issues

Issue 1: Should the Commission grant OB Utility's application for original water and wastewater certificates?

Recommendation: Yes. The Commission should grant OB Utility water and wastewater Certificate Nos. 657-W and 561-S, respectively, to serve the territory described in Attachment A, effective the date of the Commission's vote. The resultant order should serve as the Utility's water and wastewater certificates and should be retained by the Utility as such. Pursuant to Rule 25-30.033(1)(j), Florida Administrative Code (F.A.C.), the applicant should submit an executed and recorded copy of the warranty deed within 30 days after the date of the order granting the certificates. (Jones-Alexis, Walden, Jaeger)

Staff Analysis: As previously stated, on January 7, 2011, ELPI filed an application for original water and wastewater certificates in Marion County. The original filing was deficient. The deficiencies were corrected on June 27, 2011; therefore, in accordance with Section 367.083, F.S., the official filing date is June 27, 2011. The Utility's application is in compliance with the governing statutes, Sections 367.031 and 367.045, F.S., and other pertinent statutes and administrative rules concerning an application for original certificates.

Notice. The application contains proof of compliance with the noticing provisions of Rule 25-30.030, F.A.C. On July 14, 2011, an objection was filed on behalf of Oak Bend Homeowners Association, Inc. (Oak Bend HOA). The HOA's letter addressed concerns regarding ELPI's adjustment of lot rental fees as well as OB Utility's establishment and operation of facilities, as ELPI is currently providing water and wastewater services to Oak Bend MHP's residents. By letter dated July 28, 2011, staff responded to the objection by explaining that OB Utility will continue to provide water and wastewater services to its customers using its existing water and wastewater facilities. Staff's letter also described the process of a formal hearing and a protestor's rights and responsibilities; and the letter requested that staff be informed by August 11, 2011, should Oak Bend HOA intend to pursue the objection and request a formal hearing. Staff subsequently received a letter from Oak Bend HOA indicating that it did not wish to pursue a formal hearing. Additionally, no local government or utility objected to the application. No further objections have been received, and the time for filing such has expired.

Territory. Rules 25-30.033(1)(l) and (n), F.A.C., prescribe that a utility's application for original certificates shall provide a description of the territory to be served, using township, range, and section references, as well as a copy of a map showing township, range, and section with the proposed territory plotted thereon and with a defined reference point of beginning. Staff believes that the Utility has provided an accurate legal description of the proposed service territory and adequate service territory maps. The proposed service territory, approximately 62 acres, includes the area currently served by the Utility. The legal description of the proposed service territory is appended to this recommendation as Attachment A.

Proof of Ownership. Rule 25-30.033(1)(j), F.A.C., requires evidence in the form of a warranty deed that the utility owns the land upon which the utility treatment facilities are located or a copy of an agreement which provides for the continued use of the land, such as a 99-year lease. The application contained a copy of an unexecuted warranty deed made by MHC Oak

Bend, L.L.C., a wholly-owned subsidiary of ELPI and the current owner of the property on which the water and wastewater facilities are located, to OB Utility. The application indicated that the deed will be executed upon issuance of a final order granting water and wastewater certificates to the Utility. Staff recommends that, pursuant to Rule 25-30.033(1)(j), F.A.C., the Utility be required to submit an executed and recorded copy of the warranty deed within 30 days after the date of the order granting the certificates.

Financial and Technical Ability. In accordance with Rule 25-30.033(1)(e), F.A.C., ELPI provided a statement describing its financial and technical ability to provide water and wastewater service. ELPI's 2009 10-K Annual Report, as filed with the U.S. Securities and Exchange Commission, was included in the application. According to the applicant, the information indicates that ELPI has ample financial backing to ensure the safe, efficient, and sufficient provision of water and wastewater service to the proposed service territory. The Utility has the ability to raise cash when necessary to finance its operations through its parent company, ELPI, which is publicly traded on the New York Stock Exchange. Staff has reviewed ELPI's financial statements and other documentation included in the 10-K Annual Report, and they appear to show adequate resources to support OB Utility's water and wastewater operations.

ELPI has been providing service to Oak Bend MHP since approximately 1981. In addition, the application referenced ELPI's ownership interest in properties throughout the United States and Canada (307 properties as of December 31, 2010). Properties owned and operated by ELPI in Florida include utilities that are currently regulated by the Commission, such as CC Utility Systems, LLC d/b/a Coral Cay Water & Sewer Company, a Class C water and wastewater utility in Broward County,² and BE Utility Systems, LLC, a Class C water utility in Lee County.³ According to the applicant, utilities wholly owned by ELPI have a history of contracting professional, licensed companies that provide plant operation and maintenance services.

The Florida Department of Environmental Protection (DEP) conducted an inspection of the water facilities on January 27, 2011; the report indicated that the Utility had no plant deficiencies and that the overall operation of the plant was good. The Utility's wastewater treatment facility permit expires on April 12, 2015. The DEP's report of the most recent

² In 1995, the Commission granted the transfer of water and wastewater certificates to CC Utility Systems, LLC, which underwent two name changes in Dockets Nos. 010670-WS and 030454-WS. See Order No. PSC-95-0622-FOF-WS, issued May 22, 1995, in Docket No. 940850-WS, In re: Application for transfer of Certificates Nos. 481-W and 417-S in Broward County from Colonies Water Company to MHC-DeAnza Financing Limited Partnership d/b/a Colonies Water Company; Order No. PSC-01-1499-FOF-WS, issued July 18, 2001, in Docket No. 010670-WS, In re: Application for acknowledgement of corporate reorganization and name change on Certificate Nos. 417-S and 481-W in Broward County from MHC-DeAnza Financing Limited Partnership, d/b/a Colonies Water Company, to CM Utility Systems, L.L.C. d/b/a Colonies Water Company; Order No. PSC-03-0919-FOF-WS, issued August 11, 2003, in Docket No. 030454-WS, In re: Application for name change on Certificate Nos. 481-W and 417-S in Broward County from CM Utility Systems, L.L.C. d/b/a Colonies Water Company to CC Utility Systems, L.L.C. d/b/a Coral Cay Water & Sewer Company.

³ In 1995, the Commission granted the transfer of a water certificate to BE Utility Systems, LLC, which underwent a name change in Docket No. 010563-WU. See Order No. PSC-95-0623-FOF-WU, issued May 22, 1995, in Docket No. 940849-WU, In re: Application for transfer of Certificate No. 366-W in Lee County from DeAnza Properties-XI, Ltd., d/b/a Buccaneer Water Service, to MHC-DeAnza Financing Limited Partnership, d/b/a Buccaneer Water Service.

compliance evaluation inspection of the wastewater facilities, conducted on June 22, 2010, indicated that the overall operation was substantially compliant. According to the SJRWMD, there are no outstanding compliance issues related to the Utility's Consumptive Use Permit, which expires on November 16, 2020.

OB Utility understands that it must maintain its books and records according to the National Association of Regulatory Utility Commissioners' (NARUC) Uniform System of Accounts (USOA). The Utility also understands the requirements to file annual reports and pay regulatory assessment fees by March 31 for the preceding year ending December 31. In addition, the applicant is aware that it may not change its rates, serve outside its certificated territory, or sell the Utility without prior Commission approval.

Based on the above information, staff believes it is in the public interest to grant OB Utility's request for original water and wastewater certificates. Accordingly, staff recommends that the Commission grant the Utility water and wastewater Certificate Nos. 657-W and 561-S, respectively, to serve the territory described in Attachment A, effective the date of the Commission's vote. The resultant order should serve as OB Utility's water and wastewater certificates and should be retained by the Utility as such. Pursuant to Rule 25-30.033(1)(j), F.A.C., the applicant should submit an executed and recorded copy of the warranty deed within 30 days after the date of the order granting the certificates.

Docket No. 110020-WS
Date: September 8, 2011

Issue 2: Should this docket be closed?

Recommendation: No. The docket should remain open pending receipt of the executed and recorded copy of the warranty deed within 30 days after the date of the order granting the certificates, and to establish the setting of initial rates, charges, and return on equity. (Jaeger)

Staff Analysis: The docket should remain open pending receipt of the executed and recorded copy of the warranty deed within 30 days after the date of the order granting the certificates, and to establish the setting of initial rates, charges, and return on equity.

OB Utility Systems, L.L.C.
Oak Bend Mobile Home Park
Description of Water and Wastewater Territory
Marion County

A PARCEL OF LAND LYING AND BEING IN SECTION 26, TOWNSHIP 16 SOUTH, RANGE 21 EAST, SAID LANDS LYING AND BEING IN MARION COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 26; THENCE N88°51'15"W, ALONG THE SOUTH LINE OF SAID SECTION 26, A DISTANCE OF 1326.27 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE CONTINUE N88°51'15"W ALONG SAID SOUTH LINE A DISTANCE OF 349.48 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF INTERSTATE 75; THENCE N29°25'14"W ALONG SAID EASTERLY RIGHT OF WAY LINE OF INTERSTATE 75 A DISTANCE OF 1920.04 FEET TO THE WEST LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 26; THENCE N01°09'30"E ALONG SAID WEST LINE OF THE SOUTHEAST 1/4 OF SECTION 26 A DISTANCE OF 331.96 TO THE NORTH LINE OF THE SOUTH 1/2 OF THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF SAID SECTION 26; THENCE S88°51'51"E ALONG SAID NORTH LINE OF THE SOUTH 1/2 OF THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 26 A DISTANCE OF 2623.90 FEET TO THE WEST RIGHT OF WAY LINE OF 27TH AVENUE; THENCE S01°03'14"W ALONG SAID WEST RIGHT OF WAY LINE A DISTANCE OF 661.64 FEET TO THE NORTH LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 26; THENCE N88°51'30"W ALONG THE SAID NORTH LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 26 A DISTANCE OF 1300.06 FEET TO THE NORTHWEST CORNER OF SAID SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 26; THENCE S01°06'22"W ALONG THE WEST LINE OF SAID SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 26 A DISTANCE OF 1323.86 FEET TO THE POINT OF BEGINNING. CONTAINS 61.81 ACRES MORE OR LESS.

FLORIDA PUBLIC SERVICE COMMISSION

authorizes

OB Utility Systems, L.L.C.
pursuant to
Certificate Number 657-W

to provide water service in Marion County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
*	*	110020-WS	Original Certificate

***Order Number and date to be provided at time of issuance.**

FLORIDA PUBLIC SERVICE COMMISSION

authorizes

OB Utility Systems, L.L.C.
pursuant to
Certificate Number 561-S

to provide wastewater service in Marion County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
*	*	110020-WS	Original Certificate

***Order Number and date to be provided at time of issuance.**