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Public Service Commission

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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) *ALM*
Office of the General Counsel (Young) *CRB* *W*

RE: Docket No. 110023-WS – Application for certificates to provide water and wastewater service in Lake County by MFL Utility Systems, L.L.C.
County(ies): Lake

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\110023.RCM.DOC

Case Background

On January 7, 2011, Equity LifeStyle Properties, Inc. (ELPI) filed an application for original water and wastewater certificates in Lake County on behalf of its subsidiary, MFL Utility Systems, L.L.C. (MFL Utility or Utility). Since approximately 1974, the Utility has been providing potable water and wastewater service to the Mid-Florida Lakes Yacht Club mobile home park (Mid-Florida MHP), which is located south of County Road 44 near the city of Leesburg. The Mid-Florida MHP is in the St. Johns River Water Management District (SJRWMD) in a Water Resource Caution Area.

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MFL Utility currently serves approximately 1,225 residential connections in addition to a clubhouse, compound, laundry room, fitness facility, two firehouses, and two pools. Based on its projected revenues, the Utility will be a Class B water and wastewater utility, pursuant to Rule 25-30.110(4), Florida Administrative Code (F.A.C.). 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 OB Utility Systems, L.L.C. (OB Utility, Docket No. 110020-WS), COL Utility Systems, L.L.C. (COL Utility, Docket No. 110021-WS), and HV Utility Systems, L.L.C. (HV Utility, Docket No. 110022-WU). Staff's recommendation regarding OB Utility's application will be addressed at the September 20, 2011 Commission Conference. Staff's recommendation regarding COL Utility's application was addressed at the September 8, 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. MFL 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 MFL Utility's application for original water and wastewater certificates?

Recommendation: Yes. The Commission should grant MFL Utility water and wastewater Certificate Nos. 656-W and 560-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), 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, Young)

Staff Analysis: As previously stated, on January 7, 2011, ELPI filed an application for original water and wastewater certificates in Lake 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 contained proof of compliance with the noticing provisions of Rule 25-30.030, F.A.C. On June 20, 2011, an objection was filed by a resident of Mid-Florida MHP. The resident's letter addressed concerns regarding ELPI's adjustment of lot rental fees as well as the age, cost to replace, and water pressure of existing lines. Staff responded to the objection by letter, describing the process of a formal hearing and a protestor's rights and responsibilities. In its letter, staff requested to be informed by July 11, 2011, should the customer intend to pursue the objection and request a formal hearing. No further correspondence was received from this customer.

On July 14, 2011, an objection was filed by Mid-Florida Lakes Homeowners Association, Inc. (Mid-Florida HOA). The HOA's letter addressed concerns regarding ELPI's lack of timely water quality reporting to residents, ELPI's adjustment of lot rental fees, and costly irrigation of property that residents are responsible for maintaining and the effect on property values. By letter dated July 29, 2011, staff responded to the objection by explaining that ELPI intends to offset Commission-approved rates with appropriate decreases in current lot rental fees, that the Florida Department of Environmental Protection (DEP) regulates compliance of the Utility's maintenance and operation of its facilities, and that the Commission recognizes that a portion of customers' water usage does not return to the wastewater system and, thus, makes an allowance that is reflected in wastewater rates. Staff's letter also described the process of a formal hearing and a protestor's rights and responsibilities. The letter requested that staff be informed by August 10, 2011, should Mid-Florida HOA intend to pursue the objection and request a formal hearing. No further correspondence was received from Mid-Florida HOA.

In addition, the Commission received a letter dated July 5, 2011, from another resident of Mid-Florida MHP, which stated his opposition to the application. The resident also stated his concerns about facilities violations discovered by the DEP during a January 2008 inspection, which resulted in the issuance of Consent Orders. Although staff did not respond by letter, staff

discussed these concerns with the resident by phone, noting that the Utility has an obligation to bring the facility into compliance with DEP requirements, apart from any regulation by the Commission. The customer did not further pursue his objection.

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 196 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 Snowbirdland Vistas, Inc., an entity controlled by ELPI and the current owner of the property on which the water and wastewater facilities are located, to MFL 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. MFL 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 MFL Utility's water and wastewater operations.

ELPI has been providing service to Mid-Florida MHP since approximately 1974. 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.

A Consent Order issued by the DEP on March 9, 2010, addressed Maximum Contaminant Levels violations concerning disinfection by products (total trihalomethanes, TTHMs, and total haloacetic acids, HAA5s). The DEP conducted an inspection of the water facilities on November 3, 2010, noting several deficiencies, including exceedences for disinfection byproducts, public notice relating to these exceedences, and maintenance needed on two plant items. The Utility was reminded that prior to converting its disinfection process to chloramines, additional public notice was required. It was also noted that chloramines necessitated close attention to chlorine levels to ensure success of chloramines in controlling disinfection byproducts. The March 9, 2010 Consent Order was closed on March 16, 2011, after the Utility converted its disinfection process to chloramines. A wastewater plant inspection was conducted on December 21, 2010, noting that a report had been filed late, operational exceedences were observed at the plant, and groundwater test results appeared to be in error. The Utility has since taken steps to come into compliance with DEP rules, and the DEP currently has no active enforcement action against the Utility. The Utility's wastewater facility permit expired on August 13, 2011; however, according to the DEP, the Utility timely filed a renewal application on January 14, 2011, and its permit has been administratively continued. According to the SJRWMD, there are no outstanding compliance issues related to the Utility's Consumptive Use Permit, which expires on August 31, 2014.

MFL 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 requirement to file annual reports by March 31 for the preceding year ending December 31, as well as the requirement to pay regulatory assessment fees by July 30 for the preceding period from January 1 to June 30 and by January 30 for the preceding period from July 1 to 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.

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.

Docket No. 110023-WS
Date: September 8, 2011

Based on the above information, staff believes it is in the public interest to grant MFL Utility's request for original water and wastewater certificates. Accordingly, staff recommends that the Commission grant the Utility water and wastewater Certificate Nos. 656-W and 560-S, respectively, to serve the territory described in Attachment A, effective the date of the Commission's vote. The resultant order should serve as MFL 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. 110023-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. (Young)

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.

MFL Utility Systems, L.L.C.
Mid-Florida Lakes Yacht Club
Description of Water and Wastewater Territory
Lake County

A PARCEL OF LAND LYING IN THE NORTHWEST QUARTER OF SECTION 1, TOWNSHIP 19 SOUTH, RANGE 25 EAST, AND THE NORTHEAST 1/4 QUARTER OF SECTION 2, TOWNSHIP 19 SOUTH, RANGE 25 EAST, SAID LANDS LYING AND BEING IN LAKE COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 1; THENCE SOUTH 00°31'30" WEST, ALONG THE WEST LINE OF SAID SECTION 1 A DISTANCE OF 116.41 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF COUNTY ROAD 44 AND THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE N89°59'30"E ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 542.20 FEET; THENCE DEPARTING SAID RIGHT OF WAY LINE S00°35'47"W A DISTANCE OF 400.00 FEET; THENCE N89°59'30"E A DISTANCE OF 390.00 FEET; THENCE N00°35'47"E A DISTANCE OF 400.00 TO THE SAID SOUTH RIGHT OF WAY LINE OF COUNTY ROAD 44; THENCE N89°59'30"E ALONG SAID SOUTH RIGHT OF WAY LINE A DISTANCE 1690.05 FEET; THENCE DEPARTING SAID RIGHT OF WAY LINE S00°33'50"E ALONG A LINE PARALLEL TO AND 30.00 FEET SOUTH (BY PERPENDICULAR MEASUREMENT) OF THE EAST LINE OF THE NORTHWEST 1/4 OF SAID SECTION 1 A DISTANCE OF 2240 FEET MORE OR LESS TO THE NORTH BANK OF A CANAL; THENCE WESTERLY ALONG THE NORTH BANK OF A CANAL AND THE NORTH BANK OF HAINES CREEK A DISTANCE OF 2672 FEET MORE OR LESS TO THE WEST LINE OF THE NORTHWEST QUARTER OF SECTION 1; THENCE N00°31'30"E ALONG SAID WEST LINE OF THE NORTHWEST QUARTER OF SECTION 1 A DISTANCE OF 516 FEET MORE OR LESS TO THE NORTHEAST CORNER OF THE EAST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST 1/4 OF AFORESAID SECTION 2; THENCE N89°41'33"W ALONG THE NORTH LINE OF THE SAID EAST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST 1/4 OF SECTION 2 A DISTANCE OF 333 FEET MORE OR LESS TO THE NORTH BANK OF SAID HAINES CREEK; THENCE WESTERLY ALONG SAID NORTH BANK A DISTANCE OF 1078 FEET MORE OR LESS TO THE WEST LINE OF THE EAST HALF OF THE NORTHEAST QUARTER OF SAID SECTION 2; THENCE N00°28'50"E ALONG SAID WEST LINE OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 2 A DISTANCE OF 1477 FEET MORE OR LESS TO THE SAID SOUTH RIGHT OF WAY LINE OF COUNTY ROAD 44; THENCE N89°57'52"E ALONG SAID SOUTH RIGHT OF WAY LINE A DISTANCE OF 1334.57 FEET TO THE POINT OF BEGINNING. CONTAINS 195.61 ACRES MORE OR LESS.

FLORIDA PUBLIC SERVICE COMMISSION

authorizes

MFL Utility Systems, L.L.C.
pursuant to
Certificate Number 656-W

to provide water service in Lake 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>
*	*	110023-WS	Original Certificate

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

FLORIDA PUBLIC SERVICE COMMISSION

authorizes

MFL Utility Systems, L.L.C.
pursuant to
Certificate Number 560-S

to provide wastewater service in Lake 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>
*	*	110023-WS	Original Certificate

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