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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 130105-WS

APPLICATION FOR CERTIFICATES TO
PROVIDE WATER AND WASTEWATER
SERVICE IN HENDRY AND COLLIER
COUNTIES, BY CONSOLIDATED SERVICES
OF HENDRY & COLLIER, LLC.

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 2

COMMISSIONERS
PARTICIPATING: CHAIRMAN RONALD A. BRISÉ
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER ART GRAHAM
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Tuesday, June 25, 2013

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, CRR, RPR
Official FPSC Reporter
(850) 413-6734

1 P R O C E E D I N G S

2 **CHAIRMAN BRISÉ:** Okay. So now we have dealt
3 with Issues 1 -- 1, 6, 7, 8, 9, 10, and 11. Okay. We
4 are now moving on to item number 2.

5 **MS. KLANCKE:** Good morning, Commissioners.
6 Caroline Klancke from Commission legal staff.

7 Staff has a brief oral modification to item 2.
8 In particular, on pages 1, 2, and 3, the rule citation
9 erroneously contains references to subsection (r) of
10 Rule 25-30.033 of the *Florida Administrative Code*. As
11 such, staff would like to request the removal of all
12 references to the waiver of subsection (r) contained in
13 the recommendation.

14 Item 2 addresses Consolidated Services of
15 Hendry and Collier, LLC's request for waiver or variance
16 of certain provisions of Rule 25-30.033. The provisions
17 of this rule which the applicant is seeking waiver of
18 pertain primarily to the information required for the
19 setting of initial rates and charges.

20 Staff has recommended approval of the
21 temporary waiver of these provisions for a period not to
22 exceed 36 months. A representative from the utility is
23 present and available to answer any questions that you
24 may have.

25 **CHAIRMAN BRISÉ:** Thank you.

1 Commissioner Brown.

2 **COMMISSIONER BROWN:** A quick question, Ms.
3 Klancke. So you're saying that under 25-30.033(r) that
4 the applicant is not asking or requesting a waivering of
5 the financial statement?

6 **MS. KLANCKE:** That is correct.

7 **COMMISSIONER BROWN:** Thank you.

8 **CHAIRMAN BRISÉ:** Any further questions?

9 Commissioner Balbis.

10 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.

11 And I appreciate the utility being here, and
12 I'd like to give you the opportunity to provide perhaps
13 some additional information as to why you're requesting
14 the 36-month waiver on these rules.

15 **MR. WHARTON:** It's interesting, Commissioner
16 Balbis -- John Wharton for Consolidated Services. It's
17 interesting, Commissioner Balbis, that you would be the
18 person to ask me that. I actually went back -- I was
19 the attorney for Groveland.

20 Groveland was, as I recall, about
21 12,500 acres, that's 20 square miles, and was the
22 utility that you certificated last spring. You asked
23 the single question, and that is: Are we certificating
24 a utility here that is going to have very high rates
25 because the initial plan, that is the allowable

1 densities right now, which were what the facilities were
2 designed on and then the rates generated from, are going
3 to be a very high cost. And I said to you, I doubt
4 these will be the rates. I doubt this will really be
5 the initial plan of service.

6 What I've sought to do here -- because I
7 handled the East Central Florida Services case way back
8 in the early '90s, over 300,000 acres. There's 640
9 acres in a square mile. I handled the Farmington
10 litigation, I handled Groveland, and Bluefield, and
11 Skyland. And in each one of those cases, even if that
12 case went to litigation -- someone was asked in
13 deposition, "Do have you concrete plans right now to go
14 knock down trees, build a cul-de-sac, and put houses
15 up?" Well, no. But we had a Commission rule we needed
16 to comply with.

17 I think this Commission has recognized that
18 there is a unique class of landowner in Florida, and
19 that is these very, very large landowners, and they have
20 now become a unique class of certificated utility. And
21 absolutely no harm has come from the fact that East
22 Central Florida Services was certificated 20 years ago
23 but they have not built the facilities.

24 But if -- I can tell you, as someone who
25 represents a lot of large landowners, if you're sitting

1 in a room and you are attempting to plan the future,
2 it's not like you've got 40 acres and some cul-de-sac.
3 You're looking at 200 or 300 square miles or 40 square
4 miles or 20 square miles in this case. You're in a
5 variety of jurisdictions. Your plans for the future
6 will be affected by politics. I literally heard on the
7 way over here a report on NPR about how damaging the
8 fact that the Farm Bill didn't pass last week is to
9 Florida citrus growers, who Consolidated Citrus that
10 owns this company, controls this company is.

11 You are attempting to project the future, the
12 economy. You're going to have a regional impact with
13 what you do. And you don't need to know the rates when
14 you're sitting there thinking about that future, but you
15 do need to know whether or not you're going to have a
16 utility. That's why I think these landowners are
17 unique.

18 And the three years was intended to that -- we
19 are not at -- we do believe we are at the point right
20 now where we would like to have a certificate, where we
21 need the certificate. We think that it's consistent
22 with decisions you've made in the past about similar
23 landowners. But in three years we will have, we think,
24 a more mature economy, perhaps more stable politically.
25 We are already working with local governments; that's

1 why we didn't get any protest. And that was what the
2 three years was intended to do. Could we have gone down
3 and designed facilities based on local densities and
4 hired someone to do that and generated the rates? We
5 could have.

6 But I just think this request uniquely fits
7 into the waiver rule that says the agency should be
8 concerned whether or not the purpose of the statute will
9 still be fulfilled. Well, you are completely assured of
10 that because we can't charge any rates until you say we
11 can. So you know that we will not charge any rates to
12 customers until we come in with the most current
13 information. And we believe that, that while we do not
14 necessarily have that information in terms of the
15 finality of where we will build and exactly what right
16 now, we are in the planning stages so that in three
17 years that may be much more clear.

18 **COMMISSIONER BALBIS:** Thank you. And I'm glad
19 you brought up my previous questions with the other
20 docket, because I was going to make similar statements.
21 And one of the concerns that I had then and the concerns
22 that I have now is that once we issue this certificate,
23 without looking at what the rates and charges would be,
24 we don't know if we're creating an area that's difficult
25 to serve from a technical standpoint or otherwise, which

1 would ultimately result in a high cost system. We have
2 had numerous dockets with small utilities that have
3 struggled with providing -- affordable may not be the
4 right word but I'll use it -- affordable rates due to,
5 one of the reasons being it's a high cost system to
6 serve.

7 So I believe that one of the intents of the
8 statute and the rule are to make sure when we issue a
9 certificate that we're not in an unintended manner
10 creating a difficult to serve area that will ultimately
11 result in high cost, a high cost system.

12 So the previous docket that we approved did
13 have a plan in place so at least we could look at --
14 well, at least, even though it's going to change, at
15 least we know it's going to result in rates that are,
16 that are reasonable.

17 And my question for you as far as the rule
18 waiver is, is that I understand that you don't have
19 plans in place, you haven't done the design, that that
20 may be fine, but what is the hardship that you have that
21 will allow us to approve these waivers, and why not just
22 wait two years from now when you're closer along in the
23 planning process, you've gone through the initial stages
24 of concurrency, you have a better idea before coming to
25 us, so why not wait? And what is the hardship that you

1 are facing that will allow us to approve the waiver?

2 **MR. WHARTON:** Those are all obviously
3 legitimate concerns. Setting aside the fact that the
4 question of need, which is the one you are really
5 raising now, is something that you, that will come
6 before the Commission again when it votes on whether to
7 actually certificate the utility, the -- you've asked
8 two different questions.

9 One, what is the hardship, which is one of the
10 qualifications for the variance? And the other is, in
11 effect, what is the need?

12 The need is as I have described it. When,
13 when you are sitting down now and you are a very large
14 landowner and you have gone and you've worked with the
15 local governments and you've looked at the utilities out
16 there and you're only talking about certificating your
17 own territory, one of the very vital considerations as
18 you make plans over a very long horizon.

19 I know that Deseret, the landowner in the case
20 of East Central Florida Services that the Commission
21 certificated back in '92, literally operates on a
22 50-year horizon. Whether or not you will have utilities
23 available and whether or not you can serve yourself if
24 you need to do so is a vital consideration.

25 On the issue of hardship, I went through some

1 arguments which I guess could be considered arcane in
2 our petition about what the dictionary definition of
3 hardship is and the dictionary definition of
4 substantial. I certainly don't think the expense alone.
5 When we file -- when we are given confidential treatment
6 of the financial statements and we file the unredacted
7 version for the staff, you'll see this is a very
8 significant entity. That doesn't mean that the cost and
9 expense of going through this at this time is not a
10 legitimate statement of hardship if you say those monies
11 would be better spent at the end of this 36-month
12 window. In fact, I would say for someone to come in and
13 say they can't afford it wouldn't be a legitimate reason
14 to waive the rule. So that in terms of qualification of
15 the rule.

16 But in terms of the types of planning efforts
17 in which we are now engaged, we thought it was important
18 to do that now. I think we're similarly situated to
19 other entities that the Commission has certificated that
20 do own many, many thousands of acres. You've got a
21 statute that says it should be liberally construed to
22 accomplish its purpose, and I don't think any harm has
23 ever come from that. And I don't think, Commissioner,
24 that any of the cases that you are referring to happened
25 in the case of these large landowners. They are

1 uniquely able to plan and to make sure that you're not
2 providing central sewer service to houses that are a
3 mile apart, et cetera. I mean, it is a legitimate
4 concern and I understand exactly why you address it, but
5 I think the large landowners have incentives to
6 ultimately make sure that the utility service is done in
7 a way that's sufficient.

8 **COMMISSIONER BALBIS:** Okay. Thank you.

9 And a follow-up for staff on that. What's
10 before us today is whether or not to approve the waiver
11 of these rules?

12 **MS. KLANCKE:** That's correct.

13 **COMMISSIONER BALBIS:** And but we're not
14 granting the certificate at this time; correct?

15 **MS. KLANCKE:** That is correct. We will deal
16 with that at a later date.

17 **COMMISSIONER BALBIS:** When we deal with that
18 at a later date, will we have detailed information? Are
19 they still going to have the requirements that are
20 normally in place for certificates, or would this --
21 with the granting of this waiver, if they come forward
22 with the request to certificate or receive a certificate
23 within the three years, what option do we have other
24 than to grant it?

25 **MS. KLANCKE:** In the instant case, even if the

1 waiver is granted, we will still -- during the
2 substantive portion of the certification analysis when
3 it comes before you, you will still have to satisfy the
4 requirements that are contained in 367.031 and 367.045.
5 And those include, as stated by Mr. Wharton, the public
6 interest, the need for service, the lack of duplication,
7 all the substantive analyses that are required by the
8 statute.

9 This rule waiver would only waive those
10 portions that deal with what is normally a tandem
11 analysis setting rates and charges primarily. And,
12 thus, the basis of your concern will still be coming
13 before you during the substantive analysis on the
14 certification.

15 **COMMISSIONER BALBIS:** Okay. And, again, those
16 are the concerns that I have. I mean, on the fact that
17 the financial information is going to come in alleviates
18 the concern I had there. And I'm more concerned with
19 are we in an unintended manner creating a hard to serve
20 area which will result in charges? So -- but if we have
21 the opportunity before granting this certificate to look
22 at that, then I'm comfortable with it.

23 I'm not sure it's a great argument for
24 hardship, but it's, it's an argument for hardship. And
25 I think it somewhat alleviates my concerns that we have

1 another crack at this. But I don't know if there are
2 any other questions or if we're in a posture for a
3 motion.

4 **CHAIRMAN BRISÉ:** Commissioner Brown.

5 **COMMISSIONER BROWN:** Thank you.

6 And as a follow-up to Commissioner Balbis's
7 questions, thank you, Mr. Wharton, for coming here and
8 speaking before us today and giving us an opportunity to
9 ask you about that 36-month waiver.

10 And what really jumped out at me was that it
11 was 36 months. So why was, why was the utility coming
12 in or the landowner coming in asking for such an
13 extensive amount of time, and I think you kind of
14 addressed it. And I appreciate that this is a unique
15 landowner and the fact that the information that is
16 being sought to be waived is somewhat tenuous in nature;
17 not just for you, but really for all new certificates.
18 So I appreciate that.

19 With that, the only thing that I really have a
20 question about that was lacking in this, this
21 recommendation was the fact of the Commission's
22 precedential history of supporting a 36-month waiver
23 period of similarly-situated landowners.

24 And, Ms. Klancke, if you could just elaborate
25 on why the Commission has in past cases supported even

1 36 months, less, more, somewhere around there, in a
2 similarly-situated fact pattern, that would be helpful.

3 **MS. KLANCKE:** Certainly. Although each waiver
4 is analyzed based on the particulars of that case, we do
5 have precedent in the form of Central Sumter and Town
6 and Country and Docket 060601 and Docket 060602 in which
7 you have similar time frames for the temporary waiver.
8 And some of those durationally, because the waiver was
9 granted to allow for this planning horizon which on
10 occasion does take some time, have been close to 36
11 months in one instance. With Central Sumter it exceeded
12 that time period. Thus it is, although long in
13 duration, it's temporary in nature and will ultimately
14 be satisfied.

15 In the instant case, we are recommending that
16 the 36 months, that they be held to that. And if that
17 is not maintained, we will address that at that time.

18 **COMMISSIONER BROWN:** Follow-up. How will we
19 address that at that time?

20 **MS. KLANCKE:** We will keep this docket open --
21 it is my suggestion that we keep this docket open to
22 allow the utility to submit that information in a time
23 period not to exceed 36 months. If that is not
24 maintained, staff will take actions to correct that.

25 **COMMISSIONER BROWN:** Mr. Chairman, if there

1 are no other questions, I'm willing to entertain a
2 motion at this time.

3 **CHAIRMAN BRISÉ:** Okay. Are there any other
4 questions or comments? I think I will entertain the
5 motion.

6 (Laughter.)

7 Any other questions or comments at this time?
8 Seeing none, I think we are in posture for a motion.

9 **COMMISSIONER BROWN:** Thank you. I move staff
10 recommendation on Issues 1 and 2 of this item.

11 **CHAIRMAN BRISÉ:** All right. It's been moved
12 and seconded. All in favor, say aye.

13 (Affirmative vote.)

14 All right.

15 **MR. WHARTON:** Thank you, Commissioners.

16 (Agenda item concluded.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

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I, LINDA BOLES, CRR, RPR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 28th day of June, 2013.

Linda Boles

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