

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

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

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**DATE:** September 12, 2013

**TO:** Office of Commission Clerk (Cole)

**FROM:** Division of Engineering (M. Watts, Rieger) *MRW*  
Division of Accounting and Finance (T. Brown, Norris) *MB*  
Office of the General Counsel (Klancke) *CME* *JSC*

**RE:** 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. *ALM* *CRB* *TR* *SMO*

**AGENDA:** 09/25/13 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Graham

**CRITICAL DATES:** 11/03/13 (Statutory deadline for original certificate pursuant to Section 367.031, Florida Statutes)

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\ENG\WP\130105A.RCM.DOC

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### Case Background

On April 29, 2013, Consolidated Services of Hendry & Collier, LLC (Consolidated Services or Utility) filed an application for original water and wastewater certificates in Hendry and Collier Counties, concurrent with a petition to bifurcate the setting of initial rates and charges. The Utility is an LLC which is ultimately owned by King Ranch through a subsidiary, Consolidated Citrus Limited Partnership (Consolidated Citrus), one of the largest citrus growers in the United States. The proposed territory consists of a total of 12,400 acres, all owned by Consolidated Citrus. Neither Hendry nor Collier County has turned over jurisdiction of the privately owned water and wastewater utilities within its respective county to the Commission,

pursuant to Chapter 367.171, Florida Statutes (F.S.). However, pursuant to Section 367.171(7), F.S., the Commission has exclusive jurisdiction over all utility systems whose service transverses county boundaries, whether the counties involved are jurisdictional or nonjurisdictional; therefore, the Commission has jurisdiction over the proposed service area in Hendry and Collier Counties. Consolidated Services' proposed service territory is located in the South Florida Water Management District (SFWMD). The Utility anticipates serving approximately 15,000 residential units, 1.025 million square feet of commercial space (including office and retail), 725,000 square feet of industrial space, and 400 hotel rooms when buildout is reached. The Utility anticipates commencing service in May 2017.

The Utility's initial application was found to be deficient. In addition, the applicant requested a temporary waiver of the rules requiring information necessary to establish rates since the development is in the very early planning stage. The waiver request was approved at the June 25, 2013 Commission Conference.<sup>1</sup> The Utility corrected the deficiencies (other than those covered by the waiver request) on August 5, 2013. The Commission has jurisdiction pursuant to Sections 367.031 and 367.045, F.S.

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<sup>1</sup> See Order No. PSC-13-0324-PAA-WS, issued July 15, 2013, in Docket No. 130105-WS, In re: Application for certificates to provide water and wastewater service in Hendry and Collier Counties, by Consolidated Services of Hendry & Collier, LLC.

### **Discussion of Issues**

**Issue 1:** Should Consolidated Services' application for water and wastewater certificates be approved?

**Recommendation:** Yes, Consolidated Services should be granted Certificate Nos. 664-W and 568-S to serve the territory described in Attachment A effective the date of the Commission's vote. The resultant order should serve as Consolidated Services' water and wastewater certificates and it should be retained by the Utility. The Utility should file executed copies of its water and wastewater lease agreements, containing a legal description of the lease sites, within 30 days of the issuance date of the certificates. (M. Watts, Rieger, T. Brown, Klancke)

**Staff Analysis:** On April 29, 2013, Consolidated Services filed an application for original water and wastewater certificates in Hendry and Collier Counties. The application is in compliance with the governing statute, Section 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 set forth in Rule 25-30.030, Florida Administrative Code (F.A.C.). The Utility provided proof that it provided adequate notice as prescribed by this rule.

Staff notes that subsection (2) of Rule 25-30.030, F.A.C. provides that the Utility shall obtain from the Commission a list of entities to whom it must send individual notices. Pursuant to this requirement, both the Board of County Commissioners of Hendry County and governmental authorities in Collier County were denoted on this list and thus received individual notice. However, the Utility was not required to provide individual notice to Immokalee Utilities in Collier County or Hendry Utilities in Hendry County because these entities are not utilities certificated by the Commission. As noted on page 15 of the application, Consolidated Services determined independently that a portion of its proposed service territory overlaps the service territory of Immokalee Utilities in Collier County and of Hendry Utilities in Hendry County. Consolidated Services indicated that it had met with both entities prior to filing its application to discuss whether they could or would provide service in the proposed territory.

Consolidated Services represented in its application, as well as in its July 30, 2013, response to staff's June 6, 2013 deficiency letter, that neither entity was willing or able to provide service in its respective portion of the proposed service territory. Staff confirmed via telephone conversations with each entity that each had multiple meetings with Consolidated Services and neither entity opposed the Utility's application for water and wastewater certificates. No entity filed a protest during the protest period and the time for filing objections has expired. Therefore, pursuant to the statutory deadline for original certificates in Section 367.031, F.S., the application must be ruled upon by November 3, 2013.

**Territory.** The application contains adequate service territory maps, along with a territory description, as prescribed by Rules 25-30.033(1)(l), and (n), F.A.C. A description of Consolidated Services' water and wastewater territory is appended to this recommendation as Attachment A.

**Proof of Ownership.** Pursuant to Rule 25-30.033(1)(j), F.A.C., the application contains proposed water and wastewater lease agreements provided as proof that the Utility will have long-term access to the land upon which the water and wastewater treatment facilities will be located. As noted, all the land is owned by Consolidated Services' parent, Consolidated Citrus. The lease agreements are for a period of 99 years. Staff believes the leases provide proof the Utility will have long-term access to the land upon which the water and wastewater treatment facilities will be located. Staff recommends the Utility be required to file executed copies of its water and wastewater lease agreements, containing a legal description of the lease sites, within 30 days after the date of the order granting the certificates, pursuant to Rule 25-30.033(1)(j), F.A.C. It should be noted that acceptance of the leases as proof of long-term access to the land under the treatment facilities is not a determination as to the prudence of the costs of these leases.

**Financial and Technical Ability.** Rule 25-30.033(1)(e), (r), and (s), F.A.C., requires a statement showing the financial and technical ability of the applicant to provide service, a detailed financial statement, and a list of all entities upon which the applicant is relying to provide funding along with those entities' financial statements. Since Consolidated Services has not been authorized by the Commission to provide service for compensation, it is relying upon the financial backing of its parent and landowner, Consolidated Citrus. The Commission has traditionally allowed reliance on the parent's financial ability in similar situations.<sup>2</sup> The Commission's reasoning has been the logical vested interest of a parent in the financial stability of its subsidiary. The application contains Consolidated Citrus' most recent financial statement as well as a funding agreement between Consolidated Citrus and Consolidated Services, whereby Consolidated Citrus agrees to provide reasonable and necessary funding to the Utility to build and operate the systems in Hendry and Collier Counties. The application indicates Consolidated Citrus owns and controls over 53,000 acres of real property in Florida, on which it conducts substantial commercial activities. Staff believes Consolidated Citrus' financial statement and extensive business operations in Florida show adequate and stable funding reserves for the Utility. Therefore, staff recommends that Consolidated Services has demonstrated that it will have access to adequate financial resources to operate the Utility.

With respect to technical ability, the application indicates Consolidated Services' intent to retain the best people to design the facilities, work with state and local governments in the permitting and construction of the facilities, and operate the facilities thereafter. Due to Consolidated Citrus' experience in numerous areas of facility operation, regulatory compliance, planning, and financing, as well as cooperatively working with other private and public entities, staff recommends that Consolidated Services has demonstrated that it will have access to adequate technical resources to operate the Utility.

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<sup>2</sup> See Order Nos. PSC-12-0224-PAA-WS, issued April 30, 2012, in Docket No. 090445-WS, In re: Application for original certificates for proposed water and wastewater system and request for initial rates and charges in Indian River, Okeechobee and St. Lucie counties by Grove Land Utilities, LLC; PSC-08-0540-PAA-WS, issued August 18, 2008, in Docket No. 080103-WS, In re: Application for certificates to provide water and wastewater service in Hardee and Polk Counties by TBBT Utility LLC; Order No. PSC-07-0076-PAA-SU, issued January 29, 2007, in Docket No. 060602-SU, In re: Application for certificate to provide wastewater service in Lee and Charlotte Counties by Town and Country Utilities Company; and Order No. PSC-07-0274-PAA-WS, issued April 2, 2007, in Docket No. 060694-WS, In re: Application for certificates to provide water and wastewater service in Flagler and Volusia Counties by D & E Water Resources.

**Need for Service.** Rule 25-30.033(1)(e), F.A.C., also requires a showing of the need for service in the proposed area to be served, the identity of any other utilities within the proposed area that could potentially provide service, and the steps the applicant took to ascertain whether such other service is available. The proposed service area consists of contiguous land in Hendry and Collier Counties, all owned by Consolidated Citrus. According to the application, the most immediate need for service is the provision of central water and wastewater service to the existing farm worker housing and regular agriculture operations. In addition, Consolidated Citrus requested that Consolidated Services provide service for planned uses in producing biofuels. The original application indicated that there are no central potable water or wastewater services in the area, nor is there any other utility able or willing to provide the necessary level of service. In addition, since Consolidated Services' parent owns all the land in its proposed service territory, Consolidated Services believes it would be in the best position to provide water and wastewater services in the most efficient and cost-effective manner.

The Commission has acknowledged the challenges faced by citrus growers in recent years due to the impact of diseases on the groves in prior cases.<sup>3</sup> Consolidated Citrus seeks to meet these challenges through efforts to diversify its business activities. Citing the legislative intent in Section 366.92, F.S., to promote the development of renewable energy, Consolidated Citrus is investigating using its properties in part for the growth of biofuels, including algae, which will have a demand for water. Staff recommends that Consolidated Services has provided a demonstration of need consistent with prior Commission decisions.<sup>4</sup>

**Comprehensive Plan Consistency.** Rule 25-30.033(1)(f), F.A.C., requires a statement that, to the best of the applicant's knowledge, the provision of service will be consistent with the water and wastewater sections of the local comprehensive plan as approved by the Department of Community Affairs (DCA) at the time the application is filed. Consolidated Services' application contains such a statement and the proposed residential/commercial/industrial capacities through buildout are consistent with the allowed densities in the Sector Plan used by Hendry County to designate future development and preservation areas, and with the Rural Land Stewardship program in Collier County. Therefore, staff recommends that Consolidated Services has demonstrated that the provision of potable water and wastewater services will be consistent with the local comprehensive plans.

**Facilities Design.** Rules 25-30.033(1)(g), (h), and (i), F.A.C., require a description of when the applicant proposes to begin service, the number of equivalent residential connections (ERCs) proposed to be served, and the types of customers. With respect to when the applicant proposes to begin service, Consolidated Services proposes to provide potable water and wastewater services in no less than three years, and after the Commission has set rates and

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<sup>3</sup> See Docket No. 090445-WS, In re: Application for original certificates for proposed water and wastewater system and request for initial rates and charges in Indian River, Okeechobee and St. Lucie counties by Grove Land Utilities, LLC.

<sup>4</sup> Order No. PSC-04-0980-FOF-WU, p. 7, issued October 8, 2004, in Docket No. 021256-WU, In re: Application for certificate to provide water service in Volusia and Brevard Counties by Farmton Water Resources, LLC and Order No. PSC-92-0104-FOF-WU, p. 19, issued March 27, 1992, in Docket No. 910114-WU, In re: Application of East Central Services, Inc., for an original certificate in Brevard, Orange and Osceola Counties.

charges in this docket. Regarding the number of ERCs proposed to be served, pursuant to Order No. PSC-13-0324-PAA-WS, issued on July 15, 2013, in the instant docket (the Waiver Order), Consolidated Services will provide the number of ERCs when it seeks to have the Commission set its initial rates and charges. As to the types of customers to be served, the Utility proposes to serve hotels and residential, commercial, and industrial customers.

Rules 25-30.033(1)(o), (p), and (q), F.A.C., require statements regarding the proposed capacities of lines and plant, types of treatment provided, and whether effluent disposal by means of reuse will be utilized. Pursuant to the Waiver Order, Consolidated Services received a variance from the requirement to provide a statement regarding the proposed capacities of the lines and plant contained in Rule 25-30.033(1)(o), F.A.C. This information will be provided to the Commission within 36 months in conjunction with the setting of initial rates and charges. With regard to the requirements of Rules 25-30.033(1) (p), and (q), F.A.C., Consolidated Services plans to treat the raw water from the Sandstone aquifer by nanofiltration, and effluent disposal will be by means of activated sludge. Reuse for effluent disposal is planned for irrigation applications.

**Regulatory Requirements.** Consolidated Services has indicated its intent to comport with the National Association of Regulatory Utility Commissioners' Uniform System of Accounts. In addition, Consolidated Services has indicated it is aware that it may not add new services, serve outside its certificated territory, or sell the utility without prior Commission approval.

**Conclusion.** Based on all the above, staff recommends it is in the public interest to grant Consolidated Services of Hendry & Collier, LLC, Certificate Nos. 664-W and 568-S 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 it should be retained by the Utility. Consolidated Services of Hendry & Collier, LLC., should be required to file executed copies of its water and wastewater lease agreements, containing a legal description of the lease sites, within 30 days after the date of the order granting the certificates.

Docket No. 130105-WS  
Date: September 12, 2013

**Issue 2:** Should this docket be closed?

**Recommendation:** No. This docket should remain open pending the receipt of the executed and recorded warranty deeds or lease agreements and to allow for the setting of initial rates, charges, and return on equity. As discussed earlier, the company has requested that the certification and the rate setting process be bifurcated. Therefore, staff recommends that the docket remain open for the setting of initial rates, charges, and return on equity at a later date. (Klancke)

**Staff Analysis:** This docket should remain open pending the receipt of the executed and recorded warranty deeds or lease agreements and to allow for the setting of initial rates, charges, and return on equity. As discussed earlier, the company has requested that the certification and the rate setting process be bifurcated. Therefore, staff recommends that the docket remain open for the setting of initial rates, charges, and return on equity at a later date.

**CONSOLIDATED SERVICES OF HENDRY & COLLIER, LLC**

**Description of Water and Wastewater Territory  
Hendry and Collier Counties**

**THAT PORTION OF THE LAND LYING WITHIN COLLIER COUNTY, FLORIDA,  
AND KNOWN AS PART OF THE GATOR SLOUGH GROVE:**

Section 1,  
That portion of Section 2, lying North of S.R. 82 Right of Way,  
That portion of Section 11, lying North of S.R. 82 Right of Way,  
That portion of Section 12, lying North of S.R. 82 Right of Way,  
All in Township 46 South, Range 28 East, Collier County, Florida.

**THAT PORTION OF THE LAND LYING WITHIN COLLIER COUNTY, FLORIDA,  
AND KNOWN AS PART OF THE HIGHLANDS GROVE:**

That portion of Section 2, lying South of S.R. 82 Right of Way,  
That portion of Section 11, lying South of S.R. 82 Right of Way,  
That portion of Section 12, lying South of S.R. 82 Right of Way,  
All of Section 13,  
All of Section 14,  
All of Section 23,  
All of Section 24,  
All in Township 46 South, Range 28 East, Collier County, Florida.

The North 1,459.41 feet of Section 25, Township 46 South, Range 28 East, Collier County, Florida.

The North 1,452.35 feet of Section 26, Township 46 South, Range 28 East, Collier County, Florida.

The South 1/2 of the NE 1/4 and the N 1/2 of the SE 1/4 and the SE 1/4 of the SE 1/4 of Section 22, Township 46 South, Range 28 East, Collier County, Florida.

A tract or parcel of land lying in Section 19, Township 46 South, Range 29 East, Collier County, Florida being described as follows:

From the Southwest corner of said Section 19 run N 00° 04' 32" E along the West line of said Section for 2,651.53 feet to an intersection with the North line of the South one-half (S-1/2) of said Section; thence run S 89° 51' 53" along said North line for 3296.94 feet; thence run S 00° 04' 32" W for 2,675.94 E feet to an intersection with the South line of said Section; thence run N 89° 26' 22" W along said South line for 3,297.06 feet to the Point of Beginning.



**THAT PORTION OF THE LAND LYING WITHIN COLLIER COUNTY, FLORIDA,  
AND KNOWN AS PART OF THE GATOR SLOUGH GROVE:**

All of Section 22, less the North 25 feet thereof,  
The South ½ of Section 23,  
All of Section 26,  
All of Section 27,  
All of Section 28, less the West 60 feet thereof,  
All of Section 34,  
All of Section 35,  
All of Section 36,  
All in Township 45 South, Range 28 East, Hendry County, Florida.

Together with:

All of Section 25, Township 45 South, Range 28 East, Hendry County, Florida;

LESS AND EXCEPT:

A tract or parcel of land lying in Section 25, Township 45 South, Range 28 East, Hendry County, Florida, being described as follows:

From the Southeast corner of said Section 25 run N 88° 10' 10" W along the South line of said Section for 5,112.87 feet to an intersection with the West line of said Section; thence run N 00° 33' 11" W along said West line for 665.43 feet; thence run S 88° 08' 46" E for 5,112.44 feet to an intersection with the East line of said Section; thence run S 00° 35' 53" E along said East line for 663.37 feet to the Point of Beginning.

Together with:

All of Section 30, Township 45 South, Range 29 East, Hendry County, Florida;

LESS AND EXCEPT:

A tract or parcel of land lying in Section 30, Township 45 South, Range 29 East, Hendry County, Florida, being described as follows:

From the Southeast corner of said Section 30 run S 89° 24' 53" W along the South line of said Section for 2,233.22 feet; thence run N 16° 30' 52" W for 548.20 feet to a point on a non-tangent curve; thence run Northwesterly along said curve with a radius of 1,824.18 feet, (delta = 8° 37' 04"), (chord bearing = N 20° 49' 24" W), (chord = 274.11 feet) for 274.37 feet to an intersection with a non-tangent line; thence run N 25° 22' 50" W for 698.26 feet; thence run S 88° 12' 08" E for 269.51 feet; thence run N 01° 36' 10" E for 999.48 feet; thence run N 89° 22' 37" E for 2,411.56 feet to an intersection with the East line of the Northeast one-quarter (NE-1/4) of said Section 30; thence run S 01° 50' 05" E along said East line for 42.02 feet to the East quarter corner of said Section; thence run S 01° 49' 50" E along the East line of the Southeast one-quarter (SE-1/4) of said Section for 2,365.89 feet to the Point of Beginning.

**SECTION 14 HENDRY COUNTY, FLORIDA:**

All of Section 14, Township 45 South, Range 28 East, Hendry County, Florida;  
LESS AND EXCEPT:

A tract or parcel of land lying in Section 14, Township 45 South, Range 28 East, Hendry County, Florida, being described as follows:

The South 43 feet of the West 475 feet; the South 37 feet of the East 480 feet of the West 955 feet; and the South 30 feet of said Section 14 lying Easterly of the West 955 feet thereof.

**FLORIDA PUBLIC SERVICE COMMISSION**

authorizes

**Consolidated Services of Hendry & Collier, LLC pursuant to  
Certificate Number 664-W**

to provide water service in Indian River, Okeechobee, and St. Lucie Counties 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>
*	*	130105-WS	Original Certificate

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

**FLORIDA PUBLIC SERVICE COMMISSION**

authorizes

**Consolidated Services of Hendry & Collier, LLC**  
pursuant to  
**Certificate Number 568-S**

to provide wastewater service in Hendry and Collier Counties 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>
*	*	130105-WS	Original Certificate

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