

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application for Original Certificate of
Authorization and Initial Rates and Charges for
Wastewater Service in Orange County, Florida by
Gulfstream Utility LLC

DOCKET NO. 20210191-SU

**ORANGE COUNTY, FLORIDA'S RESPONSE
IN OPPOSITION TO MOTION TO DISMISS**

Orange County, Florida, by and through its undersigned attorneys, pursuant to Rule 28-106.204(1), Florida Administrative Code, files this Response in opposition to the Motion to Dismiss by Gulfstream Utility LLC ("Gulfstream"). In support thereof, Orange County states:

1. Section 367.045(4), Florida Statutes, states that a county has standing to object on the ground that issuance of a certificate of authorization violates the local comprehensive plan.

2. Section 367.045(5)(b) requires the Public Service Commission ("PSC") to consider Orange County's local comprehensive plan since Orange County made a timely objection as set forth in its Petition. Although the plain language of the statute only requires the PSC to consider the comprehensive plan, "[t]he PSC is expressly granted discretion in the decision of whether to defer to the plan." *In Re Farmton Water Res. LLC*, 2004 WL 2359423 (Oct. 8, 2004). Again, the PSC may exercise its discretion and defer to the comprehensive plan. *See also In Re: Objection to Notice of Conrock Util. Co. of Intent to Apply for A Water Certificate in Hernando County*, 90 FPSC 4:537 (Apr. 23, 1990).

3. Here, Orange County objected to Gulfstream's Application on the basis that issuance of the certificate of authorization would violate the Orange County Comprehensive Plan because, among other things, the Orange County Comprehensive Plan does not allow permanent package plants in Orange County.

4. Accordingly, Orange County has standing per the express terms of Section 367.045(4) and is a substantially affected party.

5. Further, Gulfstream's Motion to Dismiss should be denied because Orange County's Objections are not legally insufficient. "The function of a motion to dismiss is to raise as a question of law the sufficiency of the facts alleged to state a cause of action. The applicable standard for disposing of a motion to dismiss is whether, with all factual allegations in the petition taken to be true, the petition states a cause of action upon which relief may be granted. In making this determination, all reasonable inferences drawn from the petition must be made in favor of the petitioner. Consideration of a motion to dismiss 'may not properly go beyond the four corners of the complaint in testing the legal sufficiency of the allegations set forth therein.'" *In Re: Application for Certificate to Provide Wastewater Serv. in Charlotte County, by Envtl. Utilities, LLC.*, 2021 WL 5052577, at *7 (Oct. 28, 2021) (citations omitted).

6. Orange County's Objections raise disputed questions of fact, including whether or not Gulfstream can demonstrate that it meets the appropriate requirements to obtain an original certificate of authorization.

7. For example, in addition to the inconsistency with the comprehensive plan, Orange County's Objections assert that Gulfstream has not demonstrated "the necessary financial ability of the applicant to provide service to the proposed service area." The Amended Application states that "the Applicant has never been operated as a separated operating unit" and "there are no financial statements for the Applicant at present." Thus, Gulfstream has not provided copies of any enforceable financial agreements.

8. As another example, as set forth in Orange County's Objections, Gulfstream has not provided sufficient "[d]ocumentation of the utility's right to access and continued use of the

land upon which the utility treatment facilities are or will be located.” Exhibit I is an unsigned document. Gulfstream has only provided an unexecuted, proposed lease agreement.

9. Further, per Section 367.045, Florida Statutes, the PSC must determine that issuance of the certificate of authorization would be in the public interest and would not result in a duplication of services.

10. The determination of the PSC as to whether the foregoing criteria have been satisfied involves disputed issues of material fact.

11. In sum, Orange County requests that the Public Service Commission deny Gulfstream’s Motion to Dismiss for the reasons set forth herein.

Respectfully submitted this 1st day of April, 2022.

/s/ Linda S. Brehmer Lanosa
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, pursuant to Rule 28-106.104, F.A.C., on the 1st day of April 2022, a true and correct copy of the foregoing was electronically filed and served via electronic

mail to: Ryan Sandy, Esq., Senior Attorney, Economic Regulation Section, Office of the General Counsel, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0854, RSandy@psc.state.fl.us; F. Marshall Deterding, Esq., Sundstrom & Mindlin, LLP, 2458 Blairstone Pines Drive, Tallahassee, FL 32301, mdeterding@sfflaw.com; and Office of Public Counsel, Richard Gentry/Charles Rehwinkel/Steven Baird, c/o The Florida Legislature, 111 W. Madison Street, Room 812, Tallahassee FL 32399, gentry.richard@leg.state.fl.us; rehwinkel.charles@leg.state.fl.us; baird.steven@leg.state.fl.us.

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