

State of Florida



## Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

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**DATE:** September 7, 2006

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bayó)

**FROM:** Office of the General Counsel (Fleming)  
Division of Economic Regulation (Brady, Rieger)

**RE:** Docket No. 060276-WS – Application for certificates to provide water and wastewater service in Putnam County by Mariposa Utility Company, LLC.

**AGENDA:** 09/19/06 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Arriaga

**CRITICAL DATES:** 90 Day Rule Waiver Deadline Waived by Petitioner until September 19, 2006

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\060276.RCM.DOC

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### **Case Background**

On March 23, 2006, Mariposa Utility Company, LLC (Mariposa) submitted an application for original certificates to operate a water and wastewater utility in Putnam County, Florida along with a petition requesting a temporary variance from or a temporary waiver of Rules 25-30.033(1)(k), (m), (r), (t), (u), (v) and (w), Florida Administrative Code. On May 31, 2006, the utility filed an amended petition requesting a temporary variance from or temporary waiver of Rule 25-30.033(1)(j), Florida Administrative Code, in addition to the above-mentioned rules.

The affiliated developer plans to construct single family detached and attached homes, and multi-family residences. The primary commercial facilities that will be constructed include offices, retail stores, restaurants, institutional/educational uses, medical facilities and recreational facilities. Mariposa was formed on March 10, 2006. Its application indicates that construction will begin in 2008.

On April 19, 2006, Putnam County (County) filed an objection to Mariposa's application for an original certificate to provide water and wastewater service. On May 25, 2006, the County withdrew its objection relating to the wastewater service. The parties are currently negotiating a settlement on the water service.

Pursuant to Section 120.542, Florida Statutes, notice of the petition for waiver was published in the Florida Administrative Weekly on August 18, 2006. No written comments were received and the time for filing such has expired.

This recommendation addresses the petition and amended petition for temporary variance from or temporary waiver of Rules 25-30.033(1)(j), (k), (m), (r), (t), (u), (v) and (w), Florida Administrative Code. The Commission has jurisdiction pursuant to Sections 367.031 and 367.045, Florida Statutes.

### **Discussion of Issues**

**Issue 1:** Should the Commission grant Mariposa's petition for a temporary waiver of Rules 25-30.033 (1)(j), (k), (m), (r), (t), (u), (v), and (w), Florida Administrative Code?

**Recommendation:** Yes. Mariposa's petition for a temporary waiver of Rules 25-30.033(1)(j), (k), (m), (r), (t), (u), (v), and (w), Florida Administrative Code, should be granted. (Fleming, Brady, Rieger)

**Staff Analysis:** Rule 25-30.033(1)(j), (k), (m), (r), (t), (u), (v), and (w), Florida Administrative Code, directs the applicant for an original certificate to file information necessary for setting initial rates and charges, including: evidence that the utility owns the land upon which the utility facilities are or will be located, the filing of the original and two copies of tariffs, the filing of a detailed system map showing the proposed lines, treatment facilities, and the territory to be served, a detailed financial statement, a cost study supporting proposed rates and charges, a schedule showing the projected costs of the systems, a schedule showing projected operating expenses, and a schedule showing the projected capital structure. Mariposa has asked for a temporary waiver of these parts of the rule so that it may receive its certificates and then proceed with water use permitting and wastewater treatment plant permitting. When Mariposa has received its permits it will be able to provide accurate cost estimates, schedules and cost studies to support initial rates and charges.

Section 120.542, Florida Statutes, authorizes the Commission to grant variances or waivers to the requirements of its rules where the person subject to the rules has demonstrated that the underlying purpose of the statute has been or will be achieved by other means, and strict application of the rules would cause the person substantial hardship or would violate principles of fairness. "Substantial hardship" as defined in this section means demonstrated economic, technological, legal, or other hardship.

The underlying statutory provisions pertaining to the above-mentioned rules are Sections 367.031 and 367.045, Florida Statutes. Section 367.031 requires each utility seeking to provide water and wastewater service to obtain a certificate of authorization from the Commission prior to obtaining permits from the Department of Environmental Protection and water management districts. Section 367.045(5)(a), Florida Statutes, states that the Commission may grant a certificate of authorization if it is in the public interest. The purpose of Sections 367.031 and 367.045, Florida Statutes, is to ensure that a utility has the financial and technical ability to provide service, that there is a need for service in the proposed service area, and to determine the existence or nonexistence of service from other sources within geographical proximity to the proposed service area. Waiver of the parts of the rule that require information to be filed that is needed to set rates will not prevent the Commission from determining whether the utility is financially or technically able to provide service, whether the service is needed, or whether service can be provided from other sources when the application for original certificate is before the Commission. Rates can be set at a later date, and often are.<sup>1</sup>

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<sup>1</sup> See, Order No. PSC-98-1644-FOF-WS, issued December 7, 1998, in Docket No. 980876-WS, In re: Application for certificate to operate water and wastewater facility in Marion County by Ocala Springs Utilities, Inc. and Order

The development planned for the Mariposa territory will need water and wastewater service in 2008. The development will consist of 3,046 residential ERCs and 320 commercial ERCs. Mariposa states that although it does not expect to provide service for three years, Section 367.031, Florida Statutes, requires that a utility obtain a certificate from the Commission before the Department of Environmental Protection and the Water Management District may issue construction and operating permits. As such, Mariposa cannot procure a water use permit and wastewater treatment plant construction permit until it procures a Commission certificate. A waiver is necessary because the utility will not be able to determine the size, location and the associated costs it needs for its treatment facilities until certain threshold issues are determined. First, the utility's wells must be tested. The results of the tests will determine the type and size of the water treatment equipment selected. The water treatment equipment will, in turn, determine the type and size of wastewater treatment equipment selected. Once the utility's treatment facilities are selected and sized, the utility may complete its application for the necessary permits and will be able to determine how much land it requires for its treatment facilities. If the Commission does not temporarily waive its rules, however, Mariposa cannot pursue obtaining a certificate without providing detailed facility cost information, but it cannot calculate detailed facility cost information until it receives its water use permit and wastewater treatment plant construction permit. The hardship created by this circumstance is Mariposa's inability to determine the size and location of its facilities and costs until the permits are obtained and its inability to proceed with the development of its water and wastewater facilities to serve the proposed service area if the waiver is not granted.

When a utility has met the criteria set forth in Section 120.542, Florida Statutes, the Commission has granted a temporary waiver of the rules regarding establishment of initial rates and charges and bifurcated the two parts of its certification proceedings.<sup>2</sup> In this case, Mariposa has met the underlying purpose of Sections 367.031 and 367.045, Florida Statutes. Mariposa has shown that it will suffer substantial hardship if all of the provisions of Rule 25-30.033, Florida Administrative Code, are strictly applied.

Mariposa has requested a waiver of the rules until it receives its other permits and is closer to commencing operations. Mariposa states that it will file its proposed tariffs and other required financial schedules to set initial rates sufficiently in advance of providing service, so that the Commission will have sufficient time for review. Staff recommends that the utility has met the requirements found in Section 120.542, Florida Statutes, and the Commission should grant Mariposa's petition for temporary waiver of Rules 25-30.033 (1)(j), (k), (m), (r), (t), (u), (v), and (w), Florida Administrative Code, until it has completed its permitting and is closer to commencement of operations.

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No. PSC-05-0844-PAA-WS, issued August 18, 2005, in Docket No. 050192-WS, In re: Application for certificates to provide water and wastewater service in Sumter County by Central Sumter Utility Company, L.L.C.

<sup>2</sup> Id.

Docket No. 060276-WS  
Date: September 7, 2006

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

**Recommendation:** No. If no timely protest is received to the proposed agency action, the Order will become final upon the issuance of a Consummating Order. However, the docket should remain open pending Commission action on Mariposa's application for original water and wastewater certificates and the filing of the information necessary to establish rates and charges. (Fleming)

**Staff Analysis:** No. If no timely protest is received to the proposed agency action, the Order will become final upon the issuance of a Consummating Order. However, the docket should remain open pending Commission action on Mariposa's application for original water and wastewater certificates and the filing of the information necessary to establish rates and charges.