

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Original Certificate for a Proposed Wastewater System and Request for Bifurcation by Water Management Services, Inc.

Docket No. 090189

Filed: April 15, 2009

MOTION FOR VARIANCE FROM PORTIONS OF RULE 25-30.033(1), FLORIDA ADMINISTRATIVE CODE AND FORM PSC/ECR 009-W

Water Management Services, Inc. ("WMSI"), by and through its undersigned counsel and pursuant to Sections 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code, moves this Commission to grant a variance from Rule 25-30.033(1), Florida Administrative Code. In support, WMSI states as follows:

- 1. WMSI's name and address is:

Water Management Services, Inc.
250 John Knox Road, Suite 4
Tallahassee, FL 32303

- 2. The name, address, telephone number, facsimile number and email address of

WMSI's counsel:

Marsha E. Rule, Esq.
Rutledge, Ecenia & Purnell, P.A.
119 South Monroe Street, Suite 202
Tallahassee, FL 32303
marsha@reuphlaw.com
850.681.6788 Phone
850.681.6515 Fax

- 3. WMSI is a privately-owned company that currently provides residential and

commercial water service to St. George Island, Franklin County, Florida pursuant to Certificate No. 302-W. WMSI seeks to provide wastewater service within the same territory. This Motion is filed contemporaneously with WMSI's Application to obtain an original

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certificate authorizing wastewater service in the proposed territory pursuant to Section 367.031, Florida Statutes. As set forth in its Application, WMSI has requested that the Commission bifurcate the certification proceeding from the initial ratemaking process so that WMSI may obtain its certificate expeditiously and proceed with environmental permitting.

4. Pursuant to Section 367.031, Florida Statutes, WMSI must obtain an original certificate *before* applying to the Florida Department of Environmental Protection for a construction permit:

**367.031 Original certificate.**--Each utility subject to the jurisdiction of the commission must obtain from the commission a certificate of authorization to provide water or wastewater service. A utility must obtain a certificate of authorization from the commission prior to being issued a permit by the Department of Environmental Protection for the construction of a new water or wastewater facility or prior to being issued a consumptive use or drilling permit by a water management district. 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, unless an objection is filed pursuant to ss. 120.569 and 120.57, or the application will be deemed granted.

However, in order to apply for certification, WMSI must first expend substantial resources to develop the extensive amount of detailed information that must be included in its application pursuant to Rule 25-30.033, Florida Administrative Code and Form PSC/ECR 009-W. WMSI seeks a variance from the literal requirement of Rule 25-30.033(1), Florida Administrative Code, and Form PSC/ECR 009-W, to initially provide all such information in its application, and respectfully requests the Commission to permit WMSI to proceed with certification while developing and providing some of the required information after the permitting process has been completed.

5. Section 120.52(21), Florida Statutes defines the term “variance” as “a decision by an agency to grant a modification to all or part of the literal requirements of an agency rule to a person who is subject to the rule.” Section 120.542(2), Florida Statutes, requires agencies to grant a variance or waiver “when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.” Importantly, WMSI is not asking the Commission to relieve it of the requirement to provide any of the information detailed in Rule 25-30.033; the only variance sought is a modification of the time for providing some of that information.

6. Much of the information required by Rule 25-30.033 is neither necessary nor relevant to the Commission’s initial determination of whether WMSI possesses the technical, financial and managerial ability to provide wastewater service, but is instead required for the secondary task of setting rates and charges. WMSI submits that the purpose of the statutes underlying the rule, Sections 367.031, 367.045 and 367.1213, Florida Statutes, will be fulfilled if it initially provides all information necessary to the Commission’s review of its certification application, and provides the remaining information at a later date, after the permitting process is complete but in sufficient time to permit the Commission to set initial rates and charges. Further, if WMSI is unable to obtain an environmental permit for its proposed system – certainly a matter of concern in an environmentally sensitive area such as St. George Island – there will be no need for such information. In that case, and in the absence of a variance, WMSI would have expended a great deal of money unnecessarily, thus creating a substantial hardship for WMSI and violating principles of fairness. Additionally, even if WMSI is able to obtain permits, any cost information that was calculated before such

permits were obtained would have to be revised after permitting is completed in order to incorporate permitting costs, again causing an unfair and substantial financial hardship that could be avoided simply by varying the time when such cost information is filed.

7. WMSI submits that the following requirements are unnecessary for the Commission's certification determination because they relate solely to rate-setting. Accordingly, WMSI seeks a rule variance to provide the following information to the Commission at a later date, rather than in its initial Application. With Commission approval, WMSI would file such information sufficiently in advance of providing service to allow the Commission time for evaluation for initial rate-setting:

25-30.033(1)(k) – The original and two copies of tariffs.

25-30.033(1)(t) – A cost study supporting proposed rates and changes.

25-30.033(1)(u) – A schedule showing the projected cost of the system.

25-30.033(1)(v) – A schedule showing projected operating expenses.

25-30.033(1)(w) – A schedule showing the projected capital structure.

Form PSC/ECR 009-W, Part IV (I) – return on equity information.

8. In addition, WMSI submits that the following requirements are not only unnecessary for the Commission's initial certification determination, but the timing of providing such information should be varied for the additional reasons set forth below. WMSI proposes to provide all such information at a later date for the Commission's initial rate determination:

- a. 25-30.033(1)(h) – number of ERCs. WMSI proposes facilities to serve approximately 400 ERCs / 125,000 GPD. However, planning is still ongoing, so WMSI currently is unable provide the number of ERCs by meter size and customer class.

- b. 25-30.033(1)(j) – evidence of land ownership. WMSI has not yet purchased the land upon which it proposes to locate its treatment facilities and therefore seeks a variance as to the timing of providing this information. However, WMSI currently provides water service in the proposed wastewater service territory, plans to utilize currently-owned land and easements to the extent possible, and as shown in WMSI’s Application, the company has obtained an option to purchase real property upon which the proposed treatment facilities would be located.
- c. 25-30.033(1)(m) – detailed system map and (n) – official county tax or other map. WMSI has provided a map showing the territory it proposes to serve (Exhibit C to its Application) as well as a county map showing township, range and section (Exhibit D). The specific locations of lines and treatment facilities will not be determined until the planning process is completed, so WMSI seeks a variance regarding the timing of providing detailed final maps, including the level of detail required in Form PSC/ECR 009, Part VI(B).
- d. 25-30.033(1)(o) – statement regarding capacities of lines and facilities. WMSI proposes facilities to serve approximately 400 ERCs / 125,000 GPD. However, WMSI is unable provide detailed information pending completion of planning.
- e. 25-30.033(1)(s) – a list of funding entities and financial statements: WMSI is still developing construction cost estimates and identifying funding sources for the proposed wastewater facilities. Funding requirements and sources in particular will depend on cost projections and studies, which have not yet been completed. However, WMSI’s current financial statement is provided in its Application.

9. Approval of this Motion is consistent with Commission precedent. *See*, for example, Order No. PSC-08-0228-PAA-WS, issued on April 7, 2008, in Docket No. 060602-WS, *In re: Application for certificate to provide wastewater service and to establish new water and wastewater rates in Lee and Charlotte Counties by Town and Country Utilities Company*; and Order No. PSC-05-0844, PAA-WS, issued on 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.*

WHEREFORE, WMSI requests this Commission enter an Order granting a variance of Rule 25-30.033(1) and Form PSC/ECR 009-W as set forth above, and to the extent necessary to permit WMSI to proceed with certification while developing and providing the above-referenced information to the Commission at a later date, sufficiently in advance of providing service to allow the Commission time for evaluation for initial rate-setting.

Respectfully submitted this 15<sup>th</sup> day of April, 2009.



Marsha E. Rule, Esq.  
Rutledge, Ecenia & Purnell, P.A.  
P. O. Box 551  
Tallahassee, Florida 32302  
marsha@reuphlaw.com  
(850) 681-6788 (Telephone)  
(850) 681-6515 (Telecopier)

Attorneys for Water Management  
Services, Inc.