

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

MOTION TO DISMISS

Gulfstream Utility LLC (“Applicant” or “Utility”), by and through its undersigned attorneys files this Motion to Dismiss Orange County’s (“Protestant” or “Orange County”) Objection to Gulfstream Utility LLC’s Amended Application For Original Certificate of Authorization and Initial Rates and Charges for Wastewater Service (hereinafter “Objection”) for failure to state a cause of action for which relief can be granted, and in support therefore states:

1. On December 3, 2021 the Applicant filed an Application for Original Certificate of Authorization to provide Wastewater Service in Orange County, Florida. An Amended Application was filed on December 15, 2021 and then further restrictively amended on January 11, 2022 to not seek any change in rates. Deficiencies to the Application as alleged by the Commission Staff were corrected by letter dated January 27, 2022. Those filings cumulatively represent the “Application” of the Utility under Section 367.045, Fla. Stat., and Section 25-30.034, F.A.C..

2. On January 31, 2022 in accordance with Section 25-30.025, F.A.C., the Applicant was informed by the Commission that the Application was deemed to have complied with the applicable rule requirements on January 27, 2022, and that date was established as the Official Date of Filing.

3. Orange County filed an Objection to the Amended Application on February 2, 2022 and amended that Objection on February 10, 2022 (hereinafter “Objection”).

ORANGE COUNTY IS NOT A SUBSTANTIALLY AFFECTED PARTY.

4. Orange County alleges in their Objection that “Orange County is the wastewater provider in the area described in the Amended Application. As a result, Orange County’s substantial interest will be affected by the agency determination as described in more detail herein”.

5. Orange County is not now and has never been the retail wastewater provider within the area described in the Amended Application. The Applicant Utility is the only provider of retail wastewater service to the individual residents within the area described in the Amended Application. Between the Applicant and its predecessor owner, they are the only provider of retail wastewater service to have ever existed in the proposed service area and have provided retail wastewater service to that area for over three decades. Ignoring its status as an exempt entity under Section 367.022(2), Fla. Stat., Orange County does not even meet the definition of a utility as contained in Section 367.021(12), Fla. Stat., simply by providing bulk service.

6. Orange County is therefore not entitled to a hearing under Section 367.045(4), Fla. Stat., as they are not a substantially affected party.

ORANGE COUNTY’S OBJECTION DOES NOT STATE A CAUSE OF ACTION FOR WHICH RELIEF CAN BE GRANTED.

7. In paragraphs 4 through 17 of the Objection filed by Orange County various facts are alleged wherein Orange County asserts that the Applicant has failed to comply with the applicable statutes and rules relative to the filing of an application for original certificates.

8. Even if all of the allegations claimed by Orange County were assumed to be true, the Applicant is still a utility as defined under Section 367.021(12), Fla. Stat., and, as such, is

required to obtain a certificate to provide wastewater service from the Florida Public Service Commission.

9. Therefore, while these may be issues of fact, they are not issues of material fact as required to support a valid protest.

10. The only thing sought by the Applicant in this case is the issuance of a certificate.

11. Under the provisions of Section 367.031, Fla. Stat., the Utility/Applicant must apply for and the Commission must grant a wastewater certificate.

12. The County's Objection does not contest that the Applicant is a "person . . . owning, operating, managing, or controlling a system . . . who is providing wastewater service to the public for compensation" as outlined in Section 367.021(12), Fla. Stat.

13. Orange County has requested only that (a) a hearing be held locally; and that (b) the Commission ". . . deny the Amended Application".

14. There are no issues of material fact and, as such, an evidentiary hearing is not required.

15. The only issue is a legal one: whether the Applicant is a utility under the provisions of Section 367.021(1), Fla. Stat. and, as such, must be certificated.

16. The truth of Applicant's position herein can best be demonstrated by the fact that the Applicant could withdraw its request for a certificate herein and the County's objection would, as a result, cease, but the Commission would still be obligated to grant a certificate to the Utility under Sections 367.031 and 367.045, Fla. Stat.

WHEREFORE, Applicant requests that the Commission dismiss the petition of Orange County as it does not state a cause of action for which relief can be granted.

Respectfully submitted on this
25th day of March, 2022, by:

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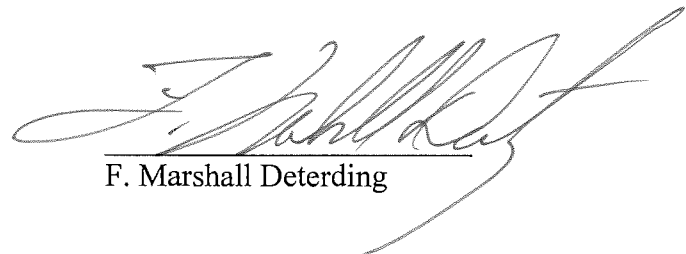
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via email on this ___ day of March, 2022, to:

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