

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-**

RECEIVED-FPSC  
13 JUN 13 AM 10:21  
COMMISSION  
CLERK

**DATE:** June 13, 2013

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

**FROM:** Office of the General Counsel (Klancke) *AKJSC*  
Division of Engineering (Watts, Rieger) *SPD, PU, D3 CKL*

**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.

**AGENDA:** 06/25/13 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Graham

**CRITICAL DATES:** 7/30/13 (90-Day Rule Waiver Statutory Deadline)

**SPECIAL INSTRUCTIONS:** None

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

### Case Background

On April 29, 2013, Consolidated Services of Hendry & Collier, LLC (applicant or utility), submitted an application for original water and wastewater certificates in Hendry and Collier Counties, Florida, along with a Petition for Variance from or Waiver of Rules 25-30.033(1)(h), (m), (o), (r), (t), (u), (v) and (w), Florida Administrative Code (F.A.C.). The utility is a wholly owned subsidiary of Consolidated Citrus Limited Partnership (Consolidated Citrus), which is one of the largest citrus growers in the United States. The primary owner of Consolidated Citrus is King Ranch, one of the largest family-owned land owners in the United States. The utility's proposed service territory comprises approximately 12,400 acres which transverse Hendry and Collier Counties. These properties have traditionally been used for

DOCUMENT NUMBER-DATE  
03282 JUN 13 13  
FPSC-COMMISSION CLERK

Docket No. 130105-WS

Date: June 13, 2013

agricultural purposes. This area is located in the South Florida Water Management District (SFWMD) which is considered a critical water supply problem area.

Pursuant to Section 120.542, Florida Statutes (F.S.), notice of the petition for waiver was published in the Florida Administrative Weekly on May 17, 2013. No written comments to the notice were received and the time for filing such has expired.

This recommendation addresses the Petition for Variance from or Waiver of Rules 25-30.033(1)(h), (j), (k), (m), (r), (t), (u), (v) and (w), F.A.C. The issues of the granting of certificates and the setting of appropriate rates and charges will be addressed at a later date. The Commission has jurisdiction pursuant to Sections 367.031 and 367.045, F.S.

### Discussion of Issues

**Issue 1:** Should the Commission grant Consolidated Services of Hendry & Collier, LLC,'s Petition for Variance from or Waiver of Rules 25-30.033(1)(h), (m), (o), (t), (u), (v), and (w), Florida Administrative Code?

**Recommendation:** Yes, the Commission should grant Consolidated Services of Hendry & Collier, LLC,'s Petition for Variance from or Waiver of Rules. The utility should be granted a temporary waiver of Rule 25-30.033(1)(h), (m), (o), (r), (t), (u), (v) and (w), F.A.C., for a period of 36 months from the granting of the certificate to enable the utility to continue to engage in planning activities with respect to the area proposed for certification. (Klancke)

**Staff Analysis:** Rule 25-30.033(1)(h), (m), (o), (r), (t), (u), (v) and (w), F.A.C. directs the applicant for an original certificate to file information necessary for the granting of certificates and for setting initial rates and charges, including: the number and type of equivalent residential connections (ERCs); the filing of a detailed system map showing the proposed lines, treatment facilities, and the territory to be served; a statement regarding the separate capacities of the proposed lines and treatment facilities in terms of ERCs and gallons per day; a detailed financial statement; a cost study including customer growth projections supporting the proposed rates, charges and service availability charges; a schedule showing the projected costs of the systems; a schedule showing projected operating expenses; and a schedule showing the projected capital structure. The applicant has asked for a temporary waiver of these parts of the rule for a period of 36 months from the granting of the certificate to enable the utility to continue to engage in active planning with respect to the area proposed for certification, continue the dialogue with governmental entities regarding the provision of service, and negotiate with developers and other non-related customers.

Section 120.542, F.S., 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 may include a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver.

The underlying statutory provisions pertaining to the above-mentioned rules are Sections 367.031 and 367.045, F.S. Section 367.031, F.S., 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 (DEP) and water management districts. Section 367.045(5)(a), F.S., 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, F.S., 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> Therefore, staff agrees with the applicant that the public interest can still be served, the Commission's mandate can still be fulfilled, and the long range and short term planning of the utility can still be facilitated without requiring the utility to comply with the rate setting portion of the rule at this time.

Moreover, the applicant asserted that the utility is still engaged in the early planning stages of development of the land identified in the application and as such the imposition of the rate setting portions of the rule at this time would result in rates, fees, and charges that are based, at best, upon estimated and projected expenses. Thus the utility argued that the application of the requirements of the rate setting requirements of the rule at this time would result in an economic hardship as the generation of the estimated and projected rates, fees, or charges would be expensive and onerous, occupying the time and resources of the utility as well as the time and resources of the Commission's staff. The utility further argued that the deferral of the rate setting portion of this case for three years will avoid the unreasonable commitment of money and resources; and will lead to more reliable and accurate rates; and may avoid the possibility that a second application for adjusted, modified, or different rates would need to be filed prior to operation or in the first few years of operations of the utility. Thus, staff believes that the temporary waiver of the applicable portions of the rule will enable the applicant to defer incurring a substantial economic hardship until such time that the utility is able to provide accurate information to support the setting of initial rates and charges at a future date closer to the commencement of operations.

When a utility has met the criteria set forth in Section 120.542, F.S., 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. In this case, staff believes the applicant has met the underlying purpose of Sections 367.031 and 367.045, F.S. Moreover, staff believes that the applicant has shown that it will suffer substantial hardship if all of the provisions of Rule 25-30.033, F.A.C., are strictly applied.

The applicant has requested a waiver of the above-noted subsections of Rule 25-30.033(1), F.A.C., to ensure that the information provided in conjunction with the initial setting of rates and charges is based on contemporaneous costs, plans for service, and economic conditions. The utility asserted 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, F.S., and the Commission should grant the applicant's Petition for Variance from or Waiver of Rules 25-30.033(1)(h), (m), (o), (t), (u), (v), and (w), F.A.C., until it is closer to the commencement of operations.

---

<sup>1</sup> See, e.g., Order No. PSC-06-1015-PAA-WS, issued December 11, 2006, in Docket No. 060601-WS, In re: Application for certificates to provide water and wastewater service in Okeechobee County by Grove Utilities, Inc.; and Order No. PSC-06-0835-PAA-WS, issued November 9, 2006, in Docket No. 060276-WS, In re: Applications for certificates to provide water and wastewater service in Putnam County by Mariposa Utilities Company, LLC.; Order 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, LLC.

Docket No. 130105-WS

Date: June 13, 2013

**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 the utility's application for original water and wastewater certificates. (Klancke)

**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 the utility's application for original water and wastewater certificates.