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Public Service Commission

July 16, 2010

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COMMISSIONER
CLERK

Mr. Kevin S. Grube
Venture Out at Cudjoe Cay, Inc.
701 Spanish Main Drive
Cudjoe Key, FL 33042

Re: Docket No. 100065-SU, Application to provide wastewater service in Monroe County by Venture Out at Cudjoe Cay, Inc.

Dear Mr. Grube:

The above referenced application and your deficiency response letter of May 24, 2010 have been received and reviewed by Commission staff. Upon review of your May 24, 2010 letter, there are several deficiencies left unaddressed by Venture Out at Cudjoe Cay, Inc (Venture Out). The remaining deficiencies and additional information are listed below. All deficiencies must be addressed to process the application.

Deficiencies

1. Territory description. Rule 25-30.034(1)(h), Florida Administrative Code (F.A.C.), requires the application to include a description, using township, range, and section references, as specified in subsection 25-30.030(2), F.A.C., of the territory the utility was serving, or was authorized to serve. The territory description in your deficiency response is incorrect. The territory description appears to be for territory outside of the utility's service area. Please provide a correct territory description.
2. Noticing. Pursuant to Rule 25-30.030, F.A.C., the application is to contain three notices and three affidavits of noticing. The required noticings are: a) to government officials and other utilities, b) to customers of the utility, and c) in a newspaper of county-wide distribution. None of the three required noticings have been done. You have submitted a draft notice; however, the notice cannot be approved until a correct territory description is submitted. Once the notice is approved, staff will give the applicant the list of government officials and other utilities to notice. Please note that affidavits must be filed for each required notice along with a sample of the actual notices issued. In addition, the notice affidavit for the government officials and other utilities must include a copy of the noticing list provided by the Commission.
3. Jurisdiction. Section 367.022, F.S., states that a nonprofit corporation providing service solely to members who own and control such nonprofit corporation are not subject regulation by the Commission.

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July 14, 2010

Other Information Needed

What correspondence has the utility or homeowners association received from the Florida Aqueduct Authority regarding interconnection?

Allow me to further explain the remaining deficiencies and the staff's intended procedure for addressing them. The application for Venture Out remains deficient because it has not established that the Commission has jurisdiction over Venture Out. From the application of Venture Out and the data responses, Venture Out is a nonprofit corporation providing service solely to members who own and control the corporation. As such, the corporation is not subject to regulation by the Commission as a utility. I understand that Venture Out disagrees with Commission staff's position and believes the Commission may take jurisdiction because Venture Out wants to waive the provisions of 367.022(7) and because Venture Out feels that the Commission can make a determination that it is in the public interest to grant an original wastewater certificate to Venture Out.

While generally the issue of jurisdiction is dealt with by the Commission at the time of issuance of the certificate, as a matter of efficiency, Commission staff intends to bifurcate the application and bring a recommendation to the Commission regarding the jurisdictional question only. For the Commission to reach a decision on jurisdiction, all interested persons must be afforded the opportunity to appear before the Commission. Accordingly, Venture Out must comply with the noticing deficiency (number 2 above), the territorial description (number 1 above), and the request for additional information prior to the jurisdictional recommendation being presented to the Commission. Please correct the deficiencies and provide the required affidavits to the Commission no later than September 15, 2010. Failure to provide the required affidavits on or before that date will be deemed to be a withdrawal of Venture Out's application. Once Commission staff has received the requisite affidavits, we will notify any interested persons of the date the Commission will consider its jurisdiction over Venture Out.

If the Commission determines that it has jurisdiction over Venture Out, and if there has been no objection to the issuance of a certificate, then Commission staff will bring a subsequent recommendation to the Commission to address the issuance of an original wastewater certificate to Venture Out.

When responding to this letter, please file the original and five copies of the requested information on or before the times specified above, with Ms. Ann Cole, Commission Clerk, Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida, 32399-0850. Please feel free to call me at (850) 413-6230 if you have any questions.

Sincerely,



Lisa C. Bennett
Senior Attorney

LCB:th

cc: Office of Commission Clerk
Division of Economic Regulation (Clapp)