

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:

DOCKET NO. 090445-WS

APPLICATION FOR ORIGINAL  
CERTIFICATES FOR PROPOSED WATER  
AND WASTEWATER SYSTEM AND REQUEST  
FOR INITIAL RATES AND CHARGES IN  
INDIAN RIVER, OKEECHOBEE AND ST.  
LUCIE COUNTIES BY GROVE LAND  
UTILITIES, LLC.

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PROCEEDINGS: COMMISSION CONFERENCE AGENDA  
ITEM NO. 8

COMMISSIONERS  
PARTICIPATING: CHAIRMAN RONALD A. BRISÉ  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER ART GRAHAM  
COMMISSIONER EDUARDO E. BALBIS  
COMMISSIONER JULIE I. BROWN

DATE: Tuesday, April 10, 2012

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR, CRR  
Official FPSC Reporter  
(850) 413-6734

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## P R O C E E D I N G S

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3           **CHAIRMAN BRISÉ:** Moving on to Item Number  
4 8.

5           **MS. BRADY:** Commissioners, I'm Pat Brady  
6 with Commission staff.

7           Item Number 8 is an application by Grove  
8 Land Utilities, LLC, for original water and  
9 wastewater certificates and initial rates and  
10 charges for a territory located in Indian River,  
11 Okeechobee, and  
12 St. Lucie counties. Staff requested a deferral of this  
13 item from the March 27th Agenda Conference to include  
14 an issue on the utility's settlement agreements with  
15 Indian River and St. Lucie counties.

16           Staff is recommending that Grove Land's  
17 settlement agreements be approved, that original water  
18 and wastewater certificates be granted, and that the  
19 utility's proposed initial rates and charges be  
20 established.

21           Staff is prepared to answer any questions the  
22 Commission may have on this item. And also here to  
23 address any questions you may have for the utility is  
24 Mr. John Wharton.

25           **CHAIRMAN BRISÉ:** All right. Thank you.

1 Commissioner Balbis.

2 **COMMISSIONER BALBIS:** Thank you, Mr.  
3 Chairman. And I pulled this item because I believe  
4 that it warranted some additional discussion. We  
5 have been faced as a Commission with water and  
6 wastewater utilities that have, by whatever reason  
7 or method, ended up with expensive to serve and  
8 inefficient areas.

9 And I had a lot of discussions with staff  
10 during my briefings about this particular utility,  
11 and I thought it was important to bring it out into  
12 the record, the question that I asked during the  
13 briefing, which was the proposed layout of the  
14 certificated area, proposed certificated area, would  
15 it result in an expensive or inefficient area to  
16 provide water and wastewater service to?

17 **MS. BRADY:** It's going to depend on what  
18 is actually built. They do have a provision in  
19 later phases because the property is somewhat  
20 distributed to connect the property for the  
21 provisions of providing water and wastewater  
22 services. We can't really anticipate at this stage  
23 what those costs will be. They'll require some  
24 easements, they'll require additional lines,  
25 transmission lines. That will require perhaps the

1 utility coming in and asking for those costs to be  
2 included in rate base. But they will have to come  
3 back with a reason for doing that and the cost  
4 justification and the plan. Clearly they're not in  
5 a position right now to do that. The development  
6 that they have planned for the acreage is modest and  
7 can be within the, within the agricultural building  
8 code of future land use requirements for how much  
9 density can be there. So it's pretty modest. And  
10 the way they have proposed their rates and charges  
11 is that each of the areas can take care of that with  
12 the well and with an individual wastewater treatment  
13 plant. So it will be distributed.

14 The cost savings, of course, will come  
15 from it being administered at one level. And that's  
16 if they choose and are able to -- there's many more  
17 steps in this process beyond the Commission -- are  
18 able to do a development.

19 One of the more likely scenarios for this  
20 utility, one of the things that they are proceeding  
21 with and have been working on for several years is  
22 bulk water service and/or a retention area for  
23 treating, for capturing and cleansing storm water  
24 runoff, also providing bulk service to agricultural  
25 businesses. These will all be -- they'll be

1 required to come back for a new class of service in  
2 rates and charges if the party in which they enter  
3 into that agreement for those services, it would  
4 become jurisdictional. If it's another government,  
5 we won't see that transaction. That's an exemption  
6 in our statutes.

7 But for an intensified effort that's going  
8 to require more than the facilities we can see in  
9 this application, I would envision that they would  
10 come back before the Commission and we'd have to  
11 take that one step further. I don't know if that  
12 answers your question or not. We don't know, I  
13 guess is what I'm saying.

14 **MR. WHARTON:** May I speak to that point,  
15 Mr. Chairman?

16 **CHAIRMAN BRISÉ:** I think that that would  
17 be appropriate.

18 **MR. WHARTON:** John Wharton on behalf of  
19 Grove Land of Sundstrom, Friedman & Fumero.

20 Of course, Commissioner, that's a very  
21 legitimate concern. I do think that this type of a  
22 large landowner applicant is a unique animal. The  
23 Commission has historically certificated some of the  
24 larger landowners, which I think is a very unique  
25 class of Florida citizens. They look over very long

1 horizons, they transition their land, they think  
2 about the future like the Lykes Brothers, like East  
3 Central Florida Services on the Deseret Ranches,  
4 like Farmton, and the lands owned by Miami Corp.

5 I would expect that with regard to cost,  
6 as that service matures, there is no one who can do  
7 it better or more efficiently. But I would agree  
8 with staff. Since I left the Commission in 1987,  
9 I've never seen a client that was more active in  
10 terms of working with local government, visioning  
11 with state agencies. They've got letters of support  
12 in this application from two water management  
13 districts and from the Department of Agriculture in  
14 terms of what to do with their land.

15 This is a 7,000 acre property. Evans  
16 Properties, which is the related party, owns  
17 45,000 acres free and clear in the State of Florida.  
18 They don't have any incentive to, to not reduce  
19 rates every way they can. I would expect that the  
20 reality would be that as this service matures, it  
21 might be inefficient at first like any new utility  
22 is, but that there would be other things that would  
23 be implemented along as the property grows and  
24 changes that would tend to reduce rate. There would  
25 be other industrial customers. There might be

1 housing for people who are working on the lands that  
2 remain of the citrus, although that's what's really  
3 happening here. There's a disease that is killing  
4 the citrus in Florida, and Evans is beginning to  
5 think about how to transition their property.

6 You know, something very interesting just  
7 occurred that has a parallel to this case. I was  
8 the attorney for Farmton in a contested hearing that  
9 was held in the early '90s. That's a 50,000 acre  
10 piece of property. First of all, it's been  
11 certificated all this time. No public harm or harm  
12 to the public interest or erosion of respect for  
13 what it means to be certificated has ever occurred  
14 by the fact the utility has not matured.

15 But just recently they went through a very  
16 contentious hearing under the growth management laws  
17 and they did get that change approved. A, if they  
18 now had to say, okay, we've got to spend two years  
19 getting a certificate, maybe the same people are  
20 going to come in and make the same arguments, it  
21 would change all the dynamics in this difficult  
22 economy.

23 But more to your point, that same concern  
24 was raised about Farmton. You're showing us a map  
25 that is showing service at allowable densities, but,

1 in fact, the service is going to be implemented in a  
2 way that will actually be more efficient than that.  
3 And I would expect that if Evans and Grove Land  
4 implements the service that was proposed in the  
5 application and that staff has recommended, they  
6 would do it in a way perhaps with different  
7 facilities for the early customers, and larger, more  
8 economical in terms of scale facilities as there  
9 were more and more customers, or they would do it in  
10 conjunction with other activities that would tend to  
11 hold down rates.

12 And certainly they are the ones who  
13 control the property, they will control the timing  
14 of the property, and they will control the utility.  
15 And I think, once again, that given the big picture  
16 they're looking at, they have every incentive to  
17 make sure that when those rates are charged, they  
18 are as low as they can be.

19 **CHAIRMAN BRISÉ:** All right. Thank you.  
20 Commissioner.

21 **COMMISSIONER BALBIS:** Yeah. Thank you.  
22 And I appreciate those comments and, and that does  
23 provide additional information.

24 And one of the, one of the issues that  
25 again we faced are these sparsely, you know, low



1 density developments that, you know, are more  
2 difficult to provide service to. And I guess the  
3 confirmation from staff is the proposed plan, I  
4 believe, has a density of one unit per ten acres.  
5 Is that five? There's some -- one section is five  
6 acres and the other is ten; is that correct?

7 **MS. BRADY:** I'm sorry. I didn't quite  
8 understand that question.

9 **COMMISSIONER BALBIS:** The proposed  
10 density.

11 **MS. BRADY:** Oh, the proposed density.  
12 Yes. There's -- we have three counties involved, so  
13 there's three comp plans, there's three future land  
14 use amendments. They all define agricultural use a  
15 slightly different way. But I think you are  
16 correct. Some have five houses per acre. Are you  
17 talking about the density per acre, is that your  
18 question?

19 **COMMISSIONER BALBIS:** Right. The site  
20 plan that shows the number of dwelling units per  
21 acre that was used in this application for  
22 certification.

23 **MS. BRADY:** I think it's five. And I  
24 think there may be one of these counties, I might be  
25 confusing it with another application, that might

1 allow ten. But they have designed it so that they  
2 will be within those densities.

3           There's another option that most of the  
4 comp plans give utilities that seems to be supported  
5 is to cluster the development; rather than  
6 distribute it, to pick one particular area. And  
7 this is what they have done in some of the utilities  
8 that I know that have gone forward with development.  
9 And it seems to have some preference. You cluster  
10 it, you have green area. You don't have to  
11 spread -- every acre doesn't have to have that one  
12 house or whatever the density is. You take the  
13 total density -- excuse me, I'm sorry -- for the  
14 area and then you can cluster it. They haven't  
15 requested this to my knowledge, but that's another  
16 option.

17           **MR. WHARTON:** And, Commissioner, if I may.  
18 It doesn't change your point, but I would more  
19 accurately characterize those as opposed to the  
20 proposed densities. They are the present densities.  
21 And there are various things under the law that  
22 might allow greater densities. Growth management is  
23 an emerging issue right now in Florida. But those  
24 are the present densities. And we are dealing with  
25 some different jurisdictions here, jurisdictions

1 that Grove Land went out and worked with to resolve  
2 the concerns of. But I understand perfectly your  
3 point.

4 **COMMISSIONER BALBIS:** Okay. Well, thank  
5 you. And, again, I guess my, my overriding point is  
6 the proposed rates and charges are for the existing  
7 density, which would be the higher cost systems, so  
8 that any proposed property owners, et cetera, will  
9 clearly understand what the proposed rates are, and  
10 it's based upon these low densities, which there may  
11 be a more efficient way to provide service, but  
12 which would lower the cost.

13 But, you know, again, I want to make sure  
14 that everyone coming in understands what the  
15 proposed rates and charges are. And I would ask  
16 staff to hopefully concisely confirm that the  
17 proposed rates and charges are for this lower  
18 density development.

19 **MS. BRADY:** The proposed rates and charges  
20 are for the density development in our, in our  
21 recommendation, which is, depending on which way you  
22 view it, is a lower density development. It's  
23 also -- the water system though is going to be  
24 somewhat centralized, and there's many reasons why  
25 they are doing that. But the centralized system

1 should bring some economies of scale for the service  
2 area.

3 **COMMISSIONER BALBIS:** Okay. Well,  
4 Mr. Chairman, I thank you for the latitude there. I  
5 did want to make sure that we got into the record that,  
6 you know, the proposed density, which in my opinion  
7 is -- the lower the density, the more difficult it is  
8 to provide service. And the rates and charges are  
9 based upon that. And if the, the landowner can come up  
10 with a more effective way to develop the land, it will  
11 only result in lower charges, and so that no one should  
12 be surprised in this situation. So with that, I move  
13 staff's recommendation on this item.

14 **CHAIRMAN BRISÉ:** Before you do that, I  
15 think Commissioner Graham has a comment or a  
16 question.

17 **COMMISSIONER GRAHAM:** Thank you, Mr.  
18 Chairman.

19 It's interesting as I read through this  
20 recommendation the thing that struck me that is  
21 actually kind of exciting, the two water management  
22 districts getting on board. But the fact that DEP  
23 is allowing them to actually create some sort of  
24 reservoir and actually retain the surface water. I  
25 mean, all over the state we have, what the people

1 would label good, clean water running off to  
2 brackish areas or running off to salt water, to the  
3 ocean, and that water, for the most part, is gone  
4 unless we go through some sort of desalinization  
5 process.

6 Here we're actually retaining that, and  
7 this may be used for agriculture or maybe down the  
8 road some sort of potable water. So I encourage  
9 even going down this path. I think it's a great  
10 idea, and I think it's something that, you know,  
11 we'll probably see more of this stuff coming  
12 forward. I mean, this is the first time I saw it.  
13 I don't know if it's the first time it's come before  
14 us, but I think it's a great project.

15 **MR. WHARTON:** It's interesting,  
16 Commissioner Graham. I may be coming before you in  
17 a couple years arguing that the Grove Land and Evans  
18 property is using their properties under the new  
19 numeric nutrient criteria, just as a for instance,  
20 to actually sell the natural treatment of wastewater  
21 that is coming onto the land and being returned in a  
22 clean form, and that that is a jurisdictional  
23 activity. It's wastewater without a traditional  
24 wastewater plant. These guys are very forward  
25 looking in that regard. They're always thinking

1 about it and dealing with the agencies. They come  
2 and they meet when the Legislature is in session.  
3 And I do believe they're going to do some things  
4 that are very dynamic.

5 **COMMISSIONER GRAHAM:** Thank you.

6 **CHAIRMAN BRISÉ:** All right. I think now  
7 we're ready for that motion, Commissioner Balbis.

8 **COMMISSIONER BALBIS:** Thank you, Mr.  
9 Chairman. I move staff's recommendation on all  
10 issues.

11 **CHAIRMAN BRISÉ:** All right. Is there a  
12 second?

13 **COMMISSIONER GRAHAM:** Second.

14 **CHAIRMAN BRISÉ:** Good. We have a second  
15 from Commissioner Graham. All in favor, say aye.

16 (Vote taken.)

17 All right. Any opposed, same sign?

18 Seeing none, it's carried.

19 We want to thank you all for your  
20 participation today. And we stand adjourned.

21 (Agenda item concluded.)

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STATE OF FLORIDA     )  
                              :            CERTIFICATE OF REPORTER  
COUNTY OF LEON     )

I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 11<sup>th</sup> day of April, 2012.

  
\_\_\_\_\_  
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