

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for original certificate of authorization for water and wastewater service in Volusia County, by Avalon Park Utilities LLC.

DOCKET NO. 20260099-WS
ORDER NO. PSC-2026-0348-PAA-WS
ISSUED: September 30, 2026

The following Commissioners participated in the disposition of this matter:

GABRIELLA PASSIDOMO SMITH, Chairman
GARY F. CLARK
MIKE LA ROSA
BOBBY PAYNE
ANA ORTEGA

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING AVALON PARK UTILITIES, LLC'S
MOTION TO BIFURCATE AND GRANTING IN PART
AND DENYING IN PART ITS MOTION TO WAIVE RULES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature, and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

BACKGROUND

On July 1, 2026, Avalon Park Utilities, LLC (Avalon) filed an Application for Original Certificate of Authorization for Water and Wastewater Service in Volusia County (Application). Simultaneous with this filing, Avalon filed a Motion to Bifurcate and for Temporary Rule Waiver (Motion). The proposed service area consists of approximately 2,700 acres and is located within the city limits of the City of Daytona Beach. The property will be developed as a mixed-use development and is initially anticipated to contain 8,198 residential Equivalent Residential Connections (ERCs) and 715 commercial ERCs. It is anticipated that the water, wastewater, and reuse/irrigation services will be needed on or before August 31, 2028.

The property proposed to be served by Avalon is owned and controlled by a limited liability company created on May 18, 2026. The sole shareholder of Avalon is Avalon Park Group, a diversified family of companies engaged in master-plan community development, technology, health care, and industrials.

In its Motion, Avalon has requested a temporary waiver of portions of Rule 25-30.033, F.A.C., that deal with setting initial rates and providing certain information about the facilities necessary to provide water and wastewater service to the proposed service area. Avalon has also requested that the initial rates and charges for water and wastewater service be established after the certificates of authorization are granted, a process referred to as bifurcation. We have 90 days to grant or deny the rule waiver pursuant to Section 120.542(8), Florida Statutes (F.S.). Thus, we have until September 29, 2026, to rule on the requests for rule waiver.

On July 30, 2026, Avalon's initial application was found to be deficient. Responses to the identified deficiencies are due on or before August 28, 2026. On August 10, 2026, the City of Ormond Beach timely filed its comments objecting to Avalon's request for rule waivers and application for a certificate to provide water and wastewater service in Volusia County.

This order is limited to the question of whether the requested rule waivers should be granted. The question of whether certificates for water and wastewater services should be granted will be determined at a later date. We have jurisdiction pursuant to Sections 367.031, 367.045, 367.081, and 120.542, F.S.

DECISION

I. Legal Standard

Original Certificates

Under Section 367.031, F.S., 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. Under Section 367.045(1), F.S., a utility applying for an initial certificate of authorization must provide information supporting the ability of the applicant to provide service, the area and facilities involved, the need for service in the area involved, and the existence or nonexistence of service from other sources in or near the requested service area. The utility is also required to file schedules showing all rates, classifications, and charges for the service it proposes to provide. As discussed in greater detail below, Rule 25-30.033, F.A.C., implements these statutes, requiring specific information supporting the request for an original certificate and establishment of initial rates and charges.

Rule Waivers and Variances

Section 120.542, F.S., authorizes the Commission to grant variances or waivers to the requirements of our rules where the person subject to said rules has demonstrated that the underlying purpose of the statute has been or will be achieved by some other means, and that strict application of the rules would cause the person substantial hardship or would violate principles of fairness. "Substantial hardship" as defined in this section means demonstrated economic, technological, legal, or other hardship.

II. Avalon's Motion for Temporary Rule Waiver

In its Motion Avalon has requested that it be allowed to temporarily waive providing the documentation required by Rules 25-30.033(1)(j)2, and 25-30.033(1)(m) through (1)(q), F.A.C., until its development plan is finalized in the next four to six months. The rules that Avalon seeks to temporarily waive can be divided into two groups: those concerning the facilities necessary to provide the requested water and wastewater service, Rules 25-30.033(1)(j)2 and 25-30.033(1)(m) through (1)(o), F.A.C.,¹ and those related to setting initial rates and charges, Rules 25-30.033(1)(p) and 25-30.033(1)(q), F.A.C.²

Avalon argues that the information requested about the proposed facilities required by Rules 25-30.033(1)(j)2, and 25-30.033(1)(m) through (1)(o), F.A.C., cannot be developed before final plans for construction are approved by DEP. Since Section 367.031, F.S., requires certificates from this Commission before DEP will issue construction permits, Avalon argues that this inconsistency between the two statutes requires a temporary waiver of these facilities rules until its plans can be finalized.

Additionally, Avalon states that it will not have a “clear picture” of what land will be needed and what treatment facilities will be needed until “decisions are made about the appropriate method for obtaining treated water and wastewater.”

Avalon states that at the time of filing it “knows of no plans by another utility to timely and economically serve the proposed territory in Volusia County.” Avalon further states that it has entered into a Planned Development Agreement (PDA) with the City of Daytona Beach which states that this development as proposed is consistent with the City's Comprehensive Plan. It is Avalon's position that the PDA allows Avalon the “options both to obtain bulk service, and the construction of its own source and treatment facilities to provide service to the proposed territory.” Avalon estimates that the information required by the rules of which treatment option it will pursue will be available in the next four to six months or by no later than February 2027.

Based on the above, the substantial hardship Avalon alleges is its inability at this time to develop a water and wastewater system plan. Without a plan that identifies the facilities that will

¹ Rule 25-30.033(1)(j)2, F.A.C., directs that the applicant for an original certificate provide a detailed system map showing the existing and proposed lines and treatment facilities, with the territory proposed to be served plotted thereon, consistent with the legal description provided by Avalon. Rule 25-30.033(1)(m), F.A.C., requires documentation of Avalon's right to access and continued use of the land upon which treatment facilities will be located. Rule 25-30.033(1)(n), F.A.C., requires a description of the separate capacities of the existing and proposed lines and treatment facilities in terms of ERCs and gallons per day estimated demand per ERC for water and wastewater and the basis for such estimate. Rule 25-30.033(1)(o), F.A.C., requires a description of the type of water treatment, wastewater treatment, and method of effluent disposal.

² Rule 30.033(1)(p), F.A.C., requires financial information for the proposed facilities, e.g., projected cost of the systems and associated depreciation by year; projected contributions-in-aid-of-construction; projected capital structure and methods of financing the operation of the utility until the utility reaches 80 percent of its design capacity; and proposed annual operating expenses. Rule 30.033(1)(q), F.A.C., requires a tariff containing all rates, classifications, charges, rules, and regulations which shall be consistent with Chapter 25-9, F.A.C, Form PSC 1010 (12/15), entitled “Water Tariff” and Form PSC 1011 (12/15), entitled “Wastewater Tariff”.

be built, the financial and land use information requested cannot be provided. Without the financial information requested, initial rates cannot be calculated.

Avalon states that it can provide the financial information in January 2027, which is approximately 19 months before initial water, wastewater and reuse/irrigation services will be provided on August 31, 2028. That being the case, Avalon argues that bifurcation of the certification from initial rate setting in this instance does not harm the ratepayers and is consistent with past Commission practice.³

III. Response by City of Ormond Beach

The City of Ormond Beach (Ormond) in its August 10, 2026, letter has objected to Avalon's request to waive these rules as well as Avalon's request for issuance of certificates for water and wastewater services. Ormond argues that it has the infrastructure and capacity to provide bulk water and wastewater services for the vast majority of Avalon's service area. Further, Ormond states that it has engaged in the design, permitting, and construction of significant utility infrastructure to meet the present and future phases of the Avalon project.

Additionally, Ormond argues that it has a Wholesale Water and Wastewater Service Agreement and Second Amended Water and Sewer Service Area Agreement with Daytona Beach to provide bulk potable water and wastewater treatment service to Daytona Beach for use within Ormond's Wholesale Service Area. Phase I of the Avalon project is primarily within Ormond's service area. Therefore, Ormond argues that Avalon must obtain Ormond's consent to operate a water and wastewater utility pursuant to these interlocal agreements. Ormond has not given its consent at this time.

Finally, Ormond states that there is both a state and federal lawsuit⁴ involving the interpretation and validity of the Wholesale Water and Wastewater Service Agreement and Second Amended Water and Sewer Service Area Agreement relevant to this case.⁵ Interpretation of those agreements will determine what type of water and wastewater facilities Avalon can build in its service area. Based on the above, we conclude that Ormond is arguing that the substantial hardship raised by Avalon to support the rule waivers is easily curable and a problem of Avalon's own making.

³ Order No. PSC-02-0179-FOF-WS, issued February 11, 2002, in Docket No 010859-WS, *In re: Application for original certificate to operate water and wastewater utility in Sumter County by North Sumter Utility 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*; Order No. PSC-17-0059-PAA-WS, issued February 24, 2017, in Docket No. 160220-WS, *In re: Application for original water and wastewater certificates in Sumter County, by South Sumter Utility Company, LLC*.

⁴ *Avalon Park Daytona, LLC & Avalon Park Daytona Land Holding, LP v City of Ormond Beach, Florida & City of Daytona Beach, Florida*, Case No. 2024 13870 CICI (7th Jud. Cir. Volusia Cnty., FL); *Avalon Park Daytona, LLC & Avalon Park Daytona Land Holding, LP v. City of Ormond Beach, Florida*, Case No. 6:26-cv-00658 (M.D. Fla.).

⁵ Since Ormond filed its letter objecting to Avalon's application for certificates, Avalon has voluntarily withdrawn its Volusia County lawsuit and Ormond Beach has voluntarily withdrawn its counter-petition against the City of Daytona. The only remaining issue in the Volusia County case is Ormond's request for attorney fees and costs from Avalon.

IV. Analysis

A. Purpose of the Underlying Statutes

The purpose of Section 367.031 and 367.045, F.S., is to ensure that a utility seeking an original certificate has the financial and technical ability to provide service, that there is a need for service in the proposed service area, to determine the existence or nonexistence of service from other sources in proximity to the proposed service area, and to establish initial rates and charges.

B. Waiver of Rules Requiring Facilities Information

Avalon has stated that it will have the information necessary to provide the detailed financial and technical information required by Rules 25-30.033(1)(j)2, and 25-30.033(1)(m) through (1)(o), F.A.C., within four to six months or no later than February 2027. The facilities and land necessary to provide a distribution system for water service and/or collection system for wastewater service are significantly less expensive than providing those facilities in addition to constructing water and wastewater treatment facilities. Given the fact that there is an outstanding court case involving the validity and/or applicability of the Wholesale Water and Wastewater Service Agreement and Second Amended Water and Sewer Service Area Agreement it seems improbable that Avalon will be able to provide a final, viable plan for service to the proposed service area by February 2027. Without knowing if wholesale water and wastewater treatment must be purchased by Avalon from Ormond to serve the project, the information required by the facility-related rules can't be provided. Without having information regarding the system map, a description of the capacities of the proposed lines and treatment facilities, or proof of continued access to the land,⁶ there is a lack of support for Avalon's application. In other words, it appears less that a rule waiver is needed, than that Avalon's application may be premature.

Since the information for which waiver is requested is an essential part of deciding whether a certificate application should be granted, we find that Avalon has not demonstrated that the underlying purpose of Sections 367.031 and 367.045, F.S., will be met by temporarily waiving Rules 25-30.033(1)(j)2, and 25-30.033(1)(m) through (1)(q), F.A.C.

C. Substantial Hardship

Waiver of Rules Requiring Facilities Information

By asking for a waiver of Rules 25-30.033(1)(j)2, and 25-30.033(1)(m) through (1)(q), F.A.C., Avalon is essentially asking us to continue this certification case indefinitely until Avalon can provide the information needed to support its request for an original certificate. Due to the litigation discussed above, where the bulk provider of water and wastewater service is at issue, Avalon cannot control the outcome of the litigation, nor can it predict the timeframe in which the litigation will be resolved. Unlike the waiver cases cited by Avalon, this is not simply

⁶ In addition to being a requirement under the rule, a utility must demonstrate it owns the land or possesses the right to continued use of the land upon which treatment facilities are located under Section 367.1213, F.S.

a case where the utility does not have the blessing of DEP for its proposed facilities, this is an instance in which Avalon does not even know what facilities it wishes to, or can legally, build. Further, since Avalon does not anticipate providing service to its proposed service area before August 31, 2028, there is more than sufficient time for Avalon to resolve the Ormond/Daytona Beach service issues before pursuing certification.

In support of its request to waive these rules, Avalon relies on three decisions where the Commission bifurcated application for an original certificate from setting initial rates: *North Sumter Utility Company, LLC*, issued February 11, 2002; *Central Sumter Utility Company, LLC*, issued August 18, 2005; and *South Sumter Utility Company, LLC*, issued February 24, 2017. These proceedings are not applicable here. In each of these cases the utility provided detailed information regarding the type of water and wastewater systems that it proposed to construct.⁷ Also, in each there were no objections to certification. Here Ormond Beach has objected and stated that it can, and will, provide water and wastewater services to the proposed Avalon Phase I development.

For these reasons, we find that Avalon's request to waive Rules 25-30.033(1)(j)2, and 25-30.033(1)(m) through (1)(o), F.A.C., requiring facilities information is hereby denied.

Waiver of Rules Relating to Initial Rates and Charges

With regard to waiving Rules 25-30.033(1)(p) and (q), F.A.C., delaying establishing rates until the certificate is issued does not affect our ability to determine whether Avalon has the technical and financial ability to provide service or whether there is a need for service in the proposed territory. Therefore, we find that the requirements of Section 367.045, F.S., can be met and the public interest can be served by temporarily waiving compliance with these rules. Therefore, we find that Rules 25-30.033(1)(p) and (q), F.A.C., be temporarily waived and that the certificate and rate making proceedings be bifurcated.

For the reasons stated above, Avalon's Motion should be granted in part and denied in part. We find that Avalon's request to temporarily waive compliance with Rules 25-30.033(1)(j)2, and 25-30.033(1)(m) through (1)(o), F.A.C., is denied and its request to temporarily waive Rules 25-30.033(1)(p) and (q), F.A.C., is granted.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Avalon Park Utilities, LLC's Motion to Bifurcate is hereby granted and Motion for Temporary Rule Waiver is hereby granted in part and denied in part as discussed in the body of this order. It is further

⁷ North Sumter Utility Company, LLC proposed to build two water plants comprised of four wells providing 2.8 million gallons per day and a wastewater plant of 1.125 mgd maximum month average daily flow with a total capacity of 2.25 mgd MMADF. Central Sumter Utility Company, LLC proposed a water treatment plant with three 12-inch wells and wastewater treatment plant of 2.0 mgd providing 1.542 mgd maximum month average daily flow. South Sumter Utility Company, LLC proposed constructing wells, sodium hypochlorite chlorination and a ground water storage tank as well as a 1.0 mgd wastewater treatment plant.

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that this docket shall remain open pending resolution of whether water and wastewater certificates of service should be granted and the setting of initial rates and charges.

By ORDER of the Florida Public Service Commission this 30th day of September, 2026.



ADAM TEITZMAN
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

SBr

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 21, 2026.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.