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STATE OF FLORIDA



OFFICE OF THE GENERAL COUNSEL  
S. CURTIS KISER  
GENERAL COUNSEL  
(850) 413-6199

# Public Service Commission

March 29, 2010

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:

From your letter of March 11, 2010, it appears that Venture Out at Cudjoe Cay, Inc (Venture Out) is exempt from the regulation of the Public Service Commission pursuant to Section 367.022, Florida Statutes. I understand that Venture Out wishes the Commission to issue it an original certificate even though Venture Out is an exempt entity. You state that Venture Out believes the authority of the Commission to issue a certificate of authorization to an exempt entity rests under the authority of Section 367.045(5)(a), Florida Statutes, if the Commission determines it is in the public interest to do so.

It is staff's opinion that the Commission is without jurisdiction to regulate an exempt entity, even if that exempt entity so desires. The Commission only has the jurisdiction and authority to regulate a utility if the state legislature gives the Commission that authority. The Commission has held in the past that its "powers and duties are only those conferred expressly or impliedly by statute, and any reasonable doubt as to the existence of a particular power compels [the Commission] to resolve that doubt against the exercise of such jurisdiction. City of Cape Coral v. GAC Utilities, Inc. of Florida, 281 So. 2d 493 (Fla. 1973)." Order No. PSC-01-0217-FOF-EC, issued January 23, 2001, in Docket No. 981827-EC; affirmed on appeal. Lee County Electric Cooperative v. Jacobs, 820 So. 2d 297 (Fla. 2002). The relevant statutes follow:

**367.011 Jurisdiction; legislative intent.-**

(2) The Florida Public Service Commission shall have exclusive jurisdiction over each utility with respect to its authority, service, and rates.

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**367.021 Definitions.-**

(12) "Utility" means a water or wastewater utility and, except as provided in s. 367.022, includes every person, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide, water or wastewater service to the public for compensation.

**367.022 Exemptions.-** The following are not subject to regulation by the commission as a utility nor are they subject to the provisions of this chapter, except as expressly provided:

(7) Nonprofit corporations, associations, or cooperative providing service solely to members who own and control such nonprofit corporations, associations, or cooperatives.

**367.045 Certificate of authorization; application and amendment procedures.-**

(5)(a) The commission may grant or amend a certificate of authorization, in whole or in part or with modifications in the public interest, but may not grant authority greater than that requested in the application or amendment thereto and noticed under this section; or it may deny a certificate of authorization or an amendment to a certificate of authorization, in if the public interest. . .

Applying the above case and statutes to your current request, the Commission regulates utilities as defined by the statutes. The statutes define a utility as anyone, except those listed in the exemptions section of the statutes. Venture Out is exempt. Therefore, Venture Out is not a utility within the meaning of chapter 367 Florida Statutes. Accordingly, the Commission does not have jurisdiction to regulate Venture Out unless and until Venture Out changes its status to non-exempt. The Commission can only issue certificates of authorization to utilities as that term is defined by the legislature and Venture Out currently does not fit the definition of a utility. The provision you refer to, section 367.045(5)(a), Florida Statutes, is the standard the Commission uses to determine whether or not to grant a certificate of authorization to a utility under its jurisdiction. It does not allow the Commission to expand its jurisdiction if the Commission determines it is within the public interest to regulate an exempt entity. Only the Florida legislature can expand the Commission's jurisdiction.

Please understand that the above is staff's opinion of the Commission's jurisdictional authority to issue Venture Out at Cudjoe Cay an original certificate of authorization. If you continue with Venture Out's request for an original certificate after review of the above, staff will prepare a recommendation regarding Venture Out's application for the Commission's consideration at a regularly scheduled Agenda Conference. You will be notified of the date of the Agenda Conference and a representative of Venture Out may be present to address the Commission at that Agenda Conference.

#### Deficiencies

In addition to the above-stated deficiency, we have reviewed the application and find it deficient as follows:

1. Noticing. The application needs to be noticed pursuant to Rule 25-30.030, Florida Administrative Code (F.A.C.), which requires noticing a) to government officials and other utilities, b) to customers of the utility, and c) in a newspaper with county-wide distribution. None of the three required noticings have been done. The applicant may have the draft notice approved by Public Service Commission staff prior to issuing. If a non approved notice is issued and the notice is incorrect the applicant may have to renotice. Once the notice is approved, staff will give the applicant the list of government officials and other utilities to notice. Please provide a draft notice for review and approval.

2. Territory Description. The territory description is incorrect pursuant to Rules 25-30.034(1)(h), and 25-30.030(2), F.A.C. The territory description of the applicant's requested service area cannot include reference to government lots. Please provide a revised territory description.

3. The maps provided are incorrect pursuant to Rule 25-30.034(1)(i) and (j), F.A.C. The maps must be of the proper scale. Anyone comparing the maps to the territory description must be able to follow the territory description around the boundary of the utility's requested territory. Please provide corrected maps.

#### Additional information

The following additional information is needed in order to complete staff's review of the application:

1. According to the application, the wastewater gallonage billing is based upon water usage. Who supplies water service? Does the utility have an agreement to receive water meter readings?

2. Are the rates in the proposed tariff currently being charged? If yes, when did the utility start charging these rates? If not, the applicant is required to file per Rule 25-30.033, F.A.C., including a cost study.

3. Has the utility been charging the miscellaneous service charges? If yes, when did the utility start charging these charges? If not, the applicant is required to file per Rule 25-30.033, F.A.C., including a cost study.

#### Tariff modifications

The draft tariff included with the application is not consistent with the model tariff. A copy of the model tariff is provided for your reference. Please provide corrected sheets for the following:

1. Original Sheet 2.0 needs to be revised to indicate the actual pages of the index pages.

2. Original Sheet 3.1 needs to be revised to include the revised territory description based upon the revised description provided in deficiency 2 above.

3. Original Sheet 12.0 needs the monthly base facility charge shown by meter size in the "Rate" section and Minimum charge should simply say monthly base facility charge.
4. Original Sheet 13.0 needs the same revisions as Original Sheet 12.0 above.
5. Original Sheet 16.0 must be in the same format as the Original Sheet 16.0 in the model tariff.
6. Original Sheet 17.0 is supposed to be the "Index of Standard Forms,"
7. Original Sheet 18.0 must include a Sample Customer Bill. Rule 25-30.335, F.A.C., requires that each bill shall indicate: the billing period covered; the applicable rate; beginning and ending meter readings; the amount of the bill; the delinquent date or the date after which the bill becomes past due; and any Commission authorized late payment charge.
8. Original Sheet 21.0 is supposed to be the "Index of Service Availability Policy."
9. Original Sheet 22.0 is supposed to be the "Service Availability Policy."

The original and four copies of the response to the deficiencies and other information requested in this letter should be filed with the Commission on or before **May 28, 2010**. When filing the response, please be sure to refer to the docket number on your cover letter and to direct the response to:

Office of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Should you have any questions concerning the information in this letter, please contact

Sincerely,



Lisa C. Bennett  
Senior Attorney

LCB:th

Enclosure

cc: Stephanie Clapp (w/o attachment)  
Office of Commission Clerk (w/o attachment)