



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  
NOV 7 11:05 AM '02  
COMMISSION CLERK

DATE: NOVEMBER 7, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK  
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF ECONOMIC REGULATION (REDEMANN)  
OFFICE OF THE GENERAL COUNSEL (CROSBY, HELTON)

*ppr* *es*  
*Wlet* *JDJ* *19\**

RE: DOCKET NO. 020553-WS - APPLICATION FOR AMENDMENT OF  
CERTIFICATE NOS. 294-S AND 338-W TO EXTEND WATER AND  
WASTEWATER SERVICE AREA IN BREVARD COUNTY BY BURKIM  
ENTERPRISES, INC.  
COUNTY: BREVARD

AGENDA: 11/19/02 - REGULAR AGENDA - INTERESTED PERSONS MAY  
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\ECR\WP\020553.RCM

CASE BACKGROUND

Burkim Enterprises, Inc. (Burkim or utility) is a Class C utility providing water and wastewater service to about 423 residential customers in Snug Harbor Village and Snug Harbor Lakes Condominium in Brevard County. Burkim also serves three general service customers. The utility is serving about 334 customers that are outside of the existing service area in the Snug Harbor Lakes Condominium area. Some of the water and wastewater customers outside the service area have been served since 1988. The utility reported gross operating revenues for water and wastewater of \$117,523 with a net operating loss of \$46,002 in its 2001 Annual Report.

On June 21, 2002, Burkim filed an application for amendment of Certificates Nos. 338-W and 294-S to add territory in Brevard

DOCUMENT NUMBER-DATE

12236 NOV-7 02

FPSC-COMMISSION CLERK

DOCKET NO. 020553-WS  
DATE: November 7, 2002

County. The utility's water system is in the St. Johns River Water Management District and this area is located in a water use caution area.

While staff would normally process this application administratively if no protests had been filed, this case is being brought to the attention of the Commission because the utility is currently serving customers in the proposed territory, which is addressed in Issue 1. The Commission has jurisdiction pursuant to Section 367.045, Florida Statutes.

#### **DISCUSSION OF ISSUES**

**ISSUE 1:** Should Burkim be ordered to show cause, in writing, within 21 days, why it should not be fined for serving outside its certificated territory without prior Commission approval in apparent violation of Section 367.045(2), Florida Statutes?

**RECOMMENDATION:** No, a show cause proceeding should not be initiated. (CROSBY, REDEMANN)

**STAFF ANALYSIS:** As discussed earlier, there are about 334 water and wastewater customers being served outside the utility's current service area which is an apparent violation of Section 367.045, Florida Statutes. Section 367.045, Florida Statutes, states that a utility may not extend its service outside the area described in its certificate of authorization until it has obtained an amended certificate of authorization from the Commission.

Staff became aware that Burkim is serving the Snug Harbor Lakes Condominium area, which is located outside its certificated territory, during a staff assisted rate case (Docket No. 010396-WS). Upon further investigation, it was determined that the current territory served by Burkim was transferred to Burkim from CGD Utilities by Order No. PSC-002-1628-FOF-WS, issued on August 8, 2001, in Docket No. 001501-WS. Burkim continued to serve the area served by the previous owner believing that all of the territory was within its service area. On May 1, 2002, Burkim was informed that it appeared the utility was serving outside its certificated

DOCKET NO. 020553-WS  
DATE: November 7, 2002

territory. On June 21, 2002, Burkim filed an application for amendment of its service area to include the additional territory.

Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

Section 367.161(1), Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any provision of Chapter 367, Florida Statutes. In serving outside of its certificated territory without obtaining an amended certificate of authorization, the utility's act was "willful" in the sense intended by Section 367.161, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, Florida Administrative Code, Relating To Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., the Commission having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule."

Staff does not believe that the apparent violation of Section 367.045, Florida Statutes, rises in these circumstances to the level which warrants the initiation of a show cause proceeding. According to the information provided, Burkim continued serving the territory served by the previous owner. In addition, Burkim has included the customers in the additional territory in its annual reports and paid all the related regulatory assessment fees during the time the area has been served. Further, shortly after being told that it was serving customers outside of its territory, Burkim filed for an amendment of its service area. Therefore, staff recommends that the Commission not order Burkim to show cause for failing to obtain an amended certificate of authorization prior to serving outside of its certificated territory.

DOCKET NO. 020553-WS  
DATE: November 7, 2002

**ISSUE 2:** Should Burkim's amendment application of Water Certificate No. 338-W and 294-S be granted?

**RECOMMENDATION:** Yes, Burkim's amendment application to expand its territory should be granted. The territory amendment is described in Attachment A. Burkim should charge the customers in the territory added herein the rates and charges contained in its tariff until authorized to change by this Commission in a subsequent proceeding. (REDEMANN)

**STAFF ANALYSIS:** On June 21, 2002, Burkim filed an application for amendment of Certificate No. 338-W and 294-S to add territory in Brevard County. The application is in compliance with the governing statute, Section 367.045, Florida Statutes, and other pertinent statutes and administrative rules concerning applications for amendment of certificate, except as noted in Issue 1. The application contains a check in the amount of \$1000 which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The applicant has provided evidence in the form of a warranty deed that the utility owns the land upon which the utility's facilities are located as required by Rule 25-30.036(3)(d), Florida Administrative Code.

Adequate service territory and system maps and territory descriptions have been provided as prescribed by Rule 25-30.036(3)(e), (f) and (i), Florida Administrative Code. A description of the territory to be added by the utility is appended to this recommendation as Attachment A. The area being added is already being served by Burkim. The utility has filed an affidavit consistent with Section 367.045(2)(d), Florida Statutes, that it has tariffs and annual reports on file with the Commission.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. On July 11, 2002, the Commission received a letter from Ms. Nancy Higgs, Brevard County Commissioner, District 3 proposing to delay Burkim's request for the extension of its service area until Order No. PSC-01-2511-PAA-WS had been complied with including all of the specific upgrades of the utility plant to be made by Burkim. By a letter dated September 25, 2002 we advised Ms. Higgs that on August 21, 2002, a staff engineer visited the Snug Harbor service area and inspected the utility to verify that the utility had completed the water and wastewater treatment plant improvements. The utility has completed all the water and

wastewater improvements as required by Order No. PSC-01-2511-PAA. The local planning agency was provided notice of the application and did not file a protest to the amendment. The Department of Community Affairs has identified no growth management concerns with the proposed expansion of the utility. The utility states that to the best of the utility's knowledge the provision of water and wastewater service to this property by Burkim is consistent with the Brevard County Comprehensive Plan. These customers were already being served and were included in the utility's recent staff assisted rate case.

The water treatment system consists of two 6-inch wells, a filter system, one 65,000 gallon ground storage tank, a chlorination/ammoniation system, three high service pumps and a hydro pneumatic tank. The average daily water use is about 65,000 gallons per day (gpd). The highest maximum demand in the last 12 months was 112,000 gpd. According to the rate case, the firm reliable capacity of the water system was determined to be 356,447 gpd. The high service pumps can deliver a peak instantaneous demand of 1,200 gallons per minute. The wastewater treatment system consists of a 100,000 gpd contact stabilization plant and perk/evaporation ponds and chlorination for disinfection. The utility treats on average about 42,000 gpd and has a maximum flow of 90,840 gpd.

According to the application, the water and wastewater lines have already been constructed. The property which is not currently being served will connect to Burkim's existing water and wastewater system so that no line extension will be needed by the utility. Staff has contacted the Department of Environmental Protection (DEP) and learned that there are no outstanding notices of violation issued for the water and wastewater systems. According to the DEP, the utility has the capacity to add additional water and wastewater customers. Therefore, it appears that the existing water and wastewater systems have sufficient capacity to handle the demands for the existing service territory and the proposed areas in the near future.

With respect to technical ability Burkim has a contract licensed operator, a bookkeeper, and engineers. To demonstrate the utility's financial ability, the utility provided a copy of their profit and loss statement, which showed that the utility has total revenues of \$124,942 and net income of \$11,327 for the period of January 1, 2002 to August 12, 2002. The utility's balance sheet

DOCKET NO. 020553-WS  
DATE: November 7, 2002

showed total assets of \$409,866, total long-term debt of \$360,221 and total equity capital of \$49,645. Staff believes that Burkim has adequate technical and financial ability to render service to the proposed territory.

Burkim's rates and service availability charges were last set by Order No. PSC-01-2511-PAA-WS, issued December 24, 2001, in Docket No. 010396-WS, the staff assisted rate case. Staff recommends that Burkim should charge the customers in the territory added herein the rates and charges contained in its tariff until authorized to change by this Commission in a subsequent proceeding. The utility has filed revised tariff sheets incorporating the additional territory into its tariff and returned its certificate for entry reflecting the additional territory.

Based on the above information, staff recommends that Burkim's amendment application to expand territory should be granted. The territory amendment is described in Attachment A.

DOCKET NO. 020553-WS  
DATE: November 7, 2002

**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** Yes, no further action is required and the docket should be closed. (CROSBY)

**STAFF ANALYSIS:** No further action is required and the docket should be closed.

BURKIM ENTERPRISES, INC.

TERRITORY DESCRIPTION

SNUG HARBOR CONDOMINIUM AREA AND VICINITY

BREVARD COUNTY

Sewer Treatment Plant

All that part of the South 1/3 of the Northeast 1/4 of the Northeast 1/4 of Section 10, Township 30 South, Range 38 East, Brevard County, Florida. Lying West of the Florida East Coast Railway right of way and lying East of a line 592 feet Westerly of the West right of way line of said Florida East Coast Railway as measured at right angles of said right of way line.

Water Treatment Site

A portion of Sections 10 and 11, Township 30 South, Range 38 East, being more particularly described as follows: Commence at the Southeast corner of the Northeast one quarter of said Section 10. Thence North 00°03'59" West a distance of 246.18 feet to the Point of Beginning; thence continue North 00°03'59" West a distance of 30.13 feet to a point of curvature of a circular curve concave to the West having a radius of 261.27 feet and a central angle of 23°48'02"; thence northwesterly along the arc of said curve an arc distance of 108.53 feet to a point of tangency; thence North 23°52'01" West a distance of 116.81 feet; thence North 66°07'59" East a distance of 91.74 feet to a point on the westerly right of way line of Florida East Coast Railway; thence South 23°52'01" East along said Westerly right of way line a distance of 305.78 feet; thence North 89°56'12" West a distance of 137.98 feet to the Point of Beginning.

Parcel A:

A portion of the Northeast 1/4 of the Northeast 1/4 of Section 10, Township 30 South, Range 38 East, Brevard County, Florida, lying westerly of a 100.00 foot wide Florida Power and Light Company Easement as described in Deed Book 166, Page 52, Public Records of Brevard County, Florida, and being more particularly described as follows:

From a concrete monument marking the Southwest corner of said Northeast 1/4, of the Northeast 1/4 Section 10 said point being the



DOCKET NO. 020553-WS  
DATE: November 7, 2002

Point of Beginning of this description; thence run North 00°35'41" East along the West line of said Northeast 1/4 a distance of 438.83 feet; thence run North 89°42'50" East a distance of 48.01 feet to the westerly right of way line of said Florida Power and Light Company Easement; thence run South 25°15'52" East along said right of way line a distance of 484.10 feet; thence run South 89°42'50" West a distance of 260.07 feet to the Point of Beginning.

Together with:

A parcel of land lying in the South 1/3 of the Northeast 1/4 of the Northeast 1/4 of Section 10, Township 30 South, Range 38 East, Brevard County, Florida,

Being more particularly described as follows:

Commence at the Southwest corner of said Northeast 1/4 of the Northeast 1/4 of Section 10, thence North 00°35'41" West along the West line of the said Northeast 1/4 of the Northeast 1/4 of Section 10 a distance of 438.83 feet to the Point of Beginning of the herein described parcel; thence continue North 00°35'41" West along the said West line of the Northeast 1/4 of the Northeast 1/4 of Section 10 a distance of 4.01 feet to the North line of the said South 1/3 of the Northeast 1/4 of the Northeast 1/4 of Section 10; thence North 89°45'28" East along the said North line of the South 1/3 of the Northeast 1/4 of the Northeast 1/4 of Section 10, a distance of 180.41 feet the intersection with a line 615.50 feet West of by perpendicular measurement and parallel with the west right of way line of Florida East Coast Railway; thence South 23°53'02" East along the said line 615.50 feet West of by perpendicular measurement and parallel with the West right of way line of the Florida East Coast Railway, a distance of 483.09 feet to the South line of the said Northeast 1/4 of the Northeast 1/4 of Section 10; thence South 89°42'50" West along the said South line of the Northeast 1/4 of the Northeast 1/4 of Section 10, a distance of 121.34 feet; thence North 25°15'52" West a distance of 484.10 feet; thence South 89°42'50" West a distance of 48.01 feet to the Point of Beginning.

Together with:

A parcel of land lying in the Northwest 1/4 of the Northeast 1/4 of Section 10, Township 30 South, Range 38 East, Brevard County, Florida, and being more particularly described as follows:

Commence at the Northeast corner of the Northwest 1/4 of the Northeast 1/4 of Section 10, Township 30 South, Range 38 East, thence South 00°35'41" East along the East line of the Northwest 1/4 of the Northeast 1/4 of Section 10 for a distance of 66.00 feet to the Point of Beginning of the herein described parcel of land; thence continue South 00°35'41" East along said East line a

DOCKET NO. 020553-WS  
DATE: November 7, 2002

distance of 1262.51 feet to the South line of the Northwest 1/4 of the Northeast 1/4 of Section 10; thence run South 89°42'50" West along said South line a distance of 308.99 feet; thence departing said South line run North 00°35'41" West a distance of 1263.23 feet; thence North 89°50'45" East a distance of 309.00 feet to the Point of Beginning.

Together with:

A 66 foot strip of land more particularly described as follows: Beginning at the Northeast corner of the Northwest 1/4 of the Northeast 1/4, Section 10, Township 30 South, Range 38 East; thence West along the North line of the Northeast 1/4 a distance of 375 feet; thence South and parallel to the East line of said Northeast 1/4 a distance of 1350 feet more or less to a point on the North line of the South 1/2 of the West 1/2 of the Northeast 1/4 of said Section 10, Township 30 South, Range 38 East; thence East along said North line of the South 1/2 of the West 1/2 of the Northeast 1/4 66 feet to a Point; thence North and parallel to the East line of the Northeast 1/4 a distance of 1284 feet to a point; thence East and parallel to the North line of the Northeast 1/4 a distance of 309 feet to a point on the East line of the West 1/2 of the Northeast 1/4, thence North 00°35'41" West 66 feet to the Point of Beginning.

#### Snug Harbor Condominium Area

A parcel of land lying in Section 10 and 11, Township 30 South, Range 38 East, Brevard County, Florida, being more particularly described as follows: Begin at the Southeast corner of the Northeast 1/4 of said Section 10; thence run South 89°35'00" West a distance of 2684.0 feet to the Southwest corner of said Northeast 1/4 ; thence run North 00°38'31" West a distance of 1331.75 feet to the North line of the South 1/2 of said Northeast 1/4; thence run North 89°18'28" East a distance of 2352.44 feet, along said North line to the West right of way line of the Florida East Coast Railway; thence run along said right of way line South 23°52'01" East a distance of 891.11 feet; thence run South 66°07'59" West a distance of 91.74 feet; thence run South 23°52'01" East a distance of 116.81 feet to the beginning of a curve concave to the Southwest, said curve having a radius of 261.27 feet and a central angle of 23°48'02"; thence run Southeasterly along said curve, an arc distance of 108.53 feet; thence run South 00°03'59" East a distance of 276.31 feet to the Point of Beginning.