

State of Florida



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DATE: February 17, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Johnson, Kaproth)
Office of the General Counsel (Rodan) *KK JS @ PDC JOT 1/20*

RE: Docket No. 041391-WS – Request for cancellation of Certificate Nos. 294-S and 338-W by Burkim Enterprises, Inc., due to condemnation of land and facilities by Barefoot Bay Water and Sewer District in Brevard County.

AGENDA: 03/01/05 – Regular Agenda – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\041391.RCM.DOC

Case Background

Burkim Enterprises, Inc. (Burkim or utility) is a Class C water and wastewater utility which has operated in Brevard County since 1981. The utility is located in a water use caution area as defined by the St. Johns River Water Management District. According to the 2003 annual report, Burkim serves 483 water and wastewater customers in Snug Harbor Village and Snug Harbor Lakes. The utility reported combined gross revenues of \$222,074 with a combined net operating income of \$7,012. The utility was granted Certificates 338-W and 294-S by Order No. 10147, issued July 21, 1981, in Docket No. 810007-WS, to Connecticut General Development Corporation, d/b/a CGD Utilities, Inc. (CGD).

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Burkim acquired the utility in Order No. PSC-01-1628-FOF-WS, issued August 8, 2001, in Docket No. 001501-WS.¹ Rate base was last established for this utility in a staff assisted rate case.² Burkim subsequently filed and received approval of an amendment application.³

On August 24, 2004, the Brevard County Board of County Commissioners, sitting as the Barefoot Bay Water and Sewer District (BBWSD), took formal action to acquire the assets of the utility by condemnation. On December 10, 2004, Burkim Enterprises, Inc. filed an application for transfer of its land and facilities in Brevard County to BBWSD and cancellation of Certificate Nos. 338-W and 294-S. The application states that:

On November 29, 2004, the Circuit Court for the Eighteenth Judicial Circuit issued an Order of Taking in Barefoot Bay Water & Sewer District v. Burkim Enterprises, Inc., Brevard County Circuit Court Case No. 05-2004-CA-023957, pursuant to the condemnation procedures set forth under Chapter 73, Florida Statutes. As a result of this condemnation proceeding, BBWSD acquired title to Burkim's land and facilities in Brevard County.

At issue in this docket is Burkim's application for approval of the transfer for the land and facilities that were condemned by BBWSD and cancellation of Certificate Nos. 338-W and 294-S. The Commission has jurisdiction under Section 367.071, Florida Statutes.

¹ Order No. PSC-01-1628-FOF-WS, issued August 8, 2001, in Docket No. 001501-WS, In Re: Application for authority to transfer facilities and Certificate Nos. 338-W and 294-S in Brevard County from Connecticut General Development Corporation d/b/a CGD Utilities to Burkim Enterprises, Inc.

² Order No. PSC-01-2511-PAA-WS, issued December 24, 2001, in Docket No. 010396-WS, In Re: Application for staff-assisted rate case in Brevard County by Burkim Enterprises, Inc.

³The Commission approved an amendment in Order No. PSC-02-1712-FOF-WS, issued December 9, 2002, in Docket No. 020553-WS, In Re Application for amendment of Certificate Nos. 338-W and 294-S to extend water wastewater service area in Brevard County by Burkim Enterprises, Inc.

Discussion of Issues

Issue 1: Should the Commission approve the transfer of Burkim Enterprises, Inc.'s land and facilities to the Barefoot Bay Water and Sewer District?

Recommendation: Yes. The transfer of Burkim Enterprises, Inc.'s land and facilities to the Barefoot Bay Water and Sewer District should be approved, as a matter of right, pursuant to Section 367.071(4)(a), Florida Statutes, effective November 29, 2004. Certificate Nos. 338-W and 294-S should be cancelled. (Johnson, Kaproth, Rodan)

Staff Analysis: On December 10, 2004, Burkim filed a completed application to transfer its land and facilities to the BBWSD pursuant to Section 367.071 (4) (a), Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code. Included with the application is a copy of the Order of Taking in Barefoot Bay Water & Sewer District v. Burkim Enterprises, Inc., pursuant to the condemnation procedures set forth under Chapter 73, Florida Statutes. As a result of the condemnation proceeding, BBWSD acquired title to Burkim's land and facilities as of November 29, 2004, which is the date the order was issued by the Circuit Court of the Eighteenth Judicial Circuit.

Pursuant to Section 367.071(4)(a), Florida Statutes, the transfer of facilities, in whole or in part, to a governmental authority shall be approved as a matter of right. As such, no notice of the transfer is required and no filing fees apply.

BBWSD is a governmental authority pursuant to Section 367.021(7), Florida Statutes, which states that a "governmental authority" is a political subdivision, as defined by Section 1.01(8), Florida Statutes. According to Section 1.01(8), Florida Statutes, a "political subdivision" includes counties, cities, towns, villages, special tax districts, special road and bridge districts, and all other districts in this state. The BBWSD is a special district, created and passed on March 23, 1999, by the Brevard County Board of County Commissioners in Ordinance No. 99-17. Ordinance No. 99-17 was enacted pursuant to Chapter 153, Part II, Florida Statutes, which provides for the establishment of water and sewer districts by the board of county commissioners.

The application contains a statement that the BBWSD obtained Burkim's most recent income and expense statement, balance sheet, statement of rate base for regulatory purposes, and contributions-in-aid-of-construction pursuant to Rule 25-30.037(4)(e), Florida Administrative Code. Burkim did not collect customer deposits.

Pursuant to the requirements of Rule 25-30.037(4)(h), Florida Administrative Code, a statement was included that Burkim has no outstanding regulatory assessment fees (RAFs) and no fines or refunds are owed. Staff has verified that the utility has filed its 2003 annual report and paid its 2004 RAFs, and that there are no outstanding penalties and interest. As of December 31, 2004, the utility was owned by BBWSD, an exempt entity. Therefore, the utility is not required to file the 2004 annual report.

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Based on the above, staff recommends that the Commission approve, as a matter of right, the transfer of Burkim's land and facilities to the BBWSD effective November 29, 2004. Certificate Nos. 338-W and 294-S should be cancelled.

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Issue 2: Should this docket be closed?

Recommendation: Yes, no further action is required and the docket should be closed. (Rodan)

Staff Analysis: No further action is required and the docket should be closed.