

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for) DOCKET NO. 960134-WS
amendment of Certificates Nos.) ORDER NO. PSC-96-1484-FOF-WS
511-W and 467-S in Marion and) ISSUED: December 4, 1996
Sumter Counties by Spruce Creek)
South Utilities, Inc.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER AMENDING CERTIFICATES TO INCLUDE
ADDITIONAL TERRITORY AND CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

Spruce Creek South Utilities, Inc., (Spruce Creek or utility) is a Class B water and wastewater utility. It has operated under water Certificate No. 511-W since March of 1989 and wastewater Certificate No. 467-S since October of 1991. Spruce Creek currently provides residential service to 1,472 water customers and 874 wastewater customers in the Spruce Creek South subdivision which is located on the border of Marion and Sumter Counties. The utility also provides water and wastewater service to seven commercial customers within the subdivision. According to its 1995 annual report, Spruce Creek had combined operating revenues of \$675,139 and a combined net operating income of \$12,240.

On February 6, 1996, the utility requested an extension of territory to serve the remaining properties in the Spruce Creek South subdivision with water and wastewater service where it is not already certificated to provide such services. The utility was designed and constructed with the intent to serve the entire subdivision and is currently serving all properties within the subdivision which have requested service. However, during discussions with our staff in an earlier docket, the utility discovered that portions of the subdivision were not certificated. The utility responded to the apparent violation with this filing.

DOCUMENT NUMBER-DATE

12904 DEC-4 96

FPSC-RECORDS/REPORTING

NO SHOW CAUSE REQUIRED

As stated earlier, Spruce Creek is currently serving outside its certificated areas. Pursuant to Section 367.045(2), Florida Statutes, a utility may not delete or extend its service area outside the area described in its certificate of authorization until it has obtained an amended certificate of authorization from the Commission. Section 367.161, 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.

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). Thus, any intentional act, such as the utility's failure to obtain the approval of the Commission prior to extending the service area outside the area described in the certificate of authorization is an apparent violation of Section 367.045(2), 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, F.A.C., 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." Id. at 6. Therefore, the utility's failure to obtain antecedent Commission approval to extend its service area outside of the area described in its certificate of authorization meets the "willful" standard.

Although Spruce Creek failed to obtain an amendment prior to providing service, we do not believe that the violation of Section 367.045(2), Florida Statutes, rises in these circumstances to the level of warranting initiation of show cause proceedings. First, the utility has indicated that its original intent was to serve the entire Spruce Creek South subdivision. However, when the utility requested its original certificates of authorization, it only requested the territory within the subdivision that the utility was then serving. Apparently, the utility did not realize that it should have requested, instead, the entire subdivision that it

proposed to serve. The utility's omission was exacerbated by the fact that the utility had no other filings with the Commission which would have caused the territory to be reviewed until recently. The territory error was not discovered until the new owners filed a name change with the Commission. Spruce Creek filed an amendment application as soon as the violation was discovered and has been responsive to its customers' and our requests for information regarding the application. Based on the foregoing, we do not find it appropriate to order Spruce Creek to show cause for its failure to comply with Section 367.045(2), Florida Statutes.

APPLICATION

On February 6, 1996, Spruce Creek filed an application for amendment and consolidation of its water and wastewater certificates to include all of the territory within the Spruce Creek South subdivision including additional territory not currently certificated. Except as noted above, the application is in compliance with Section 367.045, Florida Statutes, and the requirements of Rule 25-30.036(3), Florida Administrative Code.

In particular, the application contains a filing fee in the total amount of \$1,500, which is the correct filing fee pursuant to Rule 25-30.020(2)(b), Florida Administrative Code. In addition, Spruce Creek provided evidence that the utility owns the land upon which the utility treatment facilities are located in the form of a warranty deed for the wastewater plant site and a long-term lease for the water treatment site. Subsequent to filing, the long-term lease for the water treatment plant was converted to a warranty deed and a copy provided for the application. Adequate service territory and system maps and a territory description have been provided, as prescribed by Rule 25-30.036, Florida Administrative Code. The amended and consolidated territory is described in Attachment A of this Order, which by reference is incorporated herein.

Spruce Creek has provided proof of compliance with the noticing requirements of Rule 25-30.030, Florida Administrative Code. Eleven customers subsequently responded in writing. Most of the letters were from customers with septic systems seeking assurance that they would not be required to connect to Spruce Creek's central wastewater system if the territory amendment was granted. Other customers expressed concerns about potentially overloading the wastewater system if new customers were added. However, the utility in fact had no intention of extending the

service to areas outside that which was currently being served and no intention of requiring septic tank customers to connect to the utility's central wastewater system. This raised some uncertainty regarding whether or not a formal protest would be pursued if these misconceptions were cleared up.

On April 10, 1996, the utility provided us with an expanded statement that there would be no requirement to connect to Spruce Creek's central wastewater system unless that requirement was imposed on the utility and its customers by law or regulatory action. The utility further explained that the purpose of the amendment was not to provide services beyond where they are currently provided, and, therefore, the concerns about potential system overloads were unfounded. On April 18, 1996, we provided the eleven customers responding to Spruce Creek's notice with the utility's letter of clarification. Three of the eleven customers responded in writing that their concerns were resolved. When the remaining eight customers did not respond to our correspondence, we subsequently contacted them by telephone, and they all expressed no desire to pursue a protest to the application because their concerns had been resolved by the utility's letter.

Spruce Creek has been providing satisfactory service to the customers of the consolidated territory since 1989. We believe the utility has demonstrated its technical and financial ability to continue to provide water and wastewater service. We note that Spruce Creek's 1995 regulatory assessment fees have been paid and the utility has no outstanding fees, fines or penalties with the Commission. A check of the Department of Environmental Protection's (DEP's) database indicated that there are no outstanding compliance actions against the utility.

Spruce Creek has provided a statement that the proposed service is consistent with all sections of the Local Comprehensive Plan as approved by the Department of Community Affairs, specifically the water and wastewater sections. The utility is currently providing effluent disposal through percolation ponds. Under its development permits, the utility will utilize spray irrigation to golf courses as a means of effluent disposal when the development reaches build-out and such sources are readily and economically available. A list of Spruce Creek's DEP construction and operating permits has been provided.

The Spruce Creek South subdivision is near build-out for residential connections. The utility is also serving approximately

30% of all approved commercial uses within the subdivision. The utility's water treatment system has an estimated capacity of approximately 4,000 equivalent residential connections (ERCs). At near build-out, the utility is currently serving less than half of that number. The utility's wastewater treatment system has a DEP rated capacity of 206,000 gallons per day (GPD). The average daily flows through the plant are approximately 82,000 GPD. It is anticipated that when the balance of the commercial uses are completed, the total flows into the plant during peak seasonal periods will not exceed 125,000 GPD. All water distribution and wastewater collection lines necessary to serve the consolidated territory have been constructed. The application states that no additional capital investment will be needed in order to provide service to the proposed territories at build-out and, therefore, no impact on monthly service charges or service availability charges is anticipated.

The utility's most recent and only order establishing water rates is Order No. 20933, issued March 24, 1989, and the utility's most recent and only order establishing wastewater rates is Order No. 25331, issued November 13, 1991. The utility has requested no price indexes. The utility is not requesting any modification to its existing rates at this time. The application included sample tariff sheets reflecting the additional service area, as amended, and the utility's original water and wastewater certificates. Finally, the application included an affidavit from the utility that it has tariffs and annual reports on file with the Commission.

Based on the above information, we find that it is in the public interest to grant the application of Spruce Creek for an amendment of Certificates Nos. 511-W and 467-S for the consolidated territory described in Attachment A. Spruce Creek shall apply its existing tariff rates and charges to all new service in the territory extension until authorized to change by this Commission in subsequent proceedings. No further action is necessary, and this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that water Certificate No. 511-W and wastewater Certificate No. 467-S, held by Spruce Creek South Utilities, Inc., are hereby amended to include the territory described in Attachment A of this Order, which by reference is incorporated herein. It is further

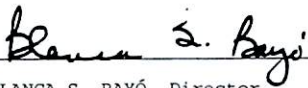
ORDER NO. PSC-96-1484-POF-WS
DOCKET NO. 960134-WS
PAGE 6

ORDERED that Spruce Creek South Utilities, Inc. shall charge the customers in the territory added herein the rates and charges approved in its tariff until authorized to change by this Commission. It is further

ORDERED that each of the findings made in the body of this order is hereby approved in every respect. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission, this 4th day of December, 1996.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

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ORDER NO. PSC-96-1484-FOF-WS
DOCKET NO. 960134-WS
PAGE 7

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

ATTACHMENT A

SPRUCE CREEK SOUTH UTILITIES, INC.

Marion County

Spruce Creek South Subdivision -
Water and Wastewater Service Area

Amended and Consolidated

Township 17 South, Range 23 East
Section 36

- o that part of Section 36, Township 17 South, Range 23 East, lying Southwest of U.S. Highway 441/27 (200 feet wide).

Township 17 South, Range 23 East
Section 35

- o that part of the East ½ of Section 35, Township 17 South, Range 23 East, lying Southwest of U.S. Highway 441/27; and
- o the Southwest 1/4 of said Section 35.

Township 17 South, Range 23 East
Section 34

- o the South 3/4 of the East ½ of Section 34, Township 17 South, Range 23 East; and
- o the East ½ of the Southeast 1/4 of the Northwest 1/4 of said Section 34; and
- o the Northeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of said Section 34.

ORDER NO. PSC-96-1484-FOF-WS
DOCKET NO. 960134-WS
PAGE 9

ATTACHMENT A

SPRUCE CREEK SOUTH UTILITIES, INC.

Sumter County

Spruce Creek South Subdivision -
Water and Wastewater Service Area

Amended and Consolidated

Township 18 South, Range 23 East
Section 2

- o the Northwest 1/4 of the Northeast 1/4 of Section 2, Township 18 South, Range 23 East; and
- o the Northeast 1/4 of the Northwest 1/4 of said Section 2; and
- o the East 1/4 of the Southeast 1/4 of the Northwest 1/4 of said Section 2.