

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for
certificates to operate a water
and wastewater utility in Marion
County by Ocala Springs
Utilities Inc.

DOCKET NO. 980876-WS
ORDER NO. PSC-98-1644-FOF-WS
ISSUED: December 7, 1998

The following Commissioners participated in the disposition of
this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

ORDER APPROVING APPLICATION FOR ORIGINAL WATER AND WASTEWATER
CERTIFICATES, ISSUING CERTIFICATES NOS. 604-W AND 520-S, AND
KEEPING DOCKET OPEN PENDING THE COMPLETION OF FILING REQUIREMENTS
AND THE ESTABLISHMENT OF RATES AND CHARGES

BY THE COMMISSION:

BACKGROUND

Ocala Springs Utilities Inc. (OSUI or utility) is a wholly-owned subsidiary of Avatar Utilities, Inc., (Avatar Utilities), which is a wholly-owned subsidiary of Avatar Holdings, Inc., (Avatar Holdings). OSUI was established by Avatar Utilities in April of 1998 for the specific purpose of providing water and wastewater service to an undeveloped tract of acreage known as Ocala Springs. The entire tract of 4,666 acres is owned by another wholly-owned subsidiary of Avatar Holdings, Avatar Properties, Inc. (API or developer), which intends to develop the land as an active adult community. Based on the magnitude of the Ocala Springs acreage, it is expected that OSUI will be a Class A water and wastewater utility at build-out.

On July 13, 1998, OSUI submitted an application for original certificates to operate a water and wastewater utility in Marion County, Florida, along with a petition requesting a temporary variance from or a temporary waiver of Rules 25-30.033(1)(h), (j),

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FLORIDA PUBLIC SERVICE COMMISSION REPORTING

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(m), (o), (r), (t), (u), (v), (w), (2) and (3) and Rule 25-30.433(10), Florida Administrative Code. On July 31, 1998, the utility filed an amended petition requesting a temporary variance from or a temporary waiver of Rules 25-30.033(1)(k) and (4), Florida Administrative Code, in addition to the above-mentioned rules.

By Order No. PSC-98-1374-PCO-WS, issued October 12, 1998, we granted OSUI's amended petition for the temporary rule waivers. Pursuant to that order, OSUI is required to submit evidence of ownership of the plant sites and detailed system maps when it submits its applications for construction permits with the Water Management District and the Florida Department of Environmental Protection. According to OSUI's revised application, this is scheduled to occur by July 1, 1999, and the utility stated that construction will commence by January 1, 2000. The order also requires OSUI to submit a separate application in this docket for initial rates and charges within 24 months of a Commission order granting original certificates.

On July 24, 1998, pursuant to a Memorandum of Understanding between the Public Service Commission (PSC) and the Department of Community Affairs (DCA), we provided the DCA with a copy of OSUI's application. On August 28, 1998, the DCA provided comments as to the need for service in the requested territory and compliance with the local comprehensive plan. The utility responded to the DCA's comments on October 8, 1998.

Pursuant to Section 367.031, Florida Statutes, we are required to grant or deny an application for certificates of authorization within 90 days after the official filing date of the completed application. The application, as filed, contained deficiencies which were cured by the utility on August 27, 1998. We voted on the application on November 17, 1998, which is within the required statutory time frame.

Order No. PSC-98-1374-PCO-WS bifurcated this docket, so this action pertains only to the issue of whether OSUI should be granted certificates of authorization to provide water and wastewater service. The establishment of rates and charges will be addressed at a later date.

APPLICATION

As stated earlier, Order No. PSC-98-1374-PCO-WS granted OSUI's petition for waiver of certain provisions of Rules 25-30.033 and 25-30.433, Florida Administrative Code. Except for the rule waivers, the application, as filed and amended, is otherwise in compliance with Section 367.045, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code.

The appropriate filing fee for applications for original certificates, pursuant to Rule 25-30.020, Florida Administrative Code, is based on the proposed capacity of the system(s) in terms of equivalent residential connections (ERCs). Since the development plans for Ocala Springs have not been finalized, the number of proposed ERCs is not yet known. One of the temporary waivers granted by Order No. PSC-98-1374-PCO-WS was to Rule 25-30.033(1)(h), Florida Administrative Code, which requires the utility to specify the number of ERCs proposed to be served. However, since 4,666 acres will undoubtedly serve in excess of one residential unit per acre, the application contained the maximum filing fee prescribed by the rule.

Pursuant to Rules 25-30.030(5) and (7), Florida Administrative Code, the utility provided proof of notice of its application for original certificates. However, while the body of the notices indicated that the application was for both original water and wastewater certificates, the heading only indicated that application was for an original water certificate. In an abundance of caution, the utility was required to renotice the application. No protests to either the utility's original notice or renotice were received, and the time for filing such protest has expired.

Pursuant to Rules 25-30.033(1)(a), (b), (c) and (d), Florida Administrative Code, the application stated that OSUI is a regular corporation which has not elected to be an S Corporation under Internal Revenue Code Section 1362. It is a wholly-owned subsidiary of Avatar Utilities which is a wholly-owned subsidiary of Avatar Holdings. The names, titles and addresses of the utility's corporate officers were fully disclosed.

Because OSUI was just recently incorporated, the utility has no financial statements. In lieu of filing its own financial statements and pursuant to Rules 25-30.033(1)(e) and (s), Florida Administrative Code, OSUI submitted the financial statements of its

direct parent, Avatar Utilities, and its subsidiaries. Based on these statements, total assets are sufficient to assure continued operation of the utility.

The application also contained a Master Agreement, dated May 4, 1998, between OSUI and the developer, API, in which API agreed to design and construct the utility's facilities which it will then convey to OSUI as advances or contributions-in-aid-of-construction until OSUI has the financial capability to perform on its own. In addition, API has agreed to finance the initial operations of OSUI through guaranteed revenues or other mutual agreement until OSUI's operating revenues are adequate to cover its operating costs.

Pursuant to Rule 25-30.033(1)(e), Florida Administrative Code, the application contains a statement describing the utility's technical ability to provide service. Currently OSUI has no assets and no employees. OSUI's application stated that, as a wholly-owned subsidiary of Avatar Utilities, OSUI intends to initially receive technical support from its parent's subsidiaries, primarily Florida Cities Water Company (FCWC) and Avatar Utility Services, Inc. As OSUI becomes operational, local operating and customer service staff will be employed.

As to Avatar Utilities' technical ability, it is a utility holding company which has been providing water and wastewater services through its subsidiaries since 1956. In addition to FCWC, Poinciana Utilities Inc. (Poinciana) is also a subsidiary of Avatar Utilities. FCWC currently owns and operates eight water treatment and six wastewater treatment facilities, and associated systems, which provide service to approximately 34,000 water and 26,000 wastewater customers in six separate communities located in Brevard, Collier, Hillsborough, Lee and Sarasota Counties. Poinciana currently provides service to approximately 6,300 water and 5,900 wastewater customers in a rapidly developing community located near Disney World in Osceola and Polk Counties. Both FCWC and Poinciana are considered Class A utilities.

Pursuant to Rule 25-30.033(1)(e), Florida Administrative Code, the application describes the need for service within the proposed area to be served. The need for service is based on API's intent to commence development of Ocala Springs within two years. According to the application, the development plans are predicated on the assurances and economic feasibility of water and wastewater service which can only be achieved through the creation of a

utility entity and the construction of the required water and wastewater infrastructure.

As to the availability of alternative sources for service, the application indicates the utility analyzed the annual reports filed with this Commission for all water and wastewater utilities having service areas within two miles of any portion of its proposed territory. OSUI concluded that none of these utilities had the economic or physical facility capability to provide water and wastewater service to the proposed development. The application further states that Ocala Springs is not within the service area of the City of Ocala nor the Marion County Water and Wastewater Utility Planning and Service Areas. As previously stated, notice of this application was given to all local utilities and governmental entities and no protests to OSUI serving the proposed territory were filed.

Pursuant to Rule 25-30.033(1)(j), Florida Administrative Code, the utility is required to provide evidence that it owns the land upon which the utility facilities are located. Order No. PSC-98-1374-PCO-WS granted OSUI a temporary waiver of the requirement to submit evidence of ownership. As previously explained, the exact location of utility facilities is not known at this stage of the Ocala Springs development; however, the application indicates that all the land within the proposed territory is owned by API. The previously mentioned Master Agreement between OSUI and API also contains a provision whereby API agrees to convey title to OSUI for any land upon which the water and wastewater treatment facilities are eventually located. Pursuant to Order No. PSC-98-1374-PCO-WS, OSUI must submit evidence of ownership of plant sites in its applications for construction permits with the Water Management District and the Florida Department of Environmental Protection.

Pursuant to Rules 25-30.033(1)(l) and (n), Florida Administrative Code, the utility submitted an adequate territory description and official county tax assessment map. A description of the territory is appended to this Order as Attachment A, which by reference is incorporated herein.

The requirement to submit detailed system maps, pursuant to Rule 25-30.033(1)(m), Florida Administrative Code, has been temporarily waived by Order No. PSC-98-1374-PCO-WS. Like the evidence of ownership, OSUI must submit the system maps when it submits its applications for construction permits with the Water

Management District and the Florida Department of Environmental Protection.

Pursuant to Rule 25-30.033(1)(f), Florida Administrative Code, the application describes the extent to which service will be consistent with the water and wastewater sections of the local comprehensive plan as approved by the DCA. Based on several early binding letters of interpretation from the DCA regarding Ocala Springs' vested rights, the utility's original application indicated its belief that API's intent to replan and replat the development as an active adult community would not constitute a substantial deviation from the impacts previously approved by the DCA.

DCA'S COMMENTS

As previously stated, the DCA provided comments on the consistency of OSUI's application with the County's comprehensive plan pursuant to a Memorandum of Understanding between the DCA and the PSC. Of the approximately 4,666 total acres comprising Ocala Springs, the DCA found that approximately 3,644 acres were appropriate for central water and wastewater service due to the urban-type development approved and vested on the acreage by Marion County. However, the DCA found that approximately 1,022 acres scattered around the perimeter of the development were not appropriate for central water and wastewater due to the rural-type land use designation in Marion County's Future Land Use Maps. The DCA indicated this acreage would require an amendment to the County's comprehensive plan to change the land use for development at urban densities.

The DCA did not appear to object to a change in the land use designation for the non-vested acres from rural to urban use. Instead, the DCA stated that central water and wastewater systems would be beneficial to the Ocala Springs development as it is in the Silver River watershed and less than a half of a mile from the Silver River which is designated both as a Special Waters and an Outstanding Florida Waters.

In its response to the DCA's comments, OSUI did not dispute the fact that the final configuration of Ocala Springs may require changes to the County's comprehensive plan because the final configuration of the development is not yet known. Additionally, in the Master Agreement between API and OSUI, the developer pledged to work closely with all applicable government agencies in the

design, planning and development of Ocala Springs including, but not limited to, Marion County and the DCA.

OSUI also provided in its response additional documentation on the 1,022 disputed acres that was not considered by the DCA when evaluating the utility's original application. The documentation appears to indicate that a later Marion County Vesting Order, dated October 5, 1992, considered the entire area of Ocala Springs as vested by the County. The development would still be constrained by the current zoning classifications, some of which may not comport with API's final development designs. If so, OSUI acknowledges that zoning changes would be pursued.

Based on the comments provided by the DCA, the utility and Marion County, it seems likely that some portion of API's final development plans may be inconsistent with Marion County's Land Use Designation Maps or zoning restrictions. However, we believe the comments also indicate consensus among the three entities that the central water and wastewater service proposed by OSUI would be highly beneficial for Ocala Springs. Thus, all three entities appear to be committed to resolving any inconsistencies with the local comprehensive plans and/or zoning classifications. Moreover, pursuant to Section 367.045(5)(b), Florida Statutes, we are required to consider, but are not bound by, a local comprehensive plan when determining whether to grant or deny certificates of authorization. See City of Oviedo v. Clark, 699 So.2d 316 (Fla. 1st DCA), rev. dismissed, 705 So.2d 7 (Fla. 1997), wherein the court held that the Commission is not required to defer to a local comprehensive plan.

CONCLUSION AND FINDINGS

Based on the foregoing, we find that OSUI has demonstrated a need for service to Ocala Springs, the absence of alternate sources for service and the availability of adequate financial and technical support through startup phase of development. Although the issue of whether all of the final development plans will be consistent with the local comprehensive plan cannot be known at this time, it appears there is consensus among the DCA, the utility and Marion County with respect to the benefits of establishing such a utility and the resolution of any future inconsistencies. Therefore, pursuant to Sections 367.031 and 367.045, Florida Statutes, we find that Ocala Springs Utilities, Inc.'s application for certificates to serve the territory described in Attachment A is in the public interest, and it is approved. The utility shall

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be issued Water Certificate No. 604-W and Wastewater Certificate No. 520-S.

Pursuant to Order No. PSC-98-1374-PCO-WS, OSUI must submit detailed system maps and evidence of ownership of the plant sites when it submits its application for construction permits with the Water Management District and the Florida Department of Environmental Protection. Furthermore, it must submit a separate application in this docket for initial rates and charges within 24 months of the issuance of this Order granting original certificates.

This docket should remain open pending the completion of all filing requirements and the establishment of appropriate rates and charges. The utility is hereby put on notice that it cannot receive compensation for any utility service, pursuant to Sections 367.045 and 367.081(1), Florida Statutes, until we establish rates and charges for the utility.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the application submitted by Ocala Springs Utilities Inc., 4837 Swift Road, Suite 100, Sarasota, Florida 34231, for certificates of authorization to provide water and wastewater service to the area described in Attachment A is hereby approved. It is further

ORDERED that Ocala Springs Utilities Inc., shall be issued Water Certificate No. 604-W and Wastewater Certificate No. 520-S. It is further

ORDERED that, pursuant to Order No. PSC-98-1374-PCO-WS, Ocala Springs Utilities Inc., shall submit detailed system maps and evidence of ownership of plant sites when it submits its applications for construction permits with the Water Management District and the Florida Department of Environmental Protection. It is further

ORDERED that, pursuant to Order No. PSC-98-1374-PCO-WS, Ocala Springs Utilities Inc., shall submit a separate application in this docket to establish initial rates and charges within 24 months of the date of this Order. It is further

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ORDERED that Ocala Springs Utilities Inc., shall not receive any compensation for utility service until rates and charges have been established by this Commission. It is further

ORDERED that this docket shall remain open pending completion of the filing requirements by Ocala Springs Utilities Inc., and the establishment of rates and charges by this Commission.

By ORDER of the Florida Public Service Commission this 7th day of December, 1998.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: 
Kay Flynn, Chief
Bureau of Records

(S E A L)

SAM

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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 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.

OCALA SPRINGS UTILITIES INC.

WATER AND WASTEWATER SERVICE AREA

MARION COUNTY

TOWNSHIP 14 SOUTH, RANGE 23 EAST
SECTION 7

That part of Section 7, Township 14 South, Range 23 East, lying South and West of Anthony-Burbank Road (NE 97th Street Road), being more particularly described as follows:

Beginning at the SW corner of said Section 7;

thence N 00°00'42" W, along the West line of said Section 7, a distance of 1,356.70 feet, to the centerline of said Anthony-Burbank Road;

thence Southeasterly, along said centerline, a chord bearing of S 45°12'04" E, a distance of 194.74 feet;

thence, continue along said centerline, Southeasterly, a chord bearing of S 61°26'52" E, a distance of 2,506.48 feet, to the South line of said Section 7;

thence S 89°28'26" W, along said South line, a distance of 2,339.66 feet, to the Point of Beginning.

TOWNSHIP 14 SOUTH, RANGE 22 EAST
SECTION 12

That part of the East 3/4 of Section 12, Township 14 South, Range 22 East, lying South and West of Anthony-Burbank Road (NE 97th Street Road), being more particularly described as follows:

Beginning at the SE corner of said Section 12;

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thence S 89°44'31" W, along the South line of said Section 12, a distance of 3,939.66 feet, to the SW corner of said East 3/4 of Section 12;

thence N 00°04'57" E, along the West line of said East 3/4, a distance of 2,647.09 feet;

thence continue along said West line, N 00°04'54" E, a distance of 1,290.63 feet, to the centerline of said Anthony-Burbank Road;

thence Easterly along said centerline a chord bearing of N 89°00'47" E, a distance of 1,222.21 feet;

thence continue along said centerline, Southeasterly, a chord bearing of S 60°35'41" E, a distance of 289.66 feet;

thence continue along said centerline, Southeasterly, a chord bearing of S 45°12'04" E, a distance of 3,660.59 feet, to the East line of said Section 12;

thence S 00°00'42" E, along said East line a distance of 1,356.70 feet, to the Point of Beginning.

TOWNSHIP 14 SOUTH, RANGE 23 EAST
SECTION 18

All of Section 18, Township 14 South, Range 23 East, Less and Except:

Beginning at the NE corner of said Section 18;

thence S 00°13'02" W, along the East line of said Section 18, a distance of 464.79 feet, to the centerline of Anthony-Burbank Road (NE 97th Street Road);

thence Southwesterly, along said centerline, a chord bearing of S 65°18'41" W, a distance of 378.24 feet;

thence continue along said centerline, Southwesterly, a chord bearing of S 76°49'44" W, a distance of 298.34 feet;

thence continue along said centerline, Northwesterly, a chord bearing of N 84°18'56" W, a distance of 681.00 feet;

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thence continue along said centerline, Northwesterly, a chord bearing of N 62°07'46" W, a distance of 179.86 feet;

thence continue along said centerline, Northwesterly, a chord bearing of N 84°11'10" W, a distance of 769.59 feet;

thence continue along said centerline, Northwesterly, a chord bearing of N 61°26'52" W, a distance of 906.77 feet, to the North line of said Section 18;

thence N 89°28'26" E, along said North line, a distance of 3,034.81 feet, to the Point of Beginning;

And also less and except:

Beginning at the SE corner of said Section 18,

thence N 89°46'58" W, along the South line of said Section 18, a distance of 380.00 feet;

thence N 19°41'19" E, a distance of 1,140.00 feet, to the East line of said Section 18;

thence S 00°13'02" W, along said East line, a distance of 1,074.80 feet, to the Point of Beginning.

TOWNSHIP 14 SOUTH, RANGE 22 EAST
SECTIONS 13, 24, and 25

All of Sections 13, 24, and 25, Township 14 South, Range 22 East.

TOWNSHIP 14 SOUTH, RANGE 22 EAST
SECTION 14

The East 1/2 of Section 14, Township 14 South, Range 22 East,

Less the NW 1/4 of the NE 1/4 and also

Less: Commencing at the SW Corner of the SE 1/4 of said Section 14;

thence N 00°31'45" E, a distance of 931.68 feet, to the Point of Beginning;

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thence N 86°38'25" E, a distance of 933.25 feet;
thence N 02°21'35" W, a distance of 397.28 feet;
thence S 86°38'25" W, a distance of 638.66 feet;
thence S 02°21'35" E, a distance of 373.28 feet;
thence S 86°38'25" W, a distance of 292.96 feet;
thence S 00°31'45" W, a distance of 24.05 feet, to the Point of Beginning.

TOWNSHIP 14 SOUTH, RANGE 22 EAST
SECTION 23

All of Section 23, Township 14 South, Range 22 East,

Less: Beginning at the SW corner of said Section 23,

thence N 00°00'48" W, along the West line of said Section 23, a distance of 661.34 feet;

thence N 89°57'10" E, a distance of 2,314.73 feet;

thence S 00°00'26" W, a distance of 661.79 feet, to the South line of said Section 23;

thence S 89°57'50" W, along said South line, a distance of 2,314.66 feet, to the Point of Beginning.

TOWNSHIP 14 SOUTH, RANGE 22 EAST
SECTION 26

That part of Section 26, Township 14 South, Range 22 East, lying East of the CSX Railroad (formerly known as Seaboard Coast Railroad),

Less and Except: Commencing at the NE corner of the NW 1/4 of said Section 26;

thence S 00°06'47" W, along the East line of said NW 1/4, a distance of 1,364.87 feet;

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thence S 89°56'52" W, a distance of 631.93 feet, to the Point of Beginning;

thence S 00°06'47" W, a distance of 1,072.31 feet;

thence S 89°56'52" W, a distance of 840.80 feet, to the Easterly right-of-way line of NE 40th Avenue Road;

thence N 00°00'00" E, along said Easterly right-of-way line, a distance of 429.33 feet, to the point of curvature of a curve concave to the East, having a radius of 1,450.00 feet and a central angle of 26°19'45";

thence Northeasterly, along said right-of-way line and curve, a distance of 666.32 feet;

thence N 89°56'52" E, 692.50 feet, to the Point of Beginning.

TOWNSHIP 14 SOUTH, RANGE 22 EAST
SECTION 27

That part of the East 1/2 of Section 27, Township 14 South, Range 22 East, lying East of the CSX Railroad (formerly known as Seaboard Coast Railroad).

TOWNSHIP 14 SOUTH, RANGE 22 EAST
SECTION 22

The SE 1/4 of the SE 1/4 of Section 22, Township 14 South, Range 22 East, lying East of the CSX Railroad (formerly known as Seaboard Coast Railroad), less the North 495 feet (7-1/2 chains);

and the West 1/2 of said SE 1/4 of Section 22, lying East of said Railroad;

and the South 858 feet (13 chains) of the SW 1/4 of the NE 1/4 of said Section 22, lying East of said Railroad, less the North 198 feet (3 chains) of the South 858 feet (13 chains) of the East 1/2 of the SW 1/4 of the NE 1/4.

TOWNSHIP 14 SOUTH, RANGE 22 EAST
SECTION 36

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The NE 1/4 of Section 36, Township 14 South, Range 22 East;

and the North 3/4 of the East 1/2 of the SE 1/4;

and the East 396 feet (6 chains) of the SW 1/4 of the SE 1/4 of the SE 1/4;

Less and Except: the East 14 feet of the South 210 feet; and the East 60 feet of the West 264 feet of the North 105 feet of the SW 1/4 of the SE 1/4 of the SE 1/4; all in Section 36, Township 14 South, Range 22 East.