

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-00-2387-FOF-WS
ISSUED: December 13, 2000

The following Commissioners participated in the disposition of
this matter:

J. TERRY DEASON, Chairman
E. LEON JACOBS, JR.
BRAULIO L. BAEZ

ORDER GRANTING AMENDED REQUEST FOR EXTENSION OF TIME
AND REQUIRING STATUS REPORT

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 for the specific purpose of providing water and wastewater service to an undeveloped tract of land consisting of 4,666 acres known as Ocala Springs. The entire tract of land is owned by another wholly-owned subsidiary of Avatar Holdings, Avatar Properties, Inc. (Avatar Properties or developer). Based on the magnitude of 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 along with a petition requesting a temporary variance from or a temporary waiver of Rules 25-30.033(1)(h), (j), (m), (o), (r), (t), (u), (v), (w), (2) and (3) and 25-30.433(10), Florida Administrative Code. On July 31, 1998, the utility filed an amended petition requesting a temporary variance from or a

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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 was required to submit evidence of ownership of the plant sites and detailed system maps when it submitted its applications for construction permits with the St. Johns River Water Management District (WMD) and the Florida Department of Environmental Protection (DEP). According to OSUI's revised application, this was scheduled to occur by July 1, 1999, and the utility stated that construction would commence by January 1, 2000. Order No. PSC-98-1374-PCO-WS also required the utility to submit a separate application in this docket for initial rates and charges within 24 months of a Commission order granting original certificates.

By Order No. PSC-98-1644-FOF-WS, issued December 7, 1998, OSUI's application for original certificates was approved, and Certificates Nos. 604-W and 520-S were issued to the utility. Order No. PSC-98-1644-FOF-WS reiterated that the utility was required to file an application to establish initial rates and charges within 24 months of the Order, which would make the filing deadline December 7, 2000.

On August 10, 2000, our staff sent a data request to the utility, inquiring about the status of OSUI's construction progress. On September 12, 2000, the utility filed its Response to Staff's First Data Request and Request for Extension of Time to File Information Pursuant to Orders Nos. PSC-98-1644-FOF-WS and PSC-98-1374-PCO-WS, requesting an extension of time, until December 7, 2001, to file an application to establish initial rates and charges. On October 11, 2000, the utility filed its Supplemental Response to Staff's First Data Request and Amended Request for Extension of Time. The amended filing provided a more detailed explanation of the status of the utility's construction plans. Also by this filing, the utility requested an extension of time, until February 7, 2002, instead of the December 7, 2001 date set forth in its previous request, to file an application to establish initial rates and charges.

We have the authority to consider these filings under Sections 367.045 and 120.542, Florida Statutes.

REQUEST FOR EXTENSION OF TIME

In its request for extension of time, the utility states that when "OSUI applied for certification from the Public Service Commission, the planning and permitting of the Ocala Springs active adult community development in Marion County were imminent, and the development was intended to commence within two years." The utility further states that in 1998, Avatar Properties became aware that Marion County was considering the construction of a landfill within one mile of the Ocala Springs project, which would be put into operation in the near future. The utility states that Avatar Properties was concerned that the placement of the landfill so close to the proposed Ocala Springs project would have material and adverse negative impacts to the extent that the Ocala Springs development possibly would not have been an economically viable community project. Also, the utility states that Avatar Properties actively lobbied Marion County to have the landfill relocated and, after a number of public hearings, Marion County decided not to locate the landfill near the Ocala Springs project site. OSUI states that Marion County's decision not to locate the landfill near Ocala Springs took substantially longer than anticipated, and that because of the potential negative impact on the Ocala Springs development, Avatar Properties had "no alternative but to place on hold its plans for a proposed active adult community development at the Ocala Springs site."

OSUI states that during the time that it was contesting the location of the landfill, Avatar Properties proceeded with another active adult project in Polk County. The utility states that Avatar Properties will use the sales information obtained from the Polk County project to determine whether to proceed with making Ocala Springs an active adult community or pursue the project as a more traditional residential community. However, the utility states that in either case, Avatar Properties "intends to start planning and development of the Ocala Springs property in 2001 with OSUI being the water and wastewater service provider therefor."

OSUI sets forth a time line for permitting and construction as follows:

Final decision as to type of development (active adult vs. traditional residential)	April/May 2001
Commencement of replanning and replatting of development with Marion County	June 2001
Major advertising effort begins for the Ocala Springs development	December 2001
Consumptive use permit application submitted to WMD	December 2001
Construction permit application for water and wastewater facilities submitted to DEP	December 2001
Submit to PSC copies of detailed system maps and evidence of ownership of plant sites	February 2002
File with PSC application to establish initial water and wastewater rates	February 2002
Construction to begin on water and wastewater facilities	May 2002

Thus, OSUI requests that it be allowed until February 7, 2002, to file the information required by Orders Nos. PSC-98-1374-PCO-WS and PSC-98-1644-FOF-WS.

In In Re: Application for Original Certificate to Operate Water and Wastewater Utility in Bay County by Dana Utility Corporation, Order No. PSC-00-1376-PCO-WS, issued July 31, 2000, in Docket No. 991632-WS, we addressed the issue of whether to grant an extension of time to file information that was temporarily waived pursuant to Section 120.542, Florida Statutes. In that Order, we found it necessary to address whether the recipient of the temporary waiver is, and will continue to be, in compliance with the rule waiver requirements of Section 120.542, Florida Statutes, when determining whether an extension of time should be granted for the temporary waiver. See Id. at 4.

As previously noted, we granted OSUI a temporary waiver of Rules 25-30.033(1)(h), (j), (k), (m), (o), (r), (t), (u), (v), (w), (2), (3) and (4) and 25-30.433(10), Florida Administrative Code, by Order No. PSC-98-1374-PCO-WS. In granting the temporary waiver, we applied the requirements of Section 120.542(2), Florida Statutes. We found that OSUI met the underlying purpose of Sections 367.031 and 367.045, Florida Statutes, because the utility demonstrated its technical and financial ability to provide service and that there was a need for service in the area. Further, we found that the utility showed that it would suffer a substantial hardship if all of the provisions of Rule 25-30.033, Florida Administrative Code, were strictly applied because OSUI needed water and wastewater certificates to proceed with its development plans, and initial rates and charges could not be established until the development plans were complete.

The utility's financial and technical ability to provide service has not changed since OSUI was granted the temporary waiver. OSUI's parent company, Avatar Utilities, promises to finance the initial operation of the utility. Further, OSUI, through Avatar Utilities, has the technical ability to operate the utility as Avatar Utilities has been providing water and wastewater service through its subsidiaries since 1956.

With respect to whether there is a need for service, the future Ocala Springs development will need water and wastewater service. OSUI states in its request for extension of time that there is no water or wastewater utility service available to the proposed Ocala Springs development except by OSUI. Further, there were no protests to OSUI's certificate application when it was noticed in 1998. Moreover, our staff contacted the Department of Community Affairs, which stated that its analysis of the application has not changed since 1998. Thus, although the timing for the need for service has been delayed, there will be a need for service in the territory.

With respect to whether the utility still faces a substantial hardship, OSUI continues to contend that the development plans for Ocala Springs 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 to

serve the development." Although OSUI was granted certificates to serve the Ocala Springs development by Order No. PSC-98-1644-FOF-WS, OSUI continues to face the hardship of needing those certificates in order to proceed with the development plans for Ocala Springs, and initial rates and charges cannot be established until the development plans are complete. Moreover, the utility has shown that it will face a substantial hardship if required to provide the information to establish the utility's rates and charges within the current filing deadline because of the development delays.

We note that we are authorized, pursuant to Section 367.111, Florida Statutes, to revoke a utility's certificate of authorization. Section 367.111, Florida Statutes, states:

If a utility has not provided service to any part of the area which a utility is authorized to serve, whether or not there has been a demand for such service, within 5 years after the date of authorization for service to such part, such authorization may be reviewed and amended or revoked by the [C]ommission.

We have previously revoked certificates when no service has been provided after five years. See In Re: Revocation by Florida Public Service Commission of St. George Island Utility Company, Ltd., Certificate No. 356-S in Franklin County, Pursuant to Section 367.111(1), Florida Statutes, Order No. 24798, issued July 11, 1991, in Docket No. 900223-SU (revoking utility's wastewater certificate, in part, because the utility had not provided service to its territory after five years); In Re: Monument Utility Company - Revocation of Authority to Provide Service and Cancellation of Certificates Nos. 319-W and 267-S, Order No. 14012, issued January 18, 1985, in Docket No. 840440-WS (canceling utility's certificates because the utility had no facilities, no customers, and had not provided service after five years).

We find that the initiation of revocation proceedings would not be appropriate at this time because five years has not passed since the utility was issued its certificates and the area the utility is being constructed to serve has experienced development delays. However, the utility is hereby on notice that failure to file the information required by Orders Nos. PSC-98-1644-FOF-WS and

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PSC-98-1374-PCO-WS by February 7, 2002, may result in the initiation of certificate revocation proceedings pursuant to Section 367.111, Florida Statutes.

We find that OSUI's request for extension of time is reasonable because the Ocala Springs development has experienced delays and the utility continues to be in compliance with Order No. PSC-98-1374-PCO-WS, which granted the temporary waiver. Thus, OSUI's Amended Request for Extension of Time to File Information Pursuant to Orders Nos. PSC-98-1644-FOF-WS and PSC-98-1374-PCO-WS, is hereby granted. As requested in its filing, the utility shall be allowed until February 7, 2002, to file an application to establish initial rates and charges for the utility, along with the other supporting information required by Orders Nos. PSC-98-1644-FOF-WS and PSC-98-1374-PCO-WS. Moreover, OSUI shall file a status report detailing the utility's progress within eight months of the issuance date of this Order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Ocala Springs Utilities, Inc.'s Amended Request for Extension of Time to File Information Pursuant to Orders Nos. PSC-98-1644-FOF-WS and PSC-98-1374-PCO-WS, is hereby granted. 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 Ocala Springs Utilities, Inc., shall be allowed until February 7, 2002, to file an application to establish initial rates and charges for the utility, along with the other supporting information required by Orders Nos. PSC-98-1644-FOF-WS and PSC-98-1374-PCO-WS. It is further

ORDERED that Ocala Springs Utilities, Inc., shall file a status report detailing the utility's progress within eight months of the issuance date of this Order. It is further

ORDERED that Ocala Springs Utilities, Inc., is hereby on notice that failure to file the information required by Orders Nos. PSC-98-1644-FOF-WS and PSC-98-1374-PCO-WS by February 7, 2002, may

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result in the initiation of certificate revocation proceedings pursuant to Section 367.111, Florida Statutes. 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 13th day of December, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

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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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.