

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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.

DOCKET NO. 001501-WS  
ORDER NO. PSC-01-1628-FOF-WS  
ISSUED: August 8, 2001

The following Commissioners participated in the disposition of  
this matter:

E. LEON JACOBS, JR., Chairman  
J. TERRY DEASON  
LILA A. JABER  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI

ORDER APPROVING TRANSFER AND CLOSING DOCKET

BY THE COMMISSION:

Background

On September 28, 2000, an application was filed with this  
Commission for approval of the transfer of water and wastewater  
facilities and Certificates Nos. 338-W and 294-S from Connecticut  
General Development Utilities, Inc. d/b/a CGD Corporation (CGD or  
utility) to Burkim Enterprises, Inc. (Burkim or Buyer). CGD is a  
Class C utility that provides water and wastewater service to 354  
customers in the Snug Harbor Lakes and Snug Harbor Village  
developments in Brevard County.

The utility is located in a water use caution area in the St.  
Johns River Water Management District. The utility has been in  
existence providing water and wastewater service since 1981. CGD  
was granted original Certificates Nos. 338-W and 294-S by Order No.  
10147, issued July 21, 1981, in Docket No. 810007-WS.

The Buyer currently owns no other utilities in Florida.  
However, the shareholders of Burkim include Mr. Keith A. Burge and  
Mr. Reginald Burge, who is a shareholder in Laniger Enterprises of  
American, Inc. (Laniger). Laniger has certificates to provide  
water and wastewater service in Martin County.

DOCUMENT NUMBER-DATE

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Pursuant to Section 367.071, Florida Statutes, no utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control without prior approval of the Commission unless the sale, assignment or transfer is contingent upon Commission approval. Although the parties closed on August 28, 2000, according to the contract, the transfer is contingent upon the approval of this Commission.

#### Application

The application is in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code. In particular, the application contains a filing fee in the amount of \$1,500, pursuant to Rule 25-30.020, Florida Administrative Code. The application also includes proof, in the form of a warranty deed, that the utility owns the land upon which its facilities are located, as required by Rule 25-30.037(2)(q), Florida Administrative Code.

The application contains proof of compliance with the noticing provisions of Rule 25-30.030, Florida Administrative Code, including notice to the customers of the system being transferred. No objections to the application have been received and the time for filing such has expired.

According to the information provided, Burkim has the technical and financial ability to continue to operate the utility. Burkim provided a copy of its balance sheet as of August 28, 2000, which shows that it has the financial ability to ensure that the utility provides adequate service to its customers. Based on the balance sheet, Burkim has invested \$86,575 in the utility and has incurred \$228,090 in long-term debt on behalf of the utility. Further, Burkim has indicated that it will provide the financial stability required to maintain the utility systems in accordance with Commission standards.

The utility's water treatment system consists of two six-inch wells, one 65,000 gallon ground storage tank, a chlorination system, two high service pumps and a hydropneumatic tank. The average daily water use is about 100,000 gallons per day (gpd). The wastewater treatment system consists of a contact stabilization

plant and percolation/evaporation ponds and chlorination for disinfection. The utility treats an average of about 100,000 gpd of wastewater. The Department of Environmental Protection (DEP) has not issued any violations or corrective orders against the wastewater system and there are no pending DEP related issues.

However, upon contacting DEP, we learned that the previous owner illegally modified the water system by removing the lime softening plant without notifying DEP and submitting plans for the modification. Burkim has submitted the plans to DEP for the modification and has paid the associated fine.

There have been several water pipe repairs since the beginning of the year. One of the repairs appears to be due to pressure problems because there is no hydropneumatic tank. The tank exploded on March 24, 2001, and a replacement was required by DEP. A new hydro pneumatic tank was installed by Burkim on July 9, 2001. Burkim also repaired a high service pump that was leaking at the time of the audit inspection. In addition, the utility was delinquent in filing the quarterly and monthly operating reports required by DEP. Burkim is current with these reports at this time.

Further, DEP has indicated that the utility needs to correct a few additional problems. One is related to a trihalomethanes (THMs) problem the utility is experiencing. The other concerns the drinking water exceeding the maximum contaminant level with respect to total THMs. When chlorine is used in the treatment of drinking water, disinfectants react with naturally occurring organic and inorganic matter to form disinfection byproducts (DBPs). Certain DBPs, including some THMs, have been shown to cause cancer in laboratory animals. To correct this problem, the utility is planning to install a new disinfection system that includes ammonia. Burkim has indicated that the plans for this correction will be submitted shortly. These problems were inherited from the previous owner due to deferred maintenance. It appears that the buyer has been doing a reasonable job in repairing the utility in a timely manner.

In addition to the DEP items, nine customer complaints were filed with DEP on April 20, 2001, expressing concerns about underground leaks, the presence of THMs in the water, and poor

quality of service. It appears that the customers' first issue of concern regarding the underground leaks was resolved by the pipe repairs. The second issue raised by the customers regarding THMs in the water should be resolved by the new disinfection system which Burkim is planning to install.

Burkim plans to resolve the issue regarding poor quality of service by hiring additional employees so that it will be more timely in responding to customers' concerns, requests for information, and other utility matters. The utility has hired a new professional engineer who is working closely with DEP to bring the system into compliance. Therefore, it appears that Burkim has the technical ability to continue the operations of the utility.

The application contains a statement that Burkim conducted a reasonable investigation of the utility system and found it to be in satisfactory condition, with only minor maintenance anticipated. Instead, Burkim has incurred major capital expenditures in repairing the utility which is further evidence of the Buyer's commitment, and financial and technical ability.

A copy of the Agreement for Purchase and Sale was included with the application. The Agreement includes the purchase price (\$250,000), terms of payment and a list of the assets purchased. The purchase was financed with a \$202,500 loan from Fidelity Federal Bank and Trust, with the remainder being provided by the shareholders.

There are no guaranteed revenue contracts, developer agreements, utility debt, customer deposits, customer advances or leases that must be disposed of in association with the transfer. CGD will be responsible for the existing debts of the utility incurred up to the time of closing. Further, Burkim has provided a statement that it will fulfill the commitments, obligations, and representations of the seller regarding utility matters.

The utility is current on its regulatory assessment fees (RAFs) through December 31, 2000, and has filed an annual report for 2000 and all prior years. The buyer and seller have agreed to prorate the RAFs after the closing date of August 28, 2000.

According to the application, the transfer is in the public interest because the prior owner developed the utility systems as part of the overall development. Now that the development activities are complete, the prior owner has no incentive to continue to operate the utility. Further, the transfer is in the public interest because Burkim has the technical and financial ability to ensure the continued operations of the utility.

Based on the foregoing, we find that the transfer of the water and wastewater facilities and Certificates Nos. 338-W and 294-S from CGD to Burkim is in the public interest and it is approved. The territory the utility is authorized to serve is shown on Attachment A of this Order, which by reference is incorporated herein.

#### Books and Records

During an audit of the books and records, it was determined that CGD is not in compliance with the National Association of Regulatory Utility Commissioners Uniform System of Accounts (NARUC USOA) Class C, Accounting Instruction 2.B. Rule 25-30.115, Florida Administrative Code, states that "Water and wastewater utilities shall, effective January 1, 1998, maintain their accounts and records in conformity with the 1996 NARUC USOA adopted by the National Association of Regulatory Utility Commissioners." Accounting Instruction 2.B of the NARUC USOA for Class C utilities states:

All books of accounts, together with records and memoranda supporting the entries therein, shall be kept in such a manner as to support fully the facts pertaining to such entries. The books and records referred to herein include not only the accounting records in a limited technical sense, but also all other records, reports, correspondence, invoices, memoranda and information useful in determining the facts regarding a transaction.

Although CGD's failure to maintain its books and records in accordance with NARUC USOA is an apparent violation of Rule 25-30.115, Florida Administrative Code, CGD will not be operating the utility after the transfer. Therefore, we find it appropriate to

put Burkim on notice that it is required to maintain the utility's books and records in conformance with the NARUC USOA as prescribed by Rule 25-30.115, Florida Administrative Code. Burkim shall submit a statement from its accountant with its next annual report that the utility's books and records have been brought into compliance with Rule 25-30.115, Florida Administrative Code. If the books and records are not brought into compliance, a show cause proceeding will be initiated.

Rates and Charges

CGD's current rates for residential and general service were approved administratively pursuant to a price index and pass through rate adjustment, which became effective on October 31, 2000. Further, the utility was ordered to discontinue the collection of service availability charges, pursuant to Order No. PSC-93-0011-FOF-WS, issued January 5, 1993, in Docket No. 920397-WS. That Order also approved the collection of miscellaneous service charges. The utility's current rates and charges are set forth below.

WATER

Monthly Rates

Residential and General Service

Base Facility Charge:

Meter Size:

5/8" x 3/4"	\$ 9.92
Full 3/4"	\$ 14.88
1"	\$ 24.81
1 1/2"	\$ 49.62
2"	\$ 79.38
3"	\$158.76
4"	\$248.06
6"	\$496.12

Gallonage Charge

Per 1,000 Gallons \$ 1.73

Fire Protection Service

Per Month \$ .51

WASTEWATER  
Month Rates

Residential and General Service

Base Facility Charge:

Meter Size:

5/8" x 3/4"	\$ 3.54
Full 3/4"	\$ 5.32
1"	\$ 8.85
1 1/2"	\$ 17.72
2"	\$ 28.34
3"	\$ 56.66
4"	\$ 88.55
6"	\$177.10

Gallonage Charge:

Per 1,000 Gallons

Residential (Maximum 6,000 Gallons)	\$ 1.62
General Service	\$ 1.95

CUSTOMER DEPOSITS

<u>Meter Size</u>	<u>Residential Service</u>	<u>General Service</u>
5/8" x 3/4"	\$ 15.00	\$ 15.00
1"	N/A	\$ 25.00
1 1/2"	N/A	\$ 40.00
2" and Over	N/A	\$ 60.00

Rule 25-9.044(1), Florida Administrative Code, requires the new owner of a utility to adopt and use the rates, classifications and regulations of the former owner unless authorized to change by this Commission. Burkim has not requested to change the rates and charges of the utility, and we see no reason to change them at this

time. Burkim shall continue to charge the rates and charges approved in CGD's tariff until authorized to change by this Commission in a subsequent proceeding. The utility has filed tariff sheets reflecting the change in ownership. The tariffs sheets shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets.

It is, therefore,

ORDERED by the Florida Public Service Commission that the transfer of water and wastewater facilities and Certificates Nos. 338-W and 294-S from Connecticut General Development Corporation d/b/a CGD Utilities, 7600 U.S. 1, Micco, Florida 32976, to Burkim Enterprises, Inc., 2340 Northeast Dixie Highway, Jensen Beach, Florida 34957, is hereby approved. The territory the utility is authorized to serve is shown on Attachment A of this Order, which by reference is incorporated herein. It is further

ORDERED that Burkim Enterprises, Inc. is hereby put on notice that it shall maintain the utility's books and records in accordance with the NARUC USOA as prescribed by Rule 25-30.115, Florida Administrative Code. It is further

ORDERED that Burkim Enterprises, Inc. shall submit a statement from its accountant with its next annual report indicating that the books and records have been brought into compliance with Rule 25-30.115, Florida Administrative Code. It is further

ORDERED that Burkim Enterprises, Inc. shall continue to charge the rates and charges approved in CGD Utilities' tariff until authorized to change by this Commission in a subsequent proceeding. It is further

ORDERED that the tariff sheets filed reflecting the change in ownership shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets. It is further

ORDERED that this docket shall be closed.



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By ORDER of the Florida Public Service Commission this 8th  
day of August, 2001.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records and Hearing  
Services

( S E A L )

ALC

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 the Commission Clerk and Administrative Services, 2540 Shumard Oak

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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 the Commission Clerk and Administrative Services 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

Burkim Enterprises, Inc.  
Brevard County  
Water and Wastewater Service Area

Brevard County, Florida:

Township 30 South, Range 38 East  
Sections 10 and 11

Commence at the Southeast corner of the Northeast quarter of Section 10; proceed North 00 degrees 03 minutes 59 seconds East along the common line between Sections 10 and 11, a distance of 246.18 feet; thence South 89 degrees 56 minutes 12 seconds East, a distance of 302.08 feet to the East right-of-way of the Florida East Coast Railroad, as described in ORB 157, Page 85 and ORB 154, Page 39 of the Public Records of Brevard County, Florida; and the Point of Beginning of the herein described parcel; thence North 23 degrees 52 minutes 01 seconds West along the said East right-of-way, a distance of 1659.88 feet; thence South 89 degrees, 47 minutes, 45 seconds East, a distance of 367.79 feet to the said common line between Sections 10 and 11; thence continue South 89 degrees, 47 minutes, 45 seconds East, a distance of 228.50 feet to the West right-of-way of U.S. Highway No. 1 (143 foot R/W) and a point on a circular curve concave to the Northeast having a radius of 11,459.2 feet; thence Southeasterly along said West right-of-way and said curve through a central angle of 00 degrees, 13 minutes, 16 seconds for an arc distance of 44.22 feet to the Point of Tangency; thence continue along said right-of-way South 24 degrees, 36 minutes, 19 seconds East, a distance of 681.28 feet to the intersection with the North line of land described in DB 82, page 452, thence South 24 degrees, 36 minutes, 19 seconds East, a distance of 133.09 feet to a point of intersection; thence South 28 degrees, 00 minutes, 19 seconds East, a distance of 263.35 feet to a point on the West right-of-way of said U.S. Highway No. 1; thence continuing along said right-of-way South 28 degrees, 00 minutes, 19 seconds East, a distance of 317.88 feet to the point of curvature of a circular curve concave to the Southwest having a radius of 5729.65 feet; thence Southeasterly along said right-of-way and said curve through a central angle of 02 degrees, 28

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minutes, 06 seconds for an arc distance of 246.84 feet; thence leaving said right-of-way proceed North 89 degrees, 56 minutes, 12 seconds West, a distance of 661.40 feet to the Point of Beginning.