

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for approval of special service availability contract (developer agreement) with Avatar Properties Inc. and bulk water service agreement with Florida Governmental Utility Authority, by O&S Water Company, Inc. in Osceola County.

DOCKET NO. 030067-WU

In re: Application for amendment of Certificate No. 510-W to extend water service area in Osceola County by O&S Water Company, Inc.

DOCKET NO. 030160-WU  
ORDER NO. PSC-03-0873-PAA-WU  
ISSUED: July 29, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman  
J. TERRY DEASON  
BRAULIO L. BAEZ  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING SPECIAL SERVICE AVAILABILITY CONTRACT AND  
INCREASED SERVICE AVAILABILITY CHARGES  
AND  
FINAL ORDER APPROVING AMENDMENT OF CERTIFICATE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that, except for approval of the amendment of Certificate No. 510-W, the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

DOCUMENT NUMBER DATE

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REGISTRATION CLERK

BACKGROUND

O & S Water Company, Inc. (O&S or utility) is a Class C utility which provides water service to approximately 185 customers in Osceola County. The utility's 2002 annual report shows an annual operating revenue of \$61,051 and a net operating loss of \$79,221. The utility is in the St. Johns River Water Management District, all of which is considered a water use caution area.

By Order No. 20583, issued January 10, 1989, in Docket No. 870392-WU, this Commission granted the utility Certificate No. 510-W to provide service to certain territory in Osceola County and established initial rates and charges. The utility's service territory was subsequently amended to include additional territory.

By Order No. PSC-92-0204-FOF-WU, issued April 14, 1992, in Docket No. 910895-WU, rate base was established when the utility applied for the transfer of majority organizational control from Douglas B. Stewart and the Estate of Jack Chernau to Douglas B. Stewart. Further, by Order No. PSC-92-1339-FOF-WU, issued November 18, 1992, in Docket No. 920941-WU, we granted the utility's request to change its name from C & S Water Company to O&S Water Company Inc. The utility's rates and charges have not changed since it was certificated in 1989.

When Avatar Properties, Inc. (API), began to plan to develop a property known as Bellalago, a dispute arose as to whether O&S or the Florida Governmental Utility Authority (FGUA) should provide water service. FGUA is a legal entity and public body created by interlocal agreement pursuant to Section 163.01(7)(g) 1., Florida Statutes, and is not regulated by this Commission. Bellalago is in O&S's water service territory, but is in FGUA's wastewater territory, and is in close proximity to FGUA's water territory. Because there was a dispute as to who would provide water service to Bellalago, O&S filed a lawsuit against API, Case No. CI01-OC-2532, in the Circuit Court of the Ninth Judicial Circuit, Osceola County, Florida.

However, O&S and API have now reached an agreement in settlement of the lawsuit. O&S and API entered into a Developer Agreement for O&S to provide water service to API's Bellalago development. API will construct and donate to FGUA a water

treatment plant and transmission main and in return will receive credit for payment of FGUA's plant capacity charges. O&S and FGUA entered into a Bulk Water Service Agreement for O&S to purchase water from FGUA for the southern portion of O&S's territory, which includes the API development and another development, the Yates development. O&S will collect and pay to FGUA the FGUA plant capacity charges for new connections in the remaining portion of O&S's southern territory (Yates development). Approval by the Commission of the Developer Agreement and an amendment to the O&S certificated service area are conditions precedent to the completion of the Bulk Water Service Agreement and the complete resolution of the lawsuit between O&S and API.

Pursuant to the settlement agreement, and in accordance with Rule 25-30.550 (2) and (3), Florida Administrative Code, O&S filed its Application (Docket No. 030067-WU) for approval of Special Service Availability Contract (application) on January 22, 2003. In the final paragraph of the Application, O&S states:

10. The construction of the Plant by API and its conveyance to FGUA, and the approval by the Commission of the Bulk Water Service Agreement, the Developer Agreement and an amendment to O&S certificated service area (which will be subject to a separate docket) are conditions precedent to the completion of the Bulk Water Service Agreement and the complete resolution of the lawsuit between O&S and API.

Also, in the Requested Actions section of its Application, O&S requested that we "approve the Bulk Water Service Agreement between O&S and FGUA."

However, upon being questioned by our about the Commission's authority over the Bulk Water Service Agreement with FGUA, a nonregulated entity, O&S wrote a letter dated January 31, 2003. In that letter, O&S acknowledged that we did "not have jurisdiction over the Bulk Water Service Agreement," and that it did not expect our "specific approval of that Agreement." Also, by letter dated February 19, 2003, O&S advised FGUA of this position. Based on the above, O&S is no longer seeking our approval of the Bulk Water Service Agreement, and that is not an issue in this proceeding.

At about the same time that O&S became aware of the Bellalago proposed development, O&S became aware of the proposed development known as the Yates development. The Yates development is near that same area, but part of the Yates development is outside O&S's certificated territory. On February 11, 2003, the utility applied for an amendment to Certificate No. 510-W to extend its water service territory in Osceola County, Florida, pursuant to Section 367.045(2), Florida Statutes, and Rule 25-30.036, Florida Administrative Code. At build-out, the proposed amended area will consist of 85 single-family residential dwellings.

This Order addresses the utility's request for approval of the special service availability contract for the Bellalago development, the application to amend its certificate to include an additional portion of the Yates development, and a change in the service availability policy and charges for the southern portion of the utility's service area. We have jurisdiction pursuant to Sections 367.091 and 367.045, Florida Statutes.

#### SPECIAL SERVICE AVAILABILITY CONTRACT

On January 22, 2003, O&S filed its Application for Approval of a Special Service Availability Contract. O&S and API entered into a Developer Agreement, and O&S and FGUA have entered into a Bulk Water Service Agreement in settlement of the dispute over the right to provide water service to API's Bellalago development which is located in O&S's southern service area. O&S's current service availability policy does not have a provision for the water system capacity impact fee (plant capacity fee) that FGUA requires per connection; therefore, Rule 25-30.550(2) and (3), Florida Administrative Code, requires O&S to seek Commission approval of the contract.

O&S is certified by us to provide water service to an unincorporated area of Osceola County, Florida; however, a dispute arose as to who would provide water service to API's Bellalago development, which is in the southern portion of O&S's water service area, but is in FGUA's wastewater territory. FGUA currently provides water and wastewater services within the Poinciana service area, which traverses Polk and Osceola County, Florida.

On November 15, 2002, O&S executed a developer agreement with API to provide water service to Bellalago. Pursuant to the developer agreement, API agreed to construct and install the on-site water distribution system and off-site water transmission system to deliver water from FGUA's water treatment plant to the Bellalago customers and convey the distribution system to O&S. Further, API agreed to construct a water treatment plant and transmission main within FGUA's Poinciana service area and convey the water treatment plant to FGUA to induce FGUA to sell bulk water to O&S for redelivery to its customers within Bellalago. O&S will charge API's Bellalago customers its current monthly service rates. However, it proposes not to collect its approved plant capacity and guaranteed revenue charges.

O&S and FGUA agree that it is in their mutual best interests and the best interest of the public and future customers within the southern portion of O&S's service area for O&S to purchase bulk water from FGUA in lieu of constructing its own water treatment plant. They also agreed that it is in their mutual best interests to form a cooperative relationship whereby FGUA provides retail wastewater services to the public within O&S's southern service area. Therefore, on January 16, 2003, O&S and FGUA entered into a bulk water service agreement as a condition of the settlement.

Pursuant to the bulk service agreement, O&S will purchase water from FGUA for redelivery to all of its customers within the southern portion of the service area on the terms and conditions specified in the bulk service agreement. O&S will not pay any plant capacity fees to FGUA for the 2,300 ERCs in API's Bellalago development. API will utilize its connection fee credits with FGUA (resulting from constructing and donating a water treatment plant and transmission main to FGUA) in lieu of paying FGUA's plant capacity charges.

Although API's Bellalago development customers will not pay FGUA's plant capacity charge, all other customers in O&S's southern service area will. O&S's current service availability policy does not have provisions for the plant capacity charges that are required by FGUA to provide bulk water service in O&S's southern service area. Therefore, Rule 25-30.550, Florida Administrative Code, requires the approval of the contract by this Commission.

We find that the utility's special service availability contract for API's Bellalago development is in the public interest because it is a reasonable solution to the provision of water service in the southern portion of O&S's territory and would avert a costly and lengthy litigation. In addition, water service will be assured through a 30-year contract and O&S will retain its water service territory and customers. O&S will charge its current monthly service rates. However, because of the credit for constructing and donating a water treatment plant and transmission main to FGUA, O&S will charge neither the FGUA plant capacity charges nor its currently approved plant capacity charge of \$594 per ERC or guaranteed revenue charges for the 2,300 ERCs in the Bellalago development.

Therefore, we shall approve the special service availability contract. The utility shall file tariffs to implement the special service availability contract. The tariffs shall become effective for connections made on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475(2), Florida Administrative Code, if no protest is filed within 21 days of the Order.

APPLICATION FOR AMENDMENT OF CERTIFICATE NO 510-W

Pursuant to Section 367.045(2), Florida Statutes, and Rule 25-30.036, Florida Administrative Code, on February 11, 2003, filed its Application for Amendment of Certificate No 510-W. With construction to begin later this year, at build-out the proposed amended area will consist of 85 additional single-family residential dwellings. The area will include the subdivisions known as the Audubon Preserve and Orangebranch Bay. These subdivisions are part of a larger planned development known as the Yates development, which totals between 200 to 300 single-family residential dwellings. A large portion of the Yates development is located within the utility's existing southern service area. This amendment will add the remaining portion of the Yates development to the utility's southern service area.

The application is in compliance with the governing statutes and administrative rules concerning applications for amendment of certificate. This application contained a check in the amount of

\$100, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code.

With respect to financial ability, the utility reported in its financial statement that for the period ending July 31, 2002, there was a net operating loss of \$41,554. The owners have supported the utility through infusions of capital since its inception and anticipates that the expected growth from the new developments in both the northern and southern portions of its territory will create sufficient cash flow to allow the utility to begin to show a net income within the next 2 years. For technical ability, the utility's application included a copy of the Department of Environmental Protection license for the plant operator. It appears that the utility has adequate financial and technical ability.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. No objections were received and the time for filing objections has expired. The local planning agency was provided notice of the application and did not file a protest to the amendment. Pursuant to Rule 25-30.036(3)(c), Florida Administrative Code, the utility states that the provision of water service to the proposed additional area is consistent with the Osceola County local comprehensive plan as approved by the Department of Community Affairs (DCA). DCA has reviewed the proposed territory expansion, and in a March 19, 2003, letter to the Commission, it found the application consistent with the county comprehensive plan. As a result it had no objection to the utility's proposed extension of service.

Adequate service territory and system maps and territory descriptions have been provided pursuant to Rule 25-30.036(3)(e) (f) and (i), Florida Administrative Code. A description of the territory to be amended by the utility is appended to this Order as Attachment A.

Pursuant to Rule 25-30.036(3)(d), Florida Administrative Code, the utility submitted a warranty deed for its existing water treatment facility as evidence of land ownership. However, the utility's existing facility will not be used to provide water service to the proposed area. As part of the southern portion of

O&S's service area, the proposed area will receive water service through the bulk water service agreement with FGUA as previously discussed above.

Pursuant to Rule 25-30.036(3)(j), (k), (l), and (n), Florida Administrative Code, there are no existing lines and facilities which will serve the proposed area. In addition, the utility will not be responsible for obtaining DEP permitting or financing for lines and treatment facilities to accommodate the proposed area since that will be obtained by the developers. In reference to the impact on monthly rates and service availability charges the utility stated in its application that there will be no material impact on its monthly rates. We will address the proposed change in service availability charges in the next section of this Order.

Pursuant to Rule 25-30.036(3)(o), (p), (q) and (r), Florida Administrative Code, the utility provided sample tariff sheets reflecting the additional service area. The utility indicated that it was unable to locate its certificate and requested a replacement certificate be issued. Also, the utility provided the docket number of our most recent Order establishing or changing its rates and charges. And finally, the utility stated that its tariffs and annual reports are on file with this Commission.

Based on the above information, we find that O&S's application for amendment to expand its territory as described in Attachment A is in the public interest and the application to amend its certificate is granted. The utility shall charge the customers in the territory added herein the monthly service rates contained in its current tariff until authorized to change by this Commission. The appropriate service availability charges are discussed below.

#### SERVICE AVAILABILITY POLICY AND CHARGES FOR THE YATES DEVELOPMENT

As noted above, we have approved the special service availability contract. Pursuant to that contract, O&S will purchase bulk water from FGUA in order to provide water service to the southern portion of its service territory. O&S will collect and remit to FGUA the FGUA plant capacity charge of \$1,200 per ERC, in lieu of the utility's previously approved plant capacity (\$594 per ERC) and guaranteed revenue charges, for new connections in the Yates development. On June 9, 2003, this Commission received a



letter from Mr. Yates acknowledging that he will be obtaining water service for his development from O&S, subject to the utility's bulk water service agreement with FGUA. Our staff provided Yates with a copy of the staff recommendation which we have approved in this Order. Moreover, Yates has been placed on the list to receive a copy of this Order.

We find that the change in O&S's approved service availability policy and the increased service availability charges for the Yates development are in the public interest as a reasonable solution to the provision of water service in the southern portion of O&S's territory and would avert a costly and lengthy litigation. In addition, water service will be assured through a 30-year contract and O&S will retain its water service territory and customers.

Therefore, the utility shall be authorized to collect and remit to FGUA the FGUA plant capacity charge of \$1,200 per ERC in lieu of the utility's previously approved plant capacity and guaranteed revenue charges for new connections in the Yates development. The utility shall file tariffs to reflect the change in its service availability policy and charges for the southern portion of its territory. The tariffs shall become effective for connections made on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475(2), Florida Administrative Code, if no protest is filed within 21 days of the Order. Further, the utility shall mail or hand deliver a notice of the change in the utility's service availability policy and charges for the southern portion of the utility's territory to the owners of the Yates development. The utility shall provide proof of the date the notice was given within 10 days after the date of the notice. In the event that a timely protest is filed, the tariff shall remain in effect and the applicable charges shall be held subject to refund pending resolution of the protest.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Application for Approval of Special Service Availability Contract by O & S Water company, Inc., is hereby approved. It is further

ORDERED that O & S Water company, Inc., shall file tariffs to implement the special service availability contract. The tariffs

ORDER NO. PSC-03-0873-PAA-WU  
DOCKETS NOS. 030067-WU, 030160-WU  
PAGE 10

shall become effective for connections made on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475(2), Florida Administrative Code, if no protest is filed within 21 days of the Order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that all matters contained in the attachment hereto are incorporated herein by reference. It is further

ORDERED that the Application for Amendment to Certificate of Authorization by O & S Water Company, Inc., is granted as set forth in the body of this Order, and Certificate No. 510-W is amended to include the territory as described in Attachment A. It is further

ORDERED that O & S Water company, Inc., shall charge the customers in the territory added herein the monthly service rates contained in its current tariff until authorized to change by this Commission. It is further

ORDERED that O & S Water Company, Inc., shall be authorized to collect and remit to the Florida Governmental Utility Authority the plant capacity charge of \$1,200 per equivalent residential connection in lieu of the utility's previously approved plant capacity and guaranteed revenue charges for new connections in the Yates development. It is further

ORDERED that O & S Water Company, Inc., shall file tariffs to reflect the change in its service availability policy and charges for the southern portion of its territory. The tariffs shall become effective for connections made on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475(2), Florida Administrative Code, if no protest is filed within 21 days of the Order. It is further

ORDER NO. PSC-03-0873-PAA-WU  
DOCKETS NOS. 030067-WU, 030160-WU  
PAGE 11

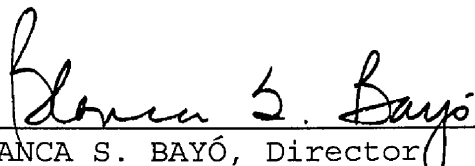
ORDERED that O & S Water Company, Inc., shall mail or hand deliver a notice of the change in the utility's service availability policy and charges for the southern portion of the utility's territory to the owners of the Yates development. The utility shall provide proof of the date the notice was given within 10 days after the date of the notice. It is further

ORDERED that in the event that a timely protest is filed, the tariff shall remain in effect and the applicable charges shall be held subject to refund pending resolution of the protest.

ORDERED that these dockets shall be closed upon issuance of a Consummating Order. It is further

ORDERED that in the event a timely protest is filed to the proposed agency action portion of this Order, the dockets shall remain open pending resolution of the protest.

By ORDER of the Florida Public Service Commission this 29th Day of July, 2003.

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

( S E A L )

RRJ

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.

As identified in the body of this order, except for approval of the amendment of Certificate No. 510-W, our actions are preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 19, 2003. If such a petition is filed, 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. In the absence of such a petition, this order shall become effective and final upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

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 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

ORDER NO. PSC-03-0873-PAA-WU  
DOCKETS NOS. 030067-WU, 030160-WU  
PAGE 13

telephone utility or the First District Court of Appeal in the case of a water 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.

ORDER NO. PSC-03-0873-PAA-WU  
DOCKETS NOS. 030067-WU, 030160-WU  
PAGE 14

Attachment A

O & S Water Company  
Amended Water Territory Description  
Osceola County

The Northeast quarter of Northeast quarter of Northeast quarter, and North half of Northwest quarter of Northeast quarter of the Northeast quarter of Section 6, Township 27 South, Range 29 East, Osceola County, Florida; and the Southeast quarter of the Southeast quarter of section 31, Township 26 South, Range 29 East, Osceola County, Florida; and the North half of the Northwest quarter of the Northeast quarter of Section 5, Township 27 South, Range 29 East, in Osceola County, Florida.