

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

M E M O R A N D U M

OCTOBER 31, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER & WASTEWATER (BRADY) *pb bsm jaw*
DIVISION OF LEGAL SERVICES (REYES) *sure [signature]*

RE: DOCKET NO. 960134-WS - SPRUCE CREEK SOUTH UTILITIES, INC.
APPLICATION FOR AMENDMENT OF CERTIFICATE# NOS. 511-W AND
467-S.
COUNTIES: MARION AND SUMTER

AGENDA: NOVEMBER 12, 1996 - REGULAR AGENDA - INTERESTED PERSONS
MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\WAW\WP\960134WS.RCM

DOCUMENT NUMBER-DATE

11617 OCT 31 8

FPSC-RECORDS/REPORTING

CASE 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 7 commercial customers within the subdivision. According to its 1995 Annual Report on file with the Commission, 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 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.

Within seven days of its application, Spruce Creek provided notice to its customers of its filing pursuant to Rule 25-30.030(6), Florida Administrative Code. Eleven customers timely filed written responses with the Commission expressing concerns about being required to convert from septic tanks to a central sewer system and potential overloads on the current sewer system. On April 18, 1996, staff provided each customer with a letter of clarification from the utility further explaining the purpose of the application. In its cover letter, staff advised the customers of their right to pursue a protest if the utility's letter did not resolve their concerns. Three customers responded in writing expressing that their concerns had been resolved, and that they had no intention of filing a formal protest to the application. Staff subsequently attempted to contact the eight remaining customers to clarify their intentions. Of the eight, staff was able to contact seven by telephone, all of whom indicated an intention not to file a formal protest. After several unsuccessful attempts to reach the last customer, staff subsequently mailed two separate letters to this customer explaining staff's attempts to reach the customer and staff's need for further clarification of the customer's intentions. To date, staff has received no further communication from this customer.

DOCKET NO. 960134-WS
DATE: OCTOBER 31, 1996

This case is being brought to the Commission's attention to address the utility's apparent violation of Section 367.045(2), Florida Statutes, in that the utility is currently serving outside of its certificated areas. This matter will be addressed in greater detail in Issue 1.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order Spruce Creek South Utilities, Inc., to show cause in writing within twenty days why it should not be fined for violation of Section 367.045(2), Florida Statutes?

RECOMMENDATION: No, show cause proceedings should not be initiated. (REYES)

STAFF ANALYSIS: As stated in the case background, 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 the area described in its certificate of authorization meets the "willful" standard.

Although Spruce Creek failed to obtain an amendment prior to providing service, staff does 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

DOCKET NO. 960134-WS
DATE: OCTOBER 31, 1996

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 staff's requests for information regarding the application. For these reasons, staff recommends that the Commission not order Spruce Creek to show cause for why it should not be fined for failing to obtain the Commission's approval to extend its service area prior to serving that area.

DOCKET NO. 960134-WS
DATE: OCTOBER 31, 1996

ISSUE 2: Should the application of Spruce Creek South Utilities, Inc., for an amendment and consolidation of Water Certificate No. 511-W and Wastewater Certificate No. 467-S be granted?

RECOMMENDATION: Yes, Spruce Creek South Utilities, Inc., should be granted the amended and consolidated territory description in Attachment A which includes additional territory not currently certificated. The utility should continue to apply its existing rates and charges to all new service in the territory extension until authorized to change by this Commission in subsequent proceedings. The remaining protest should also be deemed abandoned. (BRADY, REYES)

STAFF ANALYSIS: On February 6, 1996, Spruce Creek filed an application for amendment and consolidation of its water and wastewater certificates to include all the territory within the Spruce Creek South Subdivision including additional territory not currently certificated. Except as noted in Issue 1, the application is in compliance with Section 367.045, Florida Statutes. Pursuant to the requirements of Rule 25-30.036(3), Florida Administrative Code, the application contained the following requirements, statements and evidence:

1. Checks in the total amount of \$1,500 which is the correct filing fee pursuant to Rule 25-30.020(2)(b), Florida Administrative Code. According to the application, the territory expansion has the capacity to serve an additional 1,700 water and 450 wastewater ERCs.
2. A statement that Spruce Creek has the financial and technical ability to provide water and wastewater service to the proposed extension. Staff would note that Spruce Creek's 1995 Regulatory Assessment fees have been appropriately 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 were no outstanding compliance actions against the utility. The applicant provided a listing of all the DEP construction and operating permits for its water and wastewater facilities.
3. Evidence of the need is attested to by the fact that service is already being provided to residential and commercial customers in the territory extension. According to the application, no other water or wastewater utility facilities are in close enough proximity to the area to offer a reasonably economic alternative to the applicant's service.

4. 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.
5. Evidence that the utility owns the land upon which the utility treatment facilities are located was provided by 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.
6. The application included the required territory and system maps and legal description. The proposed territory description is intended to replace the utility's separate and differing water and wastewater territory descriptions with an amended and consolidated description of the subdivision. The amended and consolidated territory description is appended to this recommendation as Attachment A.
7. With regard to the written description of proposed method of effluent disposal required by Rule 25-30.036(3)(g) and (h), F.A.C., the utility provided a statement that it is currently providing effluent disposal through percolation ponds. In addition, the utility is required under its development permits to 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.

Customer Notice. Pursuant to Rule 25-30.030, Florida Administrative Code, notice of the filing was provided to all utilities and government agencies in the area of the proposed extension on February 6, 1996, and in a newspaper of general circulation on February 9, 1996. Customer notification was provided within 7 days of the application. Eleven customers subsequently responded in writing to the Commission. 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 sewer system if new customers were added. Since the utility 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 tie into the central sewer system, there was a question as to whether or not these customers would pursue a formal protest if these misconceptions were cleared up.

DOCKET NO. 960134-WS
DATE: OCTOBER 31, 1996

On April 10, 1996, the utility provided staff with an expanded statement that there would be no requirement to connect to Spruce Creek's central wastewater system unless that requirement were 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, staff provided the eleven customers responding to Spruce Creek's notice with the utility's letter of clarification. In its cover letter, staff advised the customers of their right to pursue a protest to the utility's filing should the utility's letter not resolve their concerns. In its letter, staff requested a response indicating whether or not they intended to pursue a protest by May 1, 1996. Three of the eleven customers responded in writing that their concerns were resolved.

Since the remaining eight customers did not respond to staff's correspondence, staff subsequently attempted to contact them by telephone. Staff was able to reach seven of these customers, and they all expressed no desire to pursue a protest to the application since their concerns had been resolved by the utility's letter. After many unsuccessful attempts to reach the last customer by telephone, staff subsequently mailed two letters to this customer explaining staff's attempts to reach the customer and staff's need for further clarification of the customer's intentions. The first letter set a September 3, 1996 deadline for a response from the customer, and the second letter set an October 30, 1996 deadline for a response before staff would recommend that the customer's objection be considered abandoned. To date, staff has received no further communication from this customer. Therefore, staff recommends that this remaining protest be deemed abandoned. Further, staff believes that all the customer concerns have been resolved.

Service Availability. 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 application states that adequate capacity to meet all the needs of the subdivision at build-out has been constructed and is in place. 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

DOCKET NO. 960134-WS
DATE: OCTOBER 31, 1996

the plant during peak seasonal periods will not exceed 125,000 GPD. The application states that the utility currently has water lines varying in size from 2" to 16" throughout the territory served and proposed to be served under the proposed amendment as well as all wastewater collection facilities required for such service.

Service Availability Charges. The water distribution and wastewater collection facilities described above have been constructed and financed through infusion of both debt and equity funds. The application states that no additional capital investment will be needed in order to provide service to the proposed territories at build-out. A substantial portion of the cost of the facilities has been and will continue to be funded with infusion of contributions-in-aid-of-construction in conformance with the utility's tariff and Commission rules. Because no additional capital investment requirements are expected in order to provide service to the territory extension, there is no impact on the utility's capital structure. Consequently, no impact on monthly service charges or service availability charges is anticipated.

Rates and Charges. 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, staff believes 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. The remaining protest should be deemed abandoned. The order should require that the applicant 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.

DOCKET NO. 960134-WS
DATE: OCTOBER 31, 1996

ISSUE 3: Should the docket be closed?

RECOMMENDATION: Yes, if Staff's recommendations in Issues Nos. 1 and 2 are approved, the docket should be closed. (REYES)

STAFF ANALYSIS: If Staff's recommendations in Issues Nos. 1 and 2 are approved, then there are no remaining issues in this docket, and it should be closed. If Issues 1 or 2 are not approved, then the docket should remain open to pursue actions consistent with the Commission's decisions.

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

- 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

- that part of the East 1/2 of Section 35, Township 17 South, Range 23 East, lying Southwest of U.S. Highway 441/27; and
- the Southwest 1/4 of said Section 35.

Township 17 South, Range 23 East
Section 34

- the South 3/4 of the East 1/2 of Section 34, Township 17 South, Range 23 East; and
- the East 1/2 of the Southeast 1/4 of the Northwest 1/4 of said Section 34; and
- the Northeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of said Section 34.

DOCKET NO. 960134-WS
DATE: OCTOBER 31, 1996

ATTACHMENT A, continued

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

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