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State of Florida



Public Service Commission

RECORDS AND REPORTING
 CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
 TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: JULY 9, 1998

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

FROM: DIVISION OF LEGAL SERVICES (FLEMING) *S.M.A. [initials]*
 DIVISION OF WATER AND WASTEWATER (WALKER, REDEMANN) *per [initials]*

RE: DOCKET NO. 980238-WS - JOINT APPLICATION FOR APPROVAL OF TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL OF SPRUCE CREEK SOUTH UTILITIES, INC. (HOLDER OF CERTIFICATES NOS. 511-W AND 467-S IN MARION AND SUMTER COUNTIES) FROM HARVEY AND BRENDA ERP AND JAY AND LORI THOMPSON TO DEL WEBB'S SPRUCE CREEK COMMUNITIES, INC.
 COUNTY: MARION AND SUMTER

AGENDA: 07/21/98 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\980238.RCM

CASE BACKGROUND

Spruce Creek South Utilities, Inc., (Spruce Creek or utility) is a Class B water and wastewater utility. Spruce Creek has provided water service under Certificate No. 511-W since March of 1989 and wastewater service under Certificate No. 467-S since October of 1991. Spruce Creek currently provides residential service for about 1,628 water customers, 1,028 wastewater customers, and various commercial customers in Marion and Sumter Counties. As shown in its 1996 annual report, Spruce Creek recorded combined operating revenues of \$723,414 and a combined net operating loss of \$11,503.

On February 12, 1998, Spruce Creek and Del Webb's Spruce Creek Communities, Inc. (Del Webb) filed a joint application for approval

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to transfer majority organizational control of the utility systems from Harvey and Brenda Erp and Jay and Lori Thompson to Del Webb's Spruce Creek Communities, Inc. Spruce Creek provides water and wastewater service for two retirement communities in Central Florida, Spruce Creek Golf and Country Club and the Spruce Creek Preserve (collectively referred to as the "Developments"), and a development community known as Spruce Creek South. In a separate but related agreement, Del Webb has acquired ownership of the Developments. If the proposed transfer is approved, Del Webb will own both the utility and the retirement communities. The purchase price for Spruce Creek's stock has been placed in escrow for subsequent release only upon final, non-appealable approval by this Commission.

This recommendation addresses Spruce Creek's application for transfer of majority organizational control. Staff's review indicates that Spruce Creek is current with regard to submission of annual reports and payment of regulatory assessment fees.

DISCUSSION OF ISSUES

ISSUE 1: Should the transfer of majority organization control of Spruce Creek South Utilities, Inc., from Harvey and Brenda Erp and Jay and Lori Thompson to Del Webb's Spruce Creek Communities, Inc., be approved?

RECOMMENDATION: Yes, the transfer of majority organizational control should be approved. (WALKER, REDEMANN)

STAFF ANALYSIS: The application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for transfer of majority organizational control. The application contains a check in the amount of \$6,000, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code.

The applicant has provided evidence that the utility owns or leases the land upon which its treatment facilities are presently located pursuant to Rule 25-30.037(3)(i), Florida Administrative Code. In addition, the applicant has furnished proof that certain planned parcels within the Developments have been set aside for

construction of water and wastewater facilities to be leased to Spruce Creek for at least ninety-nine consecutive years unless purchased earlier by the utility.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code, including notice to the customers of the system that will be transferred. Three customers filed letters that initially protested the proposed transfer. However, after further inquiry, the customers decided that they would not formally object to the application. No additional protests have been received and the time for filing such has expired.

A description of the territory served by the utility is appended to this memorandum as Attachment A.

The utility systems are being acquired by a company that will be active in the development of the utility's service area. Alignment of ownership interests between the utility and the developer should assure continuation of satisfactory service. The utility's present operating and clerical personnel were retained by Del Webb. The applicant is a wholly-owned subsidiary of Del Webb Corporation, a major developer of small and large-scale communities in several states. Typically, these areas are large-scale, master-planned residential communities that are managed by Del Webb Corporation beginning with land selection through construction and sale of homes. Reportedly, the utility will obtain investment capital from its parent company for any needed improvements.

In accordance with Section 11.10 of the purchase agreement, all normal and customary adjustments/prorations shall be made as of closing, including without limitation, rent and other income, utilities and taxes. Real property and tangible personal property ad valorem taxes assessed against the utility assets for the year in which closing occurs shall be prorated between the parties as of the closing date. Until the closing date, the sellers, Harvey and Brenda Erp and Jay and Lori Thompson, will be responsible for payment of regulatory assessment fees for any revenues it receives in 1998. After the closing, the buyer, Del Webb's Spruce Creek Communities, Inc., will be responsible for payment of regulatory assessment fees for its share of 1998 revenues. In addition, Del Webb's Spruce Creek Communities, Inc., will be responsible for submission of the utility's 1998 annual report.

Upon inquiry, Staff was informed by the Department of Environmental Protection (DEP) that Spruce Creek does not have any outstanding notices of violation. Del Webb has provided a copy of

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the purchase agreement, which among other things, shows that the purchase price for the utility's stock shall match the utility's net book value on December 31, 1997, reduced by any assumed liabilities. On a projected basis, the most current estimate of the net asset balance is \$6,043,404. Further, Del Webb furnished a statement that it will fulfill the commitments, obligations, and representations of the transferor. Del Webb also obtained the utility's books and records.

Based on the above, staff believes the transfer of majority organizational control of Spruce Creek from Harvey and Brenda Erp and Jay and Lori Thompson to Del Webb's Spruce Creek Communities, Inc., is in the public interest and should be approved.

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ATTACHMENT A

SPRUCE CREEK SOUTH UTILITIES, INC.

MARION COUNTY

SPRUCE CREEK SOUTH

WATER AND WASTEWATER SERVICE AREA

Order No. PSC-96-1484-FOF-WS (Docket No. 960134-WS)
Consolidates the water territory described in Order 20933
(Docket No. 881597-WS) and the wastewater territory described
in 25157 (Docket No. 910746-SU) along with the new area.

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.

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SPRUCE CREEK SOUTH UTILITIES, INC.

SUMTER COUNTY

SPRUCE CREEK SOUTH

WATER AND WASTEWATER SERVICE AREA

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.

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SPRUCE CREEK SOUTH UTILITIES, INC.

MARION COUNTY

SPRUCE CREEK GOLF AND COUNTRY CLUB

WATER AND WASTEWATER SERVICE AREA

ORDER NO. PSC-96-1105-FOF-WS IN DOCKET NO. 960699-WS

THE S 1/2 OF THE NW 1/4 AND THE W 1/2 OF THE SW 1/4 OF THE NE 1/4 AND THE W 1/2 OF THE SE 1/4 OF THE NE 1/4 AND THE S 1/2 EXCEPT THE EAST 30 FEET THEREOF, ALL IN SECTION 3, TOWNSHIP 17 SOUTH, RANGE 23 EAST, AND,

ALSO THE N 1/2 OF SECTION 10, TOWNSHIP 17 SOUTH, RANGE 23 EAST, EXCEPT THE EAST 315 FEET THEREOF, AND EXCEPT THE NW 1/4 OF THE SW 1/4 OF THE NW 1/4 OF SAID SECTION 10, AND,

ALSO THE N 1/2 OF THE S 1/2 OF SAID SECTION 10, EXCEPT THE EAST 315 FEET THEREOF, AND,

ALSO THE SW 1/4 OF THE SE 1/4 OF SAID SECTION 10, EXCEPT THE SOUTH 40 FEET THEREOF, AND,

ALSO THE N 1/2 OF THE S 1/2 OF THE SW 1/4 AND THE SE 1/4 OF THE SW 1/4 OF THE SW 1/4 OF SAID SECTION 10, AND,

ALSO THE EAST 1/2 OF THE NE 1/4 OF THE SE 1/4 OF SECTION 9, TOWNSHIP 17 SOUTH, RANGE 23 EAST, EXCEPT THE N 1/2 THEREOF, AND,

ALSO THE WEST 3/4 OF THE N 1/2 OF THE SE 1/4 OF SAID SECTION 9, EXCEPT THE NORTH 893.54 FEET THEREOF, AND,

ALSO THE S 1/2 OF THE SE 1/4 OF SAID SECTION 9, EXCEPT THE NW 1/4 OF THE SW 1/4 OF THE SE 1/4 OF SAID SECTION 9, AND,

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SPRUCE CREEK SOUTH UTILITIES, INC.

MARION COUNTY

SPRUCE CREEK GOLF AND COUNTRY CLUB

WATER AND WASTEWATER SERVICE AREA

ORDER NO. PSC-96-1105-FOF-WS IN DOCKET NO. 960699-WS

ALSO THAT PART OF THE S 1/2 OF THE SE 1/4 OF THE SW 1/4 OF SAID SECTION 9, LYING EAST OF U.S. HIGHWAYS 441 AND 27 (200 FEET WIDE), AND,

ALSO THAT PART OF THE N 1/2 OF THE N 1/2 OF SECTION 16, TOWNSHIP 17, RANGE 23 EAST, LYING EAST OF SAID HIGHWAYS 441 AND 27.

ALSO THE SOUTH 1/2 OF THE N.E. 1/4 OF THE N.W. 1/4 OF SECTION 16, TOWNSHIP 17 SOUTH, RANGE 23 EAST, EXCEPT THOSE LANDS LYING WITHIN THE RIGHT-OF-WAY OF STATE ROAD 500 - U.S. 441 (200 FEET WIDE)

ALL BEING IN MARION COUNTY, FLORIDA AND CONTAINING 1190.27 ACRES MORE OR LESS.

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SPRUCE CREEK SOUTH UTILITIES, INC.

MARION COUNTY

SPRUCE CREEK PRESERVE

WATER AND WASTEWATER AREA

ORDER NO. PSC-96-0958-FOF-WS IN DOCKET NO. 960380-WS

Township 17 South, Range 20 East
Section 4

That portion of Section 4, Township 17 South, Range 20 East, Marion County, Florida, lying East of State Road No. 200, Except the east 50 feet thereof; and

Township 17 South, Range 20 East
Section 9

That portion of Section 9, Township 17 South, Range 20 East, Marion County, Florida, lying East of State Road No. 200, less and except the east 50 feet of the North 1,520 feet thereof; and

Township 17 South, Range 20 East
Section 16

The Northeast 1/4 of the Northeast 1/4 and Northeast 1/4 of the Northwest 1/4 of Section 16, Township 17 South, Range 20 East, Marion County, Florida, less and except that portion conveyed in the right-of-way deeds recorded in Official Records Book 1273 at Page 1293 and Official Records Book 798 at Page 32 of the Public Records of Marion County, Florida.

Containing 416.01 acres, more or less.

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SPRUCE CREEK SOUTH UTILITIES, INC.

SUMTER COUNTY

SPRUCE CREEK SOUTH

WATER AND WASTEWATER AREA

ORDER NO. PSC-98-0380-FOF-WS IN DOCKET NO. 971404-WS

OAKLAND HILLS PROFESSIONAL CENTER

In Section 1, Township 18 South, Range 23 East, Sumter County

Commence at the S.W. corner of the N.E. 1/4 of the N.E. 1/4 of the N.W. 1/4 of Section 1, Township 18 South, Range 23 East; thence N.88°27'07"E., along the South line of the N.E. 1/4 of the N.E. 1/4 of the N.W. 1/4 of said Section, a distance of 175.33 feet to a point on the Southwesterly right of way line of U.S. Highway 27-441 (being a 200 foot right of way) and the Point of Beginning. Thence S.41°46'50"E., along said right of way line, a distance of 370.00 feet to a point on the Northerly right of way line of County Road 109; thence S.48°13'10"W., along said right of way line, a distance of 100.41 feet to the Point of curvature of a 350.00 foot radius curve, concave to the Southeast; thence along the arc of said curve, through a central angle of 35°00'00", a distance of 213.80 feet to the point of tangency; thence continue along said right of way line, S.13°13'10"W., a distance of 120.66 feet; thence departing said right of way line, N.41°46'50"W. a distance of 1665.10 feet; thence S.89°51'32"E. a distance of 537.59 feet to a point on the Southwesterly right of way line of said U.S. Highway 27-441; thence S.41°46'50"E., along said right of way line, a distance of 803.42 feet to the Point of Beginning. Said lands being situated in Sumter County, Florida and containing 12.740 acres, more or less.

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ISSUE 2: Should rate base be established?

RECOMMENDATION: No, different ownership of stock does not affect the rate base balance. (WALKER)

STAFF ANALYSIS: The sale of the utility's stock from the previous owners to Del Webb will not alter the utility's asset and liability accounts or change the rate base balance. Therefore, staff recommends that rate base should not be established in this docket.

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ISSUE 3: Should the rates and charges approved for this utility be continued?

RECOMMENDATION: Yes, the rates and charges approved for this utility system should be continued. (WALKER)

STAFF ANALYSIS: The utility's rates and charges for water service were approved on July 6, 1989, in accordance with Order No. 21340 in Docket No. 881597-WU. The utility's rates for wastewater service were approved on December 6, 1991, in accordance with Order No. 25531 in No. 910746-SU.

Rule 25-9.044(1), Florida Administrative Code, provides that:

In cases of change of ownership or control of a utility which places the operation under a different or new utility...the company which will thereafter operate the utility business must adopt and use the rates, classification and regulations of the former operating company (unless authorized to change by the Commission)...

Del Webb has not requested a change in the rates and charges of the utility and staff sees no reason to change them at this time. Accordingly, staff recommends that the utility continue operations under the existing tariff and apply the approved rates and charges until authorized to change by this Commission. The utility has filed a revised tariff reflecting a change of utility's issuing officer due to the transfer of majority organizational control. Staff will approve the tariff filing effective for services provided or connections made on or after the stamped approval date.

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ISSUE 4: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed. (FLEMING)

STAFF ANALYSIS: No further action is required in this docket, therefore, it should be closed upon issuance of the order.