

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application by )  
Ocala Springs Utilities Inc. )  
for Original Certificates for )  
Water & Wastewater Service in )  
Marion County, Florida )

Docket No. 980876-WIS

Filed: July 13, 1998

Petition for Temporary Variance from or 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

Ocala Springs Utilities Inc. (OSUI), by and through its undersigned counsel and pursuant to Section 120.542, Florida Statutes, hereby petitions the Florida Public Service Commission (the Commission) for a variance or waiver of certain requirements of Rule 25-30.033, Florida Administrative Code, as specifically identified below, and in support of its petition states the following:

1. The name, address, telephone number, and facsimile number of Ocala Springs Utilities Inc are as follows:

Ocala Springs Utilities Inc.  
4837 Swift Road, Suite 100  
Sarasota, FL 34231  
(941) 925-3088 telephone  
(941) 924-7203 facsimile

2. The name, address, telephone number, and facsimile number of the attorneys representing OSUI in this matter are as follows:

B. Kenneth Gatlin  
Gatlin, Schiefelbein & Cowdery  
3301 Thomasville Road, Suite 300  
Tallahassee, FL 32312  
(850) 385-9996 telephone  
(850) 385-6755 facsimile

ACK \_\_\_\_\_  
AFA 1 \_\_\_\_\_  
APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMU \_\_\_\_\_  
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3. Rules 25-30.033(1) (h), (j), (m), (o), (r), (t), (u), (v), (w); (2) and (3) are implementing Sections 367.031 and 367.045 (1), Florida Statutes. Rule 25-30.433(10) is implementing Section 367.081, Florida Statutes.

4. Avatar Properties, Inc. (API), a wholly-owned subsidiary of Avatar Holdings Inc. (AHI), owns all of the land (approximately 4,666 acres) included within the boundary of the territory proposed by the above-referenced application, which land is hereinafter referred to as "Ocala Springs." The history of master land use planning of the Ocala Springs property, and API's vested development rights therein, are discussed and documented at Attachment 1, Exhibit B to the application. The Florida Department of Community Affairs has issued the following letters pertaining to the development of Ocala Springs: 1) Binding Letter of Interpretation for Vested Rights, April 29, 1974; 2) Binding Letter of Interpretation for Modification to a Development of Regional Impact with Vested Rights, June 21, 1985; and 3) Binding Letter of Interpretation for Development of Regional Impact Status, August 30, 1985. API intends to replan and replat the property as an Active Adult Community and does not expect that same will constitute a substantial deviation with regard to impacts from those previously approved by the Florida Department of Community Affairs. API intends to commence development within two years. The development plans, which have not been completed, are predicated on the assurances of availability 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.

5. Therefore, Ocala Springs Utilities Inc. (OSUI), a wholly owned operating subsidiary of Avatar Utilities Inc. (AUI) (a subsidiary of AHI), has recently been created for the specific purpose of providing water and wastewater service to Ocala Springs. AUI is a utility holding company which has provided water and wastewater services through its subsidiaries since 1956. AUI's other operating subsidiaries include Florida Cities Water Company, which serves approximately 34,000 water and 26,000 wastewater customers in six Florida communities; and Poinciana Utilities Inc., which provides service to 6,300 water and 5,900 wastewater customers in Osceola and Polk Counties.

6. OSUI has filed concurrent herewith its application for original certificates for water and wastewater service in Marion County. OSUI believes that its application complies with the essential filing requirements for original certification by demonstrating the ability of the applicant to provide service, the need for service in the area involved, the nonexistence of service from other sources within proximity of the proposed service area, and the consistency of the issuance of the proposed certification with the local comprehensive plan of Marion County. Thus, OSUI believes that acceptance by the Commission of the application as

submitted will achieve the fundamental purposes of the underlying statutes, which are to allow certification of investor-owned water and wastewater utilities which are financially and technically viable and otherwise capable of satisfying the need for service within designated areas, while avoiding the certification of utilities which may be in competition with or duplicate other utility systems which are available and adequate to provide reasonably adequate service or which may otherwise violate local comprehensive planning.

7. OSUI's application as submitted requests issuance of original certificates only. Such certification would provide OSUI and API, its affiliated developer, with the reasonable assurances required to effectively plan and coordinate the development of Ocala Springs and the utility infrastructure necessary to provide water and wastewater service in an efficient and cost-effective manner.

8. OSUI seeks Commission authorization to submit its request for initial rates and charges, and the financial, engineering and operating information supporting same, at a later date through a separate application. Although the Commission has traditionally required the information for certification and for initial rates and charges to be filed concurrently, bifurcated consideration by the Commission, first of certification, and, subsequently, of initial rates and charges, has been an accepted manner of processing such applications. See for example, Orders Nos. 18817

(February 8, 1988), which accepted bifurcation, Order No. 19428 (June 6, 1988), which granted certification, and Order No. 23341 (August 10, 1990), which established initial rates and charges, for Sunray Utilities, Inc. This is further borne out by Section 367.031, Florida Statutes, which requires the Commission to grant or deny an application for certification within 90 days after the official filing date of the completed application, unless an objection thereto is filed. No statutory time periods govern the approval of initial rates and charges.

9. The specific rule requirements pertaining to initial rates and charges for which OSUI seeks a waiver or variance are as follows:

a) Rule 25-30.033(1)(h)

The number of equivalent residential connections (ERCs) proposed to be served by meter size and customer class.

b) Rule 25-30.033(1)(o)

A statement regarding the separate capacities of the proposed lines and treatment facilities, in terms of ERC, and gallons per day.<sup>1</sup>

c). Rule 25-30.033(1)(r)

"A detailed financial statement (balance sheet and income statement) ... of the financial condition of the applicant that shows all assets and liabilities of every kind

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<sup>1</sup>The Commission application form further requests an indication of "the type of (water) treatment", and "the method of (wastewater) treatment and disposal." This information is not specifically required by rule. In any event, OSUI has not yet determined the specific type or method of treatment that will be appropriate.

and character... The financial statement shall be prepared in accordance with Rule 25-30.115, Florida Administrative Code...."

d) Rule 25-30.033(1)(t)

A cost study, including customer growth projections supporting the proposed rates, charges and service availability charges.

e) Rule 25-30.033(1)(u)

A schedule showing the projected cost of the proposed systems by uniform system of accounts (USOA) account numbers ... and the related capacity of each system in ERCs and gallons per day.

f) Rule 25-30.033(1)(v)

A schedule showing the projected operating expenses of the proposed system by USOA account numbers when 80% of the desired capacity of the system is being utilized.

g) Rule 25-30.033(1)(w)

The projected capital structure including the methods of financing the construction and operation of the utility until the utility's reaches 80% of the designed capacity of the system(s).

h) Rule 25-30.033(2)

Information on alternative rate structures, if any.

i) Rule 25-30.033(3)

Information on alternative returns on common equity, if any.

10. At the present time, API is engaged in the replanning of Ocala Springs in preparation for a replatting of that development, at an expected lower density than that already approved. Pending completion of those efforts, and a concurrent determination of the specific requirements of utility infrastructure to serve the

development, there cannot be a reliable compilation of the customer growth, the investment and plant capacity required, or other cost of service information which would provide a valid basis upon which to develop initial rates and charges. Further, OSUI was incorporated on April 10, 1998, and has no assets and no financial statements. In lieu of this information, OSUI has submitted the consolidated financial statements of its AHI, AUI, and subsidiaries.

11. OSUI also seeks waiver or variance from the following additional related rule requirements which it understands apply to certification:

a) Rule 25-30.033(1)(j) and Rule 25-30.433(10), which require the application to include evidence of ownership or continued use of the land on which the utility treatment facilities are or will be located (while allowing for filing of unexecuted documents with the proviso that if certification is granted, the applicant must file such documents as executed and recorded within 30 days of the order granting the certificates); and

b) Rule 25-30.033(1)(m), which requires a detailed system map showing the location of the proposed lines, treatment facilities, and territory proposed to be served.

12. As indicated hereinabove, API is currently engaged in replanning Ocala Springs with the expected intention of replatting the development at a lower density than that already approved. These activities are inextricably related to site selection of the treatment facilities and the planning of attendant lines and facilities. OSUI therefore cannot at present comply with the foregoing requirements. Instead OSUI has entered into a Master

Agreement with API, which, in addition to committing API to finance the initial operations of OSUI until OSUI's operating revenues are adequate to cover operating costs, specifically requires API, the fee owner of the proposed service area in its entirety, to grant title to the treatment facilities and all land required for same to OSUI, in a form satisfactory to OSUI, as required by Commission rule. Please see paragraphs 1(b) and (c) of Attachment 2 of Exhibit E of the Application.

13. OSUI does not seek a permanent waiver or variance from the foregoing rule requirements. Rather, OSUI seeks to defer submittal of the requisite documentation until replanning and replatting of Ocala Springs and information regarding the requisite coordination on utility infrastructure would be more definite and readily available. OSUI requests that submittal of the detailed system maps and the evidence of ownership of treatment plant sites be deferred until such time (for water) as OSUI submits its application for a consumptive use permit with the water management district and (for wastewater) as OSUI submits its application for construction permits to the Florida Department of Environmental Protection. OSUI further requests that submittal of a separate application for initial rates and charges, and the financial, engineering and operating information supporting same, be deferred until 24 months following issuance of any Commission order granting the instant application for original certificates.

14. The strict application of the foregoing rules would

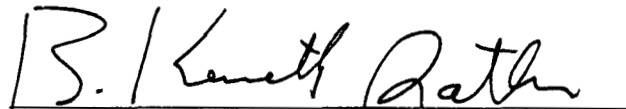


create a substantial hardship to OSUI and its affiliated companies, in that API and OSUI would be unable to obtain assurances of the availability and economic feasibility of water and wastewater service to Ocala Springs and would therefore be severely hindered in the cost-effective planning and coordination of the development of that land and the utility infrastructure needed to serve it.

15. Approval of the temporary waivers or variances of the foregoing rules, as requested herein, would avoid such substantial hardship while ensuring that the purposes of the underlying statute will be achieved by the means proposed.

WHEREFORE, Ocala Springs Utilities Inc. requests that the Commission grant the temporary waivers or variances requested in the body of this Petition and in that regard grant such other relief as the Commission may deem appropriate.

Respectfully submitted,



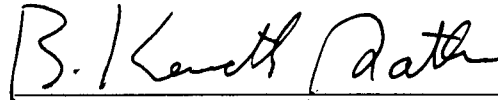
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ATTORNEYS FOR OCALA SPRINGS  
UTILITIES INC.

CERTIFICATE OF SERVICE

I hereby certify that in order to comply with Section 120.542(5), Florida Statutes, a copy of the foregoing petition (together with the Application for Original Certificates concurrently filed with the Florida Public Service Commission) has

been sent by U.S. Mail to the Administrative Procedures Committee,  
Room 120, Holland Building, 600 South Calhoun Street, Tallahassee,  
FL 32399-1300, this 13<sup>th</sup> day of July, 1998.



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B. Kenneth Gatlin