



Public Service Commission

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CLERK

DATE: JULY 12, 2001

TO: DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF REGULATORY OVERSIGHT (JOHNSON, REDEMANN) *JD*
DIVISION OF LEGAL SERVICES (CROSBY, GERVASI) *RC*
DIVISION OF ECONOMIC REGULATION (HICKS) *RH*

RE: DOCKET NO. 001501-WS - 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.
COUNTY: BREVARD

AGENDA: JULY 24, 2001 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: THIS RECOMMENDATION SHOULD BE PLACED ON AGENDA BEFORE THE RECOMMENDATION FOR DOCKET NO. 010396-WS

FILE NAME AND LOCATION: S:\PSC\RGO\WP\001501.RCM

CASE BACKGROUND

Connecticut General Development Utilities, Inc. d/b/a CGD Corporation (CGD or utility or Seller) is a developer-owned class "C" water and wastewater utility serving 354 customers in the Snug Harbor Lakes and Snug Harbor Village developments in Brevard County. The utility is located in a water caution area in the St. Johns River Water Management District (District). The annual report for 2000 shows that the operating revenues were \$81,997 and \$39,623, with net operating losses of \$13,846 and \$58,506, for the water and wastewater systems, respectively. The utility has been in service since 1981. By Order No. 10147, issued July 21, 1981,

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DOCKET NO. 001501-WS
DATE: JULY 12, 2001

in Docket No. 810007-WS, the Commission granted CGD original Certificates Nos. 338-W and 294-S.

On September 28, 2000, Burkim Enterprises, Inc. (Burkim or Buyer) filed an application for approval of the transfer of the facilities and Certificates Nos. 338-W and 294-S, currently held by CGD Corporation to Burkim. Burkim currently owns no other water or wastewater 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 America, Inc. Laniger is certificated to provide water and wastewater service in Martin County.

Although rate base and acquisition adjustment issues are typically addressed in transfer proceedings, these issues are not included in the analysis for this particular transfer because on April 4, 2001 the utility filed an application for a staff assisted rate case (SARC) in Docket No. 010396-WS. The issues to be addressed in the SARC will include the establishment of rate base, CIAC, acquisition adjustment, rate of return, and rates and charges. The SARC docket is scheduled for a decision on final rates and charges for the December 4, 2001 agenda conference.

Section 367.071, Florida Statutes, requires that 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 such sale, assignment, or transfer is made contingent upon Commission approval. The parties closed on the exchange of the utility on August 28, 2000. The transfer is contingent upon the approval of the Commission. The Commission has jurisdiction to consider this matter pursuant to Section 367.071, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the transfer of the water and wastewater facilities and Certificate Nos. 338-W and 294-S from CGD to Burkim Enterprises, Inc. be approved?

RECOMMENDATION: Yes, the transfer of the water and wastewater facilities and Certificate Nos. 338-W and 294-S from CGD to Burkim Enterprises, Inc. is in the public interest and should be approved. The utility is current on its RAFs through December 31, 2000 and has filed an annual report for 2000 and all prior years. Burkim should be put on notice that it is required to maintain the utility's books and records in conformance with NARUC USOA as prescribed by Rule 25-30.115, Florida Administrative Code. Burkim should be required to bring its accounts and records into conformance with the NARUC USOA in accordance with Rule 25-30.115, Florida Administrative Code, and to submit a statement from its accountant with its next annual report indicating that it has done so. If the utility remains out of compliance, a show cause issue will be brought to the Commission for disposition. A description of the territory served by the utility is appended to this memorandum as Attachment A. (JOHNSON, REDEMANN, CROSBY)

STAFF ANALYSIS: As stated in the case background, Burkim filed the application for the transfer of CGD's water and wastewater facilities to Burkim on September 28, 2000. 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. The application contains a check in the amount of \$1,500, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The applicant has provided a warranty deed as proof that the utility owns the land upon which the utility's facilities are located as required by Rule 25-30.037(2)(q), Florida Administrative Code.

Section 367.071, Florida Statutes, requires that 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 such sale, assignment, or transfer is made contingent upon Commission approval. The parties closed on the sale of the utility on August 28, 2000, with the contract including language that the transfer is contingent upon the approval of the Commission.

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 to be transferred. No objections to the notice of application 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 application states that the Buyer has the technical and financial ability and manpower to operate the CGD system. Based on the application, the Buyer has demonstrated its financial ability to provide service. The Buyer provided a copy of the Balance Sheet as of August 28, 2000 which showed total assets of approximately \$291,211. Based upon this balance sheet, Burkim has invested \$86,575 in the utility and has incurred \$228,090 in long-term debt. Burkim has indicated that it will provide the financial stability required to maintain the utility systems in accordance with Commission standards.

Staff has contacted the Department of Environmental Protection (DEP) and learned that the previous owner illegally modified the water plant by removing the lime softening plant. According to DEP, the plant modification is illegal because the DEP was not notified, and the plans of the modification were not submitted to DEP. Burkim has submitted the plans to DEP for the water plant modification and paid the associated fine. There have been several water pipe repairs since the beginning of the year. There is one pipe repair that appears to be due to pressure problems, because there is no hydro pneumatic tank. The hydro pneumatic tank exploded on March 24, 2001, and a replacement was required by the DEP. The new hydro pneumatic tank was installed July 9, 2001. Also, the utility was delinquent in filing the required quarterly and monthly operating reports with DEP. Burkim is current with these reports at this time. Also, one high service pump was leaking at the time of the audit inspection and it needed to be repaired. The high service pump has been repaired by the Buyer.

The DEP has reported that there is one item that needs correction and one item that needs to be replaced. The DEP correction item is related to the Trihalomethanes (THMs) problem the utility is experiencing. The correction item 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. According to the Buyer, the plans will be submitted shortly. As mentioned earlier, the failed hydro pneumatic tank was replaced on July 9, 2001. It appears that these problems were inherited from the previous owner due to deferred maintenance. The buyer has been doing a reasonable job in repairing the utility in a timely fashion when one considers the number of repairs made in the short period of time.

In addition to the DEP items, nine customer complaints were filed with the Division of Consumer Affairs with DEP on April 20, 2001, expressing concerns about the utility having 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 utility repairing the pipes.

The second issue raised by the customers is the continued presence of THMs in the water. As discussed above, to correct this problem, the utility is planning to install a new disinfection system that includes ammonia.

The third issue raised by the customers is the poor quality of service. According to the utility, additional employees will be hired in an effort to improve the quality of service. By hiring additional employees, the utility hopes to be more timely in responding to customers' concerns, requests for information and responses to other utility matters. The utility has indicated that it has hired a new professional engineer who is working closely with DEP to bring the system back into compliance. The utility is putting forth an effort to change the customers' perception that there is a lack of cooperation on its behalf, by resolving past problems and installing new measures to make the utility more responsive. Therefore, Staff believes that Burkim possesses the overall financial and technical ability to continue the operations of the CGD system.

The application states that the Buyer conducted a reasonable investigation of the utility system and found it to be in satisfactory condition. As such, only minor maintenance on the system was anticipated by the Buyer. Instead, the Buyer has incurred major capital expenditures in repairing the utility which

is evidence of the Buyer's commitment, financial ability and technical ability.

The water treatment system consists of two 6-inch wells, one 65,000 gallon ground storage tank, a chlorination system, two high service pumps and a hydro pneumatic 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 perk/evaporation ponds and chlorination for disinfection. The utility treats an average of about 100,000 gpd of wastewater. The DEP has not issued any violations or corrective orders against the wastewater system and there are no pending DEP related issues.

The application contains a copy of the Agreement for Purchase and Sale which includes the purchase price, terms of payment and a list of the assets purchased. According to the Agreement, the purchase price for the utility facilities is \$250,000. The CGD purchase was financed with a \$202,500 loan from Fidelity Federal Bank & Trust, with the remainder being provided by the shareholders. Based on the application, 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 of the utility. CGD will remain responsible for the existing debts of the utility incurred or accrued up to closing.

According to the application, the parties agreed to prorate the RAFs after the closing date of August 28, 2000. The utility is current on its RAFs through December 31, 2000 and has filed an annual report for 2000 and all prior years. Additionally, Burkim has provided a statement that it will fulfill the commitments, obligations, and representations of the seller regarding utility matters.

During a staff audit of CGD's books and records, numerous deficiencies were noted. CGD is not in compliance with NARUC, Class C, Accounting Instruction 2.B. Rule 25-30.115, Florida Administrative Code, states "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.

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. However, CGD will not be operating the utility once the transfer is approved to Burkim. Therefore, Burkim should be put 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 should be required to bring its accounts and records into conformance with the NARUC USOA in accordance with Rule 25-30.115, Florida Administrative Code, and to submit a statement from its accountant with its next annual report indicating that it has done so. If the utility remains out of compliance, a show cause issue will be brought to the Commission for disposition.

The application states that the transfer is in the public interest because the prior owner of the utility developed the utility systems as a part of its development activities. Now that the development activities are complete, the prior owners have no incentive to retain ownership of the utility system. The application states that the public interest will be well served by the transfer of the CGD facilities to Burkim because Burkim has the technical and financial ability to insure the continued operations of the CGD facilities.

Based on the above, staff recommends the transfer of the water and wastewater facilities and Certificate Nos. 338-W and 294-S from CGD to Burkim Enterprises, Inc. is in the public interest and should be approved. The utility is current on its RAFs through December 31, 2000 and has filed an annual report for 2000 and all prior years. Burkim should be put 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 should be required to bring its accounts and records into conformance with the NARUC USOA in accordance with Rule 25-30.115, Florida Administrative Code, and to submit a statement from

DOCKET NO. 001501-WS
DATE: JULY 12, 2001

its accountant with its next annual report indicating that it has done so. If the utility remains out of compliance, a show cause issue will be brought to the Commission for disposition. A description of the territory served by the utility is appended to this memorandum as Attachment A.

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 minutes, 06 seconds for an arc distance of 246.84 feet; thence

DOCKET NO. 001501-WS
DATE: JULY 12, 2001

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.

ISSUE 2: Should Burkim adopt and use the rates and charges approved by this Commission for CGD?

RECOMMENDATION: Yes, Burkim should continue charging the rates and charges approved for this utility system until authorized to change by the Commission in a subsequent proceeding. The tariff reflecting the change in ownership should be effective for services provided or connections made on or after the stamped approval date on the tariff sheets. (JOHNSON, CROSBY)

STAFF ANALYSIS: The utility's current rates for residential and general service were approved administratively in a price index and pass through application, which became effective on October 31, 2000. The utility was ordered to discontinue the collection of service availability charges, and approved to collect miscellaneous service charges pursuant to staff-assisted rate case Order No. PSC-93-0011-FOF-WS, issued January 5, 1993, in Docket No. 920397-WS. The utility's current approved rates and charges are as follows:

Monthly Water Service 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

Monthly Water Service Rates

FIRE PROTECTION SERVICE
Per Month \$ 0.51

Monthly Wastewater Service 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>Residential</u> Service	<u>General</u> Service
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, provides that:

[i]n case 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).

Burkim has not requested a change in the rates and charges of the utility. Accordingly, staff recommends that the utility continue operations under the existing tariff and apply the approved rates and charges until authorized to change by the Commission in a subsequent proceeding. The utility has filed the tariffs reflecting the transfer of ownership. If the Commission approves staff's recommendation, the tariff filing should be effective for services provided or connections made on or after the stamped approval date on the tariff sheets.

DOCKET NO. 001501-WS
DATE: JULY 12, 2001

ISSUE 3: Should this docket be closed?

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

STAFF ANALYSIS: No further action is required in this docket.
Therefore, staff recommends that this docket be closed.