

State of 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-

DATE: OCTOBER 25, 2001

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF REGULATORY OVERSIGHT (BRADY, REDEMANN) *SRM*
 DIVISION OF ECONOMIC REGULATION (C. ROMIG, IWENJIORA) *RPR pb*
 DIVISION OF LEGAL SERVICES (CIBULA) *S.M.C. DS* *DM* *ALM*

RE: DOCKET NO. 001122-WS - JOINT APPLICATION FOR TRANSFER OF ALL WATER AND WASTEWATER FACILITIES OF SPRUCE CREEK SOUTH UTILITIES, INC. IN MARION AND SUMTER COUNTIES TO FLORIDA WATER SERVICES CORPORATION, FOR CANCELLATION OF CERTIFICATES NOS. 511-W AND 467-S HELD BY SPRUCE CREEK SOUTH UTILITIES, INC. AND FOR AMENDMENT OF CERTIFICATES NOS. 373-W AND 322-S HELD BY FLORIDA WATER SERVICES CORPORATION; AND JOINT PETITION FOR APPROVAL OF ANCILLARY AGREEMENTS.
 COUNTIES: MARION AND SUMTER

AGENDA: 11/06/01 - REGULAR AGENDA - PROPOSED AGENCY ACTION FOR ISSUES 2, 3, 4, 6 AND 8 - TARIFF FILING FOR ISSUE 7 - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: 60 DAY STATUTORY DEADLINE HAS BEEN WAIVED

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\RGO\WP\001122.RCM

CASE BACKGROUND

Spruce Creek South Utilities, Inc. (Spruce Creek or seller) is a Class B water and wastewater utility. Service is currently provided to approximately 3,155 residential, 91 commercial, and 96 irrigation water customers as well as to 2,341 residential and 79 commercial wastewater customers throughout three separate adult living communities located in Marion and Sumter Counties, Florida. Spruce Creek is also located across two water management districts.

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The portion of Spruce Creek that is in the St. John's River Water Management District (SJRWMD) is in a Water Use Caution Area. The portion of Spruce Creek that is in the Southwest Florida Water Management District (SWFWMD) is not in a Water Use Caution Area. Based on the 2000 annual report on file with the Commission, the utility's total water revenues were \$1,290,625, with a net operating income of \$651,841. Total wastewater revenues were \$432,930, with a net operating income of \$263,447.

Spruce Creek was originally formed in 1989 by Spruce Creek South Development of Ocala, Inc. to provide water and wastewater services to the residents of its Spruce Creek South (SC South) development near Ocala, Florida. The Commission granted Water Certificate No. 511-W by Order No. 20933, issued March 24, 1989, in Docket No. 881597-WU and Wastewater Certificate No. 467-S by Order No. 25157, issued October 3, 1991, in Docket No. 910746-SU. Subsequent to certification, the utility has had five territory amendments to expand the SC South service area and to add service to two new adult communities called Spruce Creek Golf and Country Club (SC Country Club), in Summerfield, and Spruce Creek Preserve (SC Preserve), in Dunnellon.

Spruce Creek was acquired on December 27, 1997, by the Phoenix, Arizona-based Del Webb Corporation under the name of Spruce Creek Communities, Inc. (Del Webb or developer). The parent, Del Webb Corporation (parent), is one of the nation's largest developers of communities for senior adults. The Commission recognized the 100% transfer of majority organizational control from Harvey and Brenda Erp and Jay and Lori Thompson to Del Webb by Order No. PSC-98-1208-FOF-WS, issued September 9, 1998, in Docket No. 980238-WS. While Del Webb acquired ownership control of Spruce Creek's utility facilities in the transfer, as a matter of practice, its parent does not operate water and wastewater utility facilities at any of its other developments.

On June 29, 2000, Spruce Creek entered into an Asset Purchase Agreement with Florida Water Services Corporation (Florida Water) for the sale and purchase of the utility facilities. On August 11, 2000, Spruce Creek and Florida Water filed a joint application for transfer of all water and wastewater facilities of Spruce Creek to Florida Water, for cancellation of Certificates Nos. 511-W and 467-S held by Spruce Creek, and for amendment of Certificates Nos. 373-W and 322-S held by Florida Water. Along with the application,

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Spruce Creek and Florida Water also filed a joint petition for approval of five ancillary agreements.

The ancillary agreements include two Special Agreements for Villa Irrigation Water (Irrigation Agreements), a Reclaimed Water Agreement (Reuse Agreement), a Futures Agreement, and a Developer's Agreement. The joint applicants claim that the ancillary agreements are integral to the terms and conditions of the Asset Purchase Agreement and cannot be severed. As such, the joint applicants have requested that the Commission consider the Asset Purchase Agreement and the ancillary agreements contemporaneously in this docket.

As part of the evaluation of the transfer, staff requested an audit to establish rate base as of June 30, 2000. Although the utility had grown from a Class C to a Class B since originally established 10 years ago, it has never had a rate proceeding. In addition, until the instant transfer, the utility facilities had always been developer controlled. As a result, the audit report was limited by the availability of acceptable records. Also, certain unique provisions of the Asset Purchase Agreement and the ancillary agreements required additional staff research. In order to verify the amount of plant to be included in rate base, staff conducted extensive post-audit discovery with full assistance and cooperation from the joint applicants.

This recommendation addresses whether the transfer should be approved, the appropriate rate base for transfer purposes, whether deferred debits for invested taxes on contributions-in-aid-of construction (CIAC) should be included in rate base, whether an acquisition adjustment should be included in rate base, whether the utility's existing rates and charges should be continued, and whether the ancillary agreements should be approved.

The Commission has jurisdiction pursuant to Sections 367.071 and 367.091, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the transfer of the water and wastewater facilities from Spruce Creek to Florida Water be approved?

RECOMMENDATION: Yes. The transfer of Spruce Creek's water and wastewater facilities to Florida Water is in the public interest and should be approved. Certificates Nos. 511-W and 467-S should be canceled. Certificates Nos. 373-W and 322-S should be amended to include the territory described in Attachment A. (BRADY, REDEMANN, IWENJIORA, CIBULA)

STAFF ANALYSIS: On August 11, 2000, a joint application was filed for the transfer of all water and wastewater facilities owned by Spruce Creek in Marion and Sumter Counties to Florida Water. Approval will result in the cancellation of Certificates Nos. 511-W and 467-S held by Spruce Creek and the amendment of Certificates Nos. 373-W and 322-S held by Florida Water. The Asset Purchase Agreement was entered into on June 29, 2000, which is the date of the transfer of facilities. The transfer was made contingent upon Commission approval in compliance with Section 367.071(1), Florida Statutes.

The application as filed and amended is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules pertaining to an application for the sale, assignment, or transfer of a certificate of authorization. The application contained the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The application also returned all certificates for Commission action as required by Rule 25-30.037(2)(t), Florida Administrative Code. The territory being transferred is described in Attachment A.

Noticing Pursuant to Rule 25-30.030, Florida Administrative Code, the application contained the requisite proof of noticing. No objections to the application were received by the Commission and the time for filing such has expired. Staff would also note that on June 29, 2000, then President and CEO of Florida Water, Mr. John Cirello, PhD., P.E., sent a letter to each of Spruce Creek's customers informing them of the transfer and inviting each of the three communities to separate meetings in their local community centers on July 5, 2000. The purpose of the meetings was to introduce the customers to Florida Water and its services as well as to set up customer advisory committees in each of the

communities. The customer advisory committees recommend community service programs such as scholarship awards and charitable donations for sponsorship by the shareholders of Florida Water. The shareholders of Florida Water also sponsor an educational speaker program.

Sales Contract and Financing As required by Rules 25-30.037(2)(g), (h), (i), and (k), Florida Administrative Code, the application contained a copy of the Asset Purchase Agreement along with five ancillary agreements and a description of financing. The purchase price at closing on June 29, 2000, was \$5,500,480. This was a cash transaction. As such, there are no entities upon which Florida Water is relying for financing of the acquisition. The purchase price included \$177,903 for 95% of the seller's accounts receivable. Customer deposits were to be transferred to the buyer at the closing and to be disposed of by the buyer in accordance with the seller's approved tariff.

In addition to the purchase price at closing, the Asset Purchase Agreement made provisions for the buyer to be obligated to make additional futures payments under the terms of the ancillary Futures Agreement. The Futures Agreement will be addressed in Issue 8. The Asset Purchase Agreement also made provisions for the purchase price to be increased in the event the Commission determines that the net book value of utility assets should be increased by the amount of deferred debits for invested taxes on CIAC. At the time of the closing on June 29, 2000, the amount of booked deferred debits was approximately \$800,000. This matter will be addressed in Issue 3.

Proof of Ownership Pursuant to Rule 25-30.037(2)(q), Florida Administrative Code, the application contained proof in the form of recorded Special Warranty Deeds that the utility owns the land upon which the treatment facilities are located. The appropriate amount of land to include in rate base will be addressed in Issue 2.

Annual Reports and Regulatory Assessment Fees (RAFs) According to the Asset Purchase Agreement, Spruce Creek is liable for outstanding fees, fines or refunds with respect to annual reports and RAFs. Staff has verified that Spruce Creek has filed an annual report and paid RAFs for the period January 1, 2000, through June 30, 2000, and that Florida Water has filed an annual report and paid RAFs for the period July 1, 2000, through December 31, 2000, for the Spruce Creek System. As a result, there are no

outstanding penalties, interest, or refunds due. Florida Water is responsible for filing the utility's 2001 annual report and remitting 2001 RAFs in the time frame and manner prescribed by Commission rules.

Environmental Compliance Pursuant to Rule 25-30.037(2)(p), Florida Administrative Code, the application contained a statement that Florida Water had reviewed the overall condition of the water and wastewater treatment plants and effluent disposal facilities. At the time of the filing, Florida Water indicated the systems were in compliance with the Florida Department of Environmental Protection's (FDEP's) and the water management districts' rules and regulations but in need of some maintenance. SC South and SC Country Club are regulated by FDEP's Central District Office (FDEP Orlando Office) and the SJRWMD. SC Preserve is regulated by FDEP's Southwest District Office (FDEP Tampa Office) and SWFWMD. The following information is based on staff's conversations with each of these agency offices.

FDEP Orlando Office The FDEP Orlando Office has indicated to staff that SC South's water and wastewater systems are currently in compliance with all its environmental rules and regulations. SC South's water treatment system has a design capacity of 1,700,000 gallons per day (GPD) with average flows of 992,000 GPD. The utility's most recent maximum day peak flow was 1,333,100 GPD on February 22, 2001.

To enable SC South to meet anticipated growth from a proposed commercial development, the FDEP Orlando Office has approved the utility's plan to upgrade the utility's 1,000 gallons per minute (GPM) well pump to 1,500 GPM and to add a 20,000 gallon hydropneumatic tank. Construction is expected to begin shortly and to take approximately six months to complete at an estimated project cost of \$200,000.

SC South's wastewater treatment system has a permit capacity of 216,000 GPD with average flows of 150,000 GPD. Effluent disposal is by means of Rapid Inflow Basins (RIBS). When the average daily water flow of 992,000 GPD is compared to the average daily wastewater flow of 150,000 GPD, the difference indicates substantial non-potable water use. However, the FDEP has not required the utility to retrofit the SC South wastewater treatment plant with reclaimed water facilities.

The explanation offered by the utility is that there is no reuse customer in SC South, like a golf course, to accept the effluent. In addition, the utility's effluent is being disposed of by means of RIBS which is an alternate form of reuse. Staff would also note that, in addition to whatever drought restrictions may be in place at any given time in SC South, there are a number of conservation measures which the SJRWMD had previously required as part of SC South's consumptive use permit (CUP). These measures will be discussed below.

SC Country Club's water system has a well pump capacity of 6,000,000 GPD. However, current capacity is limited to 960,000 GPD due to the required 15 minute chlorine contact time. With a maximum day peak usage of over 1,000,000 GPD, the wells are occasionally pumping more than the capacity limit. Florida Water proposes to replace two wells, drill a third well, construct a new water treatment facility, and install a new 300,000 gallon ground storage tank with high service pumps. Construction on the water plant is anticipated to begin in October, 2001. The FDEP Orlando Office believes this expansion will correct the chlorine contact deficiency.

The FDEP Orlando Office has indicated to staff that SC Country Club's wastewater system is currently in compliance with all environmental rules and regulations. The treatment facilities, which have a capacity of 200,000 GPD with average flows of around 80,000 GPD, have been recently retrofitted with reclaimed water facilities. The treated effluent goes to a golf course for disposal with a percolation pond for emergency backup. Issue 7 contains a discussion of the newly constructed facilities, as well as Florida Water's petition for a new class of service for reclaimed water.

SJRWMD According to the SJRWMD, the permittee, Del Webb, has failed to meet the following requirements of its CUPs for both SC South and SC Country Club:

- To make available at a reasonable cost and to encourage the purchase of homes with water efficient landscapes that meet Xeriscape or Florida Friendly Landscape guidelines.
- To have all landscape irrigation equipment inspected annually by either a professional certified irrigation designer or an

approved installation contractor. Any deficiencies were to be corrected within 30 days of identification.

- To install irrigation systems which meet Xeriscape or Florida Friendly guidelines with zones which correspond to plant needs, including separate zones for turf and shrubs.
- To offer twice a year, with advance notification to homeowners, educational sessions concerning home irrigation systems management and water efficient landscaping. Content and instructors for these sessions were to be approved by the SJRWMD.
- To make available at all sales offices, and provide to homeowners at the time of the closing, SJRWMD-approved literature on irrigation system management and water efficient landscaping.

Florida Water had originally indicated to staff that, since it is not affiliated with the developer, it could not assume the permittee's obligations with regard to new home construction and landscaping. However, Florida Water indicated it could provide twice yearly educational sessions, as well as make the SJRWMD-approved literature available at its utility offices and through periodic bill stuffers. Del Webb indicated it was working with the SJRWMD to resolve the developer-related CUP requirements.

Staff encouraged both Florida Water and Del Webb to work together to resolve all the SJRWMD CUP requirements. Florida Water and Del Webb responded by proposing to segregate the original CUP into two permits; one permit to be retained by the Developer and one permit to be held by Florida Water. In consultation with the SJRWMD, the parties are in the process of drafting a proposed agreement establishing the responsibilities of each party with respect to each of the conditions for issuance of the new CUPs.

FDEP Tampa Office and SWFWMD SC Preserve's water system has a design capacity of 1,200,000 GPD with a max-day peak usage of 913,000 GPD. SC Preserve's wastewater treatment facility has a permit capacity of 95,000 GPD with average flows around 60,000 GPD. The effluent is treated to non-public access level and sprayed onto a sod field for disposal. The FDEP Tampa Office has indicated to staff that SC Preserve's water and wastewater systems are currently

in compliance with its environmental rules and regulations. SWFWMD also indicated current compliance.

Technical and Financial Ability The application indicates that Florida Water has been regulated by the Commission since 1964 and currently owns and operates water and wastewater facilities under Commission regulation in 121 service areas throughout the state of Florida. More than 500,000 Floridians in 27 Florida counties currently rely on Florida Water, making it the largest investor-owned water and wastewater utility in the State. Florida Water's 2000 Annual Report reflects a capital structure consisting of \$213 million in total capital, including \$101 million in equity capital and \$112 million in long-term debt. Florida Water believes that these facts more than adequately demonstrate the requisite technical and financial ability to own and operate the Spruce Creek facilities. Further, Florida Water has indicated its intent to fulfill the commitments, obligations, and representations of the seller with regard to water and wastewater service to the extent set forth in its filing and the Asset Purchase Agreement.

For informational purposes, on December 15, 2000, Florida Water's parent, MP Water Resources Group, Inc. (Minnesota Power), changed its name to Allete Water Services, Inc. This change is in the parent's name only, without any resulting change in the ownership, control, or name of Florida Water. As a consequence, no Commission action need be taken to approve or acknowledge the parent company's name change.

Based on all the above, staff recommends that the transfer of Spruce Creek to Florida Water is in the public interest and should be approved. Certificates Nos. 511-W and 467-S should be canceled and Certificates Nos. 373-W and 322-S should be amended to include the territory described in Attachment A.

ISSUE 2: What is the rate base for Spruce Creek's water and wastewater systems at the time of the transfer?

RECOMMENDATION: The rate base is \$912,054 for water and \$2,480,839 for wastewater as of June 30, 2000. (BRADY, REDEMANN)

STAFF ANALYSIS: The Commission has never established rate base for Spruce Creek. Since the transfer of utility facilities to Florida Water occurred on June 29, 2000, staff requested an audit to establish rate base for transfer purposes as of June 30, 2000. The resulting audit report was filed January 9, 2001, with a revision filed on January 12, 2001. The audit report included four Audit Exceptions and one Audit Disclosure. The significant findings were as follows:

- The utility's balances for land are overstated by \$107,421 for water and understated by \$86,110 for wastewater.
- The utility's balances for utility-plant-in-service (UPIS) are overstated by \$674,346 for water and \$97,780 for wastewater.
- The utility's balances for accumulated depreciation are overstated by \$196,994 for water and \$40,961 for wastewater.
- The utility's balances for CIAC are overstated by \$522,620 for water and \$76,600 for wastewater.
- The utility's balances for accumulated amortization of CIAC are understated by \$2,801 for water and \$82,968 for wastewater.

Due to the complexity of the audit and the magnitude of the proposed adjustments, the joint applicants were given time to reply to the proposed audit adjustments. Their response was filed on April 9, 2001. On May 24, 2001, staff met jointly with Spruce Creek and Florida Water to discuss the proposed audit adjustments and the joint applicants' response, as well as a number of other issues regarding the application. During, and immediately subsequent to the meeting, the joint applicants provided additional information which addressed many of staff's concerns.

However, since a large portion of Spruce Creek's facilities were constructed and operated by affiliated developers in conjunction with non-utility development, it was essential for

staff to determine the extent to which the current and prior developer may have written off utility plant to cost of goods sold on federal tax returns. Complicating the matter was the fact that the original developer was not accessible and the current developer, Del Webb, files consolidated tax returns at the parent level.

On June 4, 2001, Del Webb made its proprietary tax information for 1998 through 2000 available for staff's review at its attorney's law office. In addition, tax returns for the utility for the years prior to the transfer of majority organizational control to Del Webb in December of 1997 were subsequently provided for staff's review and are the basis for many of staff's recommendations below.

Land Utility records indicated balances for land at the time of transfer of \$114,328 for water and \$7,600 for wastewater. The Audit recommended balances for land at the time of transfer were \$6,907 for water and \$93,710 for wastewater, as follows:

Water Plant Sites:

Spruce Creek South	\$ 1,790
Spruce Creek Preserve	4,040
Spruce Creek Golf & County Club	<u>1,077</u>
Total	\$ 6,907

Wastewater Plant Sites:

Spruce Creek South	\$38,657
Spruce Creek Preserve	38,000
Spruce Creek Golf & Country Club	<u>17,053</u>
Total	\$93,710

The recommended audit balances for the land transferred to Florida Water for the water systems were based on the original cost of the land when first dedicated to public use. The joint applicants concur with the audit balances for land for the water systems. Therefore, staff recommends that the cost of land for the water systems are \$6,907 as of June 30, 2000.

SC South Wastewater Plant Site The audit calculated the original parcel of land for the SC South wastewater treatment plant as 11.49 acres at a cost of \$35,291.00. The joint applicants did not dispute these figures. However, the audit revealed that, on May 24, 1991, an additional 1.0 acre of land with an original cost

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of \$6,600 was transferred to SC South by Warranty Deed for use as an additional wastewater treatment facility site. As part of the existing transfer, the Audit noted that Del Webb provided a deed to Florida Water for 0.510 acre of the 1.0 acre. As a result, the Audit recommended the inclusion of only 0.510 acre at a cost of \$3,366.

The joint applicants argue that, since the additional 1.0 acre was originally provided by Warranty Deed to the utility, and not Del Webb, the entire 1.0 acre parcel should be included in rate base. Staff disagrees. When a transfer of certificate occurs, the utility is transferred from one corporation to another. The only means by which the new corporation has to show evidence of title to the land owned by the predecessor corporation is by recorded deed. Presumably, this is the reason Rule 25-30.037(q), Florida Administrative Code, requires staff to verify in a transfer that the new utility corporation owns the land upon which the utility treatment facilities are located or that arrangements have been made for continued use of the land. Since there are currently no utility treatment facilities located on the 1.0 acre parcel of land, staff concurs with the audit adjustment of including only the portion of the 1.0 acre parcel which was deeded to Florida Water by Del Webb.

However, upon review of the deed, staff's calculations for the amount of land transferred differed slightly from those of the Audit. According to staff's calculations, the deed transferred 0.573 acre with a resulting cost of \$3,871.80. In addition, upon review of the acreage in the original parcel, staff's calculations for the amount of land also differs from the Audit calculation of 11.49 acres. According to staff's calculations the original parcel contained 8.41 acres with a resulting cost of \$25,830.71. Based on these adjustments, the total acreage for the original parcel and the deeded portion of the additional acreage is 8.983 acres at a total original cost of \$29,612.51.

Staff provided an analysis of its proposed adjustments to the joint applicants who conducted a survey to confirm the legal description in the original deed. Based on the survey and a review of staff's analysis, the joint applicants concur with staff's proposed adjustments. Therefore, staff recommends that the acreage included in rate base for the SC South wastewater treatment facility site be adjusted to 8.983 acres at an original cost of \$29,612.51.

SC Preserve Wastewater Plant Site The utility's books indicated that the original cost for the land for the wastewater plant and percolation pond sites was \$54,680 for 13.67 acres at \$4,000 per acre. The audit revealed that, on June 29, 2000, Del Webb transferred to Florida Water by Warranty Deed only 9.5 acres which would have an original purchase price of \$38,000. The joint applicants provided a revised Special Warranty Deed recorded with Marion County on April 5, 2001, showing the amount of the land transferred to be 13.67 acres. Therefore, staff recommends that no adjustment to land be made and that 13.67 acres be included in rate base at an original cost of \$54,680.

SC Country Club Wastewater Plant Site The utility's books indicated that the original cost for land for the wastewater treatment plant was \$25,168 for 7.76 acres at \$3,243 per acre. The audit revealed that, on June 29, 2000, Del Webb transferred to Florida Water by Warranty Deed approximately 5.258 acres of land which would have had an original purchase price of \$17,053. The joint applicants provided a revised Special Warranty Deed recorded with Marion County on April 5, 2001, showing the amount of the land transferred to be 7.76 acres. Therefore, staff recommends that no adjustment to land be made and that 7.76 acres be included in rate base at an original cost of \$25,168.

Based on the above analysis, staff recommends that the cost of land for the wastewater systems is \$109,460.51 as of June 30, 2000.

Utility-Plant-In-Service (UPIS) The utility records indicated balances for UPIS at the time of transfer of \$4,320,205 for water and \$4,855,140 for wastewater. The Audit recommended balances for UPIS at the time of transfer of \$3,645,859 for water and \$4,757,360 for wastewater based on the following adjustments:

Water UPIS per utility	\$ 4,320,205
A) Remove irrigation well	(5,540)
B) Remove replaced well pumps	(26,710)
C) Retire propane gas tank	(608)
D) Retire abandoned 10-inch well	(10,504)
E) Reclassify additions to wastewater UPIS	(375,175)
F) Remove unsupported capitalized labor	(225,810)
Water UPIS per Audit	<u>\$ 3,645,859</u>
Wastewater UPIS per utility	\$ 4,855,140
G) Remove unsupported UPIS adjustment	(330,977)

E) Reclassify additions to wastewater UPIS	375,175
F) Remove unsupported capitalized labor	(141,979)
Wastewater UPIS per Audit	<u>\$ 4,757,360</u>

Adjustment A removes the cost of a 4-inch irrigation well that was non-utility plant. Adjustment B removes the original cost of two 40-hp pumps that were installed in 1989 and 1990. One of the pumps was replaced in 1992. Both pumps were replaced in 1993 with two 60-hp pumps when the system was upgraded. Adjustment C retires the cost of a propane gas tank originally installed in 1990 but replaced in 2000 by a diesel fuel system. Adjustment D retires a 10-inch well that had been abandoned and replaced by a 12-inch well in 2000. Adjustment E reclassifies wastewater UPIS additions incorrectly booked to water. Adjustment F removes unsupported capitalized labor additions to water and wastewater UPIS from 1990 through 1994. Adjustment G removes unsupported additions to wastewater UPIS in 1996.

The joint applicants concur with each of the proposed adjustments except for the removal of unsupported capitalized labor and UPIS, Adjustments F and G, respectively. The following discussion addresses the disputed removal of the unsupported capitalized labor costs for 1990-1994 and unsupported UPIS for 1996. Following the discussion of these two issues is a discussion of unsupported water and wastewater mains for 1997-2000. While the Audit was unable to find supporting documentation for a majority of the recorded costs water and wastewater mains for 1997-2000, the Audit did not make any adjustments to rate base. Instead the matter was referred to staff for its recommendation.

Capitalized Labor Costs (1990-1994) The Audit proposed removing capitalized labor additions to water and wastewater UPIS from 1990 through 1994 in the amounts of \$225,810 for water and \$141,979 for wastewater as unsupported with time cards or spreadsheet analysis. The capitalized labor was for the construction of water distribution and wastewater collections systems in SC South by the developer-owner in conjunction with new home construction.

The joint applicants replied that the disallowed labor costs occurred during a period when the developer-owner of the utility was constructing entire neighborhoods, and not utility additions in isolation. While the utility was unable to locate specific supporting documentation, the joint applicants claim the amounts

for capitalized labor are reflected on a monthly basis in the general ledgers. Since these amounts change from month-to-month, the joint applicants conclude that there were criteria established and followed for capitalizing labor costs. In addition, the joint applicants indicate that these amounts are recorded on Spruce Creek's corporate income tax returns as being depreciated.

Further, the joint applicants' consulting accountant recalls meetings held with Spruce Creek to discuss labor capitalization issues and, as such, believes the supporting documentation has just been misplaced. The joint applicants also note that capitalized labor recorded on the books during the period of 1990 through 1994 amounted to 18.86% of total construction costs and that there was no charge for capitalized overhead. Citing Florida Water's current overhead charge of approximately 30%, the joint applicants believe that the amounts recorded on the utility's books for capitalized labor do not appear to be excessive.

Staff's review of the utility's federal tax returns for 1990 through 1994 indicates that essentially the same UPIS was reported on both the tax returns and the utility's annual reports. In addition, the tax returns do not reflect any utility plant written off to cost of goods sold. Staff believes these facts, in addition to the supporting documentation provided by the utility, provides a reasonable basis upon which to accept the capitalized labor additions to water and wastewater UPIS from 1990 through 1994 as recorded on the utility's books. Therefore, staff recommends that no adjustments be made to remove capitalized labor additions for 1990 through 1994.

Plant and Lines (1996) The Audit proposed removing \$330,997 of 1996 wastewater UPIS for SC Preserve as unsupported. The work corresponded to the development of initial plant and lines for SC Preserve in conjunction with the territory amendment approved by the Commission in Order No. PSC-96-0958-FOF-WS, issued July 24, 1996, in Docket No. 960380-WS.

The joint applicants believe that disallowing such a significant portion of wastewater plant construction costs is neither fair nor equitable. As a result, the joint applicants spent considerable time attempting to locate additional documentation to support the disallowed amount.

As a result, the joint applicants were able to locate a spreadsheet and copies of invoices totaling \$35,013.88 that the Auditor did not have an opportunity to review. The remainder of the additional documentation includes 10 separate accounting records which appear to support the existence of invoices which can not be located. These records included journal entries, federal tax returns, and accounting reports detailing activities which reflect the amount of UPIS recorded by the utility.

Staff's review of Spruce Creek's Florida corporation income tax return for 1996 indicates essentially the same UPIS as that reported on the utility's 1996 annual report. In addition, the tax returns do not reflect a write off of any utility plant to cost of goods sold. Staff believes these facts, in addition to the supporting documentation provided by the utility, provides a reasonable basis upon which to accept the amount of 1996 UPIS for SC Preserve as recorded on the utility's books. Therefore, staff recommends that no adjustments be made to remove 1996 SC Preserve UPIS as unsupported.

1997 to 2000 Water and Wastewater Mains The utility records at the time of transfer included \$1,973,472 in water transmission mains and \$2,504,468 in wastewater gravity mains. However, the Audit indicated that the utility could not provide any supporting documentation for \$1,198,138 in water transmission mains and \$1,607,452 in wastewater gravity mains added during the period of 1997 through 2000 for a total amount of unsupported mains of \$2,805,590. As noted in the Case Background, there was a transfer of majority organizational control in 1997 to Del Webb. The unsupported mains represents the utility infrastructure that was constructed by Del Webb and then sold to the utility based on the number of completed single family residential lots developed during each phase of construction. During the period 1997 through 2000, the number of developed lots totaled 1,248. Therefore, the \$2,805,950 for unsupported mains represents an approximate total cost per lot of \$2,248 (\$960 for water and \$1,288 for wastewater).

The joint applicants indicated that the lack of documentation identifying the specific costs of the additions sold to the utility by the related development company was due to several reasons including, again, the fact that the development company constructed entire neighborhoods, not just the water and wastewater facilities in isolation. The joint applicants included the following exhibits

to support the yearly additions for the water and wastewater main costs:

- A cost study performed by the consulting engineer in support of \$3,421 total infrastructure costs per lot.
- Spruce Creek's Schedule 4562 from its 1997 Federal Income Tax Returns which reflects 20-year property additions of \$1,142,068. The joint applicants note that this amount approximates the \$1,170,215 in unsupported mains 1997.
- A spreadsheet which compares the Audit amount of \$1,635,375 in unsupported lines for the period 1998 through June 30, 2000, with Del Webb's reported \$1,709,819 in depreciable lines for the same period.
- The Depreciable Asset Additions tax work papers of Del Webb Corporation, parent of Del Webb, which was part of the consolidated filing tax returns for the period 1998 through June 30, 2000. Since the actual tax returns are consolidated, the utility information is not discernable. However, the joint applicants claim that the work papers represent utility information, only, and totaled \$1,709,819 verses the Audit amount of \$1,635,375.

Staff's review the utility's federal tax return for 1997 through 2000 indicates essentially the same UPIS as reported on the utility's annual reports and the utility did not write off any utility plant to cost of goods sold. In addition, staff believes that the \$2,248 per lot the utility paid to the developer is a reasonable cost for the construction of water and wastewater mains. Staff believes these facts, along with the supporting documentation provided by the utility, provides a reasonable basis upon which to accept the amount of UPIS recorded on the utility's books. Therefore, staff recommends that no adjustments be made to remove water and wastewater mains from UPIS for 1997 through 2000 as unsupported.

Based on all the above, staff recommends that total UPIS of \$3,901,668 for water and \$5,230,315 for wastewater be included in rate base as of June 30, 2000.

Accumulated Depreciation The utility records indicated balances for accumulated depreciation at the time of transfer of

(\$635,155) for water and (\$497,045) for wastewater. The Audit recommended balances for accumulated depreciation at the time of transfer of (\$438,161) for water and (\$456,084) for wastewater as a result of the following adjustments:

Water Accumulated Depreciation	
per utility	\$(635,155)
A) Remove irrigation well	3,047
B) Retire replaced well pumps	13,153
C) Retire propane gas tank	608
D) Retire abandoned 10-inch well	10,504
E) Reclassify additions to wastewater UPIS	51,160
F) Remove unsupported capitalized labor	56,581
H) Correct errors in depreciation rates	<u>61,942</u>
Total Water Accumulated Depreciation	
per Audit	<u>\$(438,161)</u>
Wastewater Accumulated Depreciation	
per utility	\$(497,045)
G) Remove unsupported UPIS adjustments	39,974
E) Reclassify additions to wastewater UPIS	(32,158)
F) Remove unsupported capitalized labor	28,025
H) Correct errors in depreciation rates	<u>5,120</u>
Total Wastewater Accumulated	
Depreciation per Audit	<u>\$(456,084)</u>

In their response to the Audit, the joint applicants disagreed with the adjustments to accumulated depreciation for the removal of the well and pumps and the removal of accumulated depreciation related to capitalized labor costs and unsupported UPIS.

The Audit proposed removing the accumulated depreciation associated with the removal of the 4-inch irrigation well and the replacement of the two 40-horse power pumps because the assets were replaced within a few years of installation. When assets are replaced that quickly, there is the presumption that the purchase was not a prudent investment and the assets and associated accumulated depreciation are removed from the books.

The joint applicants claim that accumulated depreciation should be reduced by the amount of the asset being retired or replaced (\$5,540 for the well and \$26,710 for the pumps.) The joint applicants' response is based on the way assets are normally retired pursuant to the National Association of Regulatory Utility

Commissions' (NARUC) Uniform System of Accounts which assumes that the asset has been utilized for the expected life-time. According to NARUC, when an asset is retired, the cost of the asset is removed from the asset account and accumulated depreciation is reduced by that amount. Thus, the cost of the asset remains in rate base.

However, in these instances, the assets are not being retired but are being removed from rate base. The irrigation well is not a utility asset. Further, staff recommends that, because the two pumps, which normally have useful life of approximately 20 years, were replaced within 3 to 4 years of installation, the purchases were not prudent investments. Staff recommends that the adjustments to accumulated depreciation associated with the removal of the well and pumps from rate base be recorded as \$3,047 and \$13,153, respectively.

In addition, if the Commission accepts staff's recommendations that no adjustments be made to remove capitalized labor and unsupported UPIS from rate base, then staff recommends that no adjustments be made to the accumulated depreciation.

Staff recommends that accumulated depreciation of (\$494,741) for water and (\$524,083) for wastewater be included in rate base as of June 30, 2000.

CIAC and Accumulated Amortization of CIAC The utility records indicated balances for CIAC at the time of transfer as (\$2,969,890) for water and (\$2,579,500) for wastewater. In addition, the utility records indicated balances for accumulated amortization of CIAC at the time of transfer as \$468,110 for water and \$244,646 for wastewater. The Audit recommended balances for CIAC at the time of the transfer of (\$3,492,510) for water and (\$2,656,100) for wastewater and balances for accumulated amortization of CIAC of \$470,911 for water and \$327,614 for wastewater. The Audit concluded that the understated water and wastewater CIAC amounts were the result of incorrect calculations of service availability charges.

The joint applicants claim that the company realized they were not collecting correct service availability charges in 1995 and that the payments of (\$558,990) and (\$76,600) recorded that year were catch-up payments by the developer for underpayment of tariff

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rates from 1989 through 1994, not additional CIAC related to a specific developer's agreement.

Staff is persuaded that, what the audit perceived as incorrect calculations of service availability charges, were catch up payments made by the developer to correct prior year tariff underpayments. Therefore, no adjustment should be made to CIAC or Accumulated Amortization of CIAC. Staff recommends that CIAC of (\$2,969,890) for water and (\$2,579,500) for wastewater and accumulated amortization of \$468,110 for water and \$244,646 for wastewater be included in rate base as of June 30, 2000.

Conclusion Based all the above, staff recommends that rate base for transfer purposes be established as of June 30, 2000, at \$912,054 for water and \$2,480,839 for wastewater. Schedule 1 shows the calculation of water rate base and Schedule 3 shows the calculation of wastewater rate base. The adjustments to water rate base are shown on Schedule 2 and the adjustments to wastewater rate base are shown on Schedule 4. Staff notes that rate base for transfer purposes does not include the normal rate making calculations of used and useful adjustments or working capital.

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SCHEDULE 1

SPRUCE CREEK SOUTH UTILITIES, INC.
 WATER RATE BASE
 AS OF JUNE 30, 2000

<u>DESCRIPTION</u>	<u>PER UTILITY</u>	<u>STAFF'S ADJUSTMENT</u>	<u>STAFF'S RECOMMENDATION</u>
UTILITY PLANT-IN-SERVICE	\$4,320,205	\$(418,537)	A \$ 3,901,668
LAND & LAND RIGHTS	114,328	(107,421)	B 6,907
CONTRIBUTIONS-IN-AID-OF- CONSTRUCTION (CIAC)	(2,969,890)	(0)	(2,969,890)
ACCUMULATED DEPRECIATION	(635,155)	140,414	C (494,741)
AMORTIZATION OF CIAC	<u>468,110</u>	<u>0</u>	<u>468,110</u>
WATER RATE BASE	<u>\$1,297,598</u>	<u>\$(385,544)</u>	<u>\$ 912,054</u>

SCHEDULE 2

SPRUCE CREEK SOUTH UTILITIES, INC.
SCHEDULE OF WATER RATE BASE ADJUSTMENTS

<u>EXPLANATION</u>	<u>ADJUSTMENT</u>
A Utility Plant in Service	
1) To remove non utility well	\$(5,540)
2) To remove well pumps	(26,710)
3) To retire propane gas tank	(608)
4) To retire abandoned well	(10,504)
5) To reclassify wastewater UPIS	<u>(375,175)</u>
Total	(418,537)
B Land and Land Rights	
1) To correct the balances for land	(107,421)
C Accumulated Depreciation	
1) To remove non utility well	3,047
2) To remove well pumps	13,153
3) To retire propane gas tank	608
4) To retire abandoned well	10,504
5) To reclassify wastewater UPIS	51,160
6) To correct errors in depreciation	<u>61,942</u>
Total	140,414
TOTAL ADJUSTMENT	<u>\$(385,545)</u>

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SCHEDULE 3

SPRUCE CREEK SOUTH UTILITIES, INC.
 WASTEWATER RATE BASE
 AS OF JUNE 30, 2000

<u>DESCRIPTION</u>	<u>PER UTILITY</u>	<u>STAFF'S ADJUSTMENTS</u>	<u>STAFF'S RECOMMENDATION</u>
UTILITY PLANT-IN-SERVICE	\$4,855,140	\$ 375,175	A \$ 5,230,315
LAND & LAND RIGHTS	7,600	101,861	B 109,461
CONTRIBUTIONS-IN-AID-OF- CONSTRUCTION (CIAC)	(2,579,500)	(0)	(2,579,500)
ACCUMULATED DEPRECIATION	(497,045)	(26,948)	C (524,083)
AMORTIZATION OF CIAC	<u>244,646</u>	<u>0</u>	<u>244,646</u>
WASTEWATER RATE BASE	<u>\$2,030,841</u>	<u>\$ 449,998</u>	<u>\$ 2,480,839</u>

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SCHEDULE 4

SPRUCE CREEK SOUTH UTILITIES, INC.
SCHEDULE OF WASTEWATER RATE BASE ADJUSTMENTS

	<u>EXPLANATION</u>	<u>ADJUSTMENT</u>
A	Utility Plant in Service	
1)	To reclassify wastewater UPIS	\$ 375,175
B	Land and Land Rights	
1)	To correct the balances for land	101,861
C	Accumulated Depreciation	
1)	To reclassify wastewater UPIS	32,158
2)	To correct errors in depreciation	<u>(5,120)</u>
	Total	(27,038)
	TOTAL ADJUSTMENT	<u>\$ 449,998</u>

ISSUE 3: Should deferred debits for invested taxes on CIAC be added to the calculation of rate base for transfer purposes?

RECOMMENDATION: No. Invested CIAC taxes should not be added to rate base. (C. ROMIG, BRADY)

STAFF ANALYSIS: As noted in Issue 1, the Asset Purchase Agreement provides for a purchase price adjustment (Tax Adjustment). However, the Tax Adjustment is dependent upon a determination by the Commission regarding whether the net debit deferred taxes associated with Spruce Creek's payment of taxes on CIAC should be included in the net book value of the utility.

Effective January 1, 1987, Section 118(b) of the Internal Revenue Code was repealed by the Tax Reform Act of 1986, making CIAC taxable income for federal tax purposes. Although the Commission authorized certain utilities to collect a tax gross-up to pay for the tax liability resulting from the receipt of CIAC, Spruce Creek never applied for the gross-up and paid the income tax liability from corporate funds until it became an S Corporation on January 1, 1996, and no longer had an income tax liability.

Spruce Creek's books reflect \$823,364 in net deferred taxes associated with income taxes previously paid on CIAC received by the utility through December 31, 1995. This amount is also identified in the schedule of Year End Rate Base contained in its 1999 Annual Report filed with the Commission, under the category of "Invested CIAC." Through subsequent amortization, this amount was reduced to \$808,881 as of the time of transfer on June 30, 2000.

Because Spruce Creek used its own funds to pay taxes on CIAC, it believes that the net debit deferred taxes should be recognized as an investment in CIAC. Moreover, it is Spruce Creek's position that the payment of taxes on CIAC was investment needed to make Spruce Creek's property used and useful and absent payment of the taxes, Spruce Creek's property could have been subject to IRS liens and possible confiscation. Accordingly, the joint applicants have requested that the Commission determine that \$461,062 for water and \$347,819 for wastewater for miscellaneous deferred debits associated with invested CIAC taxes be included in the net book value of the utility.

Staff does not believe that the Commission should approve the \$808,881 Tax Adjustment. As stated above, the requested \$808,881

adjustment is to recognize Spruce Creek's investment in income taxes that resulted from Spruce Creek using its own funds to pay the income taxes on CIAC. When Spruce Creek received the contributed assets, it would have reported the contribution as plant and income for tax purposes, thereby creating tax assets with a tax basis equal to the contributions and the approximate \$808,881 debit deferred tax. For book purposes, the asset would have been recorded at a net cost of zero. Therefore, at the time of the sale, if the assets are sold for their book value, Florida Water is paying zero for those assets, they are recorded as zero on Spruce Creek's books and there is no book gain or loss to Spruce Creek. However, for tax purposes, Spruce Creek has a taxable loss in the amount of the tax basis remaining on the date of the sale. In this manner, through its taxable loss, Spruce Creek recoups its investment in taxes and the debit deferred tax is "turned around."

If the Commission were to approve the inclusion of the \$808,881 deferred debit in the net book value of the utility and Florida Water were to pay Spruce Creek the additional funds, Spruce Creek would have an \$808,331 gain for book and tax. It would have recouped its taxes through the tax loss and have an \$808,331 taxable gain. Florida Water would have an \$808,331 asset for book and tax purposes. Staff believes that the Commission's recognition of the deferred debit in the sales price, thereby allowing Florida Water to recognize the debit deferred tax in the net book value for book purposes, could be considered equivalent to a positive acquisition adjustment and would circumvent Commission policy on justification of any acquisition adjustment.

Consequently, because staff believes that Spruce Creek will recoup its investment in income taxes in the year it recognizes the sale for tax purposes and because staff believes that an amount paid over and above the net book value of the assets could result in a "disguised" positive acquisition adjustment, staff recommends that the Commission deny the request for the Tax Adjustment of \$808,881.

ISSUE 4: Should a positive acquisition adjustment be approved?

RECOMMENDATION: No, a positive acquisition adjustment should not be included in the calculation of rate base for transfer purposes. (BRADY, CIBULA)

STAFF ANALYSIS: An acquisition adjustment results when the purchase price differs from the original cost calculation adjusted to the time of the acquisition. Assuming the Commission approves staff's recommendations for Issues 2 and 3, the acquisition adjustment resulting from the transfer of Spruce Creek to Florida Water is calculated as follows:

Purchase Price	\$5,500,480
Combined Rate Base As of June 30, 2000	\$3,392,893
Positive Acquisition Adjustment	<u>\$2,107,587</u>

Florida Water is not requesting an acquisition adjustment. Further, in the absence of extraordinary circumstances, it is the practice of this Commission that the purchase of a utility at a premium or discount shall not affect the rate base calculation. There do not appear to be any extraordinary circumstances such that a positive acquisition adjustment should be recommended. The treatment of the acquisition adjustment in this instance is consistent with previous Commission decisions. See Order No. PSC-00-1675-PAA-WS, issued September 19, 2000, in Docket No. 991984-WS; Order No. PSC-00-1659-PAA-WU, issued September 18, 2000, in Docket No. 000334-WU; Order No. PSC-00-1515-PAA-WU, issued August 21, 2000, in Docket No. 000333-WU; and Order No. PSC-00-1389-PAA-WU, issued July 31, 2000, in Docket No. 991001-WU. Staff therefore recommends that a positive acquisition adjustment should not be included in the calculation of rate base.

ISSUE 5: Should the existing rates and charges for Spruce Creek be continued?

RECOMMENDATION: Yes. The existing rates and charges for Spruce Creek should be continued. The tariff sheets reflecting these rates and charges should be effective for services rendered or connections made on or after the stamped approval date. (BRADY)

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

In case of change of ownership or control of a utility which places the operation under a different or new utility, or when its name is changed, 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).

The utility's water rates were established pursuant to Order No. 21340, issued June 6, 1989, in Docket No. 881597-WU. The utility's wastewater rates were established pursuant to Order No. 25331, issued November 13, 1991, in Docket No. 910746-SU. The utility has never applied for an index or pass-through rate adjustment.

In addition to original rates and charges, the utility's existing tariffs include the Commission's standard charges for meter test deposits and miscellaneous services. The utility is authorized to collect customer deposits of \$40.00 for all meter sizes. However, the utility has not yet collected customer deposits. The utility's current rates and charges are as follows:

WATER SERVICE
RESIDENTIAL SERVICE
MONTHLY

Base Facility Charge	
5/8" x 3/4"	\$ 10.16
1"	25.40
1 1/2"	50.80
2"	81.28

Gallage Charge
per 1,000 gallons \$ 1.10

**GENERAL SERVICE
MONTHLY**

Base Facility Charge
5/8" x 3/4" \$ 10.16
1" 25.40
1 1/2" 50.80
2" 81.28
3" 162.56
4" 254.00

Gallage Charge
per 1,000 gallons \$ 1.10

**WASTEWATER SERVICE
RESIDENTIAL SERVICE
MONTHLY**

Base Facility Charge
All meter sizes \$ 6.04

Gallage Charge
per 1,000 gallons \$ 1.36
10,000 maximum

**GENERAL SERVICE
MONTHLY**

Base Facility Charge
5/8" x 3/4" \$ 6.04
1" 15.10
1 1/2" 30.20
2" 48.32
3" 96.64
4" 151.00
6" 302.00

Gallage Charge
per 1,000 gallons \$ 1.63

SERVICE AVAILABILITY CHARGES

	Water	Wastewater
Plant Capacity Charge		
Residential (per ERC) *	\$135.00	\$375.00
All others (per gallon)	0.39	1.67
Main Extension Charge		
Residential (per ERC) *	\$800.00	\$725.00
All others (per gallon)	2.29	3.22
Meter Installation Fee		
5/8" x 3/4"	\$ 75.00	

* Water ERC equals 350 gallons per day.
Wastewater ERC equals 225 gallons per day.

Staff recommends that existing rates and charges for Spruce Creek be continued. The tariff sheets reflecting these rates should be effective for services rendered or connections made on or after the stamped approval date.

ISSUE 6: Should the Assignment and Assumption Agreement by Florida Water of the Irrigation Agreement between Spruce Creek and Spruce Creek Golf Country Club Homeowners' Association, Inc., and the Irrigation Agreement between Spruce Creek and Spruce Creek Preserve Homeowners' Association, Inc., be approved?

RECOMMENDATION: Yes. The terms and conditions of the two Irrigation Agreements are reasonable and the Assignment and Assumption Agreement should be approved. Florida Water should file an irrigation tariff reflecting the applicability, limitations, and terms of payments by December 6, 2001. Florida Water should also be required to impute, as though collected, any revenues associated with the base facility charge which are not billed as a result of the two agreements. (BRADY)

RECOMMENDATION: On June 29, 2000, the date of the transfer, Spruce Creek entered into two Irrigation Agreements. One Irrigation Agreement is with the Spruce Creek Golf & Country Club Homeowners' Association, Inc. (SC Country Club HOA) and the other is with the Spruce Creek Preserve Homeowners' Association, Inc. (SC Preserve HOA). Pursuant to an Assignment and Assumption Agreement also dated June 29, 2000, between Spruce Creek and Florida Water, Florida Water assumed the seller's duties under the two Irrigation Agreements. The joint applicants claim these two Ancillary Agreements are integral to the terms and conditions of the Asset Purchase Agreement and cannot be severed.

The utility currently provides potable water to the single family homes, called villas, within the developments of the SC Country Club HOA and the SC Preserve HOA. Each villa has a separate meter for domestic and irrigation purposes. Having separate meters allows the utility to bill wastewater usage based on domestic water use since water used for irrigation is not returned to the utility's wastewater treatment facilities.

Because the water distributed through both meters is potable water, the utility charges the same base facility charge and usage rates for both meters. The utility directly bills each villa monthly for domestic water and wastewater service. The respective HOAs are billed monthly by the utility for service to the irrigation meters which the HOAs pay out of member dues.

To encourage the sale of villas within the two developments, both the utility and the HOAs have a vested interest in keeping the

monthly dues as low as possible. As a consequence, the two Irrigation Agreements provide for a phase-in of the amount of the monthly base facility charge that the HOAs will pay to the utility beginning July 1, 2000, through June 30, 2005. The phase-in starts with a \$0.00 base facility charge for the first year and then increases \$2.00 every year thereafter. This provision of the Irrigation Agreements will expire on June 30, 2005, at which time the utility will begin to bill the HOAs the full base facility charge of \$10.16 pursuant to its existing residential water service tariff.

The utility will continue to bill the HOAs monthly for payment of the applicable gallonage charges for each irrigation meter within the respective villa developments. However, the utility will provide each HOA with an annual statement on or before March 10th of each year indicating the amount of base facility charge due based on the agreed-upon phase-in schedule. In addition, the Agreement provides that the HOAs will also reimburse the utility for the required RAFs associated with the unbilled base facility charges. The resulting yearly reimbursement of the base facility charge and total required amount of RAFs will be made to the utility on or before April 10th of each year.

In the transfer application, Florida Water specifically recognizes and affirms its obligation to report revenues based on its approved tariffed rates. Therefore, for the period July 1, 2000, through June 30, 2005, Florida Water indicated its intent to impute any revenues associated with the base facility charge not billed or collected. As long as the utility is required to impute the HOA's base facility revenues as though collected, staff believes the provisions of the Irrigation Agreements are reasonable. In addition, since the utility's rates are designed to record the associated RAFs, staff believes that it is also reasonable for the utility to collect that portion of the base facility charge revenues associated with RAFs from the HOAs which will decrease the amount of revenues the utility will need to impute.

Based on the above, staff recommends that the terms and conditions of the two Irrigation Agreements are reasonable and the Assignment and Assumption Agreements should be approved. Florida Water should file an irrigation tariff reflecting the applicability, limitations, and terms of payments by December 6, 2001. Florida Water should also be required to impute as though

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collected any revenues associated with the base facility charge which are not billed as a result of the two agreements.

ISSUE 7: Should the provisions of the Reuse Agreement and the new class of service for effluent water be approved?

RECOMMENDATION: Yes. The terms and conditions of the Reuse Agreement between Florida Water and Del Webb are reasonable and should be approved. A new class of service for effluent water should be approved at the rate of \$0.05 per 1,000 gallons. The tariff sheets for effluent water service should be made effective on or after the stamped approval date. Prior to providing reclaimed water service to any customer other than the Spruce Creek Country Club, the utility should be required to return to the Commission for a determination of the continued appropriateness of the rate for effluent water service. (BRADY, REDEMANN)

RECOMMENDATION: A Reuse Agreement between Florida Water and Del Webb was included with the transfer application for Commission approval. The joint applicants claim this Ancillary Agreement is integral to the terms and conditions of the Asset Purchase Agreement and cannot be severed.

Since effluent service was not yet being provided at the time of the filing, the application indicated that the joint applicants were not seeking approval for a new class of service. Subsequent to the initial filing, Florida Water retrofitted the SC Country Club wastewater treatment plant with reuse water treatment facilities. On April 12, 2001, a reuse water meter was placed into service and an application was filed on April 23, 2001, for approval of a new class of service pursuant to Section 367.091(5), Florida Statutes.

Pursuant to Section 367.091(6), Florida Statutes, the tariff sheet proposed by the utility will become effective within 60 days unless the Commission votes to withhold its consent. In this case, that would have been June 22, 2001. On May 30, 2001, Florida Water filed a waiver of the 60 day effective date so that all the ancillary agreements could be considered at the same time the Commission considers the transfer application.

The terms of the Reuse Agreement state that effluent water service will be provided at the rate of \$0.05 per 1,000 gallons to Del Webb's Spruce Creek Country Club's golf course property within the SC Country Club community. According to the application, the approval of the Reuse Agreement is imperative given the fact that the effluent spray fields were only available to Florida Water for

six months following the purchase date on June 29, 2000. As a consequence, the spray fields are no longer available as a source for effluent disposal.

The anticipated amount of treated effluent needing disposal is 100,000 GPD. Del Webb has agreed to take all of the effluent produced by the SC Country Club wastewater plant for use at the Spruce Creek Country Club's golf course property at the rate of \$0.05 per 1,000 gallons. According to the statement filed by the utility pursuant to Rule 25-9.005(4), Florida Administrative Code, such usage will equate to \$5 of revenues per day. On an annual basis, it is anticipated that the golf course property will use 36,500,000 gallons of effluent water resulting in total revenues of \$1,825.

As noted earlier, the SC Country Club wastewater facility is located in the SJRWMD and is, therefore, in a Water Use Caution Area. The SJRWMD strongly encourages the use of irrigation by processed effluent water whenever possible to offset new withdrawals from the Floridan Aquifer. As such, the permit for the SC Country Club wastewater facility required the plant to be retrofitted with reuse water facilities when usage approached 100,000 GPD. As indicated in Issue 1, SC Country Club's wastewater facilities are processing an average 80,000 GPD, triggering the need for the construction of reuse water facilities.

The rate of \$0.05 per 1,000 gallons for reuse water is a negotiated contract amount between Florida Water and Del Webb based on the mutual benefits to both parties from the Reuse Agreement. The application clarifies that this is not a potable water replacement rate for golf course irrigation but an offset to potential well water withdrawals by the golf course property. Del Webb benefits from securing a relatively inexpensive source for irrigation water for the golf course property. Florida Water benefits by securing a disposal source for the effluent produced by its SC Country Club wastewater facility. Without the Reuse Agreement, Florida Water would have to secure some other means to dispose of the treated effluent which could potentially be very costly.

Based on the above, staff recommends that the terms and conditions of the Reuse Agreement between Florida Water and Del Webb are reasonable and should be approved. A new class of service for effluent water should be approved at the rate of \$0.05 per

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1,000 gallons. Florida Water has filed proposed tariff sheets for effluent water service which reflect these rates and charges. The tariff sheets should be made effective on or after the stamped approval date. Prior to providing reclaimed water service to any customer other than the Spruce Creek Country Club, the utility should be required to return to the Commission for a determination of the continued appropriateness of the rate for effluent water service.

ISSUE 8: Should the Futures Agreement be approved?

RECOMMENDATION: Yes, the Futures Agreement should be approved. The utility should be required to record the periodic futures payments and the one-time lump sum payment, if applicable, as the cost of the water and wastewater lines. In addition, Florida Water should require the developer to provide invoices representing actual construction costs as payments are made. (BRADY)

RECOMMENDATION: A Futures Agreement between Florida Water and Del Webb was included with the transfer application for Commission approval. The joint applicants claim this Ancillary Agreement is integral to the terms and conditions of the Asset Purchase Agreement and cannot be severed.

Along with the Futures Agreement was a related Developer's Agreement. Certain portions of the Developer's Agreement will be described within the context of staff's analysis of the Futures Agreement, below. However, with respect to approval of the Developer's Agreement, pursuant to Rule 25-30.550(1), Florida Administrative Code:

A copy of each developer's agreement shall be filed with the Commission within 30 days of execution. Upon filing, the agreement shall be deemed to be approved under the utility's existing service availability policy, unless the Commission gives notice of intent to disapprove within 30 days.

Since the transfer application was filed on August 23, 2000, 30 days have elapsed and the Developer's Agreement is deemed approved pursuant to Rule 25-30.550(1), Florida Administrative Code. For informational purposes, the Developer's Agreement appeared to be a standard agreement detailing the utility's requirements for the design, construction, and operation of on-site facilities; easements; rates, fees and charges; allocation and provision of water and wastewater service capacity; and customers installations.

Prior to the instant transfer, the utility and developer were related entities. Initially the utility was owned by the developer known as Spruce Creek South Development of Ocala, Inc. Subsequent to the December 1997 transfer of majority organizational control, the utility became a subsidiary of the developer known as Spruce Creek Communities, Inc. (Del Webb). Both developers constructed

the utility's lines which were then recorded on the utility's books. As described in Issue 2, the cost of the lines have been verified through an audit of the utility's books along with a subsequent review of tax records.

The utility's existing service availability policy indicates that the utility is responsible for installation of all plant and lines, receiving no property contributions from individuals or developers. However, in order to install on-site facilities in an orderly and economic fashion, Del Webb and Florida Water determined that Del Webb should construct the on-site facilities in conjunction with the development and engineering of future lots and tracts. Accordingly, the Developer's Agreement designates Del Webb as the utility's exclusive contractor to design and construct the on-site facilities on behalf of the utility.

The Futures Agreement provides the terms and conditions by which Florida Water intends to reimburse Del Webb, as Florida Water's exclusive contractor, for the construction of the transmission, distribution, and collection systems and all other infrastructure (excluding water well sites and wastewater treatment plants) necessary for the utility to extend service to the developer's properties at the SC Country Club and SC Preserve developments. Since SC South is essentially at build-out, it is not affected by the Futures Agreement.

According to the Developer's Agreement, the parties acknowledged that the SC Country Club consisted of 2,200 proposed units (ERCs), with the intent to add an additional 1,000 units, and that the SC Preserve consisted of 667 proposed units for a total of 3,867 proposed units at build-out for both communities. However, as is also acknowledged in the Developer's Agreement, there is no guarantee on the part of the developer that a certain number of units will be built or sold at either development. According to supplemental information provided by the joint applicants, at the beginning of the term of the Futures Agreement, on October 1, 1999, there were 2,798 lots remaining to be closed at the SC Country Club and SC Preserve developments.

As payment for the transmission, distribution, and collection lines, Florida Water has agreed to monthly futures payments to Del Webb for each equivalent residential connection (ERC) made to the utility's system on or after October 1, 1999 through June 30, 2005, based on the following periodic schedule:

<u>Period</u>	<u>Payment Per ERC*</u>
10/01/99 to 06/30/02	\$1,000
07/01/02 to 06/30/03	\$1,500
07/01/03 to 06/30/05	\$2,500

* For purposes of these agreements, the parties have agreed that an ERC is equivalent to 350 gallons of water per day.

In addition, the Futures Agreement provides for a lump-sum payment by Florida Water to Del Webb in the amount of \$1,500,000 within 15 days from the date that 3,300 ERCs have been connected to the utility's systems at the SC Country Club and the SC Preserve, combined, as long as that date is on or before June 30, 2005. For purposes of determining when the payment is due, the Futures Agreement acknowledges that the 3,300 residential connections contemplated includes all residential units connected to the utility's systems at the SC County Club and SC Preserve, including connections made prior to the date of the Futures Agreement.

Florida Water has indicated that it intends to book the futures payments, including the lump-sum payment, as the actual construction cost of the lines. Florida Water has also indicated its willingness to have Del Webb provide invoices supporting actual construction costs for comparison with the cost of the lines booked pursuant to the Futures Agreement. For this purpose, staff would note that the Developer's Agreement has a provision which requires Del Webb to submit to Florida Water all documents and instruments necessary for the surrender of on-site facilities in a form acceptable to the utility.

In attempting to evaluate the impact of the Futures Agreement, the total anticipated futures payments plus the one-time lump sum payment need to be compared against historical construction costs and the utility's approved service availability charges. To calculate the total futures payment, staff has assumed even growth of ERCs per year for 6 years. Staff has also assumed that Del Webb will have 3,300 ERCs connected in SC Country Club and SC Preserve on or before June 30, 2005, to qualify for the lump sum payment. Given these conditions, the total estimated payment for lines under the Futures Agreement would be \$5,930,500 as follows:

<u>Payment Period</u>	<u>ERCS</u>	<u>Payment Per ERC</u>	<u>Resulting UPIS</u>
10/01/99 - 06/30/02	1,399*	\$1,000	\$1,399,000
07/01/02 - 06/30/03	466	\$1,500	\$ 699,000
07/01/03 - 06/30/05	<u>933</u>	\$2,500	<u>\$2,332,500</u>
Subtotal	2,798		\$4,430,500
Lump Sum			<u>\$1,500,000</u>
Total			<u>\$5,930,500</u>

* Includes the 365 lots closed between June 30, 2000 and September 1, 2001.

Dividing by 2,798 ERCs would result in a proposed average cost per ERC of \$2,120 for construction of water and wastewater lines. In comparison, as reflected in the Audit, during the period from 1997-2000, when Del Webb constructed the water and wastewater lines for the utility, Spruce Creek paid Del Webb an average of \$2,248 per ERC (\$960 water and \$1,288 wastewater).

Staff believes that the proposed payment schedule for water and wastewater lines appears reasonable compared to the average historical cost of lines for this utility and other developments of similar size in the area. In addition, the Futures Agreement provides an incentive for Del Webb to complete the development of the SC Country Club and SC Preserve on a timely basis which will benefit Florida Water in a higher customer base. Staff also believes that Del Webb has the experience and ability to meet the Futures Agreement's construction time frame at a reasonable cost. Finally, staff believes that the Futures Agreement represents an arms length transaction between non-affiliated parties which has the potential to benefit the customers.

For the above reasons, staff believes that the Futures Agreement should be approved. The utility should be required to record the periodic futures payments and the one-time lump sum payment, if applicable, as the cost of the water and wastewater lines. In addition, Florida Water should require the developer to provide invoices representing the actual construction costs as payments are made.

DOCKET NO. 001122-WS
DATE: OCTOBER 25, 2001

ISSUE 9: Should the docket be closed?

RECOMMENDATION: No. If no timely protest is received to the proposed agency action or tariff issues, a Consummating Order should be issued upon the expiration of the protest period. If a protest to the tariff for the new class of service is timely filed, the tariff should remain in effect pending resolution of the protest. This docket should remain open to allow the utility to file the irrigation tariff required in Issue 6. Staff should be given the authority to administratively close this docket upon verification that the tariff has been filed. (CIBULA)

RECOMMENDATION: If no timely protest is received to the proposed agency action or tariff issues, a Consummating Order should be issued upon the expiration of the protest period. If a protest to the tariff for the new class of service is timely filed, the tariff should remain in effect pending resolution of the protest. This docket should remain open to allow the utility to file the irrigation tariff required in Issue 6. Staff should be given the authority to administratively close this docket upon the verification that the tariff has been filed.

TERRITORY DESCRIPTION

SPRUCE CREEK GOLF & COUNTRY CLUB
MARION COUNTY, FLORIDA
WATER AND WASTEWATER SERVICE

TOWNSHIP 16 SOUTH, RANGE 23 EAST, MARION COUNTY, FLORIDA

SECTION 33

The Northeast 1/4 of the Southeast 1/4 lying South of U.S. Highway No. 441; and all of the Southeast 1/4 of the Southeast 1/4 of Section 33.

SECTION 34

The West 1/4 of the Southwest 1/4 lying South of U.S. Highway No. 441 and that portion of the East 1/2 of the Southwest 1/4 of the Southwest 1/4, Section 34, described as follows:

Begin at the intersection of the southerly right-of-way line of Southeast County Highway C-25 (100 feet wide) with the east line of aforesaid East 1/2 of the Southwest 1/4 of the Southwest 1/4; thence N 70° 50' 18" W along said right-of-way line 351.39 feet; thence departing said right-of-way line S 00° 01' 36" W, 240.00 feet; thence N 89° 58' 24" W, 135.00 feet; thence N 00° 01' 36" E, 251.70 feet to the point of the curve concave to the southeast with a radius of 25.00 feet and a central angle of 109° 08' 06" and a chord bearing and distance of N 54° 35' 39" E 40.74 feet; having the distance of the curve 47.62 feet, said point being on the aforesaid south right-of-way-line; thence along said right-of-way line run N 70° 50' 18" W, 240.87 feet to the west line of aforesaid East 1/2 of the Southwest 1/4 of the Southwest 1/4; thence along said west line run southerly to the Southwest corner of said East 1/2 of Southwest 1/4 of Southwest 1/4; thence easterly to the Southeast corner of said East 1/2 of the Southwest 1/4 of Southwest 1/4; thence along the east line thereof run northerly to the Point of Beginning.

TOWNSHIP 17 SOUTH, RANGE 23 EAST, MARION COUNTY, FLORIDA

SECTION 3

The South 1/2 of the Northwest 1/4 of Section 3; and the West 1/2 of the Southwest 1/4 of the Northeast 1/4 of Section 3; and the West 1/2 of the Southeast 1/4 of the Northeast 1/4 of Section 3; and the South 1/2 of Section 3, except the East 30 feet thereof; and the West 1/2 of Northeast 1/4 of Northwest 1/4 of Section 3; and the Northwest 1/4 of the Northwest 1/4 of Section 3.

SECTION 9

The East 1/2 of Section 9; and the Southeast 1/4 of the Northeast 1/4 of the Southeast 1/4 of Section 9; and that part of the South 1/2 of the Southeast 1/4 of the Southwest 1/4 of said Section 9 lying East of U.S. Highways 441 and 27 (200 feet wide).

SECTION 10

The North 1/2 of said Section 10, except the East 315 feet thereof; and the North 1/2 of the South 1/2 of said Section 10, except the East 315 feet thereof; and the Southwest 1/4 of the Southeast 1/4 of said Section 10, except the South 40 feet thereof; and the North 1/2 of the South 1/2 of the Southwest 1/4 of said Section 10; and the Southeast 1/4 of the Southwest 1/4 of the Southwest 1/4 of said Section 10; and the East 1/2 of Southwest 1/4 of Southwest 1/4 of said Section 10, together with the following property described as:

Commencing at the Southwest corner of the East 1/2 of Southwest 1/4 of Southwest 1/4 of the Southwest 1/4 of said Section 10, thence West 198.79 feet, thence North 25.00 feet, thence East 198.79 feet, thence South 25.00 feet to the Point of Beginning.

And,

The Southeast 1/4 of the Southeast 1/4 of the Southwest 1/4, except the North 329.43 feet thereof of said Section 10; and the North 65.88 feet of the South 199.57 feet of the North 463.07 feet of the Southeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of said Section 10; and the North 263.50 feet of the Southeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of said Section 10; and the East

20.00 feet of the Southeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of said Section 10, except the North 263.50 feet.

SECTION 16

That part of the North 1/2 of the North 1/2 of said Section 16 lying East of said Highways 441 and 27; and the South 1/2 of the Northeast 1/4 of the Northwest 1/4 of said Section 16, except those lands lying within the right-of-way of State Road 500 - U.S. 441 (200 feet wide).

**SPRUCE CREEK SOUTH
MARION AND SUMTER COUNTIES, FLORIDA
WATER AND WASTEWATER SERVICE**

TOWNSHIP 17 SOUTH, RANGE 23 EAST, MARION COUNTY, FLORIDA

SECTION 34

The South 3/4 of the East 1/2 of said Section 34; 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.

SECTION 35

That part of the East 1/2 of said Section 35 lying Southwest of U.S. Highway 441/27; and the Southwest 1/4 of said Section 35.

SECTION 36

That part of Section 36 lying Southwest of U.S. Highway 441/27 (200 feet wide).

TOWNSHIP 18 SOUTH, RANGE 23 EAST, SUMTER COUNTY, FLORIDA

SECTION 1 (Oakland Hills Professional Center)

Commence at the Southwest corner of the Northeast 1/4 of the Northeast 1/4 of the Northwest 1/4 of Section 1; thence N 88° 27' 07" E, along the South line of the Northeast 1/4 of the Northeast 1/4 of the Northwest 1/4 of said Section 1, a distance of 175.33 feet to a point on the Southwesterly right-of-way line of U.S.

Highway 441/27 (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 1,665.10 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 441/27; 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 12.74 acres, more or less.

SECTION 2

The Northwest 1/4 of the Northeast 1/4 of said Section 2; 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.

**SPRUCE CREEK PRESERVE
MARION COUNTY, FLORIDA
WATER AND WASTEWATER SERVICE**

TOWNSHIP 17 SOUTH, RANGE 20 EAST, MARION COUNTY, FLORIDA

SECTION 9

That portion of said Section 9 lying East of State Road No. 200, less and except the East 50.00 feet of the North 1,520.00 feet thereof.

SECTION 16

The Northeast 1/4 of the Northeast 1/4 of Section 16; and the Northeast 1/4 of the Northwest 1/4 of said Section 16, less and except that portion conveyed in the right-of-way deeds recorded in

DOCKET NO. 001122-WS
DATE: OCTOBER 25, 2001

ATTACHMENT A

Official Records Book 1,273 at Page 1,293 and Official Records Book 798 at Page 32 of the Public Records of Marion County, Florida.

Containing 416.01 acres, more or less.

ISSUE 1: Should the transfer of the water and wastewater facilities from Spruce Creek to Florida Water be approved?

ISSUE 2: What is the rate base for Spruce Creek's water and wastewater systems at the time of the transfer?

ISSUE 3: Should deferred debits for invested taxes on CIAC be added to the calculation of rate base for transfer purposes?

ISSUE 4: Should a positive acquisition adjustment be approved?

ISSUE 5: Should the existing rates and charges for Spruce Creek be continued?

ISSUE 6: Should the Assignment and Assumption Agreement by Florida Water of the special Irrigation Agreement between Spruce Creek and Spruce Creek Golf Country Club Homeowners' Association, Inc., and the special Irrigation Agreement between Spruce Creek and Spruce Creek Preserve Homeowners' Association, Inc., be approved?

ISSUE 7: Should the provisions of the Reuse Agreement and the new class of service for effluent water be approved?

ISSUE 8: Should the Futures Agreement be approved?

ISSUE 9: Should the docket be closed?