

State of Florida



Public Service Commission
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COMMISSION CLERK

DATE: JANUARY 10, 2002

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

FROM: OFFICE OF GENERAL COUNSEL (CIBULA) *SMC, Ndeet, SPR, PB, PD, 1/2*
DIVISION OF ECONOMIC REGULATION (BRADY, RIEGER)

RE: DOCKET NO. 980876-WS - APPLICATION FOR CERTIFICATES TO
OPERATE A WATER AND WASTEWATER UTILITY IN MARION COUNTY BY
OCALA SPRINGS UTILITIES INC.
COUNTY: MARION

AGENDA: 01/22/02 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\APP\WP\980876.RCM

CASE BACKGROUND

Ocala Springs Utilities, Inc. (OSUI or utility) is a wholly-owned subsidiary of Avatar Utilities, Inc. (Avatar Utilities), which is a wholly-owned subsidiary of Avatar Holdings, Inc. (Avatar Holdings). OSUI was established by Avatar Utilities for the specific purpose of providing water and wastewater service to an undeveloped tract of land consisting of 4,666 acres known as Ocala Springs. The entire tract of land is owned by another wholly-owned subsidiary of Avatar Holdings, Avatar Properties, Inc. (Avatar Properties or developer). Based on the magnitude of Ocala Springs' acreage, it is expected that OSUI will be a Class A water and wastewater utility at build-out.

On July 13, 1998, OSUI submitted an application for original certificates to operate a water and wastewater utility in Marion County along with a petition requesting a temporary variance from

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or a temporary waiver of Rules 25-30.033(1)(h), (j), (m), (o), (r), (t), (u), (v), (w), (2) and (3) and 25-30.433(10), Florida Administrative Code. On July 31, 1998, the utility filed an amended petition requesting a temporary variance from or a temporary waiver of Rules 25-30.033(1)(k) and (4), Florida Administrative Code, in addition to the above-mentioned rules.

By Order No. PSC-98-1374-PCO-WS, issued October 12, 1998, the Commission granted OSUI's amended petition for the temporary rule waivers. Pursuant to that Order, OSUI was required to submit evidence of ownership of the plant sites and detailed system maps when it filed its applications for construction permits with the St. Johns River Water Management District (WMD) and the Florida Department of Environmental Protection (DEP). According to OSUI's revised application, this was scheduled to occur by July 1, 1999, and the utility stated that construction would commence by January 1, 2000. Order No. PSC-98-1374-PCO-WS also required the utility to submit a separate application in this docket for initial rates and charges within 24 months of a Commission order granting original certificates.

By Order No. PSC-98-1644-FOF-WS, issued December 7, 1998, OSUI's application for original certificates was approved, and Certificates Nos. 604-W and 520-S were issued to the utility. Order No. PSC-98-1644-FOF-WS reiterated that the utility was required to file an application to establish initial rates and charges within 24 months of the Order, which made the filing deadline December 7, 2000.

On August 10, 2000, staff sent a data request to the utility, inquiring about the status of OSUI's construction progress. On September 12, 2000, the utility filed its Response to Staff's First Data Request and Request for Extension of Time to File Information Pursuant to Orders Nos. PSC-98-1644-FOF-WS and PSC-98-1374-PCO-WS, requesting an extension of time, until December 7, 2001, to file an application to establish initial rates and charges. On October 11, 2000, the utility filed its Supplemental Response to Staff's First Data Request and Amended Request for Extension of Time. The amended filing provided a more detailed explanation of the status of the utility's construction plans. Also by this filing, the utility requested an extension of time, until February 7, 2002, instead of the December 7, 2001, date set forth in its previous request, to file an application to establish initial rates and charges.

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By Order No. PSC-00-2387-FOF-WS, issued December 13, 2000, the Commission granted the utility's request for extension of time. Pursuant to that Order, the Commission allowed the utility until February 7, 2002, to file an application to establish initial rates and charges for the utility, along with the other supporting information required by Orders Nos. PSC-98-1644-FOF-WS and PSC-98-1374-PC0-WS.

On December 4, 2001, OSUI filed its second Motion for Extension of Time to file the information required by Orders Nos. PSC-98-1644-FOF-WS and PSC-98-1374-PC0-WS. This recommendation addresses whether the Commission should grant the motion to extend the filing date to December 7, 2003. The Commission has jurisdiction to consider this matter pursuant to Sections 367.045 and 120.542, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Ocala Springs Utilities, Inc.'s Motion for Extension of Time?

RECOMMENDATION: Yes. The Commission should grant Ocala Springs Utilities, Inc.'s Motion for Extension of Time. As requested in its motion, the utility should be allowed until December 7, 2003, to file an application to establish initial rates and charges for the utility, along with the other supporting information required by Orders Nos. PSC-98-1644-FOF-WS and PSC-98-1374-PCO-WS. Moreover, the utility should be put on notice that if it fails to file the information required by Orders Nos. PSC-98-1644-FOF-WS and PSC-98-1374-PCO-WS by December 7, 2003, staff will bring a recommendation to the Commission addressing whether certificate revocation proceedings should be initiated pursuant to Section 367.111, Florida Statutes. (CIBULA, BRADY, RIEGER)

STAFF ANALYSIS: As stated in the case background, OSUI filed a Motion for Extension of Time on December 4, 2001. In support of its motion, OSUI states that it has been informed by Avatar Properties that it would not be prudent to proceed with the Ocala Springs development under the prevailing market and economic conditions. OSUI states that, consequently, it is not able to proceed with the permitting and construction of the utility infrastructure for the development at this time.

OSUI sets forth a revised time line for permitting and construction as follows:

Final decision as to type of development (active adult vs. traditional residential)	April 2003
Commencement of replanning and replatting of development with Marion County	April 2003
Major advertising effort begins for the Ocala Springs development	July 2003
Consumptive use permit application submitted to WMD	October 2003
Construction permit application for water and wastewater facilities submitted to DEP	October 2003

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Submit to PSC copies of detailed system maps
and evidence of ownership of plant sites December 7, 2003

File with PSC application to establish
initial water and wastewater rates December 7, 2003

Construction to begin on water and
wastewater facilities March 2004

Thus, OSUI requests that it be allowed until December 7, 2003, to file the information required by Orders Nos. PSC-98-1374-PCO-WS and PSC-98-1644-FOF-WS.

OSUI states that there is no water or wastewater utility service available for the development except through OSUI. OSUI further states that granting the extension of time would be in the public interest because it allows a certificated utility to remain in existence to be ready to serve a proposed development where there is no other utility provider.

Section 120.542, Florida Statutes

In In Re: Application for Original Certificate to Operate Water and Wastewater Utility in Bay County by Dana Utility Corporation, Order No. PSC-00-1376-PCO-WS, issued July 31, 2000, in Docket No. 991632-WS, the Commission addressed the issue of whether to grant an extension of time to file information that was temporarily waived pursuant to Section 120.542, Florida Statutes. In that Order, the Commission found it necessary to address whether the recipient of the temporary waiver is, and will continue to be, in compliance with the rule waiver requirements of Section 120.542, Florida Statutes, when determining whether an extension of time should be granted for the temporary waiver. See Id. at 4.

As discussed in the case background, the Commission granted OSUI a temporary waiver of Rules 25-30.033(1)(h), (j), (k), (m), (o), (r), (t), (u), (v), (w), (2), (3) and (4) and 25-30.433(10), Florida Administrative Code, by Order No. PSC-98-1374-PCO-WS. In granting the temporary waiver, the Commission applied the requirements of Section 120.542(2), Florida Statutes. The Commission found that OSUI met the underlying purpose of Sections 367.031 and 367.045, Florida Statutes, because the utility demonstrated its technical and financial ability to provide service and that there was a need for service in the area. Further, the

Commission found that the utility showed that it would suffer a substantial hardship if all of the provisions of Rule 25-30.033, Florida Administrative Code, were strictly applied because OSUI needed water and wastewater certificates to proceed with its development plans, and initial rates and charges could not be established until the development plans were complete.

The utility's financial and technical ability to provide service has not changed since OSUI was granted the temporary waiver. OSUI's parent company, Avatar Utilities, promises to finance the initial operation of the utility. Further, OSUI, through Avatar Utilities, has the technical ability to operate the utility as Avatar Utilities has been providing water and wastewater service through its subsidiaries since 1956, including its subsidiary Florida Cities Water Company which was regulated by this Commission until it was transferred to a governmental authority in 1999. See Order No. PSC-00-2351-FOF-WS, issued December 7, 2000, in Docket No. 990489-WS.

With respect to whether there is a need for service, the future Ocala Springs development will need water and wastewater service. OSUI states in its motion that there is no water or wastewater utility service available to the proposed Ocala Springs development except by OSUI. Further, there were no protests to OSUI's certificate application when it was noticed in 1998. Moreover, staff contacted the Department of Community Affairs, which stated that its analysis of the application has not changed since 1998. Thus, although the timing for the need for service has been delayed, there will be a need for service in the territory.

With respect to whether the utility still faces a substantial hardship, OSUI continues to contend that the development plans for Ocala Springs are predicated on the assurances and economic feasibility of water and wastewater service which can only be achieved through the creation of a utility entity and the construction of the required water and wastewater infrastructure to serve the development. Although OSUI was granted certificates to serve the Ocala Springs development by Order No. PSC-98-1644-FOF-WS, OSUI continues to face the hardship of needing those certificates in order to proceed with the development plans for Ocala Springs, and initial rates and charges cannot be established until the development plans are complete. Moreover, the utility has shown that it will face a substantial hardship if required to provide the information to establish the utility's rates and

charges within the current filing deadline because of the development delays.

Section 367.111, Florida Statutes

The Commission is authorized, pursuant to Section 367.111, Florida Statutes, to revoke a utility's certificate of authorization. Section 367.111, Florida Statutes, states:

If a utility has not provided service to any part of the area which a utility is authorized to serve, whether or not there has been a demand for such service, within 5 years after the date of authorization for service to such part, such authorization may be reviewed and amended or revoked by the [C]ommission.

The Commission has previously revoked certificates when no service has been provided after five years. See In Re: Revocation by Florida Public Service Commission of St. George Island Utility Company, Ltd., Certificate No. 356-S in Franklin County, Pursuant to Section 367.111(1), Florida Statutes, Order No. 24798, issued July 11, 1991, in Docket No. 900223-SU (revoking utility's wastewater certificate, in part, because the utility had not provided service to its territory after five years); In Re: Monument Utility Company - Revocation of Authority to Provide Service and Cancellation of Certificates Nos. 319-W and 267-S, Order No. 14012, issued January 18, 1985, in Docket No. 840440-WS (canceling utility's certificates because the utility had no facilities, no customers, and had not provided service after five years).

OSUI states that granting its motion will be wholly consistent with Section 367.111, Florida Statutes. OSUI points out that OSUI's application for certificates was granted on December 7, 1998, and thus the utility has been certificated for only three years.

Staff believes that the initiation of revocation proceedings would not be appropriate at this time because five years has not passed since the utility was issued its certificates and the area the utility is being constructed to serve has experienced development delays. Nevertheless, staff further recommends that the utility should be put on notice that if it fails to file the information required by Orders Nos. PSC-98-1644-FOF-WS and PSC-98-

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1374-PCO-WS by December 7, 2003, staff will bring a recommendation to the Commission addressing whether certificate revocation proceedings should be initiated pursuant to Section 367.111, Florida Statutes.

Staff believes that OSUI's request for extension of time is reasonable because the Ocala Springs development has experienced delays and the utility continues to be in compliance with Order No. PSC-98-1374-PCO-WS, which granted the temporary waiver. Thus, staff recommends that OSUI's second Request for Extension of Time should be granted. As requested in its motion, the utility should be allowed until December 7, 2003, to file an application to establish initial rates and charges for the utility, along with the other supporting information required by Orders Nos. PSC-98-1644-FOF-WS and PSC-98-1374-PCO-WS.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open pending completion of the filing requirements by Ocala Springs Utilities, Inc., and the establishment of initial rates and charges for the utility. (CIBULA)

STAFF ANALYSIS: This docket should remain open pending completion of the filing requirements by Ocala Springs Utilities, Inc., and the establishment of initial rates and charges for the utility.