



Public Service Commission

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COMMISSION
CLERK

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DATE: JULY 2, 2003

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

FROM: DIVISION OF ECONOMIC REGULATION (IWIENJIGBA, RIEGER) SOR PD
OFFICE OF THE GENERAL COUNSEL (JAEGER) TJD

RE: DOCKET NO. 030067-WU - APPLICATION FOR APPROVAL OF SPECIAL
SERVICE AVAILABILITY CONTRACT (DEVELOPER AGREEMENT) WITH
AVATAR PROPERTIES INC. AND BULK WATER SERVICE AGREEMENT
WITH FLORIDA GOVERNMENTAL UTILITY AUTHORITY, BY O & S
WATER COMPANY, INC. IN OSCEOLA COUNTY.

DOCKET NO. 030160-WU - APPLICATION FOR AMENDMENT OF
CERTIFICATE NO. 510-W TO EXTEND WATER SERVICE AREA IN
OSCEOLA COUNTY BY O & S WATER COMPANY, INC.
COUNTY: OSCEOLA

AGENDA: 07/15/03 - REGULAR AGENDA - PROPOSED AGENCY ACTION FOR
ISSUES NOS. 1 AND 3 - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\ECR\WP\030067.RCM

CASE BACKGROUND

O & S Water Company, Inc. (O&S or utility) is a Class C utility which provides water service to approximately 185 customers in Osceola County. The utility's 2002 annual report shows an annual operating revenue of \$61,051 and a net operating loss of \$79,221. The utility is in the St. Johns River Water Management District, all of which is considered a water use caution area.

By Order No. 20583, issued January 10, 1989, in Docket No. 870392-WU, the Commission granted the utility Certificate No. 510-W

DOCUMENT NUMBER DATE

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FPSC-COMMISSION CLERK

DATE: July 2, 2003

to provide service to certain territory in Osceola County and established initial rates and charges. The utility's service territory was amended to include additional territory pursuant to Orders Nos. PSC-92-0195-FOF-WU, issued April 13, 1992, and PSC-92-0195A-FOF-WU issued April 22, 1992, in Docket No. 910894-WU.

By Order No. PSC-92-0204-FOF-WU, issued April 14, 1992, in Docket No. 910895-WU, rate base was established when the utility applied for the transfer of majority organizational control from Douglas B. Stewart and the Estate of Jack Chernau to Douglas B. Stewart. Further, by Order No. PSC-92-1339-FOF-WU, issued November 18, 1992, in Docket No. 920941-WU, the Commission granted the utility's request to change its name from C & S Water Company to O&S Water Company Inc. The utility's rates and charges have not changed since it was certificated in 1989.

When Avatar Properties, Inc. (API), began to plan to develop a property known as Bellalago, a dispute arose as to whether O&S or the Florida Governmental Utility Authority (FGUA) should provide water service. FGUA is a legal entity and public body created by interlocal agreement pursuant to Section 163.01(7)(g) 1., Florida Statutes, and is not regulated by the Commission. Bellalago is in O&S's water service territory, but is in FGUA's wastewater territory, and is in close proximity to FGUA's water territory. Because there was a dispute as to who would provide water service to Bellalago, O&S filed a lawsuit entitled, O and S Water Company, Inc. v. Avatar Properties, Inc., Case No. CI01-OC-2532, in the Circuit Court of the Ninth Judicial Circuit, Osceola County, Florida.

However, O&S and API have now reached an agreement in settlement of the lawsuit. O&S and API entered into a Developer Agreement for O&S to provide water service to API's Bellalago development. API will construct and donate to FGUA a water treatment plant and transmission main and in return will receive credit for payment of FGUA's plant capacity charges. O&S and FGUA entered into a Bulk Water Service Agreement for O&S to purchase water from FGUA for the southern portion of O&S's territory, which includes the API development and another development, which is the Yates development. O&S will collect and pay to FGUA the FGUA plant capacity charges for new connections in the remaining portion of O&S's southern territory (Yates development). Approval by the Commission of the Developer Agreement and an amendment to the O&S certificated service area are conditions precedent to the

DATE: July 2, 2003

completion of the Bulk Water Service Agreement and the complete resolution of the lawsuit between O&S and API.

Pursuant to the settlement agreement, and in accordance with Rules 25-30.550 (2) and (3), Florida Administrative Code, O&S filed its Application (Docket No. 030067-WU) for approval of Special Service Availability Contract (application) on January 22, 2003. In the final paragraph of the Application, O&S states:

10. The construction of the Plant by API and its conveyance to FGUA, and the approval by the Commission of the Bulk Water Service Agreement, the Developer Agreement and an amendment to O&S certificated service area (which will be subject to a separate docket) are conditions precedent to the completion of the Bulk Water Service Agreement and the complete resolution of the lawsuit between O&S and API. (Emphasis Added)

Also, in the REQUESTED ACTIONS section of its Application, O&S requested the Commission to "approve the Bulk Water Service Agreement between O&S and FGUA."

However, upon being questioned by staff about the Commission's authority over the Bulk Water Service Agreement with FGUA, a nonregulated entity, O&S wrote a letter dated January 31, 2003. In that letter, O&S acknowledged that "the Commission does not have jurisdiction over the Bulk Water Service Agreement," and that it did "not expect the Commission's specific approval of that Agreement." Also, by letter dated February 19, 2003, O&S advised FGUA of this position. Based on the above, O&S is no longer seeking Commission approval of the Bulk Water Service Agreement, and that is not an issue in this proceeding.

At about the same time that O&S became aware of the Bellalago proposed development, O&S became aware of another proposed development known as the Yates development. The Yates development is near that same area, but part of the Yates development is outside O&S's certificated territory. On February 11, 2003, the utility applied for an amendment to Certificate No. 510-W to extend its water service territory in Osceola County, Florida, pursuant to Section 367.045(2), Florida Statutes, and Rule 25-30, Florida Administrative Code. At build-out, the proposed amended area will consist of 85 single-family residential dwellings.

DOCKET NOS. 030067-WU, 030160-WU

DATE: July 2, 2003

This recommendation addresses the utility's request for approval of the special service availability contract for the Bellalago development, the application to amend its certificate to include an additional portion of the Yates development, and a change in the service availability policy and charges for the southern portion of the utility's service area. The Commission has jurisdiction pursuant to Sections 367.091 and 367.045, Florida Statutes.

DATE: July 2, 2003

DISCUSSION OF ISSUES

ISSUE 1: Should O & S Water Company's request for approval of its special service availability contract between O&S and API be approved?

RECOMMENDATION: Yes. The special service availability contract between O&S and API should be approved. The utility should file tariffs to implement the special service availability contract. The tariffs should become effective for connections made on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475(2), Florida Administrative Code, if no protest is filed within 21 days of the Order. (IWENJIORA)

STAFF ANALYSIS: On January 22, 2003, O&S filed its Application for Approval of a Special Service Availability Contract. O&S and API entered into a Developer Agreement, and O&S and FGUA have entered into a Bulk Water Service Agreement in settlement of the dispute over the right to provide water service to API's Bellalago development which is located in O&S's southern service area. O&S's current service availability policy does not have a provision for the water system capacity impact fee (plant capacity fee) that FGUA requires per connection; therefore, Rule 25-30.550(2) and (3), Florida Administrative Code, requires O&S to seek Commission approval of the contract.

O&S is certified by the Commission to provide water service to an unincorporated area of Osceola County, Florida; however, a dispute arose as to who would provide water service to API's development. Bellalago, a property being developed by API, is in the southern portion of O&S's water service area, but is in FGUA's wastewater territory. FGUA currently provides water and wastewater services within the Poinciana service area, which traverses Polk and Osceola County, Florida.

On November 15, 2002, O&S executed a developer agreement with API to provide water service to Bellalago. Pursuant to the developer agreement, API agreed to construct and install the on-site water distribution system and off-site water transmission system to deliver water from FGUA's water treatment plant to the Bellalago customers and convey the distribution system to O&S. Further, API agreed to construct a water treatment plant and transmission main within FGUA's Poinciana service area and convey the water treatment plant to FGUA to induce FGUA to sell bulk water

DATE: July 2, 2003

to O&S for redelivery to its customers within Bellalago. O&S will charge API's Bellalago customers its current monthly service rates. However, it will not collect its approved plant capacity and guaranteed revenue charges.

O&S and FGUA agree that it is in their mutual best interests and the best interest of the public and future customers within the southern portion of O&S's service area for O&S to purchase bulk water from FGUA in lieu of constructing its own water treatment plant. They also agreed that it is in their mutual best interests to form a cooperative relationship whereby FGUA provides retail wastewater services to the public within O&S's southern service area. Therefore, on January 16, 2003, O&S and FGUA entered into a bulk water service agreement as a condition of the settlement.

Pursuant to the bulk service agreement, O&S will purchase water from FGUA for redelivery to all of its customers within the southern portion of the service area on the terms and conditions specified in the bulk service agreement. O&S will not pay any plant capacity fees to FGUA for the 2,300 ERCs in API's Bellalago development. API will utilize its connection fee credits with FGUA (resulting from constructing and donating a water treatment plant and transmission main to FGUA) in lieu of paying FGUA's plant capacity charges.

Although API's Bellalago development customers will not pay FGUA's plant capacity charge, all other customers in O&S's southern service area will. O&S's current service availability policy does not have provisions for the plant capacity charges that are required by FGUA to provide bulk water service in O&S's southern service area. Therefore, Rule 25-30.550, Florida Administrative Code, requires the approval of the contract by this Commission.

The Commission should approve the utility's special service availability contract for API's Bellalago development because it is in the public interest as a reasonable solution to the provision of water service in the southern portion of O&S's territory and would avert a costly and lengthy litigation. In addition, water service will be assured through a 30-year contract and O&S will retain its water service territory and customers. O&S will charge its current monthly service rates; however, it will not collect its authorized plant capacity charge of \$594 per ERC or guaranteed revenue charges for the 2,300 ERCs in the Bellalago development. In addition, API will receive credit for constructing and donating a water treatment

DOCKET NOS. 030067-WU, 030160-WU

DATE: July 2, 2003

plant and transmission main to FGUA in lieu of paying FGUA's plant capacity charges.

The utility should file tariffs to implement the special service availability contract. The tariffs should become effective for connections made on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475(2), Florida Administrative Code, if no protest is filed within 21 days of the Order.

DATE: July 2, 2003

ISSUE 2: Should O & S Water Company Inc.'s application for amendment of Certificate No 510-W be granted?

RECOMMENDATION: Yes, O & S Water Company Inc.'s application for amendment to expand its territory as described in Attachment A is in the public interest and should be granted. The utility should charge the customers in the territory added herein the monthly service rates contained in its current tariff until authorized to change by the Commission. The appropriate service availability policy and charges are discussed in Issue 3. (RIEGER)

STAFF ANALYSIS: Pursuant to Section 367.045(2), Florida Statutes, and Rule 25-30.036, Florida Administrative Code, on February 11, 2003, the utility applied for an amendment to Certificate No. 510-W to extend its water service area in Osceola County, Florida. With construction to begin later this year, at build-out the proposed amended area will consist of 85 additional single-family residential dwellings. The area will include the subdivisions known as the Audubon Preserve and Orangebranch Bay. These subdivisions are part of a larger planned development known as the Yates development, which totals between 200 to 300 single-family residential dwellings. A large portion of the Yates development is located within the utility's existing southern service area. This amendment will add the remaining portion of the Yates development to the utility's southern service area.

The application is in compliance with the governing statutes and administrative rules concerning applications for amendment of certificate. This application contained a check in the amount of \$100, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code.

With respect to financial ability, the utility reported in its financial statement that for the period ending July 31, 2002, there was a net operating loss of \$41,554. The owners have supported the utility through infusions of capital since its inception and anticipates that the expected growth from the new developments in both the northern and southern portions of its territory will create sufficient cash flow to allow the utility to begin to show a net income within the next 2 years. For technical ability, the utility's application included a copy of the Department of Environmental Protection license for the plant operator. Staff believes that the utility has adequate financial and technical ability.

DATE: July 2, 2003

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. No objections were received and the time for filing objections has expired. The local planning agency was provided notice of the application and did not file a protest to the amendment. Pursuant to Rule 25-30.036(3)(c), Florida Administrative Code, the utility states that the provision of water service to the proposed additional area is consistent with the Osceola County local comprehensive plan as approved by the Department of Community Affairs (DCA). DCA has reviewed the proposed territory expansion, and in a March 19, 2003, letter to the Commission, it found the application consistent with the Highlands County Comprehensive Plan. As a result it had no objection to the utility's proposed extension of service.

Adequate service territory and system maps and territory descriptions have been provided pursuant to Rule 25-30.036(3)(e) (f) and (i), Florida Administrative Code. A description of the territory to be amended by the utility is appended to this recommendation as Attachment A.

Pursuant to Rule 25-30.036(3)(d), Florida Administrative Code, the utility submitted a warranty deed for its existing water treatment facility as evidence of land ownership. However, the utility's existing facility will not be used to provide water service to the proposed area. As part of the southern portion of O&S's service area, the proposed area will receive water service through the bulk water service agreement with FGUA as previously discussed in Issue 1.

Pursuant to Rule 25-30.036(3)(j), (k), (l), and (n), Florida Administrative Code, there are no existing lines and facilities which will serve the proposed area. In addition, the utility will not be responsible for obtaining DEP permitting or financing for lines and treatment facilities to accommodate the proposed area since that will be obtained by the developers. In reference to the impact on monthly rates and service availability charges the utility stated in its application that there will be no material impact on its monthly rates. The proposed change in service availability charges for the area will be addressed in Issue 3.

DATE: July 2, 2003

Pursuant to Rule 25-30.036(3)(o), (p), (q) and (r), Florida Administrative Code, the utility provided sample tariff sheets reflecting the additional service area. The utility indicated that it was unable to locate its certificate and requested a replacement certificate be issued. Also, the utility provided the docket number of the most recent Commission order establishing or changing its rates and charges. And finally, the utility stated that its tariffs and annual reports are on file with the Commission.

Based on the above information, staff recommends that O&S's application for amendment to expand its territory as described in Attachment A is in the public interest and should be granted. The utility should charge the customers in the territory added herein the monthly service rates contained in its current tariff until authorized to change by the Commission. The appropriate service availability charges are discussed in Issue 3.

DATE: July 2, 2003

ISSUE 3: Should O&S Water Company, Inc. be authorized to change its approved service availability policy and charges for the Yates development?

RECOMMENDATION: Yes. The utility should be authorized to collect and remit to FGUA the FGUA plant capacity charge of \$1,200 per ERC in lieu of the utility's previously approved plant capacity and guaranteed revenue charges for new connections in the Yates development. The utility should file tariffs to reflect the change in its service availability policy and charges for the southern portion of its territory. The tariffs should become effective for connections made on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475(2), Florida Administrative Code if no protest is filed within 21 days of the Order. Further, the utility should mail or hand deliver a notice of the change in the utility's service availability policy and charges for the southern portion of the utility's territory to the owners of the Yates development. The utility shall provide proof of the date the notice was given within 10 days after the date of the notice. In the event that a timely protest is filed, the tariff should remain in effect and the applicable charges should be held subject to refund pending resolution of the protest. (IWENJIORA, RIEGER)

STAFF ANALYSIS: As previously discussed, O&S will purchase bulk water from FGUA in order to provide water service to the southern portion of its service territory. O&S will collect and remit to FGUA the FGUA plant capacity charge of \$1,200 per ERC, in lieu of the utility's previously approved plant capacity (\$594 per ERC) and guaranteed revenue charges, for new connections in the Yates development. On June 9, 2003, the Commission received a letter from Mr. Yates acknowledging that he will be obtaining water service for his development from O&S, subject to the utility's bulk water service agreement with FGUA. Staff has copied Yates with a copy of the recommendation and has put them on the list to receive a copy of the PAA order issued in this docket.

Staff recommends that the utility should be authorized to collect and remit to FGUA the FGUA plant capacity charge of \$1,200 per ERC in lieu of the utility's previously approved plant capacity and guaranteed revenue charges for new connections in the Yates development. The utility should file tariffs to reflect the change in its service availability policy and charges for the southern portion of its territory. The tariffs should become effective for

DATE: July 2, 2003

connections made on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475(2), Florida Administrative Code if no protest is filed within 21 days of the Order. Further, the utility should mail or hand deliver a notice of the change in the utility's service availability policy and charges for the southern portion of the utility's territory to the owners of the Yates development. The utility shall provide proof of the date the notice was given within 10 days after the date of the notice. In the event that a timely protest is filed, the tariff should remain in effect and the applicable charges should be held subject to refund pending resolution of the protest.

The Commission should authorize the change in O&S's approved service availability policy and charges for the Yates development because it is in the public interest as a reasonable solution to the provision of water service in the southern portion of O&S's territory and would avert a costly and lengthy litigation. In addition, water service will be assured through a 30-year contract and O&S will retain its water service territory and customers.

DOCKET NOS. 030067-WU, 030160-WU

DATE: July 2, 2003

ISSUE 4: Should these dockets be closed?

RECOMMENDATION: No. Docket Nos. 030067-WU and 030160-WU should remain open pending expiration of the protest period. If a timely protest is not filed, a Consummating Order should be issued and the dockets should be closed. In the event that a timely protest is filed, the dockets should remain pending resolution of the protest. (IWENJIORA, JAEGER, RIEGER)

STAFF ANALYSIS: Docket Nos. 030067-WU and 030160-WU should remain open pending expiration of the protest period. If a timely protest is not filed, a Consummating Order should be issued and the dockets should be closed. In the event that a timely protest is filed, the dockets should remain pending resolution of the protest.

Attachment A

O & S Water Company
Amended Water Territory Description
Osceola County

The Northeast quarter of Northeast quarter of Northeast quarter, and North half of Northwest quarter of Northeast quarter of the Northeast quarter of Section 6, Township 27 South, Range 29 East, Osceola County, Florida; and the Southeast quarter of the Southeast quarter of section 31, Township 26 South, Range 29 East, Osceola County, Florida; and the North half of the Northwest quarter of the Northeast quarter of Section 5, Township 27 South, Range 29 East, in Osceola County, Florida.