

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for certificates to operate a water and wastewater utility in Marion County by Ocala Springs Utilities Inc.

DOCKET NO. 980876-WS

In re: Request for approval of transfer of Ocala Springs Utilities Inc. in Marion County to Board of Trustees of Internal Improvement Trust Fund of State of Florida, and for cancellation of Certificate Nos. 604-W and 520-S.

DOCKET NO. 060749-WS
ORDER NO. PSC-07-0022-FOF-WS
ISSUED: January 8, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW

FINAL ORDER APPROVING TRANSFER

BY THE COMMISSION:

Background

Ocala Springs Utilities Inc. (Ocala Springs or utility) is a wholly-owned subsidiary of Avatar Utilities, Inc. (Avatar), which is a wholly-owned subsidiary of Avatar Holdings, Inc. Ocala Springs was established by Avatar for the specific purpose of providing water and wastewater service to a tract of land consisting of approximately 4,666 acres in Marion County known as Ocala Springs. The entire tract of land is owned by another wholly-owned subsidiary of Avatar Holdings, Avatar Properties, Inc. (API), which had intended to develop the land as an active adult community. The acreage is located in the St. Johns River Water Management District where certain water restrictions apply. Based upon the anticipated number of connections, Ocala Springs would have been a Class A water and wastewater utility at build-out.

Ocala Springs was issued Certificate Nos. 604-W and 520-S, effective December 7, 1998.¹ However, the utility was granted a number of temporary waivers of time to file the

¹ Order No. PSC-98-1644-FOF-WS, issued December 7, 1998, in Docket No. 980876-WS, In Re: Application for certificates to operate a water and wastewater utility in Marion County by Ocala Springs Utilities Inc.

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information required for rates and charges.² Part of the reason for the delay in filing was due to discussions with the State of Florida for possible purchase of the Ocala Springs property under the Florida First Magnitude Springs Florida Forever Project. The property is located within the Silver Springs springshed which is considered to be one of the largest first magnitude springs in the United States. When the acquisition discussions failed, Ocala Springs proceeded with the design and permitting process which resulted in the filing of its application for rates and charges with the Commission on April 7, 2005. After several revisions to the filing, we approved rates and charges for Ocala Springs on June 26, 2006, in Docket No. 980876-WS.³ The docket remained open pending the filing of an executed and recorded warranty deed in the name of the utility for the land upon which the utility facilities will be located.

On November 14, 2006, the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida approved the acquisition of API's Ocala Springs' acreage within the Florida First Magnitude Springs Florida Forever Project. On November 15, 2006, Ocala Springs filed an application in this docket for the transfer of its territory to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (Trustees), and for cancellation of Certificate Nos. 604-W and 520-S, which has made the need for the warranty deed moot. The closing on the transfer is expected to occur December 22, 2006. In anticipation of that closing, the utility and the State of Florida have requested that we approve the cancellation of the utility's certificates contingent upon confirmation of the closing. We have jurisdiction to consider this matter pursuant to Section 367.071, Florida Statutes.

Transfer to State of Florida

Pursuant to Section 367.071(4)(a), Florida Statutes, the sale of facilities to a governmental authority shall be approved as a matter of right. As such, no notice of the transfer is required and no filing fees apply.

The application contains an Option Agreement and an Agreement for Sale and Purchase (Purchase Agreement). The Option Agreement was executed October 20, 2006, as amended by and between API (the seller) and The Nature Conservancy (TNC), a nonprofit District of Columbia Corporation (the buyer). The option is to remain in effect until December 6, 2006, with an anticipated closing date of December 22, 2006. If the option is exercised by the buyer, the purchase price is intended to be \$76,245,000, based upon an estimated acquisition of approximately 4,471 acres after completion of the boundary survey. At closing, TNC will be conveying the property to the Trustees through the Florida Department of Environmental Protection, Division of State Lands.

The conveyance from TNC to the Trustees will be by means of the Purchase Agreement and will occur in two phases, with the closing on the first phase occurring simultaneous with closing on the Option Agreement. Under the Purchase Agreement, Marion County is to

² Order No. PSC-98-1374-PCO-WS, issued October 12, 1998; Order No. PSC-00-2387-FOF-WS, issued December 13, 2000, Order No. PSC-02-0180-PCO-WS, issued February 11, 2002, and Order No. PSC-04-0877-PCO-WS, issued September 8, 2004, all in Docket No. 980876-WS.

³ Order No. PSC-06-0536-PAA-WS, issued June 26, 2006, in Docket No. 980876-WS.

reimburse TNC \$2,000,000 of the total API purchase price, plus a portion of the closing costs, with the Trustees paying the remainder of the purchase price and all additional expenses in two phases. However, the parties have agreed that TNC will convey its entire fee simple interest in the property to the Trustees at the closing in accordance with the provisions of the Purchase Agreement.

Because the property has not been developed and the utility has not been constructed, there are no utility assets to be transferred. Ocala Springs has provided the State of Florida with a copy of its 2005 Annual Report, as filed with the Commission, pursuant to the information required to be provided by Rule 25-30.037(4)(e), Florida Administrative Code. The application also affirms that Ocala Springs has not collected any customer deposits.

Ocala Springs timely filed its 2005 Annual Report and timely reported and paid its 2005 regulatory assessment fees (RAFs). In accordance with Rule 25-30.120, Florida Administrative Code, Ocala Springs paid its 2006 RAfs up through the date its certificates were cancelled on December 22, 2006. Further, in accordance with Rule 25-30.110, Florida Administrative Code, since Ocala Springs was not jurisdictional as of December 31, 2006, it is not responsible for filing an Annual Report.

We find that the application is in compliance with the provisions of Rule 25-30.037(4), Florida Administrative Code. Therefore, we grant the transfer of Ocala Springs to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, as a matter of right, pursuant to Section 367.071(4)(a), Florida Statutes, and Certificate Nos. 604-W and 520-S shall be cancelled effective the date of the closing on the Option Agreement and Phase I of the Purchase Agreement, which was December 22, 2006.

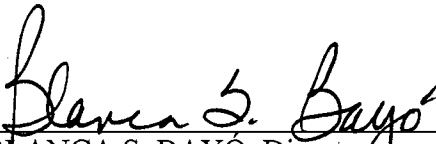
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of Ocala Springs Utilities, Inc.'s territory to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida is hereby approved as a matter of right, effective December 22, 2006. It is further

ORDERED that Certificate Nos. 604-W and 520-S shall be cancelled effective December 22, 2006. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 8th day of January, 2007.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.