

State of Florida



## Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** March 24, 2005

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bayó)

**FROM:** Division of Economic Regulation (Johnson, Kaproth)  
Office of the General Counsel (Rodan)

**RE:** Docket No. 050013-WU– Application for transfer of facilities of Spring Creek Village, Ltd. in Lee County to Bonita Springs Utilities, Inc., and for cancellation of Certificate No. 271-W.

**AGENDA:** 04/05/05 – Regular Agenda – Interested Persons May Participate

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\050013.RCM.DOC

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### Case Background

Spring Creek Village, Ltd. (Spring Creek or utility) is a Class C utility providing service to approximately 309 water customers in Lee County. The utility was organized in October 1970. The South Florida Water Management District does not consider this area a water resource caution area. Spring Creek was granted Certificate Nos. 271-W and 213-S in 1976.<sup>1</sup> In 1994, Spring Creek discontinued operation of its wastewater treatment facilities and interconnected with Bonita Springs Utilities, Inc. (BSU). BSU provides bulk wastewater service to Spring Creek, which resells the wastewater service at a rate that does not exceed the purchase price of that service. In Order No. PSC-94-1003-FOF-SU, the Commission granted Spring Creek an exemption for the wastewater system pursuant to Section 367.022(8), Florida Statutes,

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<sup>1</sup> In Order No. 7436, issued September 20, 1976, in Docket No. 760388-W, In Re: Application of Spring Creek Village, Ltd. for certificates to operate an existing water and sewer system in Lee County, Florida, pursuant to section 367.171, Florida Statutes.

and cancelled the wastewater certificate.<sup>2</sup> The utility has had one staff assisted rate case.<sup>3</sup> Spring Creek's 2004 annual report indicates gross revenue of \$58,292 and a net loss of \$6,749.

On January 5, 2005, Spring Creek filed an application for transfer of the utility's water facilities to BSU and cancellation of Certificate No. 271-W. On December 8, 2004, Spring Creek and BSU entered into an agreement to transfer the utility to BSU. The closing is scheduled to take place on or before November 1, 2005, and is contingent upon the approval of the Commission.

At issue in this docket is Spring Creek's application for approval of the proposed transfer of the utility to BSU and the cancellation of Certificate No. 271-W. The Commission has jurisdiction to consider this matter pursuant to Section 367.071, Florida Statutes, and Rule 25-30.037, Florida Administrative Code.

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<sup>2</sup> Issued August 18, 1994, in Docket No. 940192-SU, In Re: Request for exemption from Florida Public Service Commission regulation for provision of sewer service and cancellation of Certificate No. 213-S in Lee County by Spring Creek Village Utilities, Ltd.

<sup>3</sup> Order No. PSC-97-0931-FOF-WU, issued August 5, 1997, Docket No. 961447-WU, In Re: Application for Staff-Assisted Rate case in Lee county by Spring Creek Village, Ltd.

### **Discussion of Issues**

**Issue 1:** Should the transfer of facilities from Spring Creek to BSU and the cancellation of Certificate No. 271-W be approved?

**Recommendation:** Yes. The transfer of facilities from Spring Creek to BSU is in the public interest and should be approved. Certificate No. 271-W should be cancelled administratively upon receipt of the executed agreement confirming the actual date of closing, which is anticipated to be November 1, 2005. Spring Creek will be responsible for filing a regulatory assessment fee (RAF) form with the corresponding amount of RAFs due for January 1, 2005 through the date of closing. (Johnson, Kaproth)

**Staff Analysis:** As stated in the case background, Spring Creek applied for a transfer of its water facilities to BSU and cancellation of water Certificate No. 271-W on January 5, 2005. The closing is expected to take place on or before November 1, 2005, subject to approval of the Commission.

The application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and rules concerning an application for transfer. Pursuant to Rule 25-30.030, Florida Administrative Code, the application contains proof of compliance with the noticing provisions. No objections to the notice of application have been received and the time for filing such has expired.

A copy of the purchase agreement is included in the application. There are no customer deposits, guaranteed revenue contracts, developer agreements, customer advances, or leases that must be disposed of in relation to the transfer. A copy of an unrecorded warranty deed was provided in the application, transferring the land and facilities from Spring Creek to BSU. There is no financing associated with the conveyance of Spring Creek's facilities to BSU. BSU agreed to pay for renovating the utility system; in exchange, Spring Creek will transfer the facilities and land to BSU.

On September 2, 2004, Spring Creek and the Florida Department of Health, on behalf of the Florida Department of Environmental Protection (DEP), entered into consent order No. 04-0057-SFO. Spring Creek agreed to comply with the consent order and implement corrective actions. However, due to the costs of complying with the consent order, Spring Creek decided it is in the best interest of Spring Creek and its customers to secure an alternative water source. The utility determined that the agreement with BSU is the most efficient and cost effective method to address the consent order.

BSU is a member owned, nonprofit water and wastewater utility providing service to approximately 27,000 water and 22,000 wastewater equivalent residential connections (ERCs). It is exempt from Commission regulation pursuant to Section 367.022(7), Florida Statutes.<sup>4</sup> The Spring Creek customers will become members of the BSU association. Based upon BSU's

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<sup>4</sup> Docket No. 70337-W (Order No. 5223, issued September 21, 1971), In Re: Cancellation of certificates issued to certain non-profit corporations, associations, and cooperatives.

experience, it appears to be qualified to successfully provide the Spring Creek residents safe and reliable water service.

The application states that all RAFs have been paid by Spring Creek and no refunds or fines are outstanding except for fines that may have been assessed pursuant to the Consent Order. Spring Creek filed its 2004 annual report and paid its 2004 regulatory assessment fees (RAFs). Spring Creek will be responsible for filing a regulatory assessment fee form with the corresponding amount of RAFs for January 1, 2005, through the date of closing.

Based on the above, staff recommends that the transfer of Spring Creek's water facilities to BSU is in the public interest and should be approved. Certificate No. 271-W should be cancelled administratively upon receipt of the executed agreement confirming the actual date of closing, which is anticipated to be November 1, 2005. Spring Creek will be responsible for filing a regulatory assessment fee (RAF) form with the corresponding amount of RAFs due for January 1, 2005, through the date of closing.

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**Issue 2:** Should this docket be closed?

**Recommendation:** No. This docket should be closed administratively upon receipt of the the executed purchase agreement confirming the actual date of closing. (Rodan)

**Staff Analysis:** This docket should be closed administratively upon receipt of the executed purchase agreement confirming the actual date of closing.