

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: December 7, 2006

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

FROM: Division of Economic Regulation (Brady, Rieger, Romig)
Office of the General Counsel (Fleming)

RE: Docket No. 980876-WS – Application for certificates to operate a water and wastewater utility in Marion County by Ocala Springs Utilities Inc.

Docket No. 060749-WS – 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.

County: Marion

AGENDA: 12/19/06 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Docket No. 980876-WS – Deason
Docket No. 060749-WS – Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\060749.RCM.DOC

Case 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 be a Class A water and wastewater utility at build-out.

Ocala Springs was issued Certificate Nos. 604-W and 520-S, effective December 7, 1998¹. However, the utility was granted a number of temporary waivers of time to file the information required for rates and charges². 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, the Commission approved rates and charges for Ocala Springs on June 26, 2006, in Docket No. 980876-WS³. The docket continues to remain 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.

Need for the warranty deed has been mooted by the filing on November 15, 2006, of the application in this docket for the transfer of Ocala Springs 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. 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 the Commission acknowledge the transfer at the last scheduled agenda conference prior to the expected closing date, and that the Commission approve the cancellation of the utility's certificates contingent upon confirmation of the closing.

The purpose of this recommendation is to address the application for transfer of Ocala Springs to a governmental authority and cancellation of the certificates. The Commission has jurisdiction to consider this matter pursuant to Section 367.071, Florida Statutes.

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.

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.

Discussion of Issues

Issue 1: Should the transfer of Ocala Springs to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida be approved as a matter of right?

Recommendation: Yes. The transfer should be approved, as a matter of right, pursuant to Section 367.071(4)(a), Florida Statutes, and Certificate Nos. 604-W and 520-S should be cancelled effective the date of the closing on the Option Agreement and Phase I of the Purchase Agreement. Ocala Springs will continue to be responsible for water and wastewater RAFs up to the date its certificates are cancelled. Further, if Ocala Springs is still jurisdictional as of December 31, 2006, and December 31st of any future year, the utility will be responsible for filing an Annual Report. (Brady, Rieger, Romig, Fleming)

Staff Analysis: 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, an application was filed on behalf of Ocala Springs for transfer of its territory to the Trustees pursuant to Section 367.071(4)(a), Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code. The closing on the transfer is intended to occur on December 22, 2006. 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 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, the utility will continue to be responsible for water and wastewater RAFs until its certificates are cancelled. The application indicated that Ocala Springs intends to pay its 2006 RAFs prior to the cancellation of its certificates. Further, in accordance with Rule 25-30.110, Florida Administrative Code, if Ocala Springs is still jurisdictional as of December 31, 2006, and December 31st of any future year, Ocala Springs will be responsible for filing an Annual Report.

Staff recommends that the application is in compliance with the provisions of Rule 25-30.037(4), Florida Administrative Code. Therefore, staff recommends that the transfer of Ocala Springs to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida should be approved as a matter of right, pursuant to Section 367.071(4)(a), Florida Statutes, and Certificate Nos. 604-W and 520-S should be cancelled effective the date of the closing on the Option Agreement and Phase I of the Purchase Agreement. Ocala Springs will continue to be responsible for water and wastewater RAFs up to the date its certificates are cancelled. Further, if Ocala Springs is still jurisdictional as of December 31, 2006, and December 31st of any future year, the utility will be responsible for filing an Annual Report.

Docket No. 060749-WS

Date: December 7, 2006

Issue 2: Should this docket be closed?

Recommendation: No. The docket should remain open and the certificates remain active pending confirmation of the closing on the Option Agreement and Phase I of the Purchase Agreement. Once confirmation of the closing has been received, the certificates should be cancelled effective the date of the closing and the docket should be administratively closed along with Docket No. 980876-WS. (Fleming)

Staff Analysis: The docket should remain open and the certificates remain active pending confirmation of the closing on the Option Agreement and Phase I of the Purchase Agreement. Once confirmation of the closing has been received, the certificates should be cancelled effective the date of closing and the docket should be administratively closed along with Docket No. 980876-WS.