

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: NOVEMBER 16, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (CIBULA) *SMC. ps*
DIVISION OF REGULATORY OVERSIGHT (BRADY, RIEGER) *ps*

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

AGENDA: 11/28/2000 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

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

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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, Florida, along with a petition requesting a temporary variance from 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),

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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 submitted 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 would make 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, which requests 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 provides a more detailed explanation of the status of the utility's construction plans and requests 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 for the utility.

This recommendation addresses OSUI's Request and Amended Request for Extension of Time to File Information Pursuant to Orders Nos. PSC-98-1644-FOF-WS and PSC-98-1374-PCO-WS. The Commission has the authority to consider these filings under Sections 367.045 and 120.542, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Ocala Springs Utilities, Inc.'s Amended Request for Extension of Time to File Information Pursuant to Orders Nos. PSC-98-1644-FOF-WS and PSC-98-1374-PCO-WS?

RECOMMENDATION: Yes. The Commission should grant Ocala Springs Utilities, Inc.'s Amended Request for Extension of Time to File Information Pursuant to Orders Nos. PSC-98-1644-FOF-WS and PSC-98-1374-PCO-WS. As requested in its filing, the utility should be allowed 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-PCO-WS. Moreover, staff recommends that Ocala Springs Utilities, Inc., be required to file a status report detailing the utility's progress within eight months of the issuance date of the Order that arises from this recommendation. Staff further recommends that the utility be put on notice that failure to file the information required by Orders Nos. PSC-98-1644-FOF-WS and PSC-98-1374-PCO-WS by February 7, 2002, may result in the initiation of certificate revocation proceedings pursuant to Section 367.111, Florida Statutes. (CIBULA, BRADY, RIEGER)

STAFF ANALYSIS: As stated in the case background, by Order No. PSC-98-1374-PCO-WS, issued October 12, 1998, the Commission granted OSUI's amended petition for the 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. Pursuant to that Order, OSUI was required to submit evidence of ownership of the plant sites and detailed system maps when it submitted its applications for construction permits with the WMD and the 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 would make the filing deadline December 7, 2000.

OSUI's Request for Extension of Time

As previously stated, 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, which requests 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 provides a more detailed explanation of the status of the utility's construction plans and requests 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 for the utility.

In support of its request, the utility states that when "OSUI applied for certification from the Public Service Commission, the planning and permitting of the Ocala Springs active adult community development in Marion County were imminent, and the development was intended to commence within two years." The utility further states that Avatar Properties became aware in 1998 that Marion County was considering the construction of a landfill, which would be put into operation in the near future, within one mile of the Ocala Springs project. The utility states that Avatar Properties was concerned that the placement of the landfill so close to the proposed Ocala Springs project would have material and adverse negative impacts to the extent that the Ocala Springs development possibly would not have been an economically viable community project. Also, the utility states that Avatar Properties actively lobbied Marion County to have the landfill relocated, and after a number of public hearings, Marion County decided not to locate the landfill near the Ocala Springs project site. OSUI states that Marion County's decision not to locate the landfill near Ocala Springs "took substantially longer than anticipated," and that because of the potential negative impact on the Ocala Springs development, Avatar Properties had "no alternative but to place on hold its plans for a proposed active adult community development at the Ocala Springs site."

OSUI states that during the time that it was contesting the location of the landfill, Avatar Properties proceeded with another active adult project in Polk County. The utility states that Avatar Properties will use the sales information obtained from the Polk County project to determine whether to proceed with making

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Ocala Springs an active adult community or pursue the project as a more traditional residential community. However, the utility states that in either case, Avatar Properties "intends to start planning and development of the Ocala Springs property in 2001 with OSUI being the water and wastewater service provider therefor."

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

Final decision as to type of development (active adult vs. traditional residential)	April/May 2001
Commencement of replanning and replatting of development with Marion County	June 2001
Major advertising effort begins for the Ocala Springs development	December 2001
Consumptive use permit application submitted to WMD	December 2001
Construction permit application for water and wastewater facilities submitted to DEP	December 2001
Submit to PSC copies of detailed system maps and evidence of ownership of plant sites	February 2002
File with PSC application to establish initial water and wastewater rates	February 2002
Construction to begin on water and wastewater facilities	May 2002

Thus, OSUI requests that it be allowed until February 7, 2002, to file the information required by Orders Nos. PSC-98-1374-PCO-WS and PSC-98-1644-FOF-WS.

Staff Analysis

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 that it was 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 previously noted, 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 Statutes, 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.

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 request for extension of time 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 back 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.

It should also be noted that 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).

Staff does not believe that the initiation of revocation proceedings would 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. However, staff recommends that the utility be put on notice that failure to file the information required by Orders Nos. PSC-98-1644-FOF-WS and PSC-98-1374-PCO-WS by February

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7, 2002, may result in the initiation of certificate revocation proceedings 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 compliance with Order No. PSC-98-1374-PCO-WS, which granted the temporary waiver. Thus, staff recommends that the Commission should grant OSUI's Amended Request for Extension of Time to File Information Pursuant to Orders Nos. PSC-98-1644-FOF-WS and PSC-98-1374-PCO-WS. As requested in its filing, the utility should be allowed 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-PCO-WS. Moreover, staff recommends that OSUI be required to file a status report detailing the utility's progress within eight months of the issuance date of the Order that arises from this recommendation. As stated above, staff further recommends that the utility be put on notice that failure to file the information required by Orders Nos. PSC-98-1644-FOF-WS and PSC-98-1374-PCO-WS by February 7, 2002, may result in the initiation of certificate revocation proceedings pursuant to Section 367.111, Florida Statutes.

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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 rates and charges by the Commission.
(CIBULA)

STAFF ANALYSIS: This docket should remain open pending completion of the filing requirements by OSUI and the establishment of rates and charges by the Commission.