



# Public Service Commission

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**DATE:** NOVEMBER 5, 1998

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

**FROM:** DIVISION OF WATER AND WASTEWATER (BRADY, REDEMANN)  
DIVISION OF LEGAL SERVICES (MCRAE, CROSBY) *sm. JH*

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

**AGENDA:** NOVEMBER 17, 1998 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NOVEMBER 27, 1998 - STATUTORY DEADLINE FOR ORIGINAL CERTIFICATES

**SPECIAL INSTRUCTIONS:** NONE

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

### 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 in April of 1998 for the specific purpose of providing water and wastewater service to an undeveloped tract of acreage known as Ocala Springs. The entire tract of 4,666 acres is owned by another wholly-owned subsidiary of Avatar Holdings, Avatar Properties, Inc. (API or developer), which intends to develop the land as an active adult community. Based on the magnitude of the 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 this application for original certificates to operate a water and wastewater utility in Marion

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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 Rule 25-30.433(10), Florida Administrative Code (F.A.C.). On July 31, 1998, the utility filed an amended petition requesting additional temporary variances from, or temporary waiver of, Rules 25-30.033(1)(k) and (4), F.A.C. By Order No. PSC-98-1374-PCO-WS, issued October 12, 1998, the Commission granted OSUI's petition for the temporary waivers. In the order, OSUI was required to submit evidence of ownership of the plant sites and detailed system maps when it submits its applications for construction permits with the Water Management District and the Florida Department of Environmental Protection (FDEP). The order also required OSUI to submit a separate application in this docket for initial rates and charges within 24 months of a Commission order granting the original certificates.

Under a Memorandum of Understanding (MOU) between the Commission and the Department of Community Affairs (DCA), the Commission now provides the DCA with copies of applications for original certificates as well as applications for amendments. The DCA then provides the Commission with comments as to the need for service in the requested territory and compliance with local comprehensive plans. On August 28, 1998, the DCA provided comments that a portion of the proposed Ocala Springs acreage was not vested for the developer's intended use. A response was provided by the utility on October 8, 1998.

Pursuant to Section 367.031, Florida Statutes, the Commission is required to grant or deny an application for certificates of authorization within 90 days after the official filing date of the completed application, unless an objection is filed pursuant to Section 120.57, Florida Statutes. No such objection to this application has been received. However, the application, as filed, contained deficiencies which were cured by the utility on August 27, 1998. Therefore, the Commission must act by November 27, 1998.

As a result of Order No. PSC-98-1374-PCO-WS, which bifurcated the docket, this recommendation only addresses the issue of granting or denying OSUI's certificates of authorization. The establishment of rates and charges will be the subject of a later order in this docket.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the application of Ocala Springs Utilities Inc. for original certificates of authorization to operate a water and wastewater utility be granted?

**RECOMMENDATION:** Yes, Ocala Springs Utilities Inc. should be granted Water Certificate No. 604-W and Wastewater Certificate No. 520-S to serve the territory described in Attachment A. Pursuant to Order No. PSC-98-1374-PCO-WS, OSUI must submit detailed system maps and evidence of ownership of the plant sites when it submits its applications for construction permits with the Water Management District and the Florida Department of Environmental Protection and it must submit a separate application in this docket for initial rates and charges within 24 months of the issuance of an order granting original certificates. (BRADY, REDEMANN)

**STAFF ANALYSIS:** As noted in the Case Background, on July 13, 1998 OSUI filed this application for original water and wastewater certificates to serve approximately 4,666 undeveloped acres in Marion County known as Ocala Springs. The development is intended to be an age-restricted, active adult community consisting of residential, mixed use and limited commercial and industrial customers. As amended, the application contemplates that permit applications for construction of the water and wastewater systems will be submitted to the Water Management District and the FDEP by July 1, 1999 and the resulting construction will commence by January 1, 2000. The utility intends to begin serving customers by December 2000.

As stated earlier, Order No. PSC-98-1374-PCO-WS granted OSUI's petition for waivers of certain filing requirements pursuant to Rules 25-30.033 and 25-30.433, F.A.C. The application as filed and amended is otherwise in compliance with the governing statute, Section 367.045, Florida Statutes, and other pertinent statutes and administrative rules concerning applications for original certificates.

**Filing Fees.** The appropriate filing fee for applications for original certificates pursuant to Rule 25-30.020, F.A.C., is based on the proposed capacity of the system(s) in terms of equivalent residential connections (ERCs). Since the development plans for Ocala Springs have not been finalized, the number of proposed ERCs is not yet known. As a consequence, one of the temporary waivers granted by Order No. PSC-98-1374-PCO-WS was to Rule 25-30.033(1)(h), F.A.C., which requires the utility to specify the

number of ERCs proposed to be served. However, since 4,666 acres will undoubtedly serve in excess of one residential unit per acre, the application contained the maximum filing fee prescribed by the rule.

**Notice.** Pursuant to Rules 25-30.030(5) and (7), F.A.C., notice of an application for original certificates must be given to local utilities and governmental entities and published in a newspaper of general circulation in the area proposed to be served. The utility provided evidence that it had complied with these rules. However, while the body of the notices indicated that application was for both original water and wastewater certificates, the heading only indicated that application was for an original water certificate. In the abundance of caution, the utility was required to renotice the application. No protests to either the utility's original notice or renotice were received by the Commission and the time for filing such protest has expired.

**Corporate Structure.** Pursuant to Rules 25-30.033(1)(a), (b), (c) and (d), F.A.C., the application identified OSUI as a regular corporation which has not elected to be an S Corporation under Internal Revenue Code Section 1362. It is a wholly-owned subsidiary of Avatar Utilities which is a wholly-owned subsidiary of Avatar Holdings. The names, titles and addresses of the utility's corporate officers were fully disclosed.

**Financial Ability.** Pursuant to Rules 25-30.033(1)(e) and (s), F.A.C., the application describes the basis of the utility's financial ability to provide service and the entities upon which the utility will be relying for funding. As noted above, OSUI was just recently incorporated and, as such, the application indicates the utility has no financial statements. Instead, the financial statements for its direct parent, Avatar Utilities and its subsidiaries, were provided. Such statements indicate for year-end 1997 total assets of \$180.7 million including \$162.5 million (net of depreciation) in plant. Common shareholder equity is \$27.6 million and long term debt is \$35.5 million. Annual operating revenues are \$32.9 million with a total net income of \$2.7 million.

The application also contains a May 4, 1998 Master Agreement between OSUI and the developer, API, in which API has agreed to design and construct the utility's facilities which it will then convey to OSUI as advances- or contributions-in-aid-of-construction until OSUI has the financial capability to perform the same. In addition, API has agreed to finance the initial operations of OSUI

through guaranteed revenues or other mutual agreement until OSUI's operating revenues are adequate to cover its operating costs.

**Technical Ability.** Pursuant to Rule 25-30.033(1)(e), F.A.C., the application describes the basis of the utility's technical ability to provide service. Currently OSUI has no assets or employees. As a wholly-owned subsidiary of Avatar Utilities, OSUI intends to initially receive technical support from its parent's subsidiaries, primarily Florida Cities Water Company (FCWC) and Avatar Utility Services, Inc., a data processing and contract operations service company. As OSUI becomes operational, local operating and customer service staff will be employed.

As to Avatar Utilities' technical ability, it is a utility holding company which has been providing water and wastewater services through its subsidiaries since 1956. In addition to FCWC, its utility subsidiaries also includes Poinciana Utilities Inc. (Poinciana). FCWC currently owns and operates eight water treatment and six wastewater treatment facilities, and associated systems, which provide service to approximately 34,000 water and 26,000 wastewater customers in six separate communities located in Brevard, Collier, Hillsborough, Lee and Sarasota Counties. Poinciana currently provides service to approximately 6,300 water and 5,900 wastewater customers in a rapidly developing community located near Disney World in Osceola and Polk Counties. Both FCWC and Poinciana are considered Class A utilities.

**Need for Service.** Pursuant to Rule 25-30.033(1)(e), F.A.C., the application describes the need for service within the proposed area to be served. The need for service is based on API's intent to commence development of Ocala Springs within two years. According to the application, the development plans 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.

As to the availability of alternative sources for service, the application indicates the utility analyzed the annual reports filed with the Commission for all water and wastewater utilities having service areas within two miles of any portion of its proposed territory. It was concluded that none of these utilities had the economic or physical facility capability to provide water and wastewater service to the proposed development. The application further states that Ocala Springs is not within the service area of the City of Ocala or the Marion County Water and Wastewater Utility Planning and Service Areas as prescribed by Marion County Ordinance

98-10. As noted above, notice of this application was given to all local utilities and governmental entities and no protests to OSUI serving the proposed territory were filed with the Commission.

**Local Comprehensive Plan.** Pursuant to Rule 25-30.033(1)(f), F.A.C., the application describes the extent to which the provision of service will be consistent with the water and wastewater sections of the local comprehensive plan as approved by the DCA. Based on several early binding letters of interpretation from the DCA regarding Ocala Springs vested rights, the utility's original application indicated its belief that API's intent to replan and replat the development as an active adult community would not constitute a substantial deviation from the impacts previously approved by the DCA.

The County did not protest OSUI's notice of application. However, as noted in the Case Background, the DCA provided comments on the consistency of OSUI's application with the County's comprehensive plan pursuant to a recent MOU between the DCA and the Commission. Of the approximately 4,666 total acres, the DCA found that approximately 3,644 acres were appropriate for central water and wastewater service due to the urban-type development approved and vested on the acreage by Marion County. However, the DCA found that approximately 1,022 acres scattered around the perimeter of the development were not appropriate for central water and wastewater due to the rural-type land use designation in Marion County's Future Land Use Maps. As such, the DCA indicated this acreage would require an amendment to the County's comprehensive plan to change the land use for development at urban densities.

However, the DCA did not appear to object to a change in the land use designation for the non-vested acres from rural to urban use. Instead, the DCA stated that central water and wastewater systems would be beneficial to the Ocala Springs development as it is in the Silver River watershed and less than 1/2 mile from the Silver River which is designated both as a Special Waters and an Outstanding Florida Waters.

OSUI responded to the DCA comments by letter dated October 8, 1998. The utility does not dispute the fact that the final configuration of Ocala Springs may require changes to the County's comprehensive plan because the final configuration is not yet known. In any case, in the Master Agreement between API and OSUI, the developer pledged to work closely with all applicable government agencies in the design, planning and development of Ocala Springs including, but not limited to, Marion County and the DCA.

OSUI also provided in its response additional documentation on the 1,022 disputed acres that the DCA did not have available to it in the utility's original application. The documentation appears to indicate that a later Marion County Vesting Order dated October 5, 1992 considered the entire area of Ocala Springs as vested by the County. The development would still be constrained by the current zoning classifications, some of which may not comport with API's final development designs. If so, OSUI acknowledges that zoning changes would be pursued.

Based on the comments provided by the DCA, the utility and Marion County, it seems likely that some portion of API's final development plans may be inconsistent with Marion County's Land Use Designation Maps or zoning restrictions. However, staff believes the comments also indicate consensus among the three entities that the central water and wastewater service proposed by OSUI would be highly beneficial for Ocala Springs. As such, all three entities appear to be committed to resolving any inconsistencies with the local comprehensive plans and/or zoning classifications. Moreover, pursuant to Section 367.045(5)(b), Florida Statutes, the Commission shall consider, but is not bound by, a local comprehensive plan when determining whether to grant or deny certificates of authorization. See City of Oviedo v. Clark, 699 So.2d 316 (Fla 1st DCA), rev. dismissed, 705 So.2d 7 (Fla. 1997), wherein the court held that the Commission is not required to defer to a local comprehensive plan.

**Evidence of ownership.** Pursuant to Rule 25-30.033(1)(j), F.A.C., the utility is required to provide evidence that it owns the land upon which the utility facilities are located. As previously explained, the exact location of utility facilities is not known at this stage of the Ocala Springs development. In the meantime, the application indicates that all the land within the proposed territory is owned by API. The previously mentioned Master Agreement between OSUI and API also contains an agreement for API to convey title to OSUI for any land upon which the water and wastewater treatment facilities are eventually located. On this basis, Order No. PSC-98-1374-PCO-WS granted OSUI a temporary waiver of requirement for evidence of ownership. Pursuant to Order No. PSC-98-1374-PCO-WS, OSUI must submit evidence of ownership of plant sites and detailed system maps, see below, when it submits its applications for construction permits with the Water Management District and the FDEP.

**Territory Description.** Pursuant to Rules 25-30.033(1)(l) and (n), F.A.C., the application contained adequate territory description and maps. A description of the territory is appended

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to this recommendation as Attachment A. As noted above, the detailed system maps required by Rule 25-30.033(1)(m), F.A.C., have been temporarily waived by Order No. PSC-98-1374-PCO-WS. However, the application contains a commitment that the ultimate systems will include reclaimed water to be provided for golf course and certain public area irrigation.

Based on all the above, staff believes OSUI has demonstrated the need for service to Ocala Springs, the absence of alternate sources for service and the availability of adequate financial and technical support through startup phase of development. The issue of whether all of the final development plans will be consistent with the local comprehensive plan cannot be known at this time. However, it appears there is consensus among the DCA, the utility and Marion County with respect to the benefits of establishing such a utility and the resolution of any future inconsistencies. Furthermore, as previously noted, pursuant to Section 367.045(5)(b), Florida Statutes, the Commission is not required to defer to any inconsistencies with the local comprehensive plan.

Staff, therefore, recommends that it is in the public interest to grant Ocala Springs Utilities Inc. Water Certificate No. 604-W and Wastewater Certificate No. 520-S to serve the territory described in Attachment A. Also, pursuant to Order No. PSC-98-1374-PCO-WS, OSUI must submit detailed system maps and evidence of ownership of the plant sites when it submits its application for construction permits with the Water Management District and the FDEP and it must submit a separate application in this docket for initial rates and charges within 24 months of the issuance of an order granting original certificates.



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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 the utility and the establishment of resulting rates and charges by the Commission. The utility should be put on notice that it cannot receive any compensation for utility service until its rates and charges have been established by the Commission pursuant to Sections 367.045, and 367.081(1), Florida Statutes. (MCRAE, CROSBY)

**STAFF ANALYSIS:** Pursuant to Order No. PSC-98-1374-PCO-WS, the establishment of rates and charges has been temporarily waived. Consequently, the docket should remain open pending the completion of all filing requirements waived by that order and the establishment of appropriate rates and charges by future Commission order. The utility should be put on notice that it cannot receive compensation for any utility service until its rates and charges have been established by future Commission order pursuant to Sections 367.045, and 367.081(1), Florida Statutes.

**OCALA SPRINGS UTILITIES INC.**

**WATER AND WASTEWATER SERVICE AREA**

**MARION COUNTY**

**TOWNSHIP 14 SOUTH, RANGE 23 EAST  
SECTION 7**

That part of Section 7, Township 14 South, Range 23 East, lying South and West of Anthony-Burbank Road (NE 97th Street Road), being more particularly described as follows:

Beginning at the SW corner of said Section 7;

thence N 00°00'42" W, along the West line of said Section 7, a distance of 1,356.70 feet, to the centerline of said Anthony-Burbank Road;

thence Southeasterly, along said centerline, a chord bearing of S 45°12'04" E, a distance of 194.74 feet;

thence, continue along said centerline, Southeasterly, a chord bearing of S 61°26'52" E, a distance of 2,506.48 feet, to the South line of said Section 7;

thence S 89°28'26" W, along said South line, a distance of 2,339.66 feet, to the Point of Beginning.

**TOWNSHIP 14 SOUTH, RANGE 22 EAST  
SECTION 12**

That part of the East 3/4 of Section 12, Township 14 South, Range 22 East, lying South and West of Anthony-Burbank Road (NE 97th Street Road), being more particularly described as follows:

Beginning at the SE corner of said Section 12;

thence S 89°44'31" W, along the South line of said Section 12, a distance of 3,939.66 feet, to the SW corner of said East 3/4 of Section 12;

**ATTACHMENT A**

thence N 00°04'57" E, along the West line of said East 3/4, a distance of 2,647.09 feet;

thence continue along said West line, N 00°04'54" E, a distance of 1,290.63 feet, to the centerline of said Anthony-Burbank Road;

thence Easterly along said centerline a chord bearing of N 89°00'47" E, a distance of 1,222.21 feet;

thence continue along said centerline, Southeasterly, a chord bearing of S 60°35'41" E, a distance of 289.66 feet;

thence continue along said centerline, Southeasterly, a chord bearing of S 45°12'04" E, a distance of 3,660.59 feet, to the East line of said Section 12;

thence S 00°00'42" E, along said East line a distance of 1,356.70 feet, to the Point of Beginning.

**TOWNSHIP 14 SOUTH, RANGE 23 EAST  
SECTION 18**

All of Section 18, Township 14 South, Range 23 East, Less and Except:

Beginning at the NE corner of said Section 18;

thence S 00°13'02" W, along the East line of said Section 18, a distance of 464.79 feet, to the centerline of Anthony-Burbank Road (NE 97th Street Road);

thence Southwesterly, along said centerline, a chord bearing of S 65°18'41" W, a distance of 378.24 feet;

thence continue along said centerline, Southwesterly, a chord bearing of S 76°49'44" W, a distance of 298.34 feet;

thence continue along said centerline, Northwesterly, a chord bearing of N 84°18'56" W, a distance of 681.00 feet;

thence continue along said centerline, Northwesterly, a chord bearing of N 62°07'46" W, a distance of 179.86 feet;

thence continue along said centerline, Northwesterly, a chord bearing of N 84°11'10" W, a distance of 769.59 feet;

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**ATTACHMENT A**

thence continue along said centerline, Northwesterly, a chord bearing of N 61°26'52" W, a distance of 906.77 feet, to the North line of said Section 18;

thence N 89°28'26" E, along said North line, a distance of 3,034.81 feet, to the Point of Beginning;

And also less and except:

Beginning at the SE corner of said Section 18,

thence N 89°46'58" W, along the South line of said Section 18, a distance of 380.00 feet;

thence N 19°41'19" E, a distance of 1,140.00 feet, to the East line of said Section 18;

thence S 00°13'02" W, along said East line, a distance of 1,074.80 feet, to the Point of Beginning.

**TOWNSHIP 14 SOUTH, RANGE 22 EAST  
SECTIONS 13, 24, and 25**

All of Sections 13, 24, and 25, Township 14 South, Range 22 East.

**TOWNSHIP 14 SOUTH, RANGE 22 EAST  
SECTION 14**

The East 1/2 of Section 14, Township 14 South, Range 22 East,

Less the NW 1/4 of the NE 1/4 and also

Less: Commencing at the SW Corner of the SE 1/4 of said Section 14;

thence N 00°31'45" E, a distance of 931.68 feet, to the Point of Beginning;

thence N 86°38'25" E, a distance of 933.25 feet;

thence N 02°21'35" W, a distance of 397.28 feet;

thence S 86°38'25" W, a distance of 638.66 feet;

thence S 02°21'35" E, a distance of 373.28 feet;

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**ATTACHMENT A**

thence S 86°38'25" W, a distance of 292.96 feet;

thence S 00°31'45" W, a distance of 24.05 feet, to the Point of Beginning.

**TOWNSHIP 14 SOUTH, RANGE 22 EAST  
SECTION 23**

All of Section 23, Township 14 South, Range 22 East,

Less: Beginning at the SW corner of said Section 23,

thence N 00°00'48" W, along the West line of said Section 23, a distance of 661.34 feet;

thence N 89°57'10" E, a distance of 2,314.73 feet;

thence S 00°00'26" W, a distance of 661.79 feet, to the South line of said Section 23;

thence S 89°57'50" W, along said South line, a distance of 2,314.66 feet, to the Point of Beginning.

**TOWNSHIP 14 SOUTH, RANGE 22 EAST  
SECTION 26**

That part of Section 26, Township 14 South, Range 22 East, lying East of the CSX Railroad (formerly known as Seaboard Coast Railroad),

Less and Except: Commencing at the NE corner of the NW 1/4 of said Section 26;

thence S 00°06'47" W, along the East line of said NW 1/4, a distance of 1,364.87 feet;

thence S 89°56'52" W, a distance of 631.93 feet, to the Point of Beginning;

thence S 00°06'47" W, a distance of 1,072.31 feet;

thence S 89°56'52" W, a distance of 840.80 feet, to the Easterly right-of-way line of NE 40th Avenue Road;

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**ATTACHMENT A**

thence N 00°00'00" E, along said Easterly right-of-way line, a distance of 429.33 feet, to the point of curvature of a curve concave to the East, having a radius of 1,450.00 feet and a central angle of 26°19'45";

thence Northeasterly, along said right-of-way line and curve, a distance of 666.32 feet;

thence N 89°56'52" E, 692.50 feet, to the Point of Beginning.

**TOWNSHIP 14 SOUTH, RANGE 22 EAST  
SECTION 27**

That part of the East 1/2 of Section 27, Township 14 South, Range 22 East, lying East of the CSX Railroad (formerly known as Seaboard Coast Railroad).

**TOWNSHIP 14 SOUTH, RANGE 22 EAST  
SECTION 22**

The SE 1/4 of the SE 1/4 of Section 22, Township 14 South, Range 22 East, lying East of the CSX Railroad (formerly known as Seaboard Coast Railroad), less the North 495 feet (7-1/2 chains);

and the West 1/2 of said SE 1/4 of Section 22, lying East of said Railroad;

and the South 858 feet (13 chains) of the SW 1/4 of the NE 1/4 of said Section 22, lying East of said Railroad, less the North 198 feet (3 chains) of the South 858 feet (13 chains) of the East 1/2 of the SW 1/4 of the NE 1/4.

**TOWNSHIP 14 SOUTH, RANGE 22 EAST  
SECTION 36**

The NE 1/4 of Section 36, Township 14 South, Range 22 East;

and the North 3/4 of the East 1/2 of the SE 1/4;

and the East 396 feet (6 chains) of the SW 1/4 of the SE 1/4 of the SE 1/4;

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**ATTACHMENT A**

Less and Except: the East 14 feet of the South 210 feet; and the East 60 feet of the West 264 feet of the North 105 feet of the SW 1/4 of the SE 1/4 of the SE 1/4; all in Section 36, Township 14 South, Range 22 East.