



# Public Service Commission

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**DATE:** MARCH 18, 1999

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

**FROM:** DIVISION OF WATER AND WASTEWATER (BRADY, FEDEMANN)  
DIVISION OF LEGAL SERVICES (FERGUSON)

**RE:** DOCKET NO. 980731-WS - APPLICATION FOR CERTIFICATE TO PROVIDE WATER AND WASTEWATER SERVICE IN BY HUNTER CREEK UTILITIES, LLC.  
COUNTY: CHARLOTTE

**AGENDA:** 03/30/99 - REGULAR AGENDA - PROPOSED AGENCY ACTION FOR ISSUE 2 - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** 05/19/99 - STATUTORY DEADLINE FOR AN ORIGINAL CERTIFICATE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\WAW\WP\980731.RCM

### CASE BACKGROUND

Hunter Creek Utilities, LLC, (Hunter Creek or the utility) is a Class C water and wastewater utility currently providing service to approximately 41 lots in Phase I of the Rivers Edge mobile home development in Charlotte County. The total number of developed lots at the end of Phase III will be 284, or 227 equivalent residential connections (ERCs). The mobile home subdivision is located in an unincorporated portion of the county north of Punta Gorda and contains 100 platted acres adjacent to a tributary of the Peace River. The utility's current systems consist of one water treatment plant, one wastewater treatment plant, one water distribution system, and one wastewater collection system.

On June 10, 1998, the utility filed an application pursuant to Section 367.171, Florida Statutes, for original water and wastewater certificates for a utility in existence and charging

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rates. Hunter Creek completed the filing requirements of the application on February 19, 1999. Pursuant to Section 367.031, Florida Statutes, the Commission shall grant or deny an application for certificates of authorization within 90 days after the official filing date of the completed application.

The utility's water and wastewater plants have been in existence and providing service since 1982. However, it was not until September 27, 1994 that the Board of County Commissioners of Charlotte County declared the county subject to the provisions of Chapter 367, Florida Statutes. On December 5, 1994, Mr. John Leonette, land developer and utility owner, filed an application for a nonprofit exemption from Commission regulation pursuant to Section 367.022(7), Florida Statutes, under the name of Rivers Edge Property Homeowners Association, Inc. (HOA). The application was filed in Docket No. 941044-WS.

Staff could not recommend approval of the application at that time because the turnover provisions in the HOA's Articles of Incorporation (Articles) and By-Laws, and the resulting voting rights, did not comport with Rule 25-30.060(3)(g), Florida Administrative Code, which required voting rights to be one vote per unit of ownership and for control to pass to the non-developer members within 7 years from incorporation. The HOA's Articles and By-Laws relate back to the previous developer's "Declaration of Covenants and Restrictions of Hunter Creek Village" (Declaration). In the Declaration, the developer is the only member of the HOA, and casts the only vote, until 225 of the 284 lots have been sold.

Since the HOA was established in March of 1991, staff initially provided the applicant with sufficient opportunity to change the Articles and By-Laws such that the exemption would apply. However, late in 1997 staff learned the utility had announced a rate increase to go into effect in January of 1998. The exemption application still did not comport with the governing rules. In addition, the seven years from the date of incorporation was about to expire. By letter dated December 16, 1997, staff formally requested the developer-applicant to either change the HOA's Articles and By-Laws to transfer ownership and control of the utility facilities to the non-developer homeowners by March of 1998 or to file for certificates of authorization. Meanwhile, since the exemption did not apply, the developer was put on notice that the utility's rates could not be changed without prior Commission approval. For a number of considerations, the developer chose to file for certificates of authorization. And, by letter filed August 13, 1998, the applicant officially withdrew the application for exemption in Docket No. 941044-WS.

Since the utility timely filed an application for exemption shortly after Charlotte County became subject to the Commission's jurisdiction and, since the exemption application remained active until the utility filed for certificates of authorization, staff does not believe there has been any apparent violation of Section 367.031, Florida Statutes, for operating a water and wastewater utility without certificates of authorization. Staff has also treated the application as an original in existence, rather than a grandfather application, because the developer was never regulated as a utility by Charlotte County.

There was one response to the utility's notice of application. It was filed on July 8, 1998 by a customer of the utility. By letter dated July 21, 1998, staff sought clarification from the customer whether or not a hearing before the Commission was requested. If the customer wanted a hearing, a response was required by July 31, 1998. No further correspondence was received from the customer on the matter of a hearing.

Pursuant to a Memorandum of Understanding (MOU) which exists between the Department of Community Affairs (DCA) and the Commission, a copy of Hunter Creek's application for original certificates was forwarded to the DCA for review. By letter dated October 5, 1998, the DCA responded that it had identified no growth management concerns relating to Comprehensive Plan objectives and policies, Future Land Use Map designations, or Urban Service Area.

Finally, during the pendency of the application, the radioactive contaminants in Hunter Creek's water system have exceeded on a sustained basis the maximum contaminants level (MCL) allowed by the Florida Department of Environmental Protection (FDEP). The utility's attempted corrective measures have failed and the FDEP issued an official Warning Letter of enforcement action on February 15, 1999.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the application of Hunter Creek Utilities, LLC, for a water and wastewater certificate be granted?

**RECOMMENDATION:** Yes. Hunter Creek Utilities, LLC, should be granted Water Certificate No. 611-W and Wastewater Certificate No. 527-S to serve the territory described in Attachment A with the provision that only existing customers be served until the radioactive contaminants level in the utility's water system meets the FDEP's maximum standards on a sustained basis. If the maximum standards are not achieved, and verified, by September 30, 1999, staff should prepare a recommendation for the Commission's consideration limiting the territory to existing customers until compliance is achieved. (BRADY, REDEMANN, FERGUSON)

**STAFF ANALYSIS:** On June 10, 1998, Hunter Creek filed an application for original water and wastewater certificates for a utility in existence and charging rates. Hunter Creek is a limited liability corporation formed in June of 1998 to separate the utility facilities from Rivers Edge, Inc., the development corporation. The utility corporation is 50% owned by Mr. John Leonette, the applicant, and 50% by Mr. Fred Esposito. The application is in compliance with Section 367.171, Florida Statutes, and other pertinent statutes and administrative rules and contains the appropriate filing fee pursuant to Rule 25-30.020, Florida Administrative Code.

As required by Rule 25-30.034(1)(e), Florida Administrative Code, Rivers Edge, Inc., provided the utility with a 99 year lease for use of the land upon which the utility facilities are located. Evidence that Rivers Edge, Inc., owns the land leased to the utility was provided in the form of a warranty deed.

The application also provided proof of compliance with the noticing requirements set forth in Rule 25-30.030, Florida Administrative Code. As noted in the Case Background, one response to the notice was filed with the Commission by a customer of the utility on July 8, 1998. By letter dated July 21, 1998, staff asked the customer to inform the Commission by July 31, 1998 if a hearing was requested. No further correspondence was received from the customer on the matter. In a follow-up conversation with staff, the customer confirmed that a hearing was not requested.

According to the application, the utility has been satisfactorily operating the utility systems since they were

acquired in 1990 from the original developer. The application further states that, when Hunter Creek acquired the systems, the reverse osmosis (RO) plant had been out of service since 1985 and the wastewater treatment plant had a number of FDEP violations. Since purchasing the utility, Hunter Creek states it rebuilt the RO plant and has all the necessary FDEP permits. The utility's systems are currently being operated and maintained by Avatar Utility Services, Inc., from Sarasota, Florida. The plant operator is Mr. Alan Slater who is a certified FDEP operator.

However, as noted in the Case Background, during the pendency of the application, the radioactive contaminants level in Hunter Creek's water system have exceeded on a sustained basis the maximum level allowed by the FDEP. The utility timely filed a corrective plan with the FDEP and has been providing the required quarterly notices to existing customers and the general public of the potential health hazards of drinking the water. Unfortunately, the corrective measures attempted by the utility did not solve the problem. As a consequence, the FDEP issued Hunter Creek an official Warning Letter on February 15, 1999. According to staff's latest conversations with the FDEP, the utility appears to have accepted responsibility for the problem and is working with the FDEP on an agreed-upon corrective procedure and time-frame that will eventually be formalized in a Consent Order.

The source of the radioactive contaminants is unknown at this time. The most common source of Radium in drinking water comes from naturally occurring mineral deposits. Radium can usually be found at very low levels in soil, water, rocks, coal, plants, and food. What is important in this matter is that the utility is able to demonstrate the technical and financial ability to deal with the problem and the willingness to expend those resources. Staff believes the utility has adequately demonstrated technical ability to continue to operate the utility pursuant to Rule 25-30.034(1)(d), Florida Administrative Code.

A showing of financial ability has been a little more difficult to establish due to circumstances. Since the utility corporation was just established in June of 1998, it has no booked assets. And since development of the mobile home park has been arrested in the initial phase, the financial statements for the development corporation show continual financial losses. However, from the financial information provided with the application it appears that Mr. and Mrs. Leonette have been infusing the development corporation and, hence, the utility corporation with personal loans.

The Leonette's recently made their personal financial statements available for review by a Commission auditor. Such statements appear to indicate adequate liquid resources to meet utility emergencies and the ability to secure financing. A statement was also provided with the application of the intent by the development corporation to continue to provide financial support to the utility until appropriate rates can be established by the Commission. Staff believes the utility has adequately demonstrated financial ability to continue to provide utility services as required by Rule 25-30.034(1)(d), Florida Administrative Code.

As required by Rules 25-30.034(1)(h), (i), and (j), Florida Administrative Code, a description of the territory to be served was provided as well as one copy of detailed system maps showing the location of the utility's lines and treatment facilities and one copy of a tax assessment map with the territory plotted. Territory not served at the time of the application was identified on the system maps as well. While currently only serving Phase I of the subdivision, the utility has requested to serve the entire subdivision through Phase III. Appended to this memorandum as Attachment A is a full description of the territory requested by the utility.

In cases of certificates for utilities in existence and charging rates, Rule 25-30.034(2), Florida Administrative Code, requires an explanation why territory not currently served should be granted with the certificates. The utility explained that the remaining territory is part of one platted community governed by the same deed restrictions. The utility states there are no other facilities available to serve the undeveloped lots. The utility also claims the water and wastewater plants were designed and permitted for all 284 lots. As also required by Rule 25-30.034(2), Florida Administrative Code, the utility states that, to the best of its knowledge, provision of service to the unserved territory will be consistent with the water and wastewater sections of the local comprehensive plan as approved by the Department of Community Affairs at the time the application was filed.

As noted in the Case Background, pursuant to a MOU between the DCA and the Commission, a copy of Hunter Creek's application for original certificates was forwarded to the DCA for review. By letter dated October 5, 1998, the DCA responded that it had identified no growth management concerns relating to Comprehensive Plan objectives and policies, Future Land Use Map designations, or Urban Service Area. In that response, the DCA recognized that the territory requested by the utility was a single platted

subdivision. In addition, the DCA indicated that it had confirmed with Charlotte County officials that the territory does not lie within any other service area previously approved by local ordinance and does not appear to be in conflict with either County or City utility system expansion plans.

Based on the above, staff believes the utility's request to include the unserved portions of the subdivision along with the served portions would be entirely appropriate and reasonable under normal circumstances. However, the current situation involving radioactive contaminants leads staff to recommend that the unserved territory be granted with the provision that only existing customers may be served until the utility's radioactive MCL meets the FDEP's maximum standards on a sustained basis within a prescribed time-frame. While the utility has indicated its intent to make the necessary capital improvements as soon as possible, a period of verification will still be necessary. Therefore, staff recommends that the docket be kept open to verify that the utility achieves the FDEP's radioactive MCL standards on a sustained basis on or before September 30, 1999. Upon such verification, the unserved territory should be deemed granted and the docket administratively closed.

If, however, the utility does not achieve the FDEP's maximum standards on or before September 30, 1999, staff recommends that another recommendation be prepared for the Commission's consideration limiting the territory to existing customers until such compliance is achieved. The recommendation may also consider other actions the Commission may wish to take to assist FDEP in its enforcement activity.

Based on all the above, staff recommends that it is in the public interest to grant Hunter Creek Utilities, LLC, Water Certificate No. 611-W and Wastewater Certificate No. 527-S to serve the territory described in Attachment A with the provision that only existing customers may be served until the radioactive contaminants level in the utility's water system meets the FDEP's maximum standards on a sustained basis. If the FDEP's maximum standards are not achieved, and verified, by September 30, 1999, staff should prepare a recommendation for the Commission's consideration limiting the territory to existing customers until compliance is eventually achieved.

**ISSUE 2:** What rates and charges should be approved for Hunter Creek Utilities, LLC?

**RECOMMENDATION:** The existing rates and charges for Hunter Creek Utilities, LLC, should be approved. Hunter Creek should be exempt from the guidelines of Rule 25-30.580(1), Florida Administrative Code, until rate base is established. The effective date of the utility's rates and charges should be the stamped approval date of the tariffs. (BRADY)

**STAFF ANALYSIS:** The utility's current water and wastewater rates were established by the original developer in 1982 and have remained unchanged. The monthly rates and charges for water and wastewater service are as follows:

**Water Service**

Base Facility Charge	\$10.50
Gallonge Charge (per thousand gallons)	
0 - 5,000 gallons	\$ 3.25
5,001 - 8,000 gallons	\$ 4.88
over 8,000 gallons	\$ 7.32

**Wastewater Service**

Base Facility Charge	\$ 6.50
Gallonge Charge (per thousand gallons water)	
0 - 10,000 gallons	\$ 2.50
maximum monthly charge	\$31.50

The utility does not charge a meter deposit and none is required by Commission rule. The utility has adopted the Commission standard meter test deposit and miscellaneous service charges which are as follows:

**Meter Test Deposit**

<u>Meter Size</u>	<u>Fee</u>
5/8" x 3/4"	\$20.00
1" and 1-1/2"	\$25.00
2" and over	Actual Cost



Miscellaneous Service Charges

	<u>Water</u>	<u>Wastewater</u>
Initial Connection Fee	\$15.00	\$15.00
Normal Reconnection Fee	\$15.00	\$15.00
Violation Reconnection Fee	\$15.00	Actual Cost
Premises Visit Fee	\$10.00	\$10.00

Staff believes the utility's proposed rates and charges are reasonable and should be approved.

Hunter Creek currently serves 41 mobile home lots for a total of 39 ERCs. Maximum lots at the end of build out in Phase III will be 284 lots for a total 227 ERCs. Hunter Creek's utility systems currently consist of one 30,000 gallon per day (gpd) water treatment plant and one 15,000 gpd wastewater treatment plant. Assuming an ERC uses an average of 250 gpd water and wastewater, the existing plants can serve 120 water and 60 wastewater ERCs. However, the utility has applied to the FDEP for a permit to expand its wastewater treatment facilities to 60,000 gpd. In addition to the treatment plants, the utility has constructed water distribution and wastewater collection lines throughout Phase I and a portion of Phase II development.

Although expansion of both plant and lines will be necessary to serve the entire requested territory, the utility has no service availability charge. The owner of the utility, Mr. Leonette, is also the land developer. As the land developer, Mr. Leonette intends to contribute any necessary capital improvements to the water and wastewater plants. Mr. Leonette also intends to install the water distribution and wastewater collection lines to the boundary of each new lot and provide for hookup as the lots are developed and offered for sale.

Rule 25-30.580(1), Florida Administrative Code, states that the minimum amount of contributions-in-aid-of-construction (CIAC) by the utility should not be less than the percentage of facilities and plant represented by the water transmission and distribution system. However, Rule 25-30.580(2), Florida Administrative Code, also provides for the Commission to exempt a utility from the guidelines of subsection (1) when it introduces unreasonable difficulty. Since the utility's books and plant have not yet been audited by the Commission, staff cannot determine if any CIAC exists and, if so, the appropriate level. Staff would therefore, recommend that the Commission exempt the utility from the

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guidelines of Rule 25-30.580(1), Florida Administrative Code, until a staff-assisted rate case is conducted.

In summary, staff recommends that the utility's current rates and charges and the Commission's standard meter test deposits and miscellaneous service charges be approved. The utility has filed proposed water and wastewater tariffs which reflect these rates and charges. The tariff sheets should be made effective on or after the stamped approval date. Staff further recommends that the Commission exempt the utility from the guidelines of Rule 25-30.580(1), Florida Administrative Code, until a staff-assisted rate case is conducted.

**ISSUE 3:** Should Hunter Creek Utilities, LLC, be required to file a 1998 Annual Report with the Commission and pay regulatory assessment fees for 1998?

**RECOMMENDATION:** Yes. Hunter Creek Utilities, LLC, should be required to file an Annual Report and remit regulatory assessment fees for 1998 within 45 days of the date of this order. (BRADY)

**STAFF ANALYSIS:** Pursuant to Rules 25-30.110(3) and 25-30.120(2), Florida Administrative Code, annual reports and regulatory assessment fees are due from regulated utilities regardless of whether a certificate has been granted. While the utility's water and wastewater plants have been in existence and providing service since 1982, it was not until September 27, 1994, that the Board of County Commissioners of Charlotte County declared the county subject to the provision of Chapter 367, Florida Statutes.

However, as noted in the Case Background, the developer-owner filed an application on December 5, 1994 for a nonprofit exemption from Commission regulation pursuant to Section 367.022(7), Florida Statutes. While the voting rights and turnover provisions of the HOA's Articles of Incorporation and By-Laws did not comport with Rule 25-30.060(3)(g), Florida Administrative Code, the rule did not require transfer of control until seven years from the date of incorporation in March of 1991. Therefore, the applicant was given an opportunity to change the HOA's Articles of Incorporation and By-Laws such that the exemption would apply. However, late in 1997, the utility was about to raise rates and the seven years from date of incorporation were about to expire. By letter dated December 16, 1997, the applicant was formally required to either change the HOA's documents to transfer ownership and control of the utility facilities to the non-developer homeowners by March of 1998 or to file for certificates of authorization. For a number of considerations, the later option was chosen.

Since the utility was required to file for certificates of authorization in December of 1997, staff believes it is reasonable for the utility to be responsible for filing Annual Reports and remitting regulatory assessment fees from January 1, 1998 forward. Staff, therefore, recommends that the utility be given 45 days from the issuance of the order in this docket in which to file 1998 Annual Reports and pay the resulting regulatory assessment fees.

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**ISSUE 4:** Should this docket be closed?

**RECOMMENDATION:** No. Upon the expiration of the protest period, this docket should remain open until September 30, 1999 to allow the utility the opportunity bring its radioactive contaminants into compliance with the FDEP's MCL standards. (FERGUSON, BRADY)

**STAFF ANALYSIS:** If the Commission votes in Issue 1 to grant the utility unserved territory based on the condition that bring its radioactive contaminants into compliance with the FDEP's MCL standards, upon expiration of the protest period, this docket should remain open. Upon verification, on or before September 30, 1999, that the utility meets the FDEP's MCL standards, then the territory described in Attachment A should be deemed granted and the docket administratively closed. If no such evidence is provided by September 30, 1999, a revised recommendation limiting the utility's service territory to existing customers only should be prepared for Commission vote.

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DATE: MARCH 18, 1999

ATTACHMENT A

WATER AND WASTEWATER SERVICE TERRITORY  
FOR  
HUNTER CREEK UTILITIES, LLC  
IN  
CHARLOTTE COUNTY

RIVERS EDGE COMMUNITY

Township 40 South, Range 23 East  
Section 12

The NE 1/4 of the NW 1/4 of the SW 1/4 of the SW 1/4, of Section 12, Township 40 South, Range 23 East.

AND

The SE 1/4 of the NW 1/4 of the SW 1/4 of the SW 1/4, of Section 12, Township 40 South, Range 23 East.

AND

The NW 1/4 of the SW 1/4 of Section 12, Township 40 South, Range 23 East.

AND

That portion of Government Lot 2, Section 12, Township 40 South, Range 23 East, lying South of Lee Branch Creek.

AND

The Westerly 30 feet of the SW 1/4 of the SW 1/4 of Section 12, Township 40 South, Range 23 East.

Township 40 South, Range 23 East  
Section 11

All of Government Lot 5, lying South of Lee Branch Creek in Section 11, Township 40, South, Range 23 East.

AND

The NE 1/4 of the SE 1/4 of Section 11, Township 40 South, Range 23 East, lying East of Hunter's Creek.