BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for certificate to provide water and wastewater service in Charlotte County by Hunter Creek Utilities, LLC.	DOCKET NO. 980731-WS ORDER NO. PSC-99-0756-FOF-WS ISSUED: April 19, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

ORDER GRANTING CERTIFICATES NOS. 611-W AND 527-S, APPROVING RATES AND CHARGES, REQUIRING 1998 ANNUAL REPORT TO BE FILED AND 1998 REGULATORY ASSESSMENT FEES TO BE REMITTED WITHIN FORTY-FIVE DAYS

BY THE COMMISSION:

BACKGROUND

Hunter Creek Utilities, LLC, (Hunter Creek or 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 to charge 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 ninety 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, the 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.

Our 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 seven 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, our 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 we learned that the utility had announced a rate increase to become effective 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, our 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. 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 our jurisdiction and since the exemption application remained active until the utility filed for certificates of authorization, we do 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. We have 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, our staff sought clarification from the customer as to whether or not a hearing was requested. If the customer had wanted a hearing, a response would have been 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.

CERTIFICATES NOS. 611-W AND 527-S

As noted above, on June 10, 1998, Hunter Creek filed an application for original water and wastewater certificates for a utility in existence and to charge 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 explained in the Background, no 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 applicant 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 stated that 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., in Sarasota, Florida. The plant operator is a certified FDEP operator.

However, as noted in the 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 our 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. We believe 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 slightly more difficult to establish due to circumstances. Because 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 the developers have been infusing the development corporation and, hence, the utility corporation with personal loans.

The developers 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. We believe 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 order as Attachment A is a full description of the territory requested by the utility.

In cases of applications for certificates for utilities in existence and to charge 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 stated that there are no other facilities available to serve the undeveloped lots. The utility also claimed 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 stated 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 at the time the application was filed.

As noted in the 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 is 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, we find that 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 us to find 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 timeframe. 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, the docket shall 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 shall 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, another recommendation shall be prepared for our consideration limiting the territory to existing customers until such compliance is achieved. The recommendation may also consider other actions which we may wish to take to assist FDEP in its enforcement activity.

Based upon the foregoing, we find 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 shall be served until the radioactive contaminant 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, our staff shall prepare a recommendation for our consideration limiting the territory to existing customers until compliance is achieved.

RATES AND CHARGES

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
Gallonage 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
Gallonage 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 our rules. The utility has adopted the Commission's standard meter test deposit and miscellaneous service charges which are as follows:

Meter Test Deposit

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

Miscellaneous Service Charges

	Water	Wastewater
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

The utility's proposed rates and charges are reasonable and are hereby 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 is also the land developer. As the land developer, the owner intends to contribute any necessary capital improvements to the water and wastewater plants. He 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 our staff, we cannot determine if any CIAC exists and, if so, the appropriate level. We hereby find it appropriate to exempt the utility from the guidelines of Rule 25-30.580(1), Florida Administrative Code, until a staff-assisted rate case is conducted.

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

1998 ANNUAL REPORT AND REGULATORY ASSESSMENT FEES

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 Background, the developer-owner filed an application on December 5, 1994 for a nonprofit exemption from our 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-year deadline from date of incorporation was 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, we believe it is reasonable for the utility to be responsible for filing annual reports and remitting regulatory assessment fees from January 1, 1998 forward. The utility is hereby given forty-five days from the effective date of this order in which to file 1998 annual reports and pay the resulting regulatory assessment fees.

DOCKET CLOSURE

Upon the expiration of the protest period, this docket shall remain open until September 30, 1999 to allow the utility the opportunity to bring its radioactive contaminants into compliance with the FDEP's MCL standards.

Because we grant the utility unserved territory based upon the condition that it bring its radioactive contaminants into compliance with the FDEP's MCL standards, upon expiration of the protest period, this docket shall 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 shall be deemed granted and the docket shall be 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 shall be prepared for our consideration.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Water Certificate No. 611-W and Wastewater Certificate No. 527-S to serve the territory described in Attachment A, which is attached to this Order and is incorporated herein, are granted. It is further

ORDERED that only existing customers shall be served until the radioactive contaminant level in Hunter Creek Utilities, LLC's water system meets the Florida Department of Environmental Protection's maximum standards on a substantial basis. It is further

ORDERED that if the Florida Department of Environmental Protection's maximum standards are not achieved and verified, by September 30, 1999, our staff shall prepare a recommendation for our consideration limiting the territory to existing customers, until compliance is achieved. It is further

ORDERED that Hunter Creek Utilities, LLC's proposed rates and charges are hereby approved. It is further

ORDERED that Hunter Creek Utilities, LLC, is hereby exempt from Rule 25-30.580(1), Florida Administrative Code, until a staff-assisted rate case is conducted. It is further

ORDERED that the tariff sheets shall be made effective on or after the stamped approval date. It is further

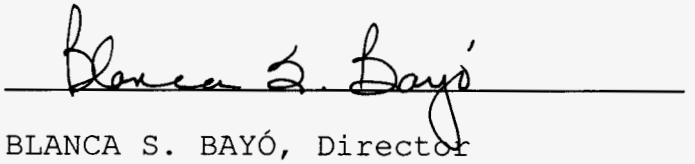
ORDERED that Hunter Creek Utilities, LLC shall file its 1998 annual report and remit resulting regulatory assessment fees within forty-five days from the effective date of this Order. It is further

ORDERED that upon expiration of the protest period, this docket shall remain open until September 30, 1999 to allow Hunter Creek Utilities, LLC the opportunity to bring its radioactive contaminants into compliance with the Florida Department of Environmental Protection's MCL standards. It is further

ORDERED that upon verification, on or before September 30, 1999, that the utility meets the Florida Department of Environmental Protection's MCL standards, the remainder of the territory described in Attachment A shall be deemed granted and the docket administratively closed. It is further

ORDERED that if no such evidence is provided by September 30, 1999, a revised recommendation limiting the utility's service territory to existing customers only shall be prepared for our consideration.

By ORDER of the Florida Public Service Commission this 19th day of April, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The Commission's decision on this tariff is interim in nature and will become final, unless a person whose substantial interests are affected by the proposed action files a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 10, 1999.

In the absence of such a petition, this Order shall become final on the day subsequent to the above date.