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DIVISION OF WATER & WASTEWATER  
CHARLES H. HILL  
DIRECTOR  
(850) 413-6900

# Public Service Commission

December 16, 1997

Mr. John Leonette  
Rivers Edge Property Homeowners Assoc.  
1601 Hunter Creek Drive  
Punta Gorda, Florida 33982

Re: Docket No. 941044-WS, Resolution of Board of Commissioners of Charlotte County declaring Charlotte County subject to provisions of Chapter 367, Florida Statutes -- Request for exemption for provision of water and wastewater service by Rivers Edge Property Homeowners Association.

Dear Mr. Leonette:

As you are aware, on December 5, 1994, an application for a non-profit exemption from regulation pursuant to Section 367.022(7), Florida Statutes, was submitted on behalf of Rivers Edge Property Homeowners Association (Rivers Edge). Staff could not recommend approval of the application at that time because the turnover provisions in Rivers Edge's Articles of Incorporation and By-Laws, and the resulting voting rights, did not comport with Commission rules. The rules were subsequently revised to match the turnover provisions in the non-profit statutes of 51% or seven years from date of incorporation. However, River Edge's application for exemption still does not appear to comply.

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG \_\_\_\_\_
- LIN \_\_\_\_\_
- OPC \_\_\_\_\_
- FOH \_\_\_\_\_
- SEC   1
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

As my staff understands the provisions of River Edge's Articles of Incorporation and By-Laws, they relate back to the development's original deed restrictions called the Declaration of Covenants and Restrictions of Hunter Creek Village (Declaration). In the Declaration, the developer established a non-profit homeowners association for the purpose of owning and maintaining the utility facilities among other common property. However, the developer is the only member of the association, and therefore casts the only vote, until 225 of a total 284 potential lots have been sold. This amounts to a turnover provision of 79%. Also, Rivers Edge was incorporated in March of 1991. Therefore, regardless of how many lots are sold, turnover would need to occur by March of 1998. According to my staff, there is no provision in Rivers Edge's documents for this to occur.

DOCUMENT NUMBER - DATE  
12924 DEC 17 97  
FPSC-RECORDS/REPORTING

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Since a non-profit exemption does not appear to apply, Rivers Edge needs to either change its Articles of Incorporation and By-Laws to transfer ownership and control of utility facilities to the homeowners by March of 1998 or file for certificates of authorization to provide utility services. Also, since Rivers Edge does not currently qualify for an exemption, it is a utility subject to the Commission's jurisdiction pursuant to Section 367.021, Florida Statutes. As such, Rivers Edge cannot change its rates without Commission approval. Once an application for certificates of authorization has been filed with the Commission, Rivers Edge may request staff's assistance in reviewing its rates. To find out more about a staff-assisted rate case, please contact Mr. Troy Rendell at (850) 413-6934.

Meanwhile, enclosed is an application package for applying for original water and wastewater certificates for a utility which is already in existence and charging rates. Included in this package are the following items:

1. Application for certificate pursuant to Section 367.045, Florida Statutes (F.S.).
2. A copy of Section 367.045, F.S., regarding applications for original certificates. Chapter 367, F.S., details the Commission's jurisdiction over private water and wastewater utilities in Florida.
3. A copy of selected portions of Chapter 25-30, Florida Administrative Code (F.A.C.), regarding applications for original certificates. Chapter 25-30, F.A.C., are the rules established to carry out the jurisdiction of the Commission over private water and wastewater utilities.
4. Sample publication/legal notice format and a list of utilities and governmental/regulatory agencies that must be notified in accordance with Commission Rule 25-30.030, F.A.C. Please note the expiration date on the list. If you have not performed the noticing by this date, you must request an updated list by contacting the undersigned.
5. Instructions for preparing the territory description and map.
6. Sample water and wastewater tariffs which will contain all of the utility's rules, regulations, rates and charges.

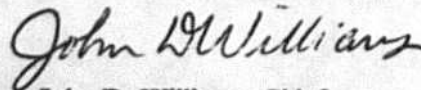
The original and five copies of the application and supporting documentation, one copy of the maps and the original and three copies of the tariffs must be filed with:

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**Director, Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850**

The application should be completed and filed by February 16, 1998. In the cover letter transmitting the application, please request that your application for exemption, which was filed in this docket, be withdrawn and a new docket opened to process your application for certificates. If you have any questions concerning this material, please feel free to contact either myself or a member of my staff, Ms. Patricia Brady, at (904) 413-6686.

Sincerely,



**John D. Williams, Chief  
Bureau of Policy Development  
and Industry Structure**

JDW:pb  
Enclosure

cc: Mr. Troy Rendell, Division of Water and Wastewater  
Ms. Alice Crosby, Division of Legal Services  
Division of Records and Reporting (two copies)  
Tickler File

Ms. Pat Raley  
Hunter Creek Village Homeowners Association  
1686 Ibis Court  
Punta Gorda, Florida 33982