



# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

## -M-E-M-O-R-A-N-D-U-M-

**DATE:** JANUARY 7, 1999

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

**FROM:** DIVISION OF WATER AND WASTEWATER (WALKER, REDEMANN)  
DIVISION OF LEGAL SERVICES (CROSBY)

**RE:** DOCKET NO. 971185-WS - APPLICATION FOR ORIGINAL  
CERTIFICATES FOR AN EXISTING UTILITY PROVIDING WATER AND  
WASTEWATER SERVICE IN POLK COUNTY BY NEW RIVER RANCH, L.C.  
COUNTY: POLK

**AGENDA:** 1/19/99 - REGULAR AGENDA - PROPOSED AGENCY ACTION ON ISSUE  
3 - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\WAW\WP\971185.RCM

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### CASE BACKGROUND

On May 14, 1996, the Board of County Commissioners of Polk County adopted a resolution pursuant to Section 367.171, Florida Statutes, declaring that privately owned water and wastewater utilities in that county were subject to the provisions of Chapter 367, Florida Statutes. The resolution was acknowledged by this Commission on July 11, 1996, by Order No. PSC-96-0896-FOF-WS. Pursuant to Section 367.171, Florida Statutes, a utility subject to the jurisdiction of this Commission must obtain a certificate of authorization.

On September 11, 1997, New River Ranch, L.C. (NRR) filed an application for a "grandfather" certificate to provide water and wastewater service in Polk County pursuant to Section 367.171(2)(b), Florida Statutes. In 1970, Polk County granted a franchise to this utility when it was known as River Ranch Water Company, Inc. In 1979, Polk County approved a transfer of the franchise to All-American River Ranch Water and Sewer Company, Inc.

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FPSC-RECORDS/REPORTING

In 1981, Polk County approved a subsequent transfer of the franchise to River Utilities, Inc., after its parent company, River Ranch, Inc., acquired the utility's assets when it foreclosed on a mortgage. On or about January 14, 1997, NRR acquired this utility during the final stages of a bankruptcy proceeding that involved the former utility, River Utilities, Inc., and its parent company. NRR was formed by a group of ten property owners in the utility's service area who joined together to acquire the utility company and its parent company. In 1997, for its combined water and wastewater systems, NRR recorded combined operating revenues of \$72,265. After expenses, NRR recorded an overall \$53,833 operating loss.

Because NRR did not own this system on May 14, 1996, when this Commission's jurisdiction began, NRR was asked to submit an amended application for an "original" certificate for an existing utility in Polk County. When an existing system files an application for an original certificate, the utility's customers and various governmental agencies must be informed. In addition, the notice must be published in a local newspaper.

This utility serves a resort area known as River Ranch that includes a variety of housing and commercial areas. There are basically four customer classes: a recreational vehicle (RV) park consisting of 367 units; a condominium village with 192 units; two residential areas: Long Hammock with 119 homes and, outside the park area, River Ranch Shores with 29 homes; and the resort community itself. The resort portion includes restaurants, a golf course, a marina, offices, and shops. The utility also has a variety of billing practices. Three homeowner's associations (the RV area, the condominium village, and the Long Hammock area) pay monthly bills, while residents in River Ranch Shores area are billed quarterly. However, many of the commercial customers are neither metered nor billed. As the utility was evidently built to serve the resort area, the original owners did not separately bill their other business segments. Instead, as residential areas were developed and sold, fees were established to partially recover operating expenses. Although meters were installed in the residential areas, fixed monthly or quarterly charges were collected in most cases.

While this application was pending, NRR has been pursuing a sale of all of its investment in the resort facilities to an entity that would be better able manage the overall River Ranch Resort community: the vacation areas, the golf course, leasing arrangements with respect to the condominium and RV areas, the utility segment, future development plans, and other concerns. On July 31, 1998, NRR concluded an agreement to sell these facilities to New River Ranch Resorts, Inc. NRR retains certain liens against the property. Staff notified NRR of the need to submit an

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application to transfer the utility to New River Ranch Resorts, Inc. That application will be filed after an original certificate is issued to NRR.

Pursuant to Rules 25-30.110(3) and 25-30.120(2), Florida Administrative Code, regulated utilities must submit annual reports and pay regulatory assessment fees while certification issues are pending. NRR has filed a 1997 Annual Report and is current with respect payment of its regulatory assessment fees.

This recommendation addresses New River Ranch's application for an original certificate for an existing utility that provides water and wastewater service in Polk County. A show cause issue for operating the utility without Commission authority is also addressed. Also, the staff recommends that metered rates should be enforced where meters have been installed. In addition, we recommend that this utility be ordered to install meters to register actual usage by customers and to bill all users.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should New River Ranch, L.C. d/b/a River Ranch (NRR) be ordered to show cause, in writing within twenty-one days, why it should not be fined for apparent violation of Section 367.031, Florida Statutes?

**RECOMMENDATION:** No. A show cause proceeding should not be initiated. (CROSBY)

**STAFF ANALYSIS:** As stated in the case background, NRR is in apparent violation of Section 367.031, Florida Statutes, which states, in part, "Each utility subject to the jurisdiction of the commission must obtain . . . a certificate of authorization to provide water or wastewater service." NRR acquired the mortgage for the utility. Soon thereafter River Ranch, Inc. went into bankruptcy, and NRR bought the utility at the bankruptcy auction. A Certificate of Sale was issued on January 2, 1997. The Certificate of Title was executed on January 14, 1997, by the Deputy Clerk of the Circuit Court of the Tenth Judicial Circuit in and for Polk County giving NRR ownership of the utility. NRR has operated the utility providing water and wastewater service since that time without a certificate. Such action is "willful" in the sense intended by Section 367.161, Florida Statutes.

Section 367.161, Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any provision of Chapter 367, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating to Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and that this is distinct from an intent to violate a statute or rule." Id. At 6.

Failure of NRR to obtain a certificate prior to providing service appears to be due to lack of knowledge of the Commission's statutes and rules. At the time NRR purchased the system, it had no knowledge of the Commission or its requirements. Upon becoming aware of the Commission's regulation, NRR filed an application for grandfather certificates on September 11, 1997. Later, at staff's

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direction, NRR filed an amended application for a certificate for an existing system providing service in Polk County on November 6, 1998.

Although regulated utilities are charged with knowledge of Chapter 367, Florida Statutes, staff does not believe that the apparent violation of Section 367.031, Florida Statutes, rises in these circumstances to the level of warranting initiation of show cause proceedings. NRR filed the application soon after being informed that it was subject to Commission regulation. Therefore, staff recommends that the Commission not order New River Ranch to show cause for failing to obtain a certificate prior to providing water and wastewater service.

**ISSUE 2:** Should the application of New River Ranch, L.C., for an original certificate for an existing system providing water and wastewater service in Polk County be granted?

**RECOMMENDATION:** Yes, New River Ranch should be granted Water Certificate No. 603-W and Wastewater Certificate No. 519-S. (WALKER, REDEMANN)

**STAFF ANALYSIS:** As discussed in the case background, the Board of County Commissioners of Polk County transferred jurisdiction of the privately owned water and wastewater utilities in Polk County to this Commission on May 14, 1996. On September 11, 1997, NRR filed an application for a "grandfather" certificate to provide water and wastewater service in Polk County, in accordance with Section 367.171(2)(b), Florida Statutes. However, as NRR acquired this system after Commission jurisdiction began, NRR was asked to submit an application for an existing system that is already providing water and wastewater service in Polk County.

On November 6, 1998, NRR filed additional information to fulfill the minimum filing requirements for an existing utility system, which included proof that it published and noticed the application. Earlier, on August 25, 1998, NRR mailed a copy of its application for an original certificate to its customers. On September 15, 1998, one of the customers, Ms. Diane Limoges, filed an objection to the proposed application, citing various concerns about the quality of water and wastewater service. On September 17, 1998, Ms. Limoges elected to withdraw her objection to certification of NRR. On September 28, 1998, the staff responded to Ms. Limoges' list of concerns and explained that NRR was not subject to any outstanding mandates from governmental agencies regarding inadequate service. Further, staff informed Ms. Limoges that because of NRR's remote location, there were no possible competing utilities that could then serve this community.

The amended application complies with the governing statute, Section 367.045, Florida Statutes, and other pertinent statutes and administrative rules regarding an application for an original certificate. Further, the application included payment of a \$1,500 filing fee, which is the prescribed filing fee per Rule 25-30.020, Florida Administrative Code.

Rule 25-30.035(6), Florida Administrative Code, requires a utility to provide proof that it owns the land or has continued use of the land upon which its facilities are located. NRR acquired this system on January 14, 1997, pursuant to a bankruptcy decision rendered by the Circuit Court of the Tenth Judicial Circuit in and for Polk County. As evidence of its ownership of the subject plant



sites, NRR filed a copy the Court's decision awarding a Certificate of Title to NRR in that proceeding.

Adequate service territory and system maps and a territory description have been provided as prescribed by Rule 25-30.035(9), (10), and (11), Florida Administrative Code. A description of the territory requested by the applicant is appended to this memorandum as Attachment A.

We contacted the Environmental Engineering Section of the Polk County Health Department (PCH) to inquire about the utility's water system. We were informed that the utility is complying with that agency's directives, which includes recently repairing its ground storage tank. NRR is also complying with all prescribed chemical analyses and bacteriological tests.

We contacted the Department of Environmental Protection (DEP) to inquire about the utility's wastewater system. We were informed that NRR does not have any outstanding violations at this time. Recently, a customer reported that sewage overflows were an occasional problem. Upon inquiry, NRR confirmed that overflow problems have occurred during peak occupancy periods and extremely wet conditions. However, NRR also reported that about \$100,000 has recently been spent to overhaul the utility's lift stations to correct these problems.

Based on the above information, staff recommends that New River Ranch be granted Water Certificate No. 603-W and Wastewater Certificate No. 519-S to serve the territory described in Attachment A.

ATTACHMENT A

NEW RIVER RANCH, LC

TERRITORY DESCRIPTION

POLK COUNTY

All of Sections 10, 15, 22, 23, and E 1/2 of Section 26, that part of Sections 11, 14, 24, 25, 36, lying west of proposed Kissimmee Canal 38, all being in Township 31S, Range 31E.

That part of Section 31, Township 31S, Range 32E lying west of proposed Kissimmee Canal 38.

The E 1/2 of Section 1, Township 32S, Range 31E.

That part of Section 6, Township 32S, Range 32E lying west of proposed Kissimmee Canal 38.

All of Section 7, Township 32S, Range 32E, lying west of proposed Kissimmee Canal 38, less the SW 1/4.

That part of Section 8, Township 32S, Range 32E lying west of proposed Kissimmee Canal 38.

The NE 1/4 of Section 18, Township 32S, Range 32E.

That part of Sections 17, 20, 28, 29, 33, lying west of proposed Kissimmee Canal 38, all of Sections 30, 31, 32, all being in Township 32S, Range 32E.



**ISSUE 3:** What rates and charges should be approved for this utility?

**RECOMMENDATION:** The rates and charges as detailed in the staff analysis should be approved. The utility should be instructed to bill all of its residential customers based on metered consumption. The utility should retain its present billing practice for service provided to the condominium village and the RV park, but only until meters can be installed. Further, the utility should install meters to measure actual usage by any presently unmetered commercial customers. NRR should be ordered to submit a schedule that shows the expected installation period for the various commercial areas. A six month period to complete installation of meters appears reasonable. The tariffs should be effective for services rendered or connections made on or after the stamped approval date of the tariff. (WALKER)

**STAFF ANALYSIS:** Several years before NRR was formed, the utility chose to bill its customers flat fees for water and wastewater service. NRR continued this practice after it acquired the utility in 1997. Traditionally, this Commission has approved retention of a utility's existing rates when a grandfather application is filed. Commonly, existing rates are retained when a certificate is granted to an existing utility system. In some cases, flat rates have also been approved for small utilities. However, there is no incentive to conserve water when flat rates are retained. Further, unless otherwise allowed by the Commission, collection of metered rates is prescribed by Rule 30.255, Florida Administrative Code. Also, installation of meters is increasingly being mandated by water management districts.

While collection of metered rates is clearly preferred, this practice may not be feasible in all cases. Reliable usage data may not be available, the utility may have difficulty locating its mains and services, and the cost to install meters may be excessive. Still, conserving water is increasingly viewed as being important and in the public interest. Thus, the opposing arguments must be weighed in the balance.

NRR is a small water and wastewater system that serves about 200 residential customers, about 200 condominiums, an RV community, and several commercial users in a resort community in Polk County. This community is a vacation area that experiences peak water conditions from about October through March. Water demand also increases during weekends that coincide with legal holidays. Water production and wastewater treatment details show these peak

conditions. Given these seasonal conditions and the absence of meter reading records, actual usage per customer is unclear.

The staff asked the South Florida Water Management District whether NRR's service area would be designated a special district for water withdrawal purposes, such as a Water Caution Use Area. We were advised that NRR's service area is not considered a special usage district.

At the present time, three commercial accounts are billed fixed monthly charges through their homeowners' associations. These separate accounts are: a 367-unit recreational vehicle park that pays \$10.50 per unit, a 192-unit condominium resort area that pays \$7.00 per unit, and a residential community (Long Hammock) that pays \$10.50 each for 119 individual homes. Also, outside the park area, 29 single family homes in the River Ranch Shores area are individually billed on a quarterly basis. While most of the River Ranch Shores customers pay \$45.60 per quarter, some customers only pay \$40.50.

NRR has a residential rate for wastewater service, but not for water service. However, NRR has a general service rate that can be used for residential water service. We believe NRR should employ these tariffs for residents in both the River Ranch Shores and Long Hammock areas. Although NRR uses a multiple dwelling rate for customers in the Long Hammock area, NRR should bill these customers based on actual usage since meters have also been installed in that area.

The other two commercial accounts, or the RV park and the condominium village, are billed each month through their respective homeowners' associations. The per customer bill is \$10.50 for the RV park, but only \$7.00 for the condominium village. The reduced charge for the condominium village presumably relates to less irrigation and usage assumptions. At present, customers in the condominium village and the RV area are billed using a Multiple Dwelling Service tariff. In addition, there are numerous commercial customers that are not billed at all, an apparent consequence of related party conditions.

In this case, the staff believes it is important that all consumption should be metered. To begin with, customers in the River Ranch Shores residential area should be billed using the general service rate (as a surrogate for a residential rate) for water service and the residential rate for wastewater service. Presently, NRR follows a convention of billing these customers a

flat, quarterly service charge. However, that practice does not encourage conservation.

Further, since meters have been installed in the Long Hammock area, we believe those customers should also be billed based on actual usage. According to NRR's tariff, general service rates should apply for multiple-family structures, mobile home parks, and in other areas where meters have been installed. Like customers in the River Ranch Shores area, customers in the Long Hammock area should be billed general service rates for water service and residential rates for wastewater service. If NRR discovers that some meters are not working, it should bill residents in the Long Hammock and River Ranch Shores areas \$12.00 per month until the defective meters can be replaced. A three month period to replace defective meters in the residential areas should be sufficient.

In addition, we believe that NRR should be ordered to install a master meter to register actual usage in the RV park area. The cost to install this meter should not be excessive and may improve NRR's earnings' profile. For the condominium village, meters should be installed to register usage for each building. There are about 17 separate buildings and the installation cost should not be excessive. For the unmetered commercial areas, meters should be installed to register actual usage. NRR cannot be self-sufficient while it continues to provide cost-free service for its other business segments. These customers should be billed according to NRR's general service tariff. Of necessity, these new metering procedures will take time. We believe a six month period to install meters for the RV park, the condominium village, and the currently unmetered commercial areas is reasonable. We believe that NRR should be ordered to submit a schedule to reflect the expected installation period for the various commercial areas. Failure to install meters may be cause for subsequent sanctions.

Until meters are installed throughout the service area, the staff recommends that NRR should use the rates that Polk County authorized, but with the modifications shown below. This utility's previous water tariff included declining block rates as usage increased and, in addition, minimum usage allowances. The rates that Polk County approved for general service customers included 4,000 gallons within the minimum charge and declining block rates (per thousand gallons) as follows: \$.85 for the next 6,000 gallons, \$.50 for the next 40,000 gallons, and \$.35 for usage after 50,000 gallons. Beyond the initial 10,000 gallon category, we believe the subsequent usage fees are too modest. Also, when larger meters are considered, the billing process is more complicated due to meter

sizing factors. For these reasons and to be consistent with Commission policy, the staff recommends that declining block rates and minimum usage provisions should both be eliminated in this docket.

The following rates for residential service and flat charges for multiple-dwelling units should be charged until meters are installed. After meters have been installed for the RV park, for the condominium area, and for the commercial areas, general service rates should thereafter be collected from those customers.

**RESIDENTIAL SERVICE: WATER**

Monthly Base Charge:	
5/8" x 3/4" Meter	\$ 6.00
1" Meter	\$ 15.00
1 1/2" Meter	\$ 30.00
2" Meter	\$ 48.00
Gallonage Charge	\$ .85

**RESIDENTIAL SERVICE: WASTEWATER**

Flat Charge: \$6.00 per month

**GENERAL SERVICE: WATER**

Monthly Base Charge:	
5/8" x 3/4" Meter	\$ 6.00
1" Meter	\$ 15.00
1 1/2" Meter	\$ 30.00
2" Meter	\$ 48.00
3" Meter	\$ 96.00
4" Meter	\$150.00
6" Meter	\$300.00
8" Meter	\$480.00
Gallonage Charge	\$ .85

**GENERAL SERVICE: WASTEWATER**

Rate: 100% of the monthly water bill

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**MULTIPLE DWELLING RATES - WATER**

Flat Charge: Monthly per Unit  
River Ranch Condo Association \$ 4.00  
River Ranch RV Association \$ 6.00

**MULTIPLE DWELLING RATES: WASTEWATER**

Flat Monthly Charge: Monthly per Unit  
River Ranch Condo Association \$ 3.00  
River Ranch RV Association \$ 4.50

**CUSTOMER DEPOSITS**

The amount of the initial deposit shall be the greater of \$15.00 or an amount necessary to cover charges for two (2) billing periods

**METER TEST DEPOSITS**

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

**MISCELLANEOUS SERVICE CHARGES**

Initial Connection Fee:	\$ 15.00
Normal Reconnection Fee:	\$ 15.00
Violation Reconnection Fee:	\$ 15.00
Premises Visit Fee:	\$ 10.00

**SCHEDULE OF TAPPING FEES - WATER**

5/8" X 3/4" Meter	\$ 60.00
1" Meter	\$110.00

**SCHEDULE OF TAPPING FEES - WASTEWATER**

Per Customer	\$ 40.00
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**SERVICE AVAILABILITY CHARGES**

When water and sewage facilities are installed, each home shall be assessed a \$650.00 fee.

The utility has filed a tariff which reflects the above rates and charges. Staff recommends that they be approved as submitted. Staff further recommends that NRR be required to continue to charge these rates and charges until authorized to change by the Commission. The tariff should be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets.

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

**RECOMMENDATION:** Yes, this docket should be closed if no timely protests are filed to the proposed agency action issue. (CROSBY)

**STAFF ANALYSIS:** If there are no timely protests filed by a substantially affected person to the proposed agency issue (Issue No. 3), no further actions will be required and the docket should be closed.