

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for original certificates for an existing utility providing water and wastewater service in Polk County by New River Ranch, L.C. d/b/a River Ranch.

DOCKET NO. 971185-WS
ORDER NO. PSC-99-0254-FOF-WS
ISSUED: February 9, 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 DECLINING TO INITIATE A SHOW CAUSE PROCEEDING
AND GRANTING CERTIFICATES

AND

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING CONTINUANCE OF EXISTING RATES AND CHARGES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein approving existing rates and charges is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Background

On September 11, 1997, New River Ranch, L.C. d/b/a River Ranch (NRR or utility) filed an application for grandfather certificates to provide water and wastewater service in Polk County, pursuant to Section 367.171, Florida Statutes. The Commission received jurisdiction in Polk County in May 1996 after the Board of County

DOCUMENT NUMBER-DATE

01704 FEB-98

FPSC-RECORDS/REPORTING

Commissioners adopted a resolution declaring privately-owned water and wastewater utilities in the County to be subject to the provisions of Section 367, Florida Statutes.

Polk County granted a franchise to the utility in 1970 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. The utility was transferred to River Utilities, Inc. in 1981, when River Utilities, Inc.'s parent company, River Ranch, Inc., acquired the utility's assets through foreclosure.

NRR acquired the utility on January 14, 1997, during the final stages of a bankruptcy proceeding that involved the former owner, 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 and its parent company.

As stated previously, on September 11, 1997, NRR filed an application for grandfather certificates. However, because NRR did not own the system when the Commission received jurisdiction in Polk County on May 14, 1996, NRR was asked to submit an application for original certificates for a utility in existence.

The utility, which has been in existence since 1970, serves a resort area known as River Ranch, which includes a 367-unit recreational vehicle (RV) park, a 192-unit condominium village, 119 homes in Long Hammock and 29 homes in River Ranch Shores. The area served by the utility also includes restaurants, a golf course, a marina, offices and shops.

Show Cause

Because NRR operated the utility providing service in Polk County without a certificate, it is in apparent violation of Section 367.031, Florida Statutes. Section 367.031, Florida Statutes, 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 the Commission staff's 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, we do not find that the apparent violation of Section 367.031, Florida Statutes, rises in these circumstances to the level of warranting the initiation of show cause proceedings. NRR filed the application soon after being informed that it was subject to Commission regulation. Therefore, we do not find it appropriate to initiate a show cause proceeding against NRR for failing to obtain a certificate prior to providing water and wastewater service.

Application

Except as discussed previously, the application, as amended, is in compliance with Section 367.045, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code. In particular, the application contains a filing fee in the

amount of \$1,500, as prescribed by Rule 2-30.020, Florida Administrative Code.

Rule 25-30.034(e), Florida Administrative Code, requires a utility to provide proof that it owns or has continued use of the land upon which its facilities are located. NRR acquired the system on January 14, 1997, through bankruptcy. As evidence of ownership and continued use of the land where the facilities are located, NRR provided a copy of the decision of the Circuit Court of the Tenth Judicial Circuit awarding NRR a Certificate of Title to the land. We find this sufficient to meet the requirements of Rule 25-30.035(6), Florida Administrative Code.

Adequate service territory and system maps and a territory description have been provided as prescribed by Rule 25-30.034(h), (i), and (j), Florida Administrative Code. A description of the territory NRR is authorized to serve is shown on Attachment A of this Order, which by reference is incorporated herein.

NRR provided proof of compliance with the provisions of Rule 25-30.030, Florida Administrative Code, including notice to the customers being served. On September 15, 1998, an objection to the proposed application was filed. However, it was withdrawn on September 17, 1998. No other objections to the application have been received and the time for filing such has expired.

The Environmental Engineering Section of the Polk County Health Department (PCH) was contacted regarding the utility's water system. According to PCH, the utility is in compliance with all directives. Also, according to the Department of Environmental Protection (DEP) there are no outstanding violations against NRR at this time. However, according to information provided by a customer, there are occasional problems with sewage overflows during peak occupancy periods and extremely wet conditions. From inquiries made by the Commission staff, we determined that NRR has recently spent about \$100,000 to overhaul the utility's lift stations to correct the overflow problems.

Based on the foregoing, we find that it is in the public interest to grant NRR Certificates Nos. 603-W and 519-S. The territory NRR is authorized to serve is shown on Attachment A of this Order.

Rates and Charges

When NRR acquired the utility in January 1997, the rates in effect were flat rates. NRR has continued these rates since that time. Traditionally, this Commission has approved retention of existing rates in grandfather applications or applications for certificates for utilities already in existence. However, there is no incentive to conserve water when flat rates are charged. Further, unless otherwise allowed by the Commission, collection of metered rates is prescribed by Rule 25-30.255, Florida Administrative Code. Installation of meters is also increasingly being mandated by water management districts.

The rates and charges now being charged by NRR are not the rates and charges approved by Polk County. Currently, NRR charges three commercial accounts fixed monthly charges through their homeowners' associations. These accounts are a 367-unit RV park (River Ranch RV Resort) which pays \$10.50 per unit; a 192-unit condominium resort area (River Ranch Inn and Cottages) which pays \$7.00 per unit; and a residential community (Long Hammock) consisting of 119 homes that pay \$10.50 each. Also, outside the park area, 29 single-family homes in the River Ranch Shores area are individually billed on a quarterly basis. Some customers in the River Ranch Shores area pay \$45.60; others pay \$40.50. In addition, NRR has several commercial customers that are not billed at all.

While collection of metered rates is clearly preferred, this practice may not be feasible in all cases. As in this case, reliable usage data is not available, and there is no information to indicate how much it would cost NRR to install meters. Thus, the Commission does not have information sufficient to make the determination that collection of metered rates would justify the cost of metering.

NRR is a small water and wastewater system. The community is a vacation area that experiences peak water usage from about October through March. Water demand increases during holiday weekends. As stated previously, additional information is needed to determine the feasibility of metering and the appropriate rates and charges for the utility.

Although not the rates and charges approved by Polk County, we find it appropriate to approve the rates and charges currently being charged by NRR, as set forth herein. New River Ranch, L.C.

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shall file a tariff reflecting these rates and charges. The tariff shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets. NRR shall continue to charge these rates and charges until the Commission makes a determination as to whether or not meters should be installed. At that time, the Commission will determine the appropriate rates and charges for this system. The docket shall remain open pending receipt of the information required to make a determination regarding metering and the appropriate rates and charges.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that New River Ranch, L.C. d/b/a River Ranch, 3200 River Ranch Road, Post Office Box 30030, River Ranch, Florida, 33867, is hereby granted Certificates Nos. 603-W and 519-S, to serve the territory shown on Attachment A of this Order, which by reference is incorporated herein. It is further

ORDERED that New River Ranch, L.C. d/b/a River Ranch shall continue to charge the rates and charges it currently charges its customers until authorized to change by this Commission. The current rates and charges of the utility are set forth in the body of this Order. It is further

ORDERED that New River Ranch, L.C. d/b/a River Ranch shall file a tariff reflecting the current rates and charges as set forth herein. The tariff shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that this Docket shall remain open pending receipt of the information required to make a determination regarding metering and the appropriate rates and charges.

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By ORDER of the Florida Public Service Commission this 9th
day of February, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

ALC

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.

As identified in the body of this order, our action approving continuance of existing rates and charges is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file 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, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 2, 1999. If such a petition is filed, 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. In the absence of such a petition, this order shall become effective on the date subsequent to the above date.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If the relevant portion of this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

Any party adversely affected by the Commission's final action in this matter may request: (1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

ATTACHMENT A

NEW RIVER RANCH, LC
Territory Description
Polk County

All of Sections 10, 15, 22, 23, and East 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 31 South, Range 31 East.

That part of Section 31, Township 31 South, Range 32 East lying West of proposed Kissimmee Canal 38.

The East 1/2 of Section 1, Township 32 South, Range 31 East.

That part of Section 6, Township 32 South, Range 32 East lying West of proposed Kissimmee Canal 38.

All of Section 7, Township 32 South, Range 32 East, lying West of proposed Kissimmee Canal 38, less the Southwest 1/4.

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

The Northeast 1/4 of Section 18, Township 32 South, Range 32 East.

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 32 South, Range 32 East.