



# Public Service Commission

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RECORDS AND REPORTING  
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**DATE:** MAY 06, 1999

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

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

**RE:** DOCKET NO. 981340-WS - APPLICATION FOR GRANDFATHER  
CERTIFICATES TO OPERATE WATER AND WASTEWATER UTILITY IN  
POLK COUNTY BY FOUR LAKES GOLF CLUB, LTD.  
COUNTY: POLK

**AGENDA:** MAY 18, 1999 - REGULAR AGENDA - PROPOSED AGENCY ACTION ON  
ISSUES 2 - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\WAW\WP\981340.RCM

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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 in Docket No. 960674-WS. Pursuant to Sections 367.031 and 367.171, Florida Statutes, a utility subject to the jurisdiction of this Commission must obtain a certificate of authorization.

On October 14, 1998, Four Lakes Golf Club, Ltd. (Four Lakes or utility) filed an application for a certificate to provide water and wastewater service in Polk County pursuant to Section 367.171, Florida Statutes. The utility's application was found to be deficient. The utility corrected the deficiencies on January 8, 1999. The application was filed after the Board of County Commissioners of Polk County adopted the resolution on May 14, 1996.

Four Lakes is a Class C utility which has been in existence since 1987. The utility currently provides water and wastewater service to 378 customers in the manufactured home community known as Four Lakes Golf Club and to a 41 acre common area golf course. At build-out, the utility will serve 750 manufactured home sites. The utility is located in the Highland Ridge Water Use Caution Area and the lots are individually metered. The utility has one water treatment system and one water distribution system, one wastewater treatment system, and one wastewater collection system. Four Lakes has been providing utility services to the Four Lakes Golf Club community since 1987 under the provisions of Section 723, Florida Statutes, which governs mobile home park lot tenancies. Since Four Lakes' operations were subject to regulation under Chapter 723, Florida Statutes, the utility was never franchised by Polk County.

On August 20-22, 1996, staff met in Polk County with all entities that could potentially be jurisdictional under Section 367, Florida Statutes, to explain the requirements for certification and the options for exemption under the statute. Subsequent to that meeting, a letter dated September 12, 1996 was sent to staff by legal counsel for an owner of a number of mobile home parks across the state including five other limited partnerships in Polk County similar to Four Lakes. The letter conveyed for staff's review and comments an Application for Declaratory Statement Relating to Exemption from Regulation or Non-jurisdictional Finding (Declaratory Statement) on behalf of CHC

VII, Ltd. (CHC). The Declaratory Statement for CHC, was intended to cover the five other mobile home limited partnerships in Polk County including Four Lakes Golf Club, Ltd.

Unfortunately, the letter was misplaced by staff for a period of time. Once the letter was rediscovered, several meetings ensued between staff and the utility. By letter dated August 10, 1998, staff informed the owner of the result of its review. Since CHC provided water and wastewater service for compensation, it was a utility under the definition in Section 367.021(12), Florida Statutes, and therefore jurisdictional. In addition, since there was a specific charge for water or wastewater service, the landlord-tenant exemption contained in Section 367.022(5), Florida Statutes, could not apply. Further, it did not appear that CHC qualified for any other exemption contained in Section 367.022, Florida Statutes. As an analogous situation, staff cited the Commission's decision with regard to Lake Yale Utility Company in Docket No. 930133-WS. A copy of Order No. PSC-94-0171-FOF-WS, issued February 2, 1994 in that docket, was provided along with applications for original certificates.

By letter dated August 18, 1998, the owner expressed some concerns regarding the applications provided with staff's August 10th letter. The owner's primary concern was the dilemma of adjusting the utility's rates to cover the cost of the Commission's regulatory assessment fees (RAFs) while still complying with the mobile home park rental agreements under Chapter 723, Florida Statutes. By letter dated September 4, 1998, staff informed the owner that Section 367.011, Florida Statutes, provides the Commission with exclusive jurisdiction over utilities with regard to service, authority, and rates. The Commission's authority under Chapter 367, Florida Statutes, supersedes all other laws, agreements and contracts with regard to the exclusive jurisdiction set forth in Section 367.011, Florida Statutes.

Upon reconsideration, however, staff substituted applications for grandfather certificates in place of certificate applications for a utility in existence and charging rates. The latter application implies that the utility has been charging rates without regulatory oversight which was not the case. The reason the owners' systems were not franchised by Polk County at the time of Commission jurisdiction was due to the fact that the Polk County Board of County Commissioners considered their operations to be governed by Chapter 723, Florida Statutes.

In staff's September 4, 1998 response, the owner was also informed that, once the grandfather applications were filed for

each utility, the owner may apply for a pass-through rate increase to accommodate RAFs and also request a staff-assisted rate case or limited proceeding to address any other operational expenses due to Commission regulation. Finally, the owner was informed that none of these rate options were prevented by park operation under Chapter 723, Florida Statutes. On October 14, 1998, a grandfather application on behalf of Four Lakes was timely filed opening this docket. Four Lakes also filed a Request for Representation by a Qualified Representative on November 16, 1998. By Order No. PSC-98-1632-PCO-WS, issued December 7, 1998, the Commission authorized Mr. Norman F. Mears to appear as Qualified Representative in this docket on behalf of Four Lakes.

On October 16, 1998, the utility applied for a 1998 pass-through rate adjustment. The pass-through rate adjustment was approved effective November 30, 1998. Meanwhile, on October 21, 1998, the utility received a standard letter from staff informing the owner of the obligation to file Annual Reports and to remit RAFs from the date of Commission jurisdiction on May 14, 1996. On December 21, 1998, Four Lakes filed a Petition for Waiver of Rule 25-30.110(3), Florida Administrative Code (F.A.C.), with regard the requirement to file annual reports for the years of 1996 and 1997 on the basis of substantial hardship. By letter of the same date to Mr. Charles Hill, Four Lakes also requested the Commission not require the remittance of RAFs for 1996 and 1997.

Docket No. 981914-WS was opened to address the Petition for Waiver of Rule 25-30.110(3), F.A.C. By Order No. PSC-99-0640-FOF-WS, issued April 5, 1999, the Commission granted the waiver of 1996 and 1997 annual reports requiring, instead, an affidavit certifying its revenues for 1996 and 1997. Annual Reports for 1998 were required to be filed in compliance with Rule 25-30.110(3), F.A.C. The appropriate starting date for the responsibility for RAFs was deferred to the Commission's decision in this docket. This recommendation, therefore, addresses the issues of authorizing grandfather certificates, determining appropriate rates and charges, and setting the effective date for RAFs responsibility for Four Lakes.

DISCUSSION OF ISSUES

**ISSUE 1:** Should the application of Four Lakes Golf Club, Ltd. for a grandfather certificate in Polk County be granted?

**RECOMMENDATION:** Yes, Four Lakes should be granted Water Certificate No. 608-W and Wastewater Certificate No. 524-S to serve the territory described in Attachment A. The jurisdictional date for purposes of certification should be May 14, 1996. (JOHNSON, REDEMANN, CROSBY)

**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. Under the circumstances detailed in the case background, an application on behalf of Four Lakes for grandfather certificates to provide water and wastewater service in Polk County was filed with the Commission on October 14, 1998. However, since the utility has filed under a grandfather application, the appropriate jurisdictional date for purposes of certification should be May 14, 1996.

The application contained a few deficiencies which included insufficient rate authority information, an inconsistency between the legal description and the territory map, and a lack of complete permit information. All deficiencies were corrected and the application was considered filed on January 8, 1999.

As amended, the application is in compliance with the governing statute, Section 367.171, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for a grandfather certificate. The rules and statutes do not require noticing for grandfather certificate applications. The application contains a check in the amount of \$2,000, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The applicant has provided evidence that the utility owns the land upon which its facilities are located as required by Rule 25-30.035(6), Florida Administrative Code.

An accurate legal description and 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 is appended to this memorandum as Attachment A. The jurisdictional date for purposes of certification should be May 14, 1998.

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Water environmental compliance in Polk County is regulated by the Polk County Department of Health. The utility's water systems were last inspected in January of 1999 and received a number of citations including failure to have a written cross connection program, a leaky air relief valve on the storage tank, an expired gas chlorine air pack, and absence of auxiliary power. The cross connection program, leaky air relief valve and the expired gas chlorine air pack have since been corrected. The auxiliary power system is scheduled to be installed by May 31, 1999. Wastewater environmental compliance in Polk County is regulated by the Florida Department of Environmental Protection. According to the application and staff's independent verification, utility is essentially in compliance with the environmental requirements of both agencies.

Based on the above information, staff believes it is appropriate to grant Four Lakes' application for a grandfather certificate. Accordingly, staff recommends that Four Lakes be granted Water Certificate No. 608-W and Wastewater Certificate No. 524-S to serve the territory described in Attachment A.

**ISSUE 2:** What rates and charges should be approved for Four Lakes Golf Club, Ltd.?

**RECOMMENDATION:** As detailed in the staff analysis, the rates and charges for 5/8 x 3/4" meters in effect at the time of this filing should be approved as the original tariff rates along with the Commission's standard meter test deposits. In addition, the utility should be required to charge itself irrigation rates for common area water, including golf course irrigations. The first revised tariff sheets for 5/8 x 3/4" meters, effective November 30, 1998 pursuant to the pass-through rate adjustments, should supersede those approved in this recommendation. The effective date of the irrigation rates and all remaining tariff provisions should be the stamped approval date on the tariffs. (JOHNSON)

**STAFF ANALYSIS:** At the time of the filing, the utility was charging the combined rates for water and wastewater service that were put into effect on September 21, 1994. Subsequent to the filing for grandfather certificates, a pass-through rate adjustment was administratively approved effective November 30, 1998. The purpose of the adjustment was to allow the utility to begin collecting the additional costs of regulatory assessment fees while its application for grandfather certificates was being processed.

In staff's November 15, 1998 letter transmitting the pass-through tariff sheets, the utility was informed that the tariff sheets were first revised sheets but that the utility's original tariffs had not yet been approved. The utility was also informed that the original tariffs would be approved when the grandfather certificates were granted and would contain the lower rates. For informational purposes, the utility's rates pursuant to the pass-through rate adjustment are listed after the utility's existing rates at the time of this application. If the Commission approves the original rates recommended by staff in this issue, then the pass-through rates will revise the original rates.

For the reasons that will be discussed below, staff is recommending that the Commission approve the utility's existing rates and charges at the time of this filing. The utility does not charge meter deposits and none are required by Commission rule. The utility has adopted the Commission's standard meter test deposits but has chosen not to adopt the standard miscellaneous service charges. Since the service area is not built-out, the utility charges a water and wastewater plant capacity charge per mobile home of \$1,818.

Water and Wastewater Service (Original Rate)

Billing Period:	Monthly in advance
Excess Consumption Charge:	Quarterly in arrears
Applicability:	5/8 x 3/4" meters
Minimum Charge:	\$25.00
Up to 5,000 gallons	\$25.00
per 1,000 gallons over 5,000 gallons	\$ 1.00

Water and Wastewater Service (Pass-Through Rate)

Billing Period:	Monthly in advance
Excess Consumption Charge:	Quarterly in arrears
Applicability:	5/8 x 3/4" meters
Minimum Charge:	\$26.18
Up to 5,000 gallons	\$26.18
per 1,000 gallons over 5,000 gallons	\$ 1.05

Customer Deposits

None

Meter Test Deposits

<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

None

Service Availability Charges - Water & Wastewater

Plant capacity charge (per mobile home connection)	\$1,818.00
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Staff is also recommending an additional tariff rate be established for irrigation service. In addition to currently serving 378 mobile home sites on 5/8 x 3/4" meters, the utility also serves itself by providing potable irrigation to a 41 acre



common area golf course. Water to irrigate the golf course averages 110,000 gallons per day (GPD). This is almost as much as the average water supply to all the mobile homes combined of 146,500 GPD. As a consequence, the Southwest Florida Water Management District (SWFWMD) required that irrigation of the golf course be metered and controlled. Staff recommends the utility also be required to charge itself for common area water and to report these revenues for purposes of annual reports and RAFs.

However, since the utility's existing rates and charges are for water and wastewater service combined and since water used to irrigate the golf course will not return as wastewater to be treated, the combined rates and charges for 5/8 x 3/4" meters should not apply. As will be explained further in its analysis, staff has been given no basis in which to separate water and wastewater charges based on the relative costs to provide each service. Therefore, staff is recommending the utility's combined water and wastewater rates simply be divided in half for irrigation service. The resulting irrigation rates are:

IRRIGATION SERVICE (New Water Rate)

Billing Period:	Monthly in advance
Excess Consumption Charge:	Quarterly in arrears
Applicability:	Irrigation meters
Minimum Charge:	\$13.09
Up to 5,000 gallons	\$13.09
per 1,000 gallons over 5,000 gallons	\$ .53

The utility's existing rates and charges are unusual in two respects. First, the Commission normally allocates rates and charges to water and wastewater service separately based on the relative costs to provide each service instead of combining the rates. Second, the Commission normally discourages combining a usage amount in the base facility (or minimum) charge. The utility's conservation rate structure was based on the \$25.00 per month minimum fee the utility was charging for water and wastewater service combined. Shortly after the filing of this application, staff asked for additional information to estimate the relative costs to provide each service as well as to separate a base facility charge from the usage rate. Due to the following claims by the utility of substantial hardships and due to the fact that a

pass-through adjustment has been implemented in the interim, staff is not recommending that an adjustment to rate structure be pursued in this docket.

Since the owner has six pending applications for grandfather certificates, the owner claims not to have the additional staff necessary to simultaneously develop the requisite information to revise the rate structures for all six utilities. Changes to the rate structure would also require the utility to pay reprogramming costs for its billing program and legal costs to prepare and file a prospectus change for each mobile home park. In addition to the legal costs to change each prospectus, the owner would also have to pay a filing fee equal to ten dollars (\$10.00) per lot for all its mobile home parks simultaneously. It is estimated that the preparation, filing, and processing of each prospectus would take three months. The owner would then have to give its customers ninety (90) days notice. For these reasons of costs and timing, the owner does not believe the Commission can fairly impose a change in rate structure without concurrently authorizing an increase in rates to offset the additional costs. Instead, the owner respectfully suggests that an application for grandfather certificates is not the proper forum in which to fairly address all these matters.

In addition to the concerns of the owner, there is also a tariff obstacle to changing the utility's rate structure at this time. As noted in the Case Background, and as discussed more fully in Issue 3, prior to the completion of the filing requirements for the application for grandfather certificates, a pass-through rate adjustment was approved effective November 30, 1998. The pass-through adjustment was to enable the utility to begin collecting the additional costs of RAFs. Having no other basis to use at the time, the pass-through rate adjustment was set up to be the first revised schedule to the rates and charges in existence at the time the grandfather application was filed. Therefore, in order for the tariffs to be consistent, the initial rates and charges approved for Four Lakes should be those in existence at the time of the filing.

Finally, staff would note that water conservation for Four Lakes is strictly controlled by SWFWMD. The agency is responsible for enforcing a tight irrigation schedule for discretionary water use as well as continued monitoring of water use through water audits. Irrigation is only allowed in certain amounts during specific time periods. Based on SWFWMD's enforcement actions, it is unlikely that modifications to the utility's existing rate

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structure would achieve enough additional conservation to warrant the costs of the modification claimed by the owner.

For all the above reasons, staff recommends that the rates and charges in effect at the time of this filing for 5/8 x 3/4" metered customers be approved as original tariff rates along with the Commission's standard meter test deposits. In addition staff recommends the utility be required to charge itself irrigation rates for common area water, including golf course irrigation. The first revised tariff sheets for 5/8 x 3/4" meters, effective November 30, 1998 pursuant to the 1998 pass-through rate adjustment should supersede those approved in this recommendation. The effective date of the irrigation rates and all remaining tariff provisions should be the stamped approval date on the tariffs.

**ISSUE 3:** Should Four Lakes Golf Club, Ltd., be responsible for regulatory assessment fees commencing with December 1, 1998?

**RECOMMENDATION:** Yes, Four Lakes Golf Club, Ltd., should be responsible for regulatory assessment fees commencing with December 1, 1998. The utility should be required to remit the resulting 1998 RAFs within 30 days from the date of the order. (JOHNSON)

**STAFF ANALYSIS:** As noted in the Case Background, by means of a standard letter for Polk County grandfathers dated October 21, 1998, the utility was informed of the obligation to file Annual Reports and to remit RAFs from the date of Commission jurisdiction in Polk County on May 14, 1996. On December 21, 1998, Four Lakes filed a Petition for Waiver of Rule 25-30.110(3), F.A.C., for 1996 and 1997 annual reports on the basis of substantial hardship and violation of principles of fairness. By separate letter of the same date to Mr. Charles Hill, the utility requested the Commission also not require the remittance of RAFs for the years of 1996 and 1997 due to the unique circumstances leading to the delayed recognition of Four Lakes as a utility subject to the Commission's jurisdiction. By facsimile to staff counsel dated April 28, 1999 on behalf of CHC VII, Ltd., a request was made for responsibility for RAFs to commence on or after December 1, 1998. By extrapolation, the facsimile applies to Four Lakes, as well.

The petition for a Waiver of Rule 25-30.110(3), F.A.C., was addressed by Order No. PSC-99-0640-FOF-WS, issued April 5, 1999 in Docket No. 981914-WS. In that order, the Commission granted the waiver of annual reports for 1996 and 1997 based upon a violation of principles of fairness pursuant to Section 120.542, Florida Statutes. Instead, the utility was required to file an affidavit certifying its revenues for 1996 and 1997. The utility was also required to file an annual report for 1998 in compliance with rule 25-30.110(3), F.A.C. However, the appropriate starting date for the responsibility for RAFs was deferred to the Commission's decision in this docket.

Meanwhile, on October 16, 1998, the utility filed Notice of Intention to Implement the Regulatory Assessment Fee Pass-Through Rate Adjustment. The adjustment was approved effective November 30, 1998. In the utility's December 21, 1998 letter to Mr. Charles Hill, it requested that the Commission set the starting date for remittance of RAFs for the first billing cycle after the effective date of the 1998 pass-through rate adjustment to enable the utility to recoup the cost of RAFs owed the Commission. In that request, the utility noted that the pass-through rate adjustment allows the

utility to recover the cost of RAFs, prospectively, but cannot provide the funds to pay RAFs for two years in arrears. The utility claimed that to require payment for RAFs for two years in arrears would be an undue financial hardship. In its facsimile letter dated April 28, 1999, the utility reiterated its request for responsibility for RAFs to commence subsequent to the 1998 pass-through.

In addition to the reasons set forth by the utility, staff would also note that it normally recommends that responsibility for RAFs start in the year in which the utility is informed, with certainty, that the Commission's jurisdiction applies. Although the utility was informed in 1996 of the Commission's potential jurisdiction, it was not officially notified until August of 1998 that an exemption from regulation or non-jurisdictional finding could not apply under Section 367, Florida Statutes. Therefore, the year in which the utility knew with certainty that Commission jurisdiction applied was 1998. Since the utility noticed and received a 1998 pass-through rate adjustment in order to generate the revenues necessary to remit RAFs, the effective date of the pass-through adjustment appears to be the most appropriate starting date for RAF responsibility.

For these reasons, staff recommends that Four Lakes' responsibility for regulatory assessment fees begin December 1, 1998. The utility should be required to remit the resulting 1998 RAFs within 30 days from the date of the order in this docket.

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

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

**STAFF ANALYSIS:** If there are no timely protests filed by substantially affected person to the proposed agency action portion of Issue 2, no further action will be required and the docket should be closed.

FOUR LAKES GOLF CLUB, LTD  
WATER AND WASTEWATER SERVICE AREA  
POLK COUNTY

In Part of Section 3, Township 28 South, Range 26 East, and in Part of Section 34, Township 27 South, Range 26 East, Polk County, Florida describes as follows:

Section 34, Township 27 South, Range 26 East, All of Said Section, LESS AND EXCEPT the SE 1/4 of the SE 1/4, thereof and LESS AND EXCEPT the North 1/2 of the NE 1/4 of the NE 1/4, thereof, and less the waters of Lake Haines.

Section 3, Township 28 South, Range 26 East, The NW 1/4 of the NE 1/4, The NW 1/4 of the NE 1/4 of the NE 1/4 and the East 1/2 of the NE 1/4 of the NE 1/4, and starting at the Northwest corner of the NE 1/4 of the SE 1/4 of the NE 1/4 of Section 3, Township 28, South, Range 26 East, Polk County, Florida, run S 00°07'3" E, along the West boundary of said NE 1/4 of the SE 1/4 of the NE 1/4 a distance of 25.0 feet to the Point of Beginning; thence continue S 00°07'53" E, along said West boundary, a distance of 336.26 feet; thence run N 54°18'33" E, a distance of 27.02 feet; thence run N 51°44'57" E, a distance of 100.74 feet; thence run N 46°11'58" E, a distance of 22.79 feet; thence run N 44°24'55" E, a distance of 64.80 feet; thence run N 36°13'28" E, a distance of 100.06 feet; thence run N 33°03'11" E, a distance of 82.62 feet; thence run N 31°12'06" E, a distance of 17.42 feet; thence run N 49°20'31" E, a distance of 47.05 feet; thence run N 89°54'05" W, a distance of 312.54 feet to the Point of Beginning.