



Public Service Commission

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RECORDS AND REPORTING

DATE: NOVEMBER 4, 1999

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

FROM: DIVISION OF LEGAL SERVICES (CROSSMAN) *see RL*
DIVISION OF WATER AND WASTEWATER (BRADY) *pb BSMW ll and*

RE: DOCKET NO. 980731-WS - APPLICATION FOR CERTIFICATE TO PROVIDE WATER AND WASTEWATER SERVICE IN CHARLOTTE COUNTY BY HUNTER CREEK UTILITIES, LLC.

AGENDA: NOVEMBER 16, 1999 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\980731.RCM

CASE BACKGROUND

Hunter Creek Utilities, LLC, (Hunter Creek or utility) is a Class C water and wastewater utility currently providing service to the Rivers Edge mobile home development in Charlotte County. According to its 1998 annual report, the utility serves approximately 44 customers. Its total gross revenues were \$13,787 with a net operating loss of \$21,470.

The mobile home subdivision is located in an unincorporated portion of Charlotte County north of Punta Gorda and contains 100 platted acres adjacent to a tributary of the Peace River. The total number of developed lots at buildout is anticipated to be 284.

On June 10, 1998, the utility filed an application for original water and wastewater certificates for a utility in existence and changing rates, which opened this docket. During the pendency of the application, the radioactive contaminants in Hunter Creek's water system exceeded on a sustained basis the maximum

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contaminants level (MCL) allowed by the Florida Department of Environmental Protection (FDEP). The utility's attempted corrective measures failed and the FDEP issued an official Warning Letter of enforcement action on February 15, 1999.

By Order No. PSC-99-0756-FOF-WS, issued April 19, 1999, in this docket, the Commission granted Certificates Nos. 611-W and 527-S. However, due to the existence of radioactive contaminants, the Commission granted the unserved territory with the provision that only existing customers could be served until the utility's radioactive MCL met the FDEP's maximum standards on a sustained basis on or before September 30, 1999. The Order stated that if the utility did not achieve the above 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."

The utility failed to meet the FDEP's maximum standards as of September 30, 1999. This recommendation addresses the initiation of proceedings for a possible deletion of the unserved territory from Hunter Creek's water certificate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission initiate proceedings for a possible deletion of the unserved portion of Hunter Creek's territory authorized by Certificate No. 611-W?

RECOMMENDATION: Yes. The Commission should initiate a proceeding for possible deletion of the unserved portion of Hunter Creek's territory authorized by Certificate No. 611-W. The proceeding should be initiated by issuing legal notice of the possible deletion pursuant to Section 367.045(6), Florida Statutes. (CROSSMAN, BRADY)

STAFF ANALYSIS: Both during the pendency of the application for original certificates and since the issuance of Order No. PSC-99-0756-FOF-WS on April 19, 1999, staff has tracked the progress of the utility's efforts to meet the FDEP's drinking water standards for radioactive contaminants. Prior to the on April 19, 1999, issuance date of Order No. PSC-99-0756-FOF-WS, staff discussed the matter at length with the utility owner, Mr. Leonette, who assured staff that he could have the work completed in two months. The September 30, 1999, deadline in Order No. PSC-99-0756-FOF-WS, afforded the utility several more months to achieve compliance.

Also, at the time staff was preparing its prior recommendation for original certificates, the FDEP was in the process of attempting to obtain a grant from the statewide revolving fund for the cost of the repairs. That grant was subsequently awarded with the FDEP controlling the funds until the utility provided proof of compliance with the radioactive MCL standards.

On June 9, 1999, Mr. Leonette entered into an Consent Order with the FDEP setting forth a specific time schedule to achieve compliance. The first, and most significant, compliance deadline was for the utility to submit an application to the FDEP for a construction permit. Pursuant to the Consent Order, action was to be taken within 60 days of the date of issuance of the order, which resulted in an August 10, 1999, deadline. After learning that the utility had failed to meet the first deadline, staff reminded the utility of the Commission's September 30, 1999, deadline for the utility to meet the FDEP's MCL standards set forth in Order No. PSC-99-0756-FOF-WS.

On October 1, 1999, staff contacted the FDEP to verify whether the utility had achieved MCL compliance. According to the FDEP, not only has the utility failed to achieve MCL compliance, it also

failed to submit an application for a construction permit. On October 13, 1999, the utility indicated to staff that it had ordered the plant the day before so the utility's engineering firm would now have the specifications necessary to complete the application for a construction permit. When asked why the utility had delayed ordering the plant, the response was that the utility had been seeking alternative sources of financing. Staff questions the necessity of the utility seeking alternative sources of financing given the fact that the FDEP had obtained grant money to make the necessary repairs.

At the time of this recommendation, the utility still has not achieved the first compliance deadline by failing to submit a construction permit. As a consequence, the FDEP is in the process of determining whether to assess the \$25 per day non-compliance penalty specified in the Consent Order. Meanwhile, since the utility has failed to meet the Commission's September 30, 1999, deadline for MCL compliance required by Order No. PSC-99-0756-FOF-WS, staff recommends the Commission initiate proceedings to delete the unserved water territory from the utility's water certificate until such time as compliance is achieved.

In order for the Commission to properly initiate proceedings for a possible deletion of Hunter Creek's certificated territory, notice must be given pursuant to Section 367.045(6), Florida Statutes. This section states that the Commission shall give 30 days' notice before it initiates a revocation, suspension, deletion or amendment of a certificate of authorization. Therefore, staff recommends that notice should be issued in accordance with Section 367.045(6), Florida Statutes, and Rule 25-30.030, Florida Administrative Code. Subsections (2) and (6) of Rule 25-30.030, Florida Administrative Code, require that certain governing bodies, governmental agencies, and affected persons, including customers in the utility's certificated territory, be noticed by regular mail or personal service. Subsection (7) of Rule 25-30.030, Florida Administrative Code, requires that notice be published in a newspaper of general circulation in the territory proposed to be deleted. In addition to the above noticing requirements, staff also recommends notice be published in the Florida Administrative Weekly.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. If the Commission approves staff's recommendation in Issue 1, this docket should be remain open pending another recommendation by staff regarding whether or not the unserved portion of Hunter Creek's certificated territory should be deleted. (CROSSMAN)

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, this docket should be remain open pending another recommendation by staff regarding whether or not the unserved portion of Hunter Creek's certificated territory should be deleted.