State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: MARCH 20, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF ECONOMIC REGULATION (JOHNSON, WALDEN, KAPROTH, PEACOCK)
OFFICE OF THE GENERAL COUNSEL (HOLLEY)

RE: DOCKET NO. 020382-WS - APPLICATION FOR TRANSFER OF FACILITIES AND CERTIFICATE NOS. 603-W AND 519-S IN POLK COUNTY FROM NEW RIVER RANCH, L.C. D/B/A RIVER RANCH TO RIVER RANCH WATER MANAGEMENT, LLC.
COUNTY: POLK

DOCKET NO. 010812-WS - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST NEW RIVER RANCH L.C. D/B/A RIVER RANCH IN POLK COUNTY FOR VIOLATION OF RULE 25-30.110(3), F.A.C., ANNUAL REPORT, AND RULE 25-30.120, F.A.C., REGULATORY ASSESSMENT FEES.
COUNTY: POLK

AGENDA: APRIL 01, 2003 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\ECR\WP\020382.RCM

CASE BACKGROUND

River Ranch Resort is a development in Polk County. Located on that development is a Class C utility providing service to the resort, which has approximately 703 water and wastewater customers. The utility is in the South Florida Water Management District and is not located in a water use caution area. According to the utility's 2000 annual report, it has been providing service since

1973. The annual report for 2000 shows that gross revenues were $46,173 and $46,173 and the net operating income and loss were $1,801 and ($27,900), for the water and wastewater systems respectively.

The utility serves the River Ranch Resort which includes a variety of housing and commercial areas, including 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/Countryside with about 40 homes), and the resort community itself which includes restaurants, a golf course, marina, offices, and shops.

History of Ownership of the Utility

The resort property, along with the utility, has changed ownership several times in the past number of years. The documentation surrounding the history of this utility is very limited, but staff has attempted to piece together the history of the transfers through correspondence and the existing Commission records related to the utility.

On May 14, 1996, Polk County transferred jurisdiction of the privately-owned water and wastewater facilities in the county to the Florida Public Service Commission. On January 14, 1997, a group of ten property owners in the utility's service area joined together to form New River Ranch, L.C. d/b/a River Ranch (NRR), to acquire the entire resort and utility out of bankruptcy. NRR is the entity that applied for and was granted Certificate Nos. 603-W and 519-S subsequent to Polk County transferring its jurisdiction of the privately-owned water and wastewater facilities to the Commission (Docket No. 971185-WS, Order No. PSC-990254-FOF-WS, issued February 9, 1999).

At some point after applying for its certificate with the Commission, it appears that NRR entered into a contract to sell the entire resort property, which included the utility, to another corporation, River Ranch American Resort, Inc. (River Ranch American). River Ranch American acquired the utility's facilities from NRR on December 1, 1997. The circumstances surrounding the transfer are unclear, but some time after the December 1, 1997 sale, staff was made aware that Brian Sparks, the President of River Ranch American, was then in control of the River Ranch resort and utility. River Ranch American apparently owned and controlled

the resort and utility for approximately two years until December of 1999, when Ocwen Federal Bank, FSB (Ocwen or Bank), who had a first mortgage and security interest in the property, filed a foreclosure action against River Ranch American. Pursuant to its foreclosure action, Ocwen succeeded in having a receiver appointed to control and manage the resort beginning February 28, 2000, effectively ending River Ranch American's control over the property.

The foreclosure proceeding was delayed due to Brian Sparks/River Ranch American Resorts, Inc. filing for bankruptcy. However, once the bankruptcy was addressed by the court, the foreclosure was processed, and Westgate Resorts, Ltd. (Westgate) bought the entire resort, along with the utility facilities, out of foreclosure. Westgate then assigned the utility over to its affiliate, River Ranch Water Management, LLC (RRWM or buyer), through a quit claim deed.

Application for Transfer

On April 29, 2002, RRWM, filed an application on behalf of NRR for approval of the transfer of the utility's facilities and Certificate Nos. 603-W and 519-S to RRWM from NRR. Docket No. 020382-WS was opened to address this application. RRWM obtained rights to the utility by an assignment of interest in the quit claim deed from Westgate Resorts, Ltd., following the mortgage foreclosure. RRWM and Westgate Resorts Ltd. are both subsidiaries of Central Florida Investments, Inc. RRWM is currently operating the utility as required by Section 367.071(6), Florida Statutes. Rate base has never been established for this utility.

The rate base and acquisition adjustment issues are typically addressed in transfer proceedings; however, these issues are not included in the analysis for this transfer because on October 22, 2002, the utility filed an application for a staff assisted rate case (SARC) in Docket No. 021067-WS. The issues to be addressed in the SARC will include the establishment of rate base and whether an acquisition adjustment should be approved. The SARC docket is scheduled for a decision on final rates and charges at the June 3, 2003 agenda conference.

This recommendation addresses the application for approval of transfer of this utility to RRWM and whether show cause proceedings should be initiated against the prior owners for outstanding

regulatory assessment fees (RAFs) and annual reports, and for failure to obtain Commission approval prior to transferring the utility's facilities. The Commission has jurisdiction to consider this matter pursuant to Sections 367.071, 367.145, and 367.161 Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should NRR be ordered to show cause, in writing, within 21 days, why it should not be fined for its apparent violation of Section 367.071(1) Florida Statutes?

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

STAFF ANALYSIS: As indicated in the case background, NRR, which had been made up of a group of property owners in the utility's service area, had joined together to acquire the utility and its parent company in a bankruptcy proceeding. NRR was the entity that applied for and was granted Certificate No. 603-W and 519-S subsequent to Polk County transferring its jurisdiction of the privately-owned water and wastewater facilities to the Commission. At some point after applying for its certificate with the Commission, it appears that NRR entered into a contract to sell the entire resort property, which included the utility, to another corporation, River Ranch American Resort, Inc. (River Ranch American), a contract which was to take effect December 1, 1997. Staff became aware of the sale in a letter to staff from one of the original ten owners who made up NRR, in which the December contract and sale was referenced. However, NRR failed to obtain Commission approval prior to transferring its facilities to River Ranch American.

Section 367.071(1), Florida Statutes, states that:

> No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof. . . without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest . . . .

Because NRR transferred the utility to River Ranch American, NRR is in apparent violation of Section 367.071(1), Florida Statutes. Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Section 367.161(1), 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. By transferring its facilities prior to Commission approval, the utility's act was "willful" in the sense intended by Section 367.161, Florida Statutes. In Commission 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, Florida Administrative Code, 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."

In this case, NRR failed to obtain Commission approval prior to transferring its facilities to River Ranch American. However, because the circumstances surrounding this transfer are very unclear, and because it is also unclear whether any of the original property owners can be located, staff does not believe that the apparent violation of Section 367.071, Florida Statutes, rises in these circumstances to the level which warrants the initiation of a show cause proceeding.

Therefore, staff recommends that the Commission should not order NRR to show cause why it should not be fined for failing to obtain Commission approval prior to transferring its facilities to River Ranch American.

ISSUE 2: Should River Ranch American be ordered to show cause, in writing, within 21 days, why it should not be fined for its apparent violation of transferring its facilities prior to Commission approval pursuant to Section 367.071(1), Florida Statutes, failure to remit its regulatory assessment fees (RAFs) as required by Section 367.145, Florida Statutes, and Rule 25-30.120, Florida Administrative Code, and failure to file annual reports as required by Rule 25-30.110(3), Florida Administrative Code?

RECOMMENDATION: No. A show cause proceeding should not be initiated. Staff recommends that the Commission refer the utility's unpaid regulatory assessment fees (RAFs) and associated penalties and interest to the Department of Financial Services for permission to write off the accounts as uncollectible. Staff further recommends that the penalties set according to Rule 25-30.110(6), Florida Administrative Code, for outstanding annual reports should not be assessed, and that River Ranch American should not be required to file the annual reports for the years designated. (HOLLEY, KAPROTH, PEACOCK)

STAFF ANALYSIS:

Transfer of Facilities Prior to Commission Approval

As stated previously, River Ranch American came into possession of the utility's facilities pursuant to a contract for sale with NRR, effective December 1, 1997. Once again, the circumstances surrounding the transfer are unclear, but at some point after December 1, 1997, staff was made aware that Brian Sparks, the President of River Ranch American, was now in control of the River Ranch resort and utility. River Ranch American apparently owned and controlled the resort and utility for approximately two years until December of 1999, when Ocwen Federal Bank, FSB (Ocwen or Bank), who had a first mortgage and security interest in the property, filed a foreclosure action against River Ranch American. Pursuant to its foreclosure action, Ocwen succeeded in having a receiver appointed to control and manage the resort beginning February 28, 2000, effectively ending River Ranch American's control over the property. Thus, River Ranch American is in apparent violation of Section 367.071(1), Florida Statutes for failure to obtain Commission approval prior to the transfer.

Failure to Pay Regulatory Assessment Fees

According to the information available to staff, this utility has outstanding RAFs for the years January 1, 1998 through November 14, 2001. As stated previously, staff believes that River Ranch American owned and controlled the utility from December 1, 1997 through February 28, 2000.

Pursuant to Section 350.113(3)(e) and 367.145, Florida Statutes, and Rule 25-30.120(1), Florida Administrative Code, each utility shall remit annually RAFs in the amount of 0.045 of its gross operating revenue. Pursuant to Rule 25-30.120(2), Florida Administrative Code, "[t]he obligation to remit the [RAFs] for any year shall apply to any utility which is subject to [the] Commission's jurisdiction on or before December 31 of that year or for any part of that year, whether or not the utility has actually applied for or been issued a certificate." Accordingly, River Ranch American is responsible for RAFs for the time period of 1998, 1999, and January through February of 2000. In failing to remit the RAFs for these years, River Ranch American is in apparent violation of the above-referenced statutory and rule provisions.

Furthermore, pursuant to Section 350.113(4), Florida Statutes, and Rule 25-30.120(7), Florida Administrative Code, a statutory penalty plus interest shall be assessed against any utility that fails to timely pay its RAFs, in the following manner:

1. 5 percent of the fee if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during the time in which failure continues, not to exceed a total penalty of 25 percent.

2. The amount of interest to be charged is 1% for each 30 days or fraction thereof, not to exceed a total of 12% per annum.

Staff's calculation of the RAFs, plus penalties and interest owed by American River Ranch for the periods indicated above is set out below. As of April 1, 2003, the amounts due would be as follows:

Time Period	RAFs	Penalty	Interest	Total
1998	$3,320.32	$830.05	$1,626.91	$5,777.28
1999	$3,360.39	$840.01	$1,243.34	$5,443.74
January-February 2000	$692.60	$173.15	$173.15	$1,038.90
			TOTAL DUE:	$12,259.92

Failure to Provide Annual Reports

Rule 25-30.110(3), Florida Administrative Code, requires utilities subject to Commission jurisdiction as of December 31 of each year to file an annual report on or before March 31 of the following year. Annual reports are considered filed on the day they are postmarked or received by the Commission. According to Commission records this utility failed to file an annual report for the years 1998 and 1999. As stated previously, staff believes that River Ranch American had ownership and control over this utility for the period of December, 1997 through February, 2000. Accordingly, River Ranch American was responsible for filing the annual reports for the years 1998 and 1999, and because it failed to do so, is in apparent violation of Rule 25-30.110(3), Florida Administrative Code.

Pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, any utility that fails to file a timely, complete annual report is subject to penalties, absent demonstration of good cause for noncompliance. The penalty set out in Rule 25-30.110(7), Florida Administrative Code, for Class C utilities is $3 per day, based on the number of calender days elapsed from March 31, or from an approved extended filing date. Using this $3 figure and multiplying by the number of days from the time the annual reports were due through this April 1, 2003 Agenda Conference, the total penalty for the outstanding 1998 and 1999 annual reports is set out below.

YEAR	CALCULATION	AMOUNT
1998	1,397 x $3/day	$4,191
1999	1,096 x $3/day	$3,288
	TOTAL DUE	**$7,479**

These penalties, if assessed, would continue to accrue until such time as River Ranch American files its annual reports for the respective years. Staff notes that pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, the Commission may, in its discretion, impose greater or lesser penalties for such noncompliance.

Staff Analysis on Whether Show Cause Action Should be Initiated

As indicated above, River Ranch American is in apparent violation of the following Statutes and Commission Rules: 1) Section 367.071(1), Florida Statutes, for transferring the utility prior to obtaining Commission approval; 2) Sections 350.113(3)(e) and 367.145, Florida Statutes, and Rule 25-30.120(1), Florida Administrative Code for failure to submit RAFs; and 3) Rule 25-30.110(3), Florida Administrative Code, for failure to file annual reports.

Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Section 367.161(1), 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. By transferring its facilities prior to Commission approval, failing to remit RAFs, and failing to file its annual reports, the utility's acts were "willful" in the sense intended by Section 367.161, Florida Statutes. In Commission 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, Florida Administrative Code, 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."

With respect to the transfer prior to Commission approval, staff believes that the circumstances do not rise to the level of warranting a show cause proceeding. Primarily this is because although River Ranch American was directly responsible for not meeting its financial obligations to Ocwen Bank, it did not voluntarily enter into foreclosure proceedings. In fact, from what little documentation staff has obtained relating to the foreclosure action, it appears that River Ranch American attempted to stay the foreclosure proceedings by filing for bankruptcy, but was eventually unsuccessful. Therefore, staff recommends that the Commission not order River Ranch American to show cause for transferring its facilities prior to obtaining Commission approval.

With respect to River Ranch American's failure to remit RAFs and file its annual reports, and with respect to the penalties and interest incurred for both, staff believes that the circumstances in this case are such that show cause proceedings should not be initiated.

Numerous attempts to contact Brian Sparks, who was the president of River Ranch American, have been made by staff via certified mail. However, all mail that was sent to the last-known address, was returned as undeliverable. As stated before, the history of this utility has been pieced together by staff based on correspondence, and staff believes that further collection efforts would not be cost effective. Staff believes that any further attempts to collect would be futile, because in this situation, it is not clear whether this corporate entity still exists, and it would be very difficult to locate the former president of River Ranch American. For these same reasons, staff believes that it would be futile to continue efforts to obtain the outstanding annual reports of this utility. As previously mentioned, the former president of River Ranch American's whereabouts are unknown, and staff is unaware of whether the former president would be in possession of any records for the utility.

Accordingly, staff recommends that show cause proceedings not be initiated against River Ranch American for its apparent violation of the aforementioned statutes and Commission rules. Staff recommends that the Commission refer the utility's unpaid

RAFs and associated penalties and interest to the Department of Financial Services for permission to write off the accounts as uncollectible. Staff also recommends that the Commission exercise its discretion as stated in Rule 25-30.110(7), Florida Administrative Code, and not assess the penalties set forth in Rule 25-30.110(7), Florida Administrative Code, for outstanding annual reports, because further collection efforts would be futile. In addition, staff recommends that the Commission not require River Ranch American to file the annual reports for the years designated.

ISSUE 3: Should Ocwen Bank be ordered to show cause, in writing, within 21 days, why it should not be fined for its apparent violation of transferring its facilities prior to Commission approval pursuant to Section 367.071(1), Florida Statutes, and its failure to remit regulatory assessment fees (RAFs) as required by Section 367.145, Florida Statutes, and Rule 25-30.120, Florida Administrative Code?

RECOMMENDATION: No. A show cause proceeding should not be initiated. Staff recommends that the Commission refer the utility's unpaid RAFs and associated penalties and interest to the Department of Financial Services for permission to write off the accounts as uncollectible. (HOLLEY, KAPROTH)

STAFF ANALYSIS:

Transfer of Facilities Prior to Commission Approval

As stated previously, Ocwen Bank, who had a first mortgage and security interest in the property, came into possession of the utility's facilities upon initiating a foreclosure action against River Ranch American. Pursuant to its foreclosure action, Ocwen succeeded in having a receiver appointed to control and manage the resort beginning February 28, 2000. Once again, based on the records available to staff, apparently the receiver controlled and managed the entire resort, which includes the utility, for the period of March 1, 2000 through November 14, 2001, when the property was purchased by the current owners, pursuant to a foreclosure sale. Ocwen is in apparent violation of Section 367.071(1), Florida Statutes, for failure to obtain Commission approval prior to transferring the facilities to the current owners.

Failure to Pay Regulatory Assessment Fees

The information available to staff indicates that this utility has outstanding regulatory assessment fees (RAFs) for the years 1998 through 2001. Staff believes that River Ranch American owned and controlled the utility from December 1, 1997 through February 28, 2000, and is responsible for the outstanding RAFs during that time period. Accordingly, staff believes that once Ocwen Bank initiated its foreclosure proceedings and had a receiver appointed to manage the resort and utility, it effectively owned and managed the resort and utility for the time period of March of 2000 through

November 14, 2001, the date of the foreclosure sale, and is therefore responsible for the outstanding RAFs for that time period.

Pursuant to Sections 350.113(3)(e) and 367.145, Florida Statutes, and Rule 25-30.120(1), Florida Administrative Code, each utility shall remit annually RAFs in the amount of 0.045 of its gross operating revenue. Pursuant to Rule 25-30.120(2), Florida Administrative Code, "[t]he obligation to remit the [RAFs] for any year shall apply to any utility which is subject to [the] Commission's jurisdiction on or before December 31 of that year or for any part of that year, whether or not the utility has actually applied for or been issued a certificate." Accordingly, Ocwen is responsible for RAFs for the time period of March through December of 2000 and January through November of 2001. In failing to remit RAFs for these years, Ocwen is in apparent violation of the above-referenced statutory and rule provisions.

Furthermore, pursuant to Section 350.113(4), Florida Statutes, and Rule 25-30.120(7), Florida Administrative Code, a statutory penalty plus interest shall be assessed against any utility that fails to timely pay its RAFs, in the following manner:

1. 5 percent of the fee if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during the time in which failure continues, not to exceed a total penalty of 25 percent.

2. The amount of interest to be charged is 1% for each 30 days or fraction thereof, not to exceed a total of 12% per annum.

Staff's calculation of the RAFs, plus penalties and interest owed by Ocwen for the periods indicated above is set out below. As of April 1, 2003, the amounts due would be as follows:

Time Period	RAFs	Penalty	Interest	Total
March-December 2000	$2,787.98	$697.00	$697.00	$4,181.97
January-November 2001	$3,565.68	$891.42	$463.54	$4,920.64
			TOTAL DUE:	**$9,102.61**

Staff Analysis on Whether Show Cause Action Should be Initiated

As indicated above, Ocwen is in apparent violation of Section 367.071(1), Florida Statutes, for transferring the utility prior to obtaining Commission approval, and Sections 350.113(3)(e) and 367.145, Florida Statutes, and Rule 25-30.120(1), Florida Administrative Code, for failure to submit RAFs.

Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Section 367.161(1), 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. By transferring its facilities prior to Commission approval and by failing to remit RAFs, the utility's acts were "willful" in the sense intended by Section 367.161, Florida Statutes. In Commission 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, Florida Administrative Code, 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."

With respect to the transfer prior to Commission approval, staff believes that the circumstances do not rise to the level of warranting a show cause proceeding. As stated previously, Ocwen initiated foreclosure proceedings against River Ranch American for its failure to meet its financial obligations. Ocwen then succeeded in having a receiver appointed to run and manage the property, which includes the utility.

The foreclosure proceeding was delayed because Brian Sparks/River Ranch American Resorts filed for bankruptcy, and for that reason, the receiver was in place from March 2000 through November 14, 2001, the date of the foreclosure sale. As soon as the bankruptcy was addressed by the court, the foreclosure was processed, and the court ordered the sale of the property. Westgate then purchased the entire resort, along with the utility facilities, pursuant to the foreclosure sale. Because of the circumstances surrounding the sale of the property and utility, staff does not believe that this situation rises to the level of warranting a show cause proceeding.

With respect to Ocwen's failure to remit RAFs and the penalties and interest incurred, staff believes that the circumstances in this case are such that show cause proceedings should not be initiated. Staff further believes that the Commission should refer the utility's unpaid RAFs and associated penalties and interest to the Department of Financial Services for permission to write off the accounts as uncollectible.

When Ocwen foreclosed on the property, it appears that there were very few records and documentation available to the receiver. Furthermore, the receiver was appointed to manage the entire resort property, and apparently had very little knowledge of managing a water and wastewater facility. However, according to copies of correspondence relating to this utility, the receiver and the attorney for Ocwen bank contacted staff to receive some guidance with respect to the obligations of the utility. In addition, at some point it appears that staff was also working with the receiver in order to facilitate a staff assisted rate case. The receiver was able to piece together what little information he had, and submitted an annual report for the year 2000. In addition, it appears that some amount of RAFs were paid as well. Staff believes that the receiver expended a lot of resources attempting to operate and repair the systems, because, unfortunately, the previous owners had allowed the development to deteriorate significantly. The

receiver was cooperative with staff and to the extent possible, attempted to operate the facility to the best of his abilities. For these reasons, staff believes that show cause proceedings should not be initiated against Ocwen. Staff has sent several letters to the former receiver regarding the outstanding RAFs, but has received no response. Staff believes that further attempts at collection of outstanding RAFs, penalties, and interest would not be cost effective.

For these reasons, staff recommends that show cause proceedings not be initiated against Ocwen for its apparent violation of the aforementioned statutes and Commission rules. Additionally, staff recommends that the Commission refer the utility's unpaid RAFs and associated penalties and interest to the Department of Financial Services for permission to write off the accounts as uncollectible.

ISSUE 4: Should the transfer of the facilities and Certificate Nos. 603-W and 519-S from New River Ranch, L.C. d/b/a River Ranch to River Ranch Water Management, L.L.C. be approved?

RECOMMENDATION: Yes, the transfer of the facilities and Certificate Nos. 603-W and 519-S from New River Ranch, L.C. d/b/a River Ranch to River Ranch Water Management, L.L.C. is in the public interest and should be approved. A description of the territory served by the utility is appended to this recommendation as Attachment A. (JOHNSON, WALDEN, HOLLEY)

STAFF ANALYSIS: As discussed in the case background, on April 29, 2002, RRWM filed an application for transfer of Certificate Nos. 603-W and 519-S from NRR to RRWM. RRWM submitted additional information to complete the filing requirements on August 19, 2002. The application is in substantial compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for transfer. The application contains two checks for $1,500 totalling $3,000, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. According to the application, the utility's certificates could not be located. Instead, in accordance with Rule 25-30.037(2)(t), Florida Administrative Code, an explanation was provided of the steps taken to locate the certificates.

Section 367.071, Florida Statutes, requires that no utility shall sell, assign, or transfer its certificate of authorization, facilities, or any portion thereof, or majority organizational control without prior approval of the Commission unless such sale, assignment, or transfer is made contingent upon Commission approval. In this case, the utility was acquired on November 14, 2001 in a foreclosure sale, without prior Commission approval or being made contingent upon Commission approval, which is an apparent violation of Section 367.071, Florida Statutes. However, this matter is addressed in Issue 3.

The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code, including notice to the customers of the utility to be transferred. No objections to the transfer of the utility or the notice of application have been received and the time for filing such has expired.

The application contains documentation to comply with Rule 25-30.037(2)(g), (h), (i), (k) and (q), Florida Administrative Code, regarding terms of the sale and financing of the purchase. Instead of a sales contract, the application contained a Court Order which indicates that Westgate Resorts Ltd. purchased the New River Ranch Resort and the utility for $5,151,000 at the foreclosure sale. The sale was a cash transaction; therefore, no outside financing was required. The acquired utility was then assigned to RRWM with a quit claim deed from Westgate Resorts, Ltd.

RRWM will own and operate the utility system. According to its application, RRWM is a wholly-owned subsidiary of Central Florida Investments, Inc., a successful resort developer. The application states that Central Florida Investments, Inc. is one of the largest privately held corporations in the central Florida area with over $400 million in annual sales. The company was founded in 1970 and employs over 5000 employees. The affiliate company, Westgate Resorts, is one of the largest timeshare companies in the world. The River Ranch development will provide financial stability to the utility system since there is a vested interest in providing utility services to the development. The buyer also indicated that it intends to fulfill all the commitments, obligations and representations of the seller with regards to utility matters. According to the application, pursuant to Rule 25-30.037(2)(j), Florida Administrative Code, the transfer is in the public interest because Central Florida Investments, Inc. will facilitate the reversal of several years of decline in the utility due to the prior owners' neglect and financial difficulties. With regard to the buyer's financial ability, staff was provided an opportunity to review the financial statements of the parent company which indicated that it has the financial ability to ensure consistent compliance with Florida Department of Environmental Protection (DEP) regulations.

With regard to the buyer's technical ability, it has hired and put together a team of consultants with the expertise needed to manage the utility. It has also hired operating staff with the proper licenses as required by the DEP. The application states that the buyer has retained a consulting firm to assist it in attaining compliance with DEP regulations and has resolved the outstanding issues that were addressed in the prior consent orders. There were some repairs and replacement of items needed for the water and wastewater systems. The utility has indicated that these repairs have been made.

The utility has a six-inch well and a twelve-inch well that pump water into two ground storage tanks and a third elevated storage tank. After storage, the water pressure is increased by three high service pumps and a hydropneumatic tank before entering into the water distribution system. The Environmental Engineering Section of the Polk County Health Department (PCH) was contacted regarding the utility's water system. According to the PCH, the utility is in compliance with all directives. Also, according to the DEP there are no outstanding violations against NRR at this time. There were occasional problems with sewage overflows during peak occupancy periods and extremely wet conditions. The utility's lift stations were overhauled to correct the overflow problems. Rehabilitative work for the wastewater collection system is still needed in the single family home subdivision known as Countryside. DEP that indicated the wastewater plant's operation has improved since the system was overhauled. A new wastewater treatment plant went on-line in August, 2002. Extensive refurbishing of the water treatment plant has been completed.

Rule 25-30.037(2)(q), 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. RRWM acquired the system on November 14, 2001, through a foreclosure sale. As evidence of ownership and continued use of the land where the facilities are located, RRWM provided a copy of the decision of the Circuit Court of the Eighteenth Judicial Circuit of Florida in Brevard County awarding Westgate Resorts, Ltd., the Certificate of Title to the land. In addition, the applicant has provided evidence of ownership of the land in the form of a recorded quit claim deed in the name of RRWM, and a copy of Title Insurance. Staff believes that this is sufficient to meet the requirements of Rule 25-30.037(2)(q), Florida Administrative Code.

According to the existing tariff and the transfer application, guaranteed revenue contracts, developer agreements, customer advances, and leases did not exist under the prior owner. Therefore, the disposition of such is not an issue for this transfer.

According to our records, NRR is delinquent with its RAFs for the years 1998 through 2000, and a portion of the year 2001. However, this matter was addressed in Issues 2 and 3. RRWM filed an annual report for the time period of November 14, 2001 through December 31, 2001, and has paid its share of the RAFs for that

period. RRWM is responsible for payment of the 2002 RAFs and filing the 2002 annual report by March 31, 2003.

Based on the above, staff recommends that the transfer of the facilities and Certificate Nos. 603-W and 519-S from NRR to RRWM is in the public interest and should be approved. RRWM will be responsible for the payment of all future RAFs and annual reports. A description of the territory served by the utility is appended to this recommendation as Attachment A.

ISSUE 5: Should the rates and charges approved for this utility be continued?

RECOMMENDATION: Yes, RRWM should continue charging the rates and charges approved for this utility system until authorized to change by the Commission in a subsequent proceeding. The tariff reflecting the change in ownership should be effective for services provided or connections made on or after the stamped approval date on the tariff sheets. (JOHNSON)

STAFF ANALYSIS: The utility's current rates and service availability charges were effective February 18, 1999, pursuant to Order No. PSC-99-0254-FOF-WS, issued February 9, 1999, in Docket No. 971185-WS. The utility's approved rates and charges are as follows:

Monthly Water Service Rates

General Service **Minimum Monthly Charge:** **Meter Size:**	
5/8" x 3/4"	$ 6.00
1"	$ 9.40
1 1/2"	$ 18.10
2"	$ 22.60
3"	$ 38.80
Gallonage Charge	
First 4,000 Gallons or less	$ 6.00
Next 6,000 Gallons (per 1,000 gal)	$ 0.85
Next 40,000 Gallons (per 1,000 gal)	$ 0.50
Next 50,000 Gallons (per 1,000 gal)	$ 0.35

Monthly Water Service Rates

Multiple Dwelling Service
Minimum Monthly Charge:

Long Hammock	$ 6.00
River Ranch RV Resort	$ 6.00
River Ranch Inn and Cottages	$ 4.00

Multiple Dwelling Service
Quarterly Charge:

River Ranch Shores (One Bath)	$ 20.25
River Ranch Shores (Other)	$ 22.80

Monthly Wastewater Service Rates

Residential and General Service
Meter Size:

Flat Rate	$ 6.00

Multiple Dwelling Service
Minimum Monthly Charge:

Long Hammock	$ 4.50
River Ranch RV Resort	$ 4.50
River Ranch Inn and Cottages	$ 3.00

Quarterly Service Rates

Multiple Dwelling Service
Quarterly Charge:

River Ranch Shores (One Bath)	$ 20.25
River Ranch Shores (Other)	$ 22.80

Miscellaneous Service Charges

	Water	Wastewater
Initial Connection Fee	$ 15.00	$ 15.00
Normal Reconnection Fee	$ 15.00	$ 15.00
Violation Reconnection Fee	$ 15.00	$ 15.00
Premises Visit Fee (in Lieu of disconnection)	$ 10.00	$ 10.00

Customer Deposits

The amount of the initial deposit shall be the greater of $15.00 or an amount necessary to cover charges for service for three billing periods.

Service Availability Fees and Charges

	Water	Wastewater
Tapping Fees		
5/8" x 3/4"	$ 60.00	
1"	$110.00	
Per Customer		$40.00
Main Extension Charge		$650.00

Rule 25-9.044(1), Florida Administrative Code, provides that:

> In case[s] of change of ownership or control of a utility which places the operation under a different or new utility . . . the company which will thereafter operate the utility business must adopt and use the rates, classification and regulations of the former operating company (unless authorized to change by the Commission) . . . .

RRWM has not requested a change in the rates and charges of the utility in this docket; however, RRWM has filed for a SARC in Docket No. 021067-WS which will address the utility's rates and charges. Therefore, staff recommends that the utility continue operations under the existing tariff and apply the approved rates and charges until authorized to change by the Commission in a subsequent proceeding. The utility has filed a revised tariff reflecting the change in issuing officer due to the transfer of control. If the Commission approves staff's recommendation, the tariff filing should be effective for services rendered or connections made on or after the stamped approval date.

ISSUE 6: Should these dockets be closed?

RECOMMENDATION: Yes, these dockets should be closed. (HOLLEY)

STAFF ANALYSIS: No further action is required in these dockets. Therefore, staff recommends that both Docket No. 010812-WS and Docket No. 020382-WS be closed.

RIVER RANCH WATER MANAGEMENT, LLC
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.