



Public Service Commission

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RECORDS AND REPORTING

DATE: MAY 6, 1999

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

FROM: DIVISION OF WATER AND WASTEWATER (BRADY, REDEMANN) *BSM*
DIVISION OF LEGAL SERVICES (CROSBY) *MS*

Pb gmv
lp

RE: DOCKET NO. 981341-WS - APPLICATION FOR GRANDFATHER
CERTIFICATES TO OPERATE WATER AND WASTEWATER UTILITY IN
POLK COUNTY BY CHC VII, LTD.
COUNTY: POLK

AGENDA: MAY 18, 1999 - REGULAR AGENDA - PROPOSED AGENCY ACTION FOR
ISSUE NO. 2 - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\981341WS.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 privately owned water and wastewater utilities in that county to be 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.

CHC VII, Ltd. (CHC or utility) is a Class C utility located in the Highlands Ridge Water Use Caution Area in Polk County. The utility has one water treatment plant, one wastewater treatment plant, one water distribution system, and one wastewater collection system. The utility has been providing water and wastewater service to Swiss Golf & Tennis Club Mobile Home Park (Swiss Park) and Hidden Golf Club Mobile Home Park (Hidden Park) since 1986 under the provisions of Section 723, Florida Statutes, which governs mobile home park lot tenancies. Since CHC's operations were subject to regulation under Chapter 723, Florida Statutes, the utility was never franchised by Polk County.

CHC currently serves 870 mobile home customers in Swiss and Hidden Parks and an 88 acre common area golf course. The mobile homes are owned by the tenants of the parks. The distinction between the two parks is that Hidden Park consists of single-wide and Swiss Park consists of double-wide mobile homes. Otherwise, the water and wastewater systems are interconnected and both utility services are provided from CHC-owned facilities. All lots in the parks are individually metered and a water conservation rate structure has been in effect since January 1, 1995, pursuant to a Southwest Florida Water Management District (SWFWMD) Consent Order dated August 31, 1994. In addition, SWFWMD restricts irrigation for the mobile homes to twice a week on specific hours of specific days and for short periods of time. Similar restrictions apply to golf course irrigation depending on the time of year.

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 CHC. 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. The Declaratory Statement for CHC, was intended to cover the five other mobile home limited partnerships in Polk County.

Unfortunately, the letter was misplaced by staff for a period of time. Once the letter was rediscovered, several conversations and meetings ensued between staff and the utility owner. By letter dated August 10, 1998, staff informed the owner of the result of its review. Since CHC provided water and wastewater service to Swiss Park and Hidden Park for compensation, CHC was a utility under the definition in Section 367.021(12), Florida Statutes, and therefore jurisdictional. In addition, since a specific charge for water or wastewater service had been broken out of lot rent, 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. 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 any regulatory oversight which was not CHC's case. The only reason CHC was 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 its operations governed by Chapter 723, Florida Statutes.

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In staff's September 4, 1998 response, the owner was also informed that, once the grandfather application was filed, the utility 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, CHC timely filed an application for grandfather certificates opening this docket. CHC also filed a Request for Representation by a Qualified Representative on November 16, 1998. By Order No. PSC-98-1633-PCO-WS, issued December 7, 1998, the Commission authorized Mr. Norman F. Mears to appear as Qualified Representative in this docket on behalf of CHC.

On October 16, 1998, the utility owner 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, the owner 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 and violation of principles of fairness. By letter of the same date to Mr. Charles Hill, the owner also requested the Commission not require the remittance of RAFs for 1996 and 1997.

Docket No. 981913-WS was opened to address the Petition for Waiver of Rule 25-30.110(3), F.A.C. By Order No. PSC-99-0639-FOF-WS, issued April 5, 1999, the Commission granted the waiver of 1996 and 1997 annual reports requiring, instead, an affidavit certifying 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 CHC.

DISCUSSION OF ISSUES

ISSUE 1: Should the application of CHC VII, Ltd., for grandfather certificates in Polk County be granted?

RECOMMENDATION: Yes, CHC VII, Ltd., should be granted Water Certificate No. 609-W and Wastewater Certificate 525-S to serve the territory described in Attachment A. The jurisdictional date for purposes of certification should be May 14, 1996. (BRADY, 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 CHC for grandfather certificates to provide water and wastewater service in Polk County was filed with the Commission on October 14, 1998. 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 a utility name correction, an inconsistency between the legal description and the territory maps, and a lack of complete rate authority and permit information. All deficiencies were corrected and the application was considered filed on April 26, 1999.

As amended, the application is in compliance with Section 367.171(2)(b), Florida Statutes, and other pertinent statutes and administrative rules concerning an application for grandfather certificates. The application contained the appropriate filing fee pursuant to Rule 25-30.020, F.A.C. Notice for grandfather certificates is not required by Florida Statutes or Commission rules.

The application indicates that CHC is a limited partnership formed in 1985. The name recorded with Florida's Department of State, Division of Corporations, was amended effective April 26, 1999 to reflect the name under which the utility has applied for certificates. According to the application, T & A Investments, Inc., owns 82% of the partnership; Century Realty Funds, Inc., owns 10%; and Mr. Raymond Moats owns the remaining 8%. A warranty deed that conveyed the land to CHC as of January 23, 1985 was provided as proof the utility owns the land upon which the utility

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facilities are located pursuant to the requirements of Rule 25-30.036(6), F.A.C.

An accurate legal description and adequate territory and system maps have been provided as prescribed by Rules 25-30.035(9), (10), and (11), F.A.C. A description of the territory is appended to this memorandum as Attachment A.

The utility is located on 353 acres of land in the Highlands Ridge Water Use Caution Area approximately 2 miles northeast of Lake Alfred. The territory is completely built-out. The potable water requirements are for residential service to 870 mobile homes and overhead spray irrigation for 88 areas of common area golf courses. There are no reuse facilities and no such facilities have been required by any regulatory authority.

In Polk County, water withdrawal is regulated by SWFWMD; water environmental compliance is regulated by the Polk County Health Department (PCHD); and wastewater environmental compliance is regulated by the Florida Department of Environmental Protection (FDEP). CHC holds SWFWMD Permit No. 207189 issued on August 19, 1986. The permit is scheduled to expire August 25, 1999. CHC holds PCHD Public Water Systems (PWS) Id No. 6535046 for Swiss Park and PWS Id No. 6534736 for Hidden Park. Both parks have been inspected within the last twelve months and some corrective actions have been taken. CHC holds FDEP wastewater Permit No. D053-200395. This permit was last modified on April 30, 1993. According to the application and staff's independent verification with SWFWMD, PCHD, and FDEP, the utility is essentially in compliance with all requirements of these agencies.

Based on the all the above information, staff recommends that CHC VII, Ltd. be granted Water Certificate No. 609-W and Wastewater Certificate No. 525-S to serve the territory described in Attachment A. The jurisdictional date for purposes of certification should be May 14, 1996.

ISSUE 2: What rates and charges should be approved for CHC VII, 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 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. (BRADY)

STAFF ANALYSIS: The utility has been in existence and charging rates since 1986 pursuant to Chapter 723, Florida Statutes. Since the utility's rates have never been subject to Polk County regulation, this issue is being handled as a proposed agency action. The conservation rate structure in existence at the time of this filing for 5/8 x 3/4" meters was put into effect on January 1, 1995, pursuant to a SWFWMD Consent Order dated August 31, 1994. During the pendency of this application, 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 advised 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 further in its analysis, staff is recommending that the Commission approve the utility's existing rates and charges at the time of this filing for 5/8 x 3/4" meters along with the Commission's standard meter test deposits. The utility does not charge a meter deposit and none is

required by Commission rule. The utility has also chosen not to adopt the Commission's standard miscellaneous service charges. And, since the service area is built-out, there is no service availability policy or charge.

Water and Wastewater Service (Original Rates)

Billing Period:	Monthly in advance
Excess Consumption Charges:	Quarterly in arrears
Applicability:	5/8 x 3/4" meters
Minimum Charge:	\$15.00
Up to 8,000 gallons	\$15.00
per 1,000 gal. over 8,000 up to 10,000	\$ 1.25
per 1,000 gal. over 10,000	\$ 2.00

Water and Wastewater Service (Pass-Through Rates)

Billing Period:	Monthly in advance
Excess Consumption Charges:	Quarterly in arrears
Applicability:	5/8 x 3/4" meters
Minimum Charge:	\$15.71
Up to 8,000 gallons	\$15.71
per 1,000 gal. over 8,000 up to 10,000	\$ 1.31
per 1,000 gal. over 10,000	\$ 2.09

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.

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Service Availability Charge

None.

Staff is also recommending an additional tariff rate be established for irrigation service. In addition to serving 870 mobile home sites on 5/8 x 3/4" meters, the utility also serves itself, including providing potable irrigation to an 88 acre common area golf course. Water to irrigate the golf course averages 229,600 gallons per day (GPD). Since this is almost as much as the average water supply to all the mobile homes combined of 280,500 GPD, in its 1994 consent order, 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 for irrigation 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 halved for irrigation service. The resulting irrigation rates and charges, including the pass-through rate adjustment for RAFs, are as follows:

IRRIGATION SERVICE (New Water Rate)

Billing Period:	Monthly in advance
Excess Consumption Charges:	Quarterly in arrears
Applicability:	Irrigation meters
Minimum Charge:	\$ 7.86
Up to 8,000 gallons	\$ 7.86
per 1,000 gal. over 8,000 up to 10,000	\$.65
per 1,000 gal. over 10,000	\$ 1.05

The utility's existing structure for rates and charges is somewhat 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

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minimum) charge. However, the utility's existing conservation rate structure was pursuant to a SWFWMD Consent Order in which the structure was based on the \$15.00 per month flat fee the utility was charging for water and wastewater service combined before the installation of meters. 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 earlier 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 CHC for 5/8 x 3/4" meters should be those in existence at the time of the filing.

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Finally, staff would note that water conservation in Swiss and Hidden Parks and to the common area golf course is strictly controlled by SWFWMD. Not only is that agency responsible for the existing conservation rate structure but also for enforcing a very tight irrigation schedule for discretionary water use. As noted in the Case Background, irrigation is only allowed twice a week for the mobile homes and only during specific hours on certain days. The total irrigation time for each period is limited to 12 minutes for double-wide units and 15 minutes for single-wide units. The irrigation schedule for the golf course is similar depending on the time of year. Based on SWFWMD's enforcement actions, it is unlikely that modifications to the utility's existing conservation rate structure will achieve enough additional conservation to warrant the costs claimed by the owner to provide the additional information.

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 CHC VII, Ltd., be responsible for regulatory assessment fees commencing December 1, 1998?

RECOMMENDATION: Yes, CHC VII, Ltd., should be responsible for regulatory assessment fees commencing 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. (BRADY)

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, the utility 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 CHC as a utility subject to the Commission's jurisdiction. By facsimile to staff counsel dated April 28, 1999, the utility requested responsibility for RAFs commence on or after December 1, 1998.

The petition for a Waiver of Rule 25-30.110(3), F.A.C., was addressed by Order No. PSC-99-0639-FOF-WS, issued April 5, 1999 in Docket No. 981913-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

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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 CHC's 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 the expiration of the protest period, the docket should be closed if no timely protest to the proposed agency action issue is filed. (CROSBY)

STAFF ANALYSIS: If there are no timely protests to the proposed agency action issue (Issue No. 2), no further actions are required and this docket should be closed.

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ATTACHMENT A

CHC VII, LTD.

WATER AND WASTEWATER TERRITORY DESCRIPTION

POLK COUNTY

SWISS GOLF & TENNIS CLUB AND HIDDEN GOLF CLUB MOBILE HOME PARKS

Township 27 South, Range 26 East
Section 27

The East 663.0 feet of the South 1,658.61 feet of the SE 1/4 of Section 27, Township 27 South, Range 26 East, Polk County.

Township 27 South, Range 26 East
Section 35

The NW 1/4 and the West 1/2 of the NE 1/4 of Section 35, Township 27 South, Range 26 East.