

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for staff- )  
 assisted rate case in Pinellas )  
 County by RANCH MOBILE WWTP, INC.)

DOCKET NO. 900246-SU  
 ORDER NO. 24888  
 ISSUED: 8/7/91

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
 J. TERRY DEASON  
 BETTY EASLEY  
 MICHAEL MCK. WILSON

Pursuant to notice, an administrative hearing was held before K. N. Ayers, Hearing Officer with the Division of Administrative Hearings, on April 25, 1991, at St. Petersburg, Florida in the above-captioned matter.

## APPEARANCES:

For Petitioners:	Thomas E. Reynolds, Esquire Suite 300, 100 2nd Avenue North St. Petersburg, FL 33701
For Respondent:	Vernon R. Wagner, Esquire 4508 Central Avenue St. Petersburg, FL 33711
For Intervenor:	Robert J. Pierson, Esquire 100 East Gaines Street Tallahassee, FL 32399-0863

The Hearing Officer's Recommended Order was entered on May 29, 1991. No exceptions were filed. After consideration of the evidence, we now enter our order.

FINAL ORDER GRANTING  
FINAL RATES AND CHARGES

BY THE COMMISSION:

BACKGROUND

On November 27, 1990, the Commission issued proposed agency action Order No. 23807, which proposed to grant increased rates and charges to Ranch Mobile WWTP, Inc. (Ranch Mobile or utility). This

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is a staff-assisted rate case. Order No. 23807 was timely protested by Twin Palms Mobile Home Court, one of the utility's three mobile home park customers. The Commission referred the matter to the Division of Administrative Hearings for a formal hearing to be conducted pursuant to Section 120.57(1), Florida Statutes.

The full text of the Hearing Officer's Recommended Order is set forth below.

#### STATEMENT OF THE ISSUES

What is the appropriate rate to charge for providing waste water treatment services to the customers of Ranch Mobile WWTP, Inc.?

#### PRELIMINARY STATEMENT

On April 3, 1990, Ranch Mobile WWTP, Inc. (Ranch Mobile) applied for a staff assisted rate case pursuant to Section 384.0814, Florida Statutes (sic). Its application was approved and, by Order No. 23807, the Florida Public Service Commission (PSC) issued a proposed agency action approving the increased rates for waste water treatment service. By Petition dated December 17, 1990, Twin Palms Mobile Home Court, Inc. (Twin Palms) and Down Yonder Mobile Home Estates, Ltd. (Down Yonder) requested a hearing to challenge the proposed agency action, and these proceedings followed.

In its Petition challenging the proposed rate increase, the Petitioners primarily allege that Ranch Mobile had contracted to provide waste water treatment services with their existing plant, and even though Ranch Mobile was forced by the Department of Environmental Regulation to cease and desist operations at the existing treatment facility, Ranch mobile (sic) should have constructed a new facility

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rather than hook up to the City of Largo's waste water treatment facility.

Petitioners herein have filed a civil action against Ranch Mobile alleging Ranch Mobile breached the contract with them and are seeking monetary damages in the Circuit Court in Pinellas County.

At a prehearing conference to limit and define the issues to be considered in these proceedings, this Hearing Officer entered an ore tenus order limiting the evidence in these proceedings to the appropriateness of the PSC's proposed rate increase. This order precluded litigation, in these proceedings, of the contract dispute between the parties.

At the hearing, the PSC called two witnesses, Petitioner called on witness, and 11 exhibits were admitted into evidence. Exhibit 1 is the engineering report used by the PSC analyst in arriving at the appropriate rate for the facility to charge. Exhibit 2 is the staff memorandum establishing the proposed rate and the reasons therefore. Exhibit 3 is the staff audit of Ranch Mobile used in establishing the proposed rates. All other exhibits related to the contractual dispute between the parties and were accepted as proffers of the evidence that would have been introduced if Petitioners had been allowed to litigate the contract dispute in these proceedings.

Proposed findings submitted by Respondent and Intervenor are accepted. Those not included herein were deemed unnecessary to the conclusions reached.

#### FINDINGS OF FACT

1. Ranch Mobile WWTP, Inc., is a Class "C" wastewater treatment facility located in the

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City of Largo, Florida. The original certificate currently held by Ranch Mobile was issued on March 22, 1977 to Midway Service Corporation and was transferred on April 17, 1985 to Ranch Mobile.

2. Ranch Mobile serves three mobile home parks, Ranch, Down Yonder and Twin Palms. The utility is owned by its largest customer, Ranch Mobile, a cooperative mobile home park with 488 members. Down Yonder has 229 members, and Twin Palms has 149 members.

3. After purchasing the utility, Ranch Mobile commenced efforts to bring the utility in compliance with Department of Environmental Regulation's requirements. These efforts included preparing new percolating ponds, which, when completed, did not allow the utility to meet DER requirements. Faced with disciplinary action by DER, Ranch Mobile was offered the option by DER of connecting to the City of Largo's wastewater treatment facility in lieu of much more expensive procedures which were not guaranteed to meet DER requirements. Suffice it to say, Ranch Mobile opted for connecting to the City of Largo system and did so. It is to recover the costs of the services provided by the City of Largo that Ranch Mobile seeks the rate increase here involved.

4. On April 3, 1990, Ranch Mobile filed for a staff-assisted rate case and paid the filing fee. On May 22, 1990, the PSC staff engineer conducted a field investigation resulting in memorandum dated June 4, 1990. (Exhibit 1) The PSC Division of Audit and Finances reviewed the utilities operation expense, files, and rate application to establish reasonableness of the original cost, utility plant retirements, and quality of service, resulting in the memorandum dated August 21, 1990. (Exhibit 3) On September 27, 1990, a

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customer meeting was held to allow customers to provide testimony regarding the qualify (sic) of service being provided by the utility. No adverse testimony to quality of service was offered.

5. Although Petitioners' witness questioned some minor costs allowed by the PSC staff report, this witness was not qualified as an expert in utility rate proceedings, and his opinion is given little, if any, credence.

6. The rates proposed in Exhibit 2 are just, reasonable, compensatory, and not unfairly discriminatory, and conform to the requirements of Section 367.081 and 367.0814, Florida Statutes.

#### CONCLUSIONS OF LAW

The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings.

Section 367.081(2)(a), Florida Statutes, provides in pertinent part:

The Commission shall, either upon request or upon its own motion, fix rates which are just, reasonable, compensatory and are not unfairly discriminatory. In every such proceeding, the Commission shall consider the value and quality of the service and the cost of providing the service, which shall include, but not be limited to, debt interest; the requirements of the utility for working capital; maintenance, depreciation, tax, and operating expenses incurred in the operation of all property used and useful in the public service; and a fair return on the investment of the utility in property used and useful in the public service.

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In these proceedings, Ranch Mobile as the applicant has the burden of proof to demonstrate its entitlement to the proposed rate increase. Balino v. Department of Health and Rehabilitative Services, 348 So.2d 349 (Fla. 1st DCA 1977).

The rates proposed in these proceedings are basically the rates charged by the City of Largo for the wastewater treatment provided the customers of Ranch Mobile.

Petitioner's contention that Ranch Mobile is required to honor the contract entered into with Down Yonder and Twin Palms, when Ranch Mobile acquired the utility, is not well founded. In a factual situation very similar to the instant case, Cohee v. Crestridge Utilities Corp., 324 So.2d 155 (Fla. 2nd DCA 1975), the court held that the PSC had the authority to raise as well as lower rates established by preexisting contracts when deemed necessary in the public interest. As stated by the court in Cohee at p. 158:

. . . it would appear that the Commission would not even be authorized to take into consideration the preexisting contract in its determination of reasonable rates.

Similarly, in H. Miller & Sons, Inc. v. Hawkins, 373 So.2d 913 (Fla. 1979), the Florida Supreme Court held that the PSC could modify a private contract between a developer and a utility as a valid exercise of the police power. Accordingly, the contract entered into between Ranch Mobile, Down Yonder and Twin Palms is not controlling or relevant in these proceedings.

Since the rates recommended by the PSC's staff are just, reasonable, compensatory, and not unfairly discriminatory, they should be approved.

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RECOMMENDATION

It is recommended that a Final Order be entered approving and establishing rates for Ranch Mobile to charge its customers as set forth in the Final Order granting temporary rates in Event of Protest and Notice of Proposed Agency Action, Order Approving Increased Rates and Charges.

Upon consideration, we find the Hearing Officer's findings to be supported by competent substantial evidence in the record, and therefore, adopt the Recommended Order. Accordingly, we will revive Order No. 23807, and make it effective and final on July 30, 1991, the date of our vote at the Agenda Conference on which we adopted the Recommended Order.

The utility has been collecting and escrowing the proposed rates since the protest. Since by this Order the protest is resolved, the escrowed funds shall be released to the utility. The utility must follow the tariff filing and notice requirements set forth in Order No. 23807.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Order No. 23807 is hereby revived and made effective and final on July 30, 1991. It is further

ORDERED that Ranch Mobile WWTP, Inc. shall follow the tariff filing and notice requirements of Order No. 23807. It is further

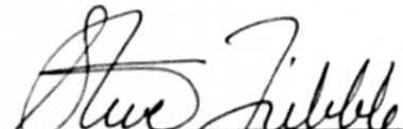
ORDERED that each and every finding herein is hereby specifically approved. It is further

ORDERED that the escrowed funds shall be released to the utility. It is further

ORDERED that this docket is hereby closed.

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By ORDER of the Florida Public Service Commission, this 7<sup>th</sup>  
day of AUGUST, 1991.



STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

NSD

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

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