



# Public Service Commission

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RECORDS AND REPORTING

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DATE: MAY 6, 1999

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

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

RE: DOCKET NO. 981339-WS - APPLICATION FOR GRANDFATHER CERTIFICATES TO OPERATE WATER AND WASTEWATER UTILITY IN POLK COUNTY BY HIDDEN COVE, LTD.  
COUNTY: POLK

AGENDA: MAY 18, 1999 - REGULAR AGENDA - PROPOSED AGENCY ACTION FOR ISSUE 2 - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\981339WS.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.

Hidden Cove, Ltd. (Hidden Cove or utility) is a Class C utility located in a 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. Water and wastewater services have been provided to Hidden Cove Mobile Home Park since 1982 under the provisions of Section 723, Florida Statutes, which governs mobile home park lot tenancies. Since Hidden Cove's operations were subject to regulation under Chapter 723, Florida Statutes, the utility was never franchised by Polk County.

The mobile home park is built-out with approximately 122 total customers. Hidden Cove is in the Highlands Ridge Water Use Caution Area but the lots are not individually metered. The utility's existing rate is a combined flat rate of \$15.00 for both water and wastewater service. Pursuant to a pass-through rate adjustment effective November 30, 1998, the rate has been increased to \$15.71.

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 Hidden Cove. 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 Hidden Cove.

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 ensued. 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 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.

At the time of staff's August 10, 1998 letter, the exact circumstances of the owner's other Polk County systems were not known. In the case of Hidden Cove, it was subsequently learned that a non-jurisdictional finding and a landlord-tenant exemption pursuant to Section 367.022(5), Florida Statutes, could not apply for the same reasons given for CHC, and no other exemptions appear to apply.

By letter dated August 18, 1998, the owner expressed some concerns regarding the applications provided for CHC 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 only reason the owner's 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.

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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 Hidden Cove was timely filed opening this docket. Hidden Cove also filed a Request for Representation by a Qualified Representative on November 16, 1998. By Order No. PSC-98-1631-PCO-WS, issued December 7, 1998, the Commission authorized Mr. Norman F. Mears to appear as Qualified Representative in this docket on behalf of Hidden Cove.

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, 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. By letter of the same date to Mr. Charles Hill, Hidden Cove also requested the Commission not require the remittance of RAFs for 1996 and 1997.

Docket No. 981915-WS was opened to address the Petition for Waiver of Rule 25-30.110(3), F.A.C. By Order No. PSC-99-0641-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 Hidden Cove.

DISCUSSION OF ISSUES

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

RECOMMENDATION: Yes, Hidden Cove, Ltd., should be granted Water Certificate No. 607-W and Wastewater Certificate 523-S to serve the territory described in Attachment A. The jurisdictional date for purposes of certification should be May 14, 1996. (CLAPP, 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 Hidden Cove 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 insufficient rate authority information, an unexecuted easement for the land upon which the utility facilities are located, and a lack of complete permit information. All deficiencies were corrected and the application considered filed on January 8, 1999.

As amended, the application is in compliance with Section 367.171(2)(b), Florida Statutes, and other pertinent statutes and administrative rules concerning 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 Hidden Cove is a limited partnership formed in 1982. T & A Investments, Inc., owns 89% of the limited partnership; ATA Properties, Inc., owns 1%; and Mr. John C. Maxwell owns the remaining 10%. A Utility Easement that grants a perpetual non-exclusive easement to Hidden Cove executed on October 1, 1998, was provided as proof the utility has long term use of the land upon which the utility facilities are located pursuant to the requirements of Rule 25-30.036(6), F.A.C.

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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 territory served consists entirely of unmetered residential mobile homes and is built-out at 122 lots.

In Polk County, water withdrawal is regulated by Southwest Florida Water Management District (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). Hidden Cove holds SWFWMD Permit No. 206893.01 issued on September 5, 1989. The permit is scheduled to expire September 5, 2010. The utility holds PCHD Public Water Systems (PWS) Id No. 6534736. The utility was inspected within the last twelve months and some corrective actions cited. The utility holds FDEP Wastewater Permit No. DO53-252330, which is due to expire on October 30, 1999. 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 Hidden Cove, Ltd. be granted Water Certificate No. 607-W and Wastewater Certificate 523-S to serve the territory described in Attachment A. The jurisdictional date for purposes of certification should be May 14, 1996.

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**ISSUE 2:** What rates and charges should be approved for Hidden Cove, Ltd.?

**RECOMMENDATION:** Hidden Cove, Ltd., existing flat rate for both water and wastewater service should be approved until the utility applies for rate assistance or it is required to so file by the Commission. The tariff sheets effective November 30, 1998 pursuant to the 1998 pass-through rate adjustment should supersede those filed in this docket. All other tariff provisions should be made effective on or after the stamped approval date. (CLAPP)

**STAFF ANALYSIS:** The utility has been in existence and charging rates since 1982. The utility's current flat rate of \$15.00 per month for water and wastewater services combined was put into effect for Hidden Cove on September 4, 1990 pursuant to Section 723, Florida Statutes. Subsequent to the utility 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 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 below, staff is recommending that the Commission approve the utility's existing rates and charges at the time of this filing. Since the utility does not have meters, meter deposits and meter test deposits do not apply. The utility has chosen not to adopt the Commission's standard miscellaneous service charges. And, since the service area is already at build-out, there is no service availability policy or charge.

**Water and Wastewater Service** (Original Rate)

Billing Period:

Monthly in advance

Base Charge: \$15.00

Water and Wastewater Service (Pass-Through Rate)

Billing Period: Monthly in advance

Base Charge: \$15.71

Customer Deposits

N/A

Meter Test Deposits

N/A

Miscellaneous Service Charges

N/A

Service Availability Charge

None.

Commission Rule 25-30.255, F.A.C., requires each utility to measure water sold upon the basis of metered volume sales unless the Commission otherwise approves flat rate service arrangements. The intent of the rule is to promote water conservation by providing a means by which customers can understand the impact of their consumption on their bill. And, increasingly, the Water Management Districts are mandating the installation of water meters, especially for utilities in water use caution areas.

On the other hand, for purposes of certificating grandfathered utilities and utilities already in existence, the Commission has generally adopted the utility's current rate structure, including flat rates, until such time as the utility first applies for rate assistance. Because of the circumstances and statutory requirements for certificate dockets, restructuring rates in these dockets presents a challenge on staff resources. In the case of grandfather certificates, there are a number of utilities simultaneously requiring certification when a County transfers jurisdiction to the Commission. In the case of utilities in



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existence, there is a statutory deadline of 90 days from the date of filing for the Commission to approve or deny the certificates.

However, the primary reason certification dockets have not been considered the appropriate forum in which to restructure rates is the general absence of metered data necessary to design appropriate rates. If meters haven't been installed, it is usually due to the economics of the system or the limitations imposed by community documents or the requirements of Chapter 723, Florida Statutes. As noted in the Case Background, the Commission's exclusive jurisdiction pursuant to Section 367.011, Florida Statutes, provides the Commission with the authority to supersede all other laws, agreements and contracts. However, as a matter of practicality, it still takes time to acquire the necessary data to construct appropriate usage rates.

Because of the increasing focus on conservation throughout the state, staff believes it has the burden to probe the specifics of each application for certificates with flat rates in order to determine whether or not it is feasible or reasonable to implement metered rates absent a rate proceeding. Shortly after the filing of this application, staff asked the utility to provide additional information on the cost and time-frame necessary to fully meter Hidden Cove. The utility was also asked to estimate the relative costs to provide each service along with supporting documentation. Due to the following claims by the owner 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 have to pay a filing fee equal to ten dollars (\$10.00) per lot for all its mobile home parks simultaneously. In addition, the owner would incur the costs of acquiring and installing meters for all unmetered lots. 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

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additional costs. 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 Hidden Cove should be those in existence at the time of the filing.

Finally, staff notes that Hidden Cove is in the Highlands Ridge Water Use Caution Area. The SWFWMD was contacted to determine any concerns it had with the utility's non-metered status. SWFWMD indicated that the utility pumps such a small amount of water per year that there would be no advantage to the district to have the utility meter.

For all the above reasons, staff recommends that the flat rate of \$15.00 per month for both water and wastewater service be approved until the utility applies for rate assistance or until it is required to do so by the Commission. The utility has filed proposed water and wastewater tariffs which reflect this rate. The first revised tariff sheets effective November 30, 1998 pursuant to the 1998 pass-through rate adjustment should supersede those filed in this docket. All other tariff provisions should be made effective on or after the stamped approval date.

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**ISSUE 3:** Should Hidden Cove, Ltd., be responsible for regulatory assessment fees commencing with December 1, 1998?

**RECOMMENDATION:** Yes, Hidden Cove, 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 in this docket. (CLAPP)

**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 Hidden Cove 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 commence on or after December 1, 1998. By extrapolation, the facsimile applies to Hidden Cove, as well.

The petition for a Waiver of Rule 25-30.110(3), F.A.C., was addressed by Order No. PSC-99-0641-FOF-WS, issued April 5, 1999 in Docket No. 981915-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

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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 Hidden Cove's responsibility for regulatory assessment fees begin December 1, 1998. The utility should be required to remit any 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

HIDDEN COVE, LTD.

WATER AND WASTEWATER SERVICE AREA

POLK COUNTY

Section 31, Township 27 South, Range 27 East, Polk County, Florida

The West 1320.0 feet of the South 1/2 of the SW 1/4 and the West 660.0 feet of the NW 1/4 of the SW 1/4 of Section 31, Township 27 South, Range 27 East, Polk County, Florida.