

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint application for) DOCKET NO. 931063-WU
transfer of TREASURE COVE WATER) ORDER NO. PSC-94-1474-FOF-WU
COMPANY to HYDRATECH UTILITIES,) ISSUED: November 30, 1994
INC., cancellation of)
Certificate No. 520-W, amendment)
of Certificate No. 337-W in)
Martin County, and joint motion)
for a limited proceeding)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

FINAL ORDER APPROVING TRANSFER

AND

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING APPLICATION FOR LIMITED
PROCEEDING AND ESTABLISHING METER CHANGE-OUT CHARGE

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein, other than approving the transfer, is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

CASE BACKGROUND

Treasure Cove Water Company (Treasure Cove) is a Class C utility which provides water service to 66 customers in Martin County. Hydratech Utilities, Inc. (Hydratech) is a Class A utility which provides service to 4,687 water customers and 4,001 wastewater customers in Martin County. On November 3, 1993, Treasure Cove and Hydratech filed a joint application for transfer of the facilities and territory of Treasure Cove to Hydratech, for the cancellation of Certificate No. 520-W, for the amendment of

DOCUMENT NUMBER-DATE

12053 NOV 30 1994

FPSC-RECORDS/REPORTING

Certificate No. 337-W, and for a limited proceeding to implement Hydratech's rates and charges for the Treasure Cove customers.

On January 25, 1994, we held a customer meeting. Twenty-five customers attended and eight provided testimony. The customers did not object to the transfer; however, several expressed concern over the implementation of higher rates and possible charges for changing to a smaller meter. These matters are discussed further, below.

APPLICATION FOR TRANSFER

The application is in compliance with Section 367.071, Florida Statutes, and our rules regarding transfers. The application contains a check in the amount of \$150, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. No objections to the notice of application have been received and the time for filing objections has expired. A description of the territory served by Treasure Cove is appended to this Order as Attachment A.

The application contains a copy of the contract for sale which includes the purchase price, terms of payment and a list of the assets purchased and the liabilities assumed. Hydratech provided a statement in its application that it will fulfill the obligations of Treasure Cove. The application states that Treasure Cove has no outstanding customer deposits, guaranteed revenue contracts, developer agreements, customer advances, debt, or leases. The application further states that there are no outstanding fines or refunds owed by Treasure Cove. Treasure Cove will be responsible for payment of all outstanding regulatory assessment fees up to the date of closing. Hydratech will be responsible for all regulatory assessment fees accruing after the date of closing.

Rule 25-30.037(2)(g), Florida Administrative Code, requires that each application for transfer of certificate of authorization, facilities or any portion thereof, "shall include evidence that the Utility owns the land upon which the Utility treatment facilities are located, or a copy of an agreement which provides for the continued use of the land, such as a 99-year lease. The Commission may consider a written easement or other cost-effective alternative."

The applicants provided a copy of a license agreement between Mr. Spicer and Hydratech which provides for Hydratech's use of the land for a term of 99 years or as long as the property is necessary

for the provision of water utility service to the residents of the Treasure Cove Subdivision. The agreement further states that upon expiration of the term, or when that property is no longer necessary for the provision of water service, Hydratech shall, within thirty days, transfer control of the property back to Mr. Spicer by quit claim deed.

A license agreement conveys no interest in the land, just a mere right to enter upon the land for the purposes set out in the agreement. A license is generally revocable at the will of the licensor. However, where a license is created by written instrument, the license agreement is construed according to its clear intent. Herschberg v. Florida Power and Light Co., 137 So. 2d 834, 835 (Fla. 3d DCA 1962). Moreover, the intent of the parties is to be gathered from the entire instrument. Prescott v. J.S. Betts Co., 81 Fla. 538, 88 So. 385, 386 (Fla. 1921). Thus, by the terms of the agreement, this license is conditionally revocable. Where a license is conditionally revocable, the condition must be satisfied before the license will be deemed revoked. Herschberg v. Florida Power and Light Co., 137 So. 2d 834, 835 (Fla. 3d DCA 1962).

It should also be noted that a license is personal to the licensee. Should Hydratech sell the utility or assets, or cease to exist during the term of the license agreement, the license would not inure to the benefit of its successor in interest, if any. However, should Mr. Spicer sell the land, the license would continue to inure to the benefit of Hydratech.

Notwithstanding the above, we believe that the license agreement is acceptable in this case. Treasure Cove is experiencing problems with its wells and treatment facilities and the parties anticipate retiring these facilities and connecting Treasure Cove's transmission and distribution system to Hydratech's supply and treatment facilities. The application provides that Treasure Cove will construct a line to connect the systems and that the line will be transferred with the utility assets. At that time, the land upon which the wells and treatment facilities are located will no longer be required for utility purposes. In the event that the facilities are not, in fact, retired, Hydratech will still have continued access to the land for the duration of the license agreement.

Based upon the discussion above, we find that the transfer of assets, the cancellation of Certificate No. 520-W, and the amendment of Certificate No. 337-W, are in the public interest and are, therefore, approved.

RATE BASE

By Order No. 21433, issued June 26, 1989, we established that the appropriate balance of rate base for Treasure Cove was \$73,049, as of December 31, 1988. According to the instant application, only minor changes to plant, contributions-in-aid-of-construction (CIAC), accumulated depreciation, and accumulated amortization of CIAC accounts have occurred since we issued Order No. 21433. With the updating of those balances as reflected in Treasure Cove's 1992 Annual Report, and the requirement that Treasure Cove construct the interconnection between its system and Hydratech, Treasure Cove and Hydratech believe that rate base will be between \$60,000 and \$65,000 as of the date of transfer. Hydratech has requested that a rate base of at least \$62,000.

We audited the books and records of Treasure Cove to determine rate base as of December 31, 1993. Treasure Cove recorded \$52,520 for the water system. However, the land upon which the treatment facilities are located is not included in the assets being sold to Hydratech. Accordingly, we have removed \$1,869 from rate base. In addition, Treasure Cove did not follow Rule 25-30.140(2)(a), Florida Administrative Code, in selecting plant lives for determining appropriate depreciation rates. We have, therefore, reduced the balance of accumulated depreciation by \$1,092.

Upon consideration, we find that rate base for the Treasure Cove system is \$51,743 as of December 31, 1993. This rate base calculation is used purely to establish the net book value of the property being transferred and does not include the normal ratemaking adjustments of working capital calculations and used and useful adjustments. Our calculation of rate base is depicted on Schedule No. 1, and our adjustments are itemized on Schedule No. 2.

ACQUISITION ADJUSTMENT

An acquisition adjustment results when the purchase price differs from the original cost calculation. The acquisition adjustment resulting from the transfer of Treasure Cove is as follows:

Purchase Price:	\$ 9,000
Rate Base:	<u>\$ 51,743</u>
Acquisition Adjustment:	\$(42,743)

The application states that Hydratech and Treasure Cove agreed to a purchase price substantially less than rate base for the

following reasons: absent the purchase, the system would likely require significant improvements in order for it to continue to meet environmental standards; Hydratech does not intend to collect service availability charges from the customers; Hydratech's purchase of the system negates the potential for abandonment; the current owner is in poor physical health and is no longer able to properly operate and maintain this system and deal with regulatory requirements; and the customers of the Treasure Cove system will benefit substantially from the transfer in the form of increased quality and reliability of service.

In the absence of extraordinary circumstances it has been Commission policy that the purchase of a utility at a premium or discount shall not affect rate base. Upon consideration, we do not believe that there are any extraordinary circumstances to justify recognizing the negative acquisition adjustment.

LIMITED PROCEEDING

Hydratech also filed a limited proceeding to apply its rates to the Treasure Cove service area. We approved Treasure Cove's existing rates by Order No. 21433, issued June 26, 1989. These rates have been in effect since September 1980. Hydratech's existing rates and charges became effective September 7, 1993, pursuant to a 1993 price index adjustment.

Treasure Cove's customers are currently charged the same minimum charge regardless of meter size. The minimum charge includes 3,000 gallons of usage per month. A gallonage charge is assessed for all usage in excess of 3,000 gallons per month. Hydratech employs the base facility/gallonage charge rate structure. The base facility charges are factored-up according to the American Waterworks Association meter equivalency factors, and thus increase with meter size.

According to Treasure Cove's 1993 Annual Report, all of its customers are served through one-inch meters. Under Hydratech's rate structure, these customers would be billed at a higher rate than for a 5/8-inch x 3/4-inch meter. Several customers at the customer meeting expressed concern over the increased rates. Some expressed an interest in changing to a 5/8-inch x 3/4-inch meter, but were concerned about a possible charge for changing the meter.

In support of its request, Hydratech stated that applying its rates for the Treasure Cove customers would ensure that service is provided for compensatory and non-discriminatory rates. In addition, Hydratech noted that fifty-three of eighty-four of Treasure Cove's customers signed a petition in favor of the

transfer and the implementation of Hydratech's rates. According to the application, eighteen out of the thirty-one customers who did not sign the petition are absentee owners.

Although we are concerned about the increase to customers' bills which would result from the implementation of Hydratech's rates, there are several factors which lead us to believe that implementation of Hydratech's rates is the most appropriate action at this time. As discussed previously, the parties expect to connect the Treasure Cove system to Hydratech's system. After they are interconnected, Treasure Cove's customers will receive higher quality service. The cost to serve the Treasure Cove customers should be the same as the cost to serve the Hydratech customers. In addition, the Treasure Cove customers will not be required to pay any additional service availability charges to Hydratech. Finally, Hydratech's base facility/gallonage charge rate structure is preferable to Treasure Cove's minimum charge rate structure.

A comparison of miscellaneous service charges indicates that most of Hydratech's charges are lower than those authorized for Treasure Cove. The exceptions are a late payment fee and a service problem identification call charge. Hydratech is also authorized to collect a deposit equal to two times the average monthly bill. Treasure Cove does not collect customer deposits. Hydratech has indicated that it intends to treat the Treasure Cove customers as existing rather than new customers, and will only collect customer deposits if payment problems arise with specific customers in the future.

Upon consideration, Hydratech's application for a limited proceeding to implement its monthly service rates, miscellaneous service charges, and customer deposits for the Treasure Cove water customers is approved. Hydratech shall file a proposed customer notice within thirty days of the effective date of this Order. In accordance with Rule 25-30.475, Florida Administrative Code, the rates and charges shall be effective for service rendered on or after the stamped approval date on the tariff sheets reflecting the addition of the Treasure Cove territory to Hydratech's certificated territory, provided the customers have received notice. The tariff sheets will be approved upon Staff's verification that the tariffs are consistent with our decision and that the proposed customer notice is adequate. Hydratech shall provide proof that the customers have received notice within ten days after the date of the notice.

METER CHANGE-OUT CHARGE

As discussed above, all of the Treasure Cove customers are served through one-inch meters. Consequently, under Hydratech's rate structure, these customers will be subject to higher rates. At the customer meeting, several customers testified that they did not object to paying Hydratech's rates. They did, however, object to any meter change-out charge.

Hydratech did not request a meter change-out charge either in the application for transfer or in its application for a limited proceeding. Hydratech does not have an approved charge for changing to a smaller meter. It does, however, have an approved charge for changing to a larger meter. Hydratech believes that this charge should apply to the present situation. We do not agree. We do not suggest that a charge is not appropriate, only that its tariff does not currently provide for such a charge.

Hydratech estimated that the total cost to exchange a 5/8-inch x 3/4-inch meter for a one-inch meter, including the cost of the meter, is \$97.64. Excluding the cost of the meter, the cost would be \$61.64. At a meeting in late 1993, Hydratech informed the Treasure Cove Homeowners that it would charge a flat fee of \$50 for the installation, labor, and materials, which is what it currently proposes. Hydratech also indicated that it intends to make the necessary changes to the lines on both sides of the meters rather than requiring the customers to make adjustments on their sides of the meters. Hydratech also stated that it is amenable to a grace period of two to three months during which it would charge at the 5/8-inch x 3/4-inch rate pending a request for a smaller meter.

There are a number of factors which should be taken into consideration in determining an appropriate meter change-out charge. As discussed above, Hydratech will acquire Treasure Cove at a substantial discount without the corresponding negative acquisition adjustment. We have also approved Hydratech's request to charge its rates rather than Treasure Cove's rates. The customers will receive better service, but will experience a rate increase in return for the improved service.

Upon consideration, we believe that \$30 is an appropriate meter change-out charge in this case. Hydratech acknowledged that the proposed \$50 charge did not cover all of the costs for changing-out the meters. A \$30 charge would likewise not cover all of the costs; however, it would cover the costs of labor and a portion of the materials. Accordingly, Hydratech is authorized to collect a charge of \$30 from the Treasure Cove customers for changing from a one-inch meter for a 5/8-inch x 3/4-inch meter.

Hydratech shall also charge the Treasure Cove customers the rate for a 5/8-inch x 3/4-inch meter for three months following implementation of the new rates, pending the customers' requests for meter change-outs.

It is, therefore,

ORDERED by the Florida Public Service Commission that the joint application for transfer of Treasure Cove Water Company to Hydratech Utilities, Inc. is approved. It is further

ORDERED that rate base for the Treasure Cove Water Company system, which represents the net book value for purposes of the transfer, is \$51,743 as of December 31, 1993. It is further

ORDERED that our calculations of rate base for purposes of the transfer are depicted on Schedules Nos. 1 and 2, which are appended to this Order and which, by reference, are expressly incorporated herein. It is further

ORDERED that Certificate No. 520-W is hereby canceled. It is further

ORDERED that Certificate No. 337-W is hereby amended to include the territory described in Attachment A, which is appended to this Order and which, by reference, is expressly incorporated herein. It is further

ORDERED that the joint motion for a limited proceeding to implement the rates, miscellaneous service charges, and customer deposit charges of Hydratech Utilities, Inc., for the customers of Treasure Cove Water Company, is approved. It is further

ORDERED that Hydratech Utilities, Inc. shall charge the Treasure Cove Water Company customers its 5/8-inch x 3/4-inch rates for a period of three months pending customer requests for meter change-outs. It is further

ORDERED that Hydratech Utilities, Inc. is authorized to collect a meter change-out charge of \$30 for those customers of Treasure Cove Water Company who wish to change out their one-inch meters for 5/8-inch x 3/4-inch meters. It is further

ORDERED that, prior to implementing the rates and charges approved herein, Hydratech Utilities, Inc. shall submit revised tariff pages reflecting the Treasure Cove Water Company service territory. It is further

ORDER NO. PSC-94-1474-FOF-WU
DOCKET NO. 931063-WU
PAGE 9

ORDERED that, prior to implementing the rates and charges approved herein, Hydratech Utilities, Inc. shall submit a proposed notice to the Treasure Cove Water Company customers of the rates and charges approved herein. It is further

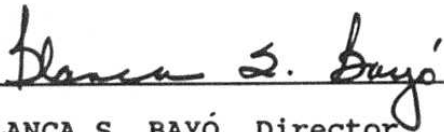
ORDERED that, in accordance with Rule 25-30.475, Florida Administrative Code, the rates and charges approved herein shall be effective for services rendered on or after the stamped approval date on the revised tariff pages, provided that customers have received notice. It is further

ORDERED that the revised tariff pages shall be approved upon Staff's verification that they are consistent with our decision herein and that the proposed customer notice is adequate. It is further

ORDERED that Hydratech Utilities, Inc. shall submit written proof that notice was given to the Treasure Cove Water Company customers no later than ten days after notice is given. It is further

ORDERED that, unless a person whose interests are substantially affected by the action proposed herein files a petition in the form and by the date specified in the Notice of Further Proceedings or Judicial Review, this Order shall become final and this docket shall be closed on the following date.

By ORDER of the Florida Public Service Commission, this 30th day of November, 1994.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

RJP

Commissioner Diane K. Kiesling dissented on the issue of the appropriate meter change-out charge.

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.

As identified in the body of this order, our actions, other than our approval of the transfer itself, are preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on December 21, 1994. the absence of such a petition, this order shall become effective on the date subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If the relevant portion of this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater 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 of the effective date 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.

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

ORDER NO. PSC-94-1474-FOF-WU
DOCKET NO. 931063-WU
PAGE 11

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 wastewater 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.

SCHEDULE NO. 1

TREASURE COVE WATER COMPANY

SCHEDULE OF WATER RATE BASE

As of December 31, 1993

<u>DESCRIPTION</u>	<u>BALANCE PER UTILITY</u>	<u>COMMISSION ADJUSTMENTS</u>	<u>BALANCE PER COMMISSION</u>
Utility Plant in Service	\$126,595	\$ 0	\$126,595
Land	1,869	(1,869) (1)	0
Contributions-in-aid-of-Construction	(16,682)	0	(16,682)
Amortization of CIAC	5,647	0	5,647
Accumulated Depreciation	<u>(64,909)</u>	<u>1,092</u> (2)	<u>(63,817)</u>
TOTAL	<u>\$ 52,520</u>	<u>\$ (777)</u>	<u>\$ 51,743</u>

SCHEDULE NO. 2

TREASURE COVE WATER COMPANY
SCHEDULE OF WATER RATE BASE ADJUSTMENTS

<u>EXPLANATION</u>	<u>ADJUSTMENT</u>
Land	
To remove land from rate base because it will not be included in the utility assets sold to Hydratech.	(1) <u>\$(1,869)</u>
Accumulated Depreciation	
To adjust accumulated depreciation to reflect the property service lives of certain plant accounts.	(2) <u>\$ 1,092</u>

ATTACHMENT A

TREASURE COVE WATER COMPANY
SERVICE TERRITORY DESCRIPTION

MARTIN COUNTY

A subdivision of a part of Lot 21 (less the North 4 acres described as the North 108.15 feet), and Lot 20, Plat of the Gomez Grant, lying west of the intercoastal waterway and east of Gomez Avenue bounded on the North by Banyan Street and on the South by Mangrove Street.

AND

Begin at the point of intersection of the South line of Lot 61 Gomez Grant, according to Plat recorded in Plat Book 1, Page 61, Public Records of Palm Beach County (now Martin County), Florida and the Easterly Right of Way line of the F.E.C. Railway; thence run North 21 degrees 10'06" West a distance of 330.15 feet to the North line of the South one-half of said Lot 62, Gomez Grant; thence run North 68 degrees, 52'16" East along the North line of the South one-half of said Lot 62 for a distance of 1287.97 feet; thence run South 21 degrees, 08'19" East a distance of 329.87 feet; thence run South 68 degrees, 51'30" West a distance of 1287.80 feet, to the Point of Beginning.