

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Hacienda
Village Utilities, Inc. in Pasco
County for ruling on appropriate
amount of regulatory assessment
fees.

DOCKET NO. 971673-WS
ORDER NO. PSC-99-0266-FOF-WS
ISSUED: February 10, 1999

The following Commissioners participated in the disposition of
this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION
ORDER DECLINING TO REFUND REGULATORY ASSESSMENT FEES FOR
1993 THROUGH 1996, REQUIRING REMITTANCE OF
REGULATORY ASSESSMENT FEES FOR 1997, AND CLOSING DOCKET

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein 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.

Hacienda Village Utilities, Inc. (Hacienda Village) is a Class C utility that provides wastewater service to approximately 450 customers in Hacienda Village Mobile Home Park and 42 single family homes outside the Mobile Home Park located in Pasco County. Hacienda Village also provides water service to the mobile home park, but provision of this service is exempt from PSC regulation pursuant to Section 367.022(5), Florida Statutes, as a landlord providing service to its tenants.

Through an audit, we discovered that the utility revenues for the years of 1993, 1994, 1995, and 1996 were not recorded properly and regulatory assessment fees on those revenues were not calculated or submitted correctly. The audit indicated that the

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utility paid regulatory assessment fees on the water revenue it reported in the years 1993 through 1996, and it is due a refund for this overpayment. However, the audit also revealed that the utility has been understating wastewater revenue by only recording revenue from customers living in the single family homes and not from those residents within the mobile home park. Therefore, the utility owed additional regulatory assessment fees associated with the unrecorded revenue.

When we advised the utility of the regulatory assessment fee deficiency, it paid the amount due but requested a ruling on whether we are overcharging the utility for regulatory assessment fees.

DECLINING TO REFUND REGULATORY ASSESSMENT FEES FOR
1993 THROUGH 1996

A desk audit of the 1996 annual report indicated that Hacienda Village was earning a return of 21.88% on its wastewater system, which is significantly above the Commission approved rate of return of 10.44%. An audit of the utility's books and revenues determined that the utility was not overearning. However, it was discovered that Hacienda Village was not recording revenue properly. The utility's reported revenue for the years 1993 through 1996 showed an up and down fluctuation. The utility reported gross wastewater revenue of \$38,262 in 1993, \$57,268 in 1994, \$32,075 in 1995 and \$77,904 in 1996. The utility had also been reporting water revenue on the annual report each year even though we do not regulate the utility's water system.

As stated previously, the audit indicated that the utility paid regulatory assessment fees on the water revenue it reported in the years 1993 through 1996, and it is due a refund for this overpayment. However, the audit also revealed that the utility has been understating wastewater revenue by only recording revenue from customers living in the single family homes and not from those residents within the mobile home park. The entire wastewater system is under our regulation. Therefore, the utility owes additional regulatory assessment fees associated with the unrecorded revenue.

By letter dated August 12, 1997, we advised the utility that the net effect of these errors results in additional regulatory assessment fees owed in the amount of \$5,402. The calculation of this amount is shown on Attachment A to this order. That attachment indicates the computed wastewater revenues based on the customers for each year and the tariffed rate in effect, the computed regulatory assessment fees owed, regulatory assessment fees paid by the utility, and the difference which includes penalty and interest calculated in accordance with Rule 25-30.120, Florida Administrative Code.

The utility paid the amount owed pursuant to our request on September 8, 1997. However, on December 31, 1997, the utility filed a formal request that we determine whether regulatory assessment fees are due for wastewater service provided to those customers within the mobile home park. The utility does not believe that wastewater service to the mobile home park should be considered jurisdictional since that service is also provided through a landlord/tenant relationship like the water service, which is specifically exempt from our regulation. As support for the utility's position, Ms. Laurice Hachem, president of the utility, faxed a letter dated July 30, 1998. Included with the letter was a copy of Chapter 723, Florida Statutes. Ms. Hachem believed that she was unable to charge the mobile homeowners for wastewater service pursuant to Chapter 723, Florida Statutes. However, as stated previously, the wastewater system provides service to 42 individual homes outside the mobile home park. As such, Hacienda Village's wastewater system does not meet the qualifications to be exempt. Therefore, we find that the wastewater system is under our regulation.

The definition of a utility includes anyone who provides water or wastewater service to the public for compensation, pursuant to Section 367.021(12), Florida Statutes. The Florida Legislature has vested exclusive jurisdiction in the Commission over each utility with respect to its authority, service, and rates pursuant to Section 367.011(2), Florida Statutes. Section 367.011(4) Florida Statutes, states that "This chapter shall supersede all other laws on the same subject." The Commission's authority also preempts any private contractual agreements or deed restrictions. See Public Service Commission v. Lindahl, 613 So. 2d 63, 64 (2nd DCA 1993) (holding "that the PSC's authority to raise or lower utility rates, even those established by a contract, is preemptive"). See Hill Top Developers v. Holiday Pines Service, 478 So. 2d 368, 371 (2nd

DCA 1985) (holding that "the power and authority of the PSC are preemptive. It is plain beyond any doubt that in formulating Chapter 367, the Legislature desired exclusive jurisdiction to rest with the PSC to regulate utilities...and to fix charges..."); See also Cohee v. Crestridge Utilities Corp., 324 So. 2d 155 (2nd DCA 1975).

Thus for Chapter 723, Florida Statutes, to have any effect on the Commission's determination of appropriate rates and regulatory assessment fees, the Legislature would have to have enacted it after Chapter 367, Florida Statutes with "express reference" to superseding Chapter 367, Florida Statutes. We contacted Ms. Hachem on July 30, 1998, and explained the Commission's power and authority on these matters. We also explained that if the utility discontinued charging the homeowners, then the utility could be found exempt on a prospective basis, but that the regulatory assessment fees on previous revenues could not be refunded. For the foregoing reasons, we find that Hacienda Village shall not be refunded any of the regulatory assessment fees paid for the years 1993 through 1996.

We also note that there is a pending docket for the transfer of the wastewater system to Hacienda Utilities, Ltd., which is also purchasing the mobile home park.

REGULATORY ASSESSMENT FEES FOR 1997

As mentioned previously, Hacienda Village has been incorrectly reporting revenue in its annual reports. The utility has been reporting water revenue even though the water system is exempt from Commission regulation. The utility has also been understating wastewater revenue even though the entire wastewater system is under our regulation. In 1997, the utility paid regulatory assessment fees in the amount of \$361.84, which is based on reported annual revenue of \$8,040.95. However, the annual report indicates that the utility served an average of 491 customers during 1997. Applying the tariffed wastewater rates in effect during 1997 to the average number of customers results in annual revenue of \$71,558.34, calculated as follows:

491 customers x 3 months x 12.19 =	\$17,955.87
491 customers x 9 months x 12.13 =	<u>\$53,602.47</u>
Total 1997 Revenue =	<u>\$71,558.34</u>
RAFs due (4.5%) =	\$ 3,220.13
RAFs paid =	<u>\$ 361.84</u>
1997 RAFs due =	<u>\$ 2,858.29</u>

We note that the utility's rates were reduced on March 27, 1997 due to a rate reduction to remove rate case expense associated with its last rate case pursuant to Section 367.0816, Florida Statutes.

Based on the above analysis, we find that the utility underpaid its 1997 regulatory assessment fees. Therefore, the utility shall remit the additional amount owed within 30 days from the effective date of this order. This is consistent with our previous discussion regarding the jurisdictional status of the entire wastewater customer base, including those customers within the mobile home park.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Hacienda Village Utilities, Inc.'s payment of regulatory assessment fees for the year 1993 through 1996 shall not be refunded. It is further

ORDERED that Hacienda Village Utilities, Inc. shall remit regulatory assessment fees for 1997 within 30 days from the effective date of this Order. It is further

ORDERED that Hacienda Village Utilities, Inc., shall remit regulatory assessment fees for 1997 in the amount of \$ 2,858.29, within thirty days from the effective date of this Order. It is further

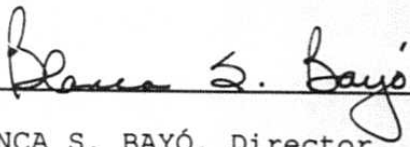
ORDERED that if no person whose substantial interests are affected files a protest within 21 days of the issuance of this Order, the docket shall be closed.

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ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 10th day of February, 1999.



ELANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

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Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 3, 1999.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date.

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 this order becomes final and effective on the date described above, any party substantially 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.

ATTACHMENT A

<u>Year</u>	Staff Computed Wastewater <u>Revenues</u>	Staff Computed Wastewater <u>RAFs</u>	Water & Wastewater RAFs paid by <u>Utility</u>	<u>Difference</u>
1993	\$70,554	\$3,175	\$2,296	\$ 879
1994	\$73,871	\$3,324	\$3,436	\$ (112)
1995	\$74,237	\$3,341	\$1,925	\$1,416
1996	\$74,603	\$3,357	\$ 138	<u>\$3,219</u>
			Totals	<u>\$5,402</u>