

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for
grandfather certificates to
operate water and wastewater
utility in Polk County by CHC
VII, Ltd.

DOCKET NO. 981341-WS
ORDER NO. PSC-99-1235-PAA-WS
ISSUED: June 22, 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.

ORDER GRANTING GRANDFATHER CERTIFICATES

AND

NOTICE OF PROPOSED AGENCY ACTION
ORDER SETTING RATES AND CHARGES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein setting rates and charges 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.

Background

On October 14, 1998, CHC VII, Ltd. (CHC or utility) filed an application for grandfather certificates to provide water and wastewater service in Polk County, pursuant to Section 367.171, Florida Statutes. CHC is a Class C utility located in the Highlands Ridge Water Use Caution Area. The utility serves approximately 870 customers and an 88-acre golf course in the Swiss Golf & Tennis Club Mobile Home Park (Swiss Park) and the Hidden Golf Club Mobile Home Park (Hidden Park). Both communities are

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built out. Water and wastewater lines between the two parks are interconnected, and all lots are individually metered. CHC has one water treatment plant, one wastewater treatment plant, one water distribution system, and one wastewater collection system.

According to the application, CHC is a limited partnership formed in 1985. T & A Investments, Inc., owns 82 percent of the limited partnership; Century Realty Funds, Inc., owns 10 percent; and Mr. Raymond Moats owns the remaining 8 percent.

The Commission received jurisdiction in Polk County (County) on May 14, 1996, after the Board of County Commissioners adopted a resolution declaring utilities in the County to be subject to the provisions of Chapter 367, Florida Statutes. On August 20-22, 1996, the Commission staff met with all entities in Polk County that could potentially be jurisdictional under Chapter 367, Florida Statutes, to explain the requirements for certification and the options for exemption. By letter dated September 12, 1996, legal counsel for an owner of a number of mobile home parks across the state of Florida sent a letter to the Commission conveying an Application for Declaratory Statement Relating to Exemption from Regulation or Non-jurisdictional Finding (Application for Declaratory Statement) on behalf of CHC VII, Ltd. (CHC). The Application for Declaratory Statement was also intended to cover five other mobile home limited partnerships in Polk County, in addition to CHC.

Unfortunately the letter was misplaced for a period of time. Once it was rediscovered, several conversations and meetings were held between staff, legal counsel of the utilities and the owner. After reviewing the Application for Declaratory Statement and the information provided by the utility, it was determined that because CHC provided water and wastewater service for compensation, it was a utility pursuant to Section 367.021(12), Florida Statutes, and, therefore, jurisdictional. In addition, since there was a specific charge for water and wastewater service, CHC did not qualify for exemption pursuant to Section 367.022, Florida Statutes. By letter dated August 10, 1998, the owner was informed of our findings. The letter also included applications for original certificates.

By letter dated August 18, 1998, the owner expressed some concerns regarding the applications provided in the August 10, 1998 letter. The primary concern was how to adjust the utility's rates to cover the cost of the Commission's regulatory assessment fees (RAFs) while still complying with the mobile home park agreements

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under Chapter 723, Florida Statutes. By letter dated September 4, 1998, the owner was informed that Section 367.011, Florida Statutes, provides the Commission with exclusive jurisdiction over utilities with regard to service, authority, and rates, and that the Commission's authority supersedes all other laws, agreements and contracts with regard to jurisdiction over utilities.

Upon reconsideration of the information provided, applications for grandfather certificates were sent to the utilities in place of applications for certificates for utilities in existence and charging rates. The latter application contemplates that the utility has been operating without regulatory oversight, which was not the case. The systems were not franchised by Polk County because the Polk County Board of County Commissioners considered the systems' operations to be governed by Chapter 723, Florida Statutes.

In the September 4, 1998 letter, the owner of the systems was informed that, after he filed the applications, he could apply for a pass-through rate increase to accommodate the RAFs and also request a staff-assisted rate case or limited proceeding to address any other operational expenses due to Commission regulation. As stated previously, CHC filed an application for a grandfather certificate on October 14, 1998.

On October 14, 1998, CHC filed a Request for Representation by a Qualified Representative. By Order No. PSC-98-1633-PCO-WS, issued December 7, 1998, the Commission authorized Mr. Norman F. Mears to appear as Qualified Representative on behalf of CHC in this docket.

CHC applied for a 1998 pass-through rate adjustment on October 16, 1998. The pass-through rate adjustment became effective on November 30, 1998.

On October 21, 1998, the utility was informed of its obligation to file annual reports and to pay RAFs from the date of Commission jurisdiction, May 14, 1996. On December 21, 1998, the owner filed a Petition for Waiver of Rule 25-30.110(3), Florida Administrative Code, with regard to the requirement to file annual reports for 1996 and 1997 on the basis of substantial hardship. By letter of the same date, CHC requested that the Commission not require the remittance of RAFs for 1996 and 1997.

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Docket No. 981913-WS was opened to address the rule waiver request. By Order No. PSC-99-0639-FOF-WS, issued on April 5, 1999, we granted the waiver, requiring instead an affidavit certifying CHC's revenues for 1996 and 1997. The utility was required to file an annual report for 1998 in accordance with Rule 25-30.110(3), Florida Administrative Code. The appropriate date for responsibility for RAFs was deferred to our decision in this docket. Payment of RAFs is addressed later in this Order.

Application

The application as originally filed contained a few deficiencies. The deficiencies were corrected on April 26, 1999. The application is now in compliance with Section 367.171, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code. In particular, the application contained the correct filing fee, as prescribed by Rule 25-30.020, Florida Administrative Code. CHC provided a warranty deed as proof that it owns the land upon which its facilities are located, in accordance with Rule 25-30.036(6), Florida Administrative Code.

Notice of applications for grandfather certificates is not required by Florida Statutes or Commission rules. Therefore, no notice of CHC's application was given.

An accurate legal description and adequate territory and system maps have been provided, as prescribed by Rules 25-30.035 (9), (10), and (11), Florida Administrative Code. A description of the territory CHC has requested to serve is shown on Attachment A of this Order, which by reference is incorporated herein.

According to the application, water withdrawal is regulated by the 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 (DEP). CHC holds SWFWMD Permit No. 207189, issued on August 19, 1986. The permit is scheduled to expire on August 25, 1999. CHC holds PCHD Public Water System Id No. 6535046 for Swiss Park, and PCHD Id No. 6534736 for Hidden Park. Both parks have been inspected within the last twelve months and some corrective actions have been taken. The utility also holds DEP Wastewater Permit No. D053-200395, which was last modified on April 30, 1993. According to the application and SWFWMD, PCHD, and DEP, the utility is essentially in compliance with all requirements of these agencies.

Based on the foregoing, we find it appropriate to grant Certificates Nos. 609-W and 525-S to CHC. The territory CHC is authorized to serve is described on Attachment A of this Order.

Rates and Charges

Residential Rates

CHC has been in existence and charging rates since 1986. The conservation rate structure in existence at the time of the utility's application became effective on January 1, 1995, pursuant to a SWFWMD Consent Order dated August 31, 1994. A pass-through rate adjustment was administratively approved by this Commission for CHC effective November 30, 1998. The purpose of the adjustment was to allow the utility to begin collecting the additional cost due to payment of RAFs. CHC's current rates, including the pass-through rate adjustment, are shown below.

Water and Wastewater Service

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 Gallons over 8,000	
Gallons up to 10,000 Gallons	\$ 1.31
Per 1,000 Gallons over 10,000 Gallons	\$ 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

Service Availability Charges

None

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. Also, the Commission normally discourages combining a usage amount in the base facility (or minimum) charge. However, the utility's existing conservation rate structure became effective pursuant to SWFWMD's Consent Order. The rate 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.

Due to the increasing focus on conservation, each application for a certificate in which there is a flat rate, is reviewed to determine feasibility of implementing metered rates. Although CHC is metered, shortly after the application was filed in the instant docket, the utility was asked to provide additional information to estimate the relative costs to provide each service as well as to separate the base facility charge from the usage rate, along with supporting documentation. According to the utility, providing the information requested would cause substantial hardship.

Because the owner has pending applications for grandfather certificates for five utilities (Hidden Cove, Ltd., Four Lakes Golf Club, Ltd., Plantation Landings, Ltd., Anglers Cove West, Ltd., and S.V. Utilities, Inc.), in addition to CHC, he does not have the staff necessary to provide the information requested. Changes in 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. The owner would also have to pay a filing fee equal to \$10.00 per lot for all of 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 days notice.

The owner believes that it would be unfair of the Commission to impose a change in rate structure without concurrently authorizing an increase in rates to offset the additional costs. Further, the owner does not believe that an application for a grandfather certificate is the proper forum in which to address these matters.

For purposes of certificating grandfather utilities and utilities already in existence, the Commission generally adopts the utility's current rate structure until the utility applies for a rate case. Certification dockets have not been considered the appropriate forum in which to restructure rates because of the general absence of data necessary to design appropriate rates. Usually meters have not been installed due to the economics of the system or the limitations imposed by community agreements or the requirements of Chapter 723, Florida Statutes.

Irrigation Rates

In addition to serving 870 mobile home sites, the utility also provides potable water to an 88-acre common area golf course. According to CHC's existing SWFWMD Permit, issued December 20, 1994, water to irrigate the golf course averages 229,600 gallons per day (GPD). Because this is almost as much as the average water supply to all the mobile homes combined (280,500 GPD), in its 1994 consent order, SWFWMD required irrigation of the golf course to be metered and controlled. Therefore, we find it appropriate to require CHC to charge for common area water, including irrigation, 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 are not appropriate. Having no way to determine the cost of providing water and wastewater service separately, we find it appropriate to simply halve the utility's combined water and wastewater rates for irrigation service. The resulting irrigation rates and charges, including the pass-through rate adjustment, are as follows:

Irrigation Service

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 Gallons over 8,000 Gallons	\$.65

It should be noted that the utility did not believe that the cost to irrigate the golf course with potable water would be as great as the cost to provide potable water to residential customers, primarily due to the distribution lines involved. Further, the utility argued that the cost of potable water would not be exactly half that of wastewater service, and requested that we consider a 40-60 percent water-wastewater factor, instead of the 50-50 percent factor. CHC voiced concerns about its ability to collect RAFs for the irrigation schedule since it did not exist at the time of the pass-through rate adjustment.

Depending on the design of the golf course's distribution lines and the relative location to the water plant, the cost to provide potable irrigation service could be as great as, or more than, that to serve a residential area. In the absence of any data regarding the costs, we have no alternative but to assume the costs are the same. Generally, the cost to provide wastewater service exceeds that to provide potable water service. Again, in the absence of the data originally requested to separate the costs, we must assume the costs are the same.

Due to the fact that the irrigation schedule recognizes for the first time that nearly half the water used has not been billed, it is likely that the additional revenues will eventually put the utility in an overearnings position. However, until we receive the utility's annual report, we have no basis to estimate the effect of the irrigation rate. We find that it would be inappropriate to require CHC to file a limited proceeding at this time to establish the appropriate irrigation rates since this Commission has never established rate base for CHC. However, due to the magnitude of potable water used for irrigation, it is not reasonable or appropriate to wait to establish an irrigation rate until the utility's first rate proceeding. To do so would require the utility's customers to continue to subsidize the utility's

irrigation of the golf course. It would also be inconsistent with the efforts of SWFWMD to encourage water conservation.

Based on the foregoing, we find the base facility and gallonage charges both water and wastewater service, set forth herein, and the standard meter test deposits, as shown above, to be reasonable, and they are approved. Further, we find the irrigation rate, set forth herein, to be reasonable, and it is approved. CHC shall charge these rates and charges until the utility applies for rate assistance or until it is required to do so by this Commission in a subsequent proceeding. The utility has filed a tariff which reflects the rates approved herein. The first revised tariff sheets effective November 30, 1998, pursuant to the 1998 pass-through rate adjustment, shall supersede those filed in this docket. All other tariff provisions shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets.

Regulatory Assessment Fees

As stated previously, this Commission received jurisdiction in Polk County on May 14, 1996. By letter dated September 12, 1996, legal counsel for an owner of a number of mobile home parks in Florida sent a letter requesting a determination by the Commission as to whether the mobile home parks were jurisdictional. Because the letter was inadvertently misplaced, response to the letter was delayed until August 10, 1998, at which time the owner was informed that all of the systems, including CHC, were jurisdictional.

On October 21, 1998, CHC was informed of the obligation to file annual reports and to remit RAFs from May 14, 1996. On December 21, 1998, CHC filed a Petition for Waiver of Rule 25-30.110(3), Florida Administrative Code. As the basis of its Petition, the utility cited substantial hardship and stated that requiring the filing of the 1996 and 1997 annual reports violated the principles of fairness. In a separate letter of the same date, the utility requested that we 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 our jurisdiction. The utility further requested that responsibility for payment of RAFs commence on or after December 1, 1998.

The Petition for Waiver of Rule 25-30.110(3), Florida Administrative Code, was addressed in Docket No. 981913-WS. By

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Order No. PSC-99-0639-FOF-WS, issued on April 5, 1999, in that Docket, we granted the waiver. We found in that Order that requiring the utility to file annual reports for 1996 and 1997 would violate the principles of fairness, pursuant to Section 120.542, Florida Statutes. The Order further required the utility to file an affidavit certifying its revenues for 1996 and 1997. The utility was required to file an annual report for 1998 in accordance with Rule 25-30.110(3), Florida Administrative Code. The date of responsibility for payment of RAFs was deferred to the Commission's decision in the instant docket.

On October 16, 1998, CHC filed a Notice of Intention to Implement the Regulatory Assessment Fee Pass-Through Rate Adjustment. The adjustment became effective on November 30, 1998. The utility requested that the starting date for the remittance of RAFs be the first billing cycle after the effective date of the pass-through rate adjustment to enable the utility to recoup the cost of the RAFs fees owed the Commission. This date was requested because the pass-through rate adjustment allows the utility to recover the cost of RAFs, prospectively, but does not provide the funds to pay the fees for two years in arrears. According to the utility, payment of RAFs for 1996 and 1997 would be an undue financial hardship.

Although regulated utilities are charged with knowledge of Chapter 367, Florida Statutes, as indicated by the letter dated September 12, 1996, there was confusion on the owner's part as to whether the utility was jurisdictional. Had we responded to the letter in a timely manner, the owner would have been informed in 1996 that the utility was jurisdictional and would have filed an application for a grandfather certificate at that time. As part of the certification procedure, the owner would have been informed of the obligation to pay RAFs and could have requested a pass-through rate adjustment to recover the cost of the fees. However, at this time, the utility has no way to recoup the cost of paying RAFs for 1996 and 1997.

Based on the foregoing, we find that to require the utility to pay RAFs for 1996 and 1997 would cause CHC undue financial hardship and violate the principles of fairness. We further find that the requirement to pay RAFs shall commence on December 1, 1998. Therefore, CHC shall remit any outstanding RAFs for 1998 within 30 days of the issuance date of this Order.

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It is, therefore,

ORDERED by the Florida Public Service Commission that CHC VII, Ltd., Post Office Box 5252, Lakeland, Florida 33807-5252, is hereby granted Certificates Nos. 609-W and 525-S. The territory CHC VII, Ltd. is authorized to serve is shown on Attachment A of this Order, which by reference is incorporated herein. It is further

ORDERED that the existing base facility and gallonage charges for both water and wastewater service charged by CHC VII, Ltd. is hereby approved. It is further

ORDERED that the standard meter test deposits, as set forth in the body of this Order, are hereby approved. It is further

ORDERED that the irrigation rates set forth in the body of this Order are hereby approved. CHC VII, Ltd. shall charge the irrigation rates for common areas, including golf course irrigation. It is further

ORDERED that CHC VII, Ltd. shall charge the rates and charges approved herein until the utility applies for rate assistance or until the utility is required to do so by this Commission. It is further

ORDERED that CHC VII, Ltd.'s first revised tariff sheets, which became effective on November 30, 1998, pursuant to the 1998 pass-through rate adjustment, shall supersede the tariffs filed in this docket. All other tariff provisions shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets. It is further

ORDERED that CHC VII, Ltd.'s obligation to pay regulatory assessment fees shall commence on December 1, 1998. It is further

ORDERED that CHC VII, Ltd. shall pay regulatory assessment fees due for 1998 within 30 days of the issuance date of this Order. It is further

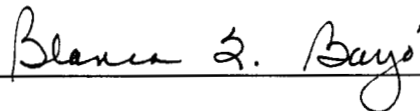
ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540

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Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" 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 22nd day of June, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

ALC

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.

As identified in the body of this order, our action setting rates and charges 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, at 2540 Shumard Oak Boulevard, Tallahassee, Florida

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32399-0850, by the close of business on July 13, 1999. If such a petition is filed, 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. In the absence of such a petition, this order shall become effective and final upon the issuance of a Consummating Order.

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.

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 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.

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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 Southeast 1/4 of Section 27, Township 27 South, Range 26 East, Polk County.

Township 27 South, Range 26 East
Section 35

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

RECEIVED-FPSC

99 JUN 21 PM 2:09

M E M O R A N D U M

June 16, 1999

RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF LEGAL SERVICES (CROSBY) *RS*
RE: DOCKET NO. 981341-WS - APPLICATION FOR GRANDFATHER
CERTIFICATES TO OPERATE WATER AND WASTEWATER UTILITY IN
POLK COUNTY BY CHC VII, LTD.

99-1235-PAA

Attached is an ORDER GRANTING GRANDFATHER CERTIFICATES AND
NOTICE OF PROPOSED AGENCY ACTION ORDER SETTING RATES AND CHARGES,
to be issued in the above-referenced docket.

(Number of pages in order - 14)

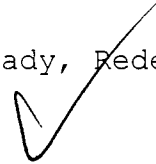
ALC/dr

Attachment

cc: Division of Water and Wastewater (Brady, Redemann)

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see 3



3:25

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Requisition for Photocopying and Mailing

Date 6/23/99
Number of Originals 14 Copies Per Original 20
Requested By [Signature]

Item Presented
Agenda For (Date) _____ Order No. 99 1235 In Docket No. 981341
Notice of _____ For (Date) _____ In Docket No. _____
Other _____

Special Handling Instructions

Distribution/Mailing		Distribution/Mailing	
Number	Distributed/Mailed To	Number	Distribution/Mailed To
<u>19</u>	<u>Commission Offices</u>	<u>1</u>	<u>Clerk</u>
	<u>Docket Mailing List - Mailed</u>		<u>poll</u>
<u>2</u>	<u>Docket Mailing List - Faxed</u>		

Note: Items must be mailed and/or returned within one working day after issue unless specified here:

Print Shop Verification
Job Number 225 Verified By Michael
Date and Time Completed 6/24 Job Checked For Correctness and Quality (Initial) U

Mail Room Verification
Date Mailed 6/24/99 Verified By [Signature]