



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

RECEIVED-FPSC
99 MAY 30 AM 11:33
RECORDS AND REPORTING
DBM
GMW
BP

DATE: MAY 6, 1999

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

FROM: DIVISION OF WATER AND WASTEWATER (JOHNSON, REDEMANN)
DIVISION OF LEGAL SERVICES (CROSBY)

RE: DOCKET NO. 981337-WS - APPLICATION FOR GRANDFATHER
CERTIFICATES TO OPERATE WATER AND WASTEWATER UTILITY IN
POLK COUNTY BY S. V. UTILITIES, LTD.
COUNTY: POLK

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

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\981337.RCM

DOCUMENT NUMBER-DATE

05754 MAY-6 99

FPSC-RECORDS/REPORTING

DATE: May 6, 1999

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 that privately owned water and wastewater utilities in that county were 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.

S. V. Utilities, LTD. (S.V. or utility) is a Class C utility located in the Highlands Ridge Water Use Caution Area of Polk County. The utility has one water treatment plant, one wastewater treatment plant, one water distribution system, and one wastewater collection system. The utility's service territory is built out at 708 customers in Swiss Village Mobile Home Park, Hidden Cove East Mobile Home Park, and Hidden Cove West Mobile Home Park. At the time of Commission jurisdiction, S.V. was providing water and wastewater service under the provisions of Section 723, Florida Statutes, which governs mobile home park lot tenancies. Since S.V.'s operations were subject to regulation under Chapter 723, Florida Statutes, the utility was never franchised by Polk County. All lots in the parks are individually metered and a water conservation rate structure is in effect pursuant to the Southwest Florida Water Management District (SWFWMD).

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 S.V. 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. The Declaratory Statement for CHC, was intended to cover the five other mobile home limited partnerships in Polk County including S.V.

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 owner. By letter dated August 10, 1998, staff informed the owner of the result of

DATE: May 6, 1999

its review. Since S.V. provided water and wastewater service to Swiss Village Mobile Home Park, Hidden Cove East Mobile Home Park, and Hidden Cove West Mobile Home Park for compensation, S.V. was a utility under the definition in Section 367.021(12), Florida Statutes, and therefore jurisdictional. In addition, since a specific charge for water or wastewater service had been broken out of lot rent, the landlord-tenant exemption contained in Section 367.022(5), Florida Statutes, could not apply. Further, it did not appear that S.V. 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.

By letter dated August 18, 1998, the owner expressed some concerns regarding the applications. 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 any regulatory oversight which was not S.V.'s case. The reason S.V. was 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 its operations governed by Chapter 723, Florida Statutes.

In staff's September 4, 1998 response, the owner was also informed that, once the grandfather application was filed, the utility 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, S.V. timely filed an application for grandfather certificates opening this

DOCKET NO. 981337-WS

DATE: May 6, 1999

docket. S.V. also filed a Request for Representation by a Qualified Representative on November 16, 1998. By Order No. PSC-98-1628-PCO-WS, issued December 7, 1998, the Commission authorized Mr. Norman F. Mears to appear as Qualified Representative in this docket on behalf of S.V.

On October 16, 1998, the utility owner 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 and violation of principles of fairness. By letter of the same date to Mr. Charles Hill, the owner also requested the Commission not require the remittance of RAFs for 1996 and 1997.

Docket No. 981917-WS was opened to address the Petition for Waiver of Rule 25-30.110(3), F.A.C. By Order No. PSC-99-0643-FOF-WS, issued April 5, 1999, the Commission granted the waiver of 1996 and 1997 annual reports requiring, instead, an affidavit certifying 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 S.V.

DISCUSSION OF ISSUES

ISSUE 1: Should the application of S.V. Utilities, Ltd. for a grandfather certificate in Polk County be granted?

RECOMMENDATION: Yes, S.V. Utilities, Ltd. should be granted Water Certificate No. 605-W and Wastewater Certificate No. 521-S to serve the territory described in Attachment A. The jurisdictional date for purposes of certification should be May 14, 1996. (JOHNSON, 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 S.V. 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 inconsistency between the legal description and the territory map, and a lack of complete permit information. All deficiencies were corrected and the application considered filed on April 4, 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 contains a check in the amount of \$2,000, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The applicant has provided evidence that the utility owns the land upon which its facilities are located as required by Rule 25-30.035(6), Florida Administrative Code. Notice for grandfather certificates is not required by Florida Statutes or Commission rules.

The application indicates that S.V. is a limited partnership. Century Realty Funds, Inc., owns 1% of the limited partnership; Ms. Anita K. Maxwell owns the remaining 99%. 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

DOCKET NO. 981337-WS

DATE: May 6, 1999

memorandum as Attachment A. The territory served consists entirely of metered residential mobile homes and is built-out at 708 lots.

Water environmental compliance in Polk County is regulated by the Polk County Health Department. The utility's water systems were last inspected in 1997 with only minor citations that were subsequently resolved. Wastewater environmental compliance in Polk County is regulated by the Florida Department of Environmental Protection. The application states, and staff has independently confirmed, that the utility is essentially in compliance with all environmental requirements of these agencies.

Based on the above information, staff recommends that S.V. Utilities, Ltd., be granted Water Certificate No. 605-W and Wastewater Certificate No. 521-S to serve the territory described in Attachment A. The jurisdictional date for purposes of certification should be May 14, 1996.

DATE: May 6, 1999

ISSUE 2: What rates and charges should be approved for S.V. Utilities, Ltd.?

RECOMMENDATION: The rates and charges for the utility in effect at the time of this filing should be approved as the original tariff rates. The first revised tariff sheets, effective November 30, 1998 pursuant to the 1998 pass-through rate adjustment, should supersede the original rates and charges. The effective date of meter test deposits and all remaining tariff provisions should be the stamped approval date on the tariffs. (JOHNSON)

STAFF ANALYSIS: The utility has been in existence and charging rates since 1981 pursuant to Chapter 723, Florida Statutes. Since the utility's rates have never been subject to Polk County regulation, this issue is being handled as a proposed agency action. The rate structure in existence at the time of this filing was put into effect on October 31, 1986 for Hidden Cove East, on September 4, 1990 for Hidden Cove West, and on January 18, 1991 for Swiss Village. During the pendency of this application, 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 informed 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 along with the Commission's standard meter test deposits. The utility does not charge a customer deposit and none is required by Commission rule. The utility has adopted the Commission's standard meter test deposits but has chosen not to adopt the standard miscellaneous service charges. Since the service area is built-out, there is no service availability policy or charge.

Water and Wastewater Service (Original Rates)

Billing Period:	Monthly in advance
Excess Consumption Charges:	Quarterly in arrears
Applicability:	5/8 x 3/4" meters

Minimum Charge: \$15.00

Up to 8,000 gallons	\$15.00
per 1,000 gal. over 8,000 up to 10,000	\$ 1.25
per 1,000 gal. over 10,000	\$ 2.00

Water and Wastewater Service (Pass-Through Rates)

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 gal. over 8,000 up to 10,000	\$ 1.31
per 1,000 gal. over 10,000	\$ 2.09

Customer Deposits

N/A - deposits are not required

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 Charge

None.

The rates and charges shown above are unusual in two respects. First, instead of combined water and wastewater rates and charges,

the Commission normally allocates rates and charges to each service based on the relative costs to provide the services. Second, the Commission normally discourages combining a usage amount in the base facility (or minimum) charge. However, the utility's existing conservation rate structure was based on the \$15.00 per month flat fee the utility had been charging for water and wastewater service combined. Shortly after the filing of this application, staff asked for additional information to estimate the relative costs to provide each service as well as to separate a base facility charge from the usage rate. Due to the following claims by the owner of substantial hardships and due to the fact that a pass-through adjustment had 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 also have to pay a filing fee equal to ten dollars (\$10.00) per lot for all 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 (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 additional costs. Instead, the owner believes that an application for grandfather certificates is not the proper forum in which to attempt to change the rate structure.

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

DOCKET NO. 981337-WS
DATE: May 6, 1999

tariffs to be consistent, the initial rates and charges approved for S.V. should be those in existence at the time of the filing.

Finally, staff would note that since S.V. is in a water use caution area, water withdrawal is strictly permitted by SWFWMD and subject to continual audit. Based on SWFWMD's permit requirements, it is unlikely that modifications to the utility's existing conservation rate structure will achieve enough additional conservation to warrant the time and costs claimed by the owner.

For all the above reasons, staff recommends that the rates and charges for the utility in effect at the time of this filing be approved as the original tariff rates. The first revised tariff sheets, effective November 30, 1998 pursuant to the 1998 pass-through rate adjustment, should supersede the original rates and charges. The effective date of meter test deposits and all remaining tariff provisions should be the stamped approval date on the tariffs.

DATE: May 6, 1999

ISSUE 3: Should S.V. Utilities, Ltd., be responsible for collection of regulatory assessment fees commencing with the first billing cycle after the effective date of its 1998 pass-through rate adjustment?

RECOMMENDATION: Yes, S.V. Utilities, Ltd., should be responsible for regulatory assessment fees commencing 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. (JOHNSON)

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 S.V. as a utility subject to the Commission's jurisdiction. By facsimile to staff counsel dated April 28, 1999, the utility requested responsibility for RAFs commence on or after December 1, 1998.

The petition for a Waiver of Rule 25-30.110(3), F.A.C., was addressed by Order No. PSC-99-0643-FOF-WS, issued April 5, 1999 in Docket No. 981917-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,

DATE: May 6, 1999

the utility noted that the pass-through rate adjustment allows the 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 S.V.'s responsibility for regulatory assessment fees begin 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.

DOCKET NO. 981337-WS

DATE: May 6, 1999

ISSUE 4: Should this docket be closed?

RECOMMENDATION: Yes, upon expiration of the protest period, if no timely protests are filed to the proposed agency action issue, the docket should be closed. (CROSBY)

STAFF ANALYSIS: If there are no timely protests filed by substantially affected person to the proposed agency action portion of Issue 2, no further action will be required and the docket should be closed.

ATTACHMENT A

S. V. UTILITIES, LTD

WATER AND WASTEWATER SERVICE AREA

POLK COUNTY

SWISS VILLAGE

Part of Sections 35 and 36, Township 27 South, Range 26 East, Polk County, Florida described as follows:

The East 1/2 of the Southeast 1/4 of Section 35, and the Southwest 1/4 of the Southwest 1/4 of Section 36, all in Township 27 South, Range 26 East, Polk County, Florida.

HIDDEN COVE EAST

Part of Section 1, Township 28 South, Range 26 East, Polk County, Florida described as follows:

The NE 1/4 of the NW 1/4 of the NE 1/4, LESS AND EXCEPT the West 56.5 feet and LESS AND EXCEPT the East 165.0 feet, thereof, the SE 1/4 of the NW 1/4 of the NE 1/4, LESS AND EXCEPT the East 121.0 feet and LESS AND EXCEPT the West 156.5 feet of the South 545.70 feet, LESS AND EXCEPT the West 56.5 feet of the North 100.0 feet and LESS AND EXCEPT the West 110.0 feet of the East 231.0 feet of the South 170.0 feet, thereof, in Section 1 Township 28 South, Range 26 East, Polk County, Florida.

HIDDEN COVE WEST

Part of Section 1, Township 28 South, Range 26 East, Polk County, Florida described as follows:

The NE 1/4 of the NE 1/4 of the NW 1/4 and the NW 1/4 of the NW 1/4 of the NE 1/4 and the West 56.5 feet of the NE 1/4 of the NW 1/4 of the NE 1/4 and the North 385.0 feet of the SE 1/4 of the NE 1/4 of the NW 1/4 and the North 385.0 feet of the SW 1/4 of the NW 1/4 of the NE 1/4 and the North 385.0 feet of the West 156.5 feet of the SE 1/4 of the NW 1/4 of the NE 1/4, LESS AND EXCEPT the North 100.0 feet of the East 100.0 feet, thereof, in Section 1, Township 28 South Range 26 East, Polk County, Florida.