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Public Service Commission

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COMMISSION
CLERK

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

DATE: May 19, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Revell, Rendell)
Office of the General Counsel (Vining)

MR E
AEV
JOJ 1905

RE: Docket No. 050228-SU – Request for approval of new class of service in Pinellas County by Ranch Mobile WWTP, Inc.
County: Pinellas

AGENDA: 05/31/05 – Regular Agenda – Tariff Filing – Interested Persons May Participate

CRITICAL DATES: 06/04/05 (60-Day Suspension Date)

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\050228.RCM.DOC

Case Background

Ranch Mobile WWTP, Inc. (WWTP or the utility) is a Class C utility which provides wastewater service to three customers, Ranch Mobile Inc. (Ranch Mobile), Down Yonder, and Twin Palms, which are mobile home parks. The utility purchases wastewater treatment services from the City of Largo (City).

By Order No. PSC-05-0287-PAA-SU, issued March 17, 2005, in Docket No. 040972-SU, In re: Application for rate increase in Pinellas County by Ranch Mobile WWTP, Inc. the utility was granted a 30.78% rate increase for phase one of a three-phase project to rehabilitate its wastewater collection lines. The utility is expected to file for a phase two rate increase at the end of 2005. Shortly after the conclusion of the phase one case, the utility notified staff that it had learned of a commercial customer that it had not been aware of during the rate case. On March 29, 2005, the utility requested approval of a new class of service for a general service tariff. The purpose of this recommendation is to address the new general service tariff. The Commission has jurisdiction pursuant to Section 367.091, Florida Statutes (F.S.)

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Discussion of Issues

Issue 1: Should the utility's request to establish a new general service tariff be approved?

Recommendation: Yes. The utility's request to establish a new general service tariff should be approved. The utility should file a proposed customer notice to reflect the Commission-approved rate. The approved rate should be effective for service rendered on or after the stamped approval date of the tariff pursuant to Rule 25-30.475(1), Florida Administrative Code, after staff has verified that the proposed customer notice is adequate and this notice has been provided to the customer. The utility should provide proof that the only effected customer has received notice within 10 days after the date of the notice. (Revell)

Staff Analysis: The utility recently realized one of its customers, Ranch Mobile, had entered into an easement agreement in November 1996 with Country Pizza Inn (CPI), a restaurant. The document, titled "Easement Agreement," granted CPI right-of-way over and across the property of Ranch Mobile. The agreement states that the easement "shall be used only for the purpose of a pipeline for the transmission of wastewater and sewage from the Grantee's [CPI] property into Grantor's [Ranch Mobile] pipeline and sewage systems which ultimately are tied into the sanitary sewer system of the City of Largo, Florida." Additionally, the agreement states that if repairs, maintenance, improvements, or modifications are made to the system, CPI will pay 7½ percent of the costs to Ranch Mobile. However, Ranch Mobile does not own the collection lines, as the lines belong to WWTP.

The easement was notarized but was never recorded, and WWTP never received a copy of the easement agreement with any signatures from the grantee identifying it as a restaurant or the name of the restaurant. The agreement states that Ranch Mobile would receive \$25.00 monthly as consideration for the granting of the easement. The agreement does not contain any additional monthly charges related to the provision of wastewater service, although it appears that wastewater service was included in the \$25.00 monthly charge.

The Commission is not bound by this agreement. In Cohee v. Crestridge Utilities Corp., 324 So. 2d 155 (Fla. 2d DCA 1975), the Second District Court of Appeal acknowledged that the Commission has exclusive jurisdiction to set rates. Also see Order No. PSC-94-0569-FOF-WS, issued May 13, 1994, in Docket No. 930847-SU, In re: Application for a staff-assisted rate case in Highlands County by Creola, Inc. In that case, the customers' position was that the Commission could not legally alter the contract by changing the customers' rates and charges for the provision of water and wastewater services. However, the Commission found that pursuant to Chapter 367, Florida Statutes, it has exclusive jurisdiction to regulate the provision of water and wastewater service by utilities, which includes the establishment of rates and charges. In Public Service Commission v. Lindahl, 613 So. 2d 63, 64 (Fla. 2d DCA 1993), the Court found that the Commission's authority to raise or lower rates, even those established by a contract, is preemptive. Also, in Order No. 21680, issued August 4, 1989, in Docket No. 881178-WS, In re: Application of Continental Country Club, Inc. for rate increase in Sumter County, the Commission found that a pre-existing contract was not determinative in setting rates in accordance with Chapter 367, Florida Statutes. Finally, even when an existing contract is voided by the Commission's actions, there is no unconstitutional impairment of contract under the Florida or the United States Constitution. See H. Miller & Sons, Inc. v. Hawkins 373 So. 2d 913 (Fla. 1979).

Since the monthly payments were being paid to Ranch Mobile rather than WWTP, these payments were not reported in any annual reports prepared by WWTP prior to 2004. As soon as WWTP discovered the additional customer, it paid the regulatory assessment fees (RAFs) on these revenues for 2004 and included the \$300 in revenues in its 2004 Annual Report. The utility also submitted a calculation for the additional RAFs, including interest, it owed for prior years to bring the utility's RAFs up to date. Commission staff recalculated the additional RAFs and interest necessary, pursuant to Rule 25-30.120, Florida Administrative Code, to make the utility current. Subsequently, the utility paid the required past due amount with interest.

The utility has requested that the Commission establish a new class of service for CPI. Section 367.091(5), F.S., states,

If any request for service of a utility shall be for a new class of service not previously approved, the utility may furnish the new class of service and fix and charge just, reasonable, and compensatory rates or charges therefore. A schedule of rates or charges so fixed shall be filed with the commission within 10 days after the service is furnished. The commission may approve such rates or charges as filed or may approve such other rates or charges for the new class of service which it finds are just, reasonable, and compensatory.

As noted above, Ranch Mobile has been receiving payments for the easement agreement, which includes wastewater service, since 1998. Staff is satisfied with the utility's explanation that it was not aware of CPI's agreement with Ranch Mobile, or that CPI was receiving wastewater service. Even though WWTP did not request the new class of service within 10 days of the service being furnished, staff is satisfied that WWTP acted in good faith by notifying the Commission as soon as it was made aware of this customer and paying the required past due RAFs.

Section 367.091(6), F.S., states, "[a]n application to establish, increase, or pursue a rate or charge other than the monthly rates for service pursuant to Section 367.101 must be accompanied by a cost justification." The utility did not include a cost justification, but did indicate that the restaurant had a one-inch water meter. Using a meter factor of 2.5 for one-inch meters, and based upon the monthly charge of \$26.08 for tenants in the Ranch Mobile park, staff calculated that a monthly flat rate of \$65.20 for the new class of service was appropriate. When notified of its failure to provide the required cost justification, the utility agreed with staff's flat rate calculation of \$65.20 per month and provided staff with a proposed tariff sheet.

The increase in this customer's present monthly charge of \$25 to \$65.20 will increase the utility's revenues by approximately \$482 per year. This represents a less than one-half of 1% increase in revenues based on the utility's 2004 Annual Report and will not have a material effect on the utility's overall rate of return. This charge will be reviewed later in 2005 when WWTP files for its phase two rate increase. Also, staff has been informed that the City of Largo has recently changed the way it charges WWTP for wastewater service. The City has instituted a surcharge on wastewater for excessive water usage. Due to this change, the utility is being assessed an additional charge that is not recovered in its present rates. Therefore, there are

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additional expenses incurred by the utility that will help offset the additional revenue collected by this new class of service.

The utility's request to establish a new general service tariff should be approved. The utility should file a proposed customer notice to reflect the Commission-approved rate. The approved rate should be effective for service rendered on or after the stamped approval date of the tariff pursuant to Rule 25-30.475(1), Florida Administrative Code, after staff has verified that the proposed customer notice is adequate and this notice has been provided to the only effected customer. The utility should provide proof that the customer has received notice within 10 days after the date of the notice.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no timely protest is filed, the docket should be closed upon the issuance of a Consummating Order and staff's verification of the utility's compliance with the noticing requirements. If a protest is filed within 21 days of the issuance of the Commission's Order, the tariff should remain in effect with all revenues held subject to refund pending resolution of the protest and the docket held open. (Vining, Revell)

Staff Analysis: If no timely protest is filed, the docket should be closed upon the issuance of a Consummating Order and staff's verification of the utility's compliance with the noticing requirements. If a protest is filed within 21 days of the issuance of the Commission's Order, the tariff should remain in effect with all revenues held subject to refund pending resolution of the protest and the docket held open.