

State of Florida



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-

DATE: June 5, 2008

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Johnson, Rieger)
Office of the General Counsel (Bennett)

RE: Docket No. 070548-WS – Application for certificates to provide water and wastewater service in Marion County by Century - Fairfield Village, Ltd.

AGENDA: 06/17/08 – Regular Agenda – Proposed Agency Action on Issues 2, 3, and 4 – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Skop

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\070548.RCM.DOC

Case Background

On July 30, 2007, Century-Fairfield Village, Ltd. (Century-Fairfield) filed an application for original water and wastewater certificates in Marion County. By Order No. PSC-08-0067-FOF-WS, issued January 29, 2008, in this docket, the Commission granted Century-Fairfield Certificate Nos. 636-W and 546-S. Century-Fairfield is a limited partnership in Florida which owns and operates an existing 293 unit mobile home rental park. The park is completely developed. As part of the rent for the mobile home lots, Century-Fairfield has been providing water and wastewater services to the tenants since 1988. Accordingly, Century-Fairfield has been exempt from Public Service Commission regulation.

Century-Fairfield is located in the Southwest Florida Water Management District (SWFWMD). Because of drought conditions, the SWFWMD enacted district-wide water use restrictions. Because Century-Fairfield was making water withdrawals in excess of its water use permit, the SWFWMD found Century-Fairfield in violation of its water use permit, fined the utility \$8,861.02, and directed the utility to take all necessary steps to reduce usage. As a result, the utility implemented a plan to curb its excessive water usage by charging for water and wastewater service.

Approximately 150 customers attended a customer meeting on April 14, 2008, at the Century-Fairfield Village Clubhouse. In addition, a separate meeting was held with the officers of the homeowners' association. The customers were generally satisfied with the utility's quality of service, although a few customers commented on the water pressure. The utility recently constructed a new, second well and is working to get the well permitted for use. During the meetings, staff explained that, as a result of a consent order from the SWFWMD, the utility had applied for water and wastewater certificates and authority to charge for those services in order to encourage water conservation. A representative of the SWFWMD attended the meetings and explained the District's concerns with the amount of water being used in the development. The main customer concern related to how much the customers monthly lot rent would be reduced as a result of their being billed for water and wastewater service.

This recommendation was deferred from the May 6, 2008 agenda conference to allow staff additional time to consider comments made by the Commissioners, a customer representative, and a utility representative and to return with a recommendation based on the discussion at the agenda conference. On June 2, 2008, staff received a settlement agreement from Century-Fairfield and the Office of Public Counsel on behalf of the customers of Century-Fairfield and Fairfield Village H.O.A., Inc. (Homeowners Association). The Settlement Agreement addresses rates for water service, rates collected prior to Commission authorization, monthly billing, cancellation of wastewater Certificate No. 549-S, and an agreement that the rates will remain unchanged for two years.

This recommendation addresses the Settlement Agreement and whether the utility should be required to show cause as to why it should not be fined for charging unauthorized rates from May 2007 to September 2007. The Commission has jurisdiction pursuant to Sections 367.031, 367.081, 367.091, and 367.161, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should Century-Fairfield Village, Ltd. (Century-Fairfield) be ordered to show cause, in writing, within 21 days, why it should not be fined for charging rates and charges that are not contained in its tariff, in apparent violation of Sections 367.081(1) and 367.091(4), F.S.?

Recommendation: No, a show cause proceeding should not be initiated. The utility should, however, be put on notice that, pursuant to Sections 367.081(1) and 367.091(4), F.S., it must charge only those rates and charges approved by the Commission in its tariff. (Bennett, Johnson, Rieger)

Staff Analysis: Century-Fairfield is a mobile home park that provided water and wastewater to its residents without specific compensation for its service. Therefore, the utility was exempt from Commission jurisdiction pursuant to Section 367.022(5), F.S. On November 30, 2006, Century-Fairfield was notified by the SWFWMD that the utility was in violation of its water use permit. The SWFWMD advised the utility that the utility would face penalties if it did not take action to reduce its water usage. Upon notification by the SWFWMD, Century-Fairfield implemented a plan to curb its excessive water usage by charging customers if the customer used more than 7,000 gallons in a month. The utility charged its customers for excess water usage for the period of May 2007 to September 2007. During that time, the utility billed and collected \$7,186.20 in revenues.

By charging customers for excessive water use, Century-Fairfield lost its statutory exemption from Commission jurisdiction. Once the Commission obtains jurisdiction, a utility may not charge water or wastewater rates until the Commission has approved those rates, Section 367.081(1) and 367.091(4), F.S. Therefore, the \$7,186.20 in revenues collected for the period of May 2007 to September 2007 was unauthorized. When it realized that charging rates made it a non-exempt utility, Century-Fairfield filed its application with the Public Service Commission. Upon notification from staff that the rates the utility was charging were unauthorized, the utility ceased collecting those revenues.

Section 367.161, F.S., authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or have willfully violated any Commission rule, order, or provision of Chapter 367, F.S. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, In Re: Investigation Into The Proper Application of Rule 25-14.003, Florida Administrative Code (F.A.C.), Relating To Tax Savings Refund for 1988 and 1989 for GTE Florida, Inc., the Commission having found that a company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that “in our view, ‘willful’ implies an intent to do an act, and this is distinct from an intent to violate a statute or rule.” Additionally, “it is a common maxim, familiar to all minds that ‘ignorance of the law’ will not excuse any person, either civilly or criminally.” Barlow v. United States, 32 U.S. 404, 411 (1833).

Staff does not believe a show cause proceeding is appropriate within these factual circumstances. The utility has indicated its willingness to comply with all statutes and rules of the state of Florida. When it was notified by the SWFWMD that it violated the water use permit,

the utility took quick action to remedy the violation. Unfortunately, the remedy the utility chose was an inadvertent violation of another statute. The utility believed it was exempt from the Commission's statutes because it was a landlord providing water and wastewater services to its tenants. Upon learning that it was no longer exempt, the utility took steps to remedy that violation by filing its application for water and wastewater certificates with the Commission. Upon learning from Commission staff that it could not lawfully collect the revenues until the Commission established rates, the utility ceased collecting those revenues. Furthermore, the utility has worked with the Office of Public Counsel, who is representing the customers and the Homeowner's Association, to resolve the customers concerns. As a result, the customer's agreed that the utility should keep the revenues previously collected, rather than refund it to the consumers.

Based on the foregoing, staff does not believe that the apparent violations of Sections 367.081(1) and 367.091(4), F.S., rise to the level that would warrant the initiation of a show cause proceeding in these circumstances. The utility should, however, be put on notice that, pursuant to Sections 367.081(1) and 367.091(4), F.S., it must only charge those rates and charges approved by the Commission in its tariff.

Issue 2: Should the Commission approve the settlement agreement provided by Century-Fairfield and the Office of Public Counsel?

Recommendation: Yes, the Commission should approve the settlement agreement without modification. The utility should file a proposed customer notice to reflect the approved rates. The water rates should be effective for services rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, F.A.C. In addition, the rates should not be implemented until staff has approved the proposed customer notice and tariff sheets. The utility should distribute the notice to the customers no later than with the first bill containing the approved rates and provide proof of the date the notice was given no less than ten days after the date of the notice. In addition, wastewater Certificate No. 549-S should be cancelled effective the date of the Commission's vote. The Commission should not require the utility to refund the \$7,186.20 in previously collected revenues. (Johnson, Bennett)

Staff Analysis: On June 2, 2008, Century-Fairfield Village, Ltd. and the Office of Public Counsel on behalf of the customers of Century-Fairfield and Fairfield Village H.O.A., Inc. filed a Settlement Agreement (Attachment A) requesting Commission approval of water conservation rates and monthly billing for customers with water usage in excess of 7,000 gallons. In addition, the Settlement Agreement would allow the utility to retain \$7,186.20 in revenues collected from high usage water customers prior to Commission approval, require the proposed rates to remain unchanged for two years, and provide for cancellation of wastewater Certificate No. 549-S.

According to the Settlement Agreement, the purpose of Century-Fairfield's application is to implement rates to curb excessive usage and not to provide the utility with a reasonable revenue requirement based upon standard ratemaking principles; therefore, the requested rates are not compensatory rates. The proposed rates, which are based on the rates charged by the utility prior to Commission authorization, do not include a base facility charge or a gallonage charge for usage up to 7,000 gallons per month. Customers that use more than 7,000 gallons and up to 12,000 gallons in a month will be charged \$3.50 per thousand gallons and usage over 12,000 gallons per month will be billed at \$5.50 per thousand gallons.

The rates established in the Settlement Agreement are to remain unchanged for a period of two years, after which time any party may initiate an appropriate proceeding to change the rates. The Settlement Agreement also allows the utility to retain the \$7,186.20 it collected from customers for excessive water usage for the period of May 2007 to September 2007 to cover the costs incurred for implementing conservation rates and complying with the Commission's regulatory requirements.

Since only water conservation rates are being requested by the utility, the parties request that wastewater Certificate No. 549-S issued in this docket be cancelled. The utility has never collected rates for wastewater service; therefore, the wastewater system is exempt from Commission regulation pursuant to Section 367.022(5), Florida Statutes, which exempts landlords providing service to their tenants without specific compensation for the service. Finally, the parties agree that if the Commission accepts the Settlement Agreement and issues a final order with respect to the certificate application; all issues concerning the application among and between the parties shall be deemed resolved.

Staff believes that the facts surrounding this rate request are unique. Both Century-Fairfield and its customers were satisfied with the costs of the utility being absorbed through the lot rent. But for the drought conditions and the mandate of another state agency, the utility would have remained outside the jurisdiction of the Public Service Commission. To respond to the SWFWMD and comply with Commission regulations while maintaining the original agreement with customers found in the mobile home prospectus, the utility proposed a non-compensatory rate structure. The utility worked with the Homeowner's Association and the Office of Public Counsel to enter into the Settlement Agreement. Staff believes it is in the public interest to approve the Settlement Agreement because it is a reasonable resolution for all of the parties and it addresses the Commission's concerns raised at the agenda conference regarding the appropriate rate structure. The proposed rate structure will allow the utility to operate as it has previously and will induce conservation of water by sending a price signal to customers that the cost of consumption will increase as consumption increases. This will encourage high consumption customers to reduce their consumption or to upgrade plumbing fixtures to achieve more efficiency. Customers who use less than 7,000 gallons of water per month will continue to pay no additional charge for water usage. The new Settlement Agreement expires after two years, which will give the utility, customers, and staff an opportunity to evaluate the effectiveness of the rate structure. At the end of the two year agreement, there is an opportunity to revise the rates as necessary. The SWFWMD does not object to the proposed Settlement Agreement.

Therefore, staff recommends that the Commission approve the Settlement Agreement without modification. The utility should file a proposed customer notice to reflect the rates established in the settlement agreement. The water rates should be effective for services rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, F.A.C. In addition, the rates should not be implemented until staff has approved the proposed customer notice and revised tariff sheets. The utility should distribute the notice to the customers no later than with the first bill containing the approved rates and provide proof of the date the notice was given no less than ten days after the date of the notice. In addition, wastewater Certificate No. 549-S should be cancelled effective the date of the Commission's vote. Also, the Commission should not require the utility to refund the \$7,186.20 in previously collected revenues.

Issue 3: Should the utility's request for miscellaneous service charges and a late fee be approved?

Recommendation: Yes. The utility's request for miscellaneous service charges and a late fee should be approved. The charges should be effective for services rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, F.A.C. (Johnson, Rieger)

Staff Analysis: The utility's request for miscellaneous service charges and a late payment fee was accompanied by its reason for requesting the charges, as well as the cost justification required by Section 367.091, F.S. Pursuant to Rule 25-30.460, F.A.C., all water and wastewater utilities may apply for miscellaneous service charges. These charges include initial connections, normal reconnections, violation reconnections, and premises visit charges. The utility's proposed miscellaneous service charges and late payment charge are also shown on Schedule No. 1.

The proposed miscellaneous service charges are based on projected expenses. The utility will only be charging miscellaneous service charges when a specific customer requests the service or is responsible for the service. The utility's justification for the miscellaneous service charges is to place the burden of these charges on the cost-causer rather than the general body of rate payers. Consistent with staff's recommendation in Issue 2, these charges should apply only to the water system.

The cost justification provided by the utility appears reasonable and is consistent with recent Commission decisions. Therefore, staff recommends that the utility's proposed miscellaneous service charges are reasonable and should be approved.

In addition to the standard miscellaneous service charges, the utility proposed a \$5.00 late fee. The utility indicated that the justification for a late fee is two-fold. First, the fee encourages current and future customers to pay their bills on time. Second, if the payment is not made on time, the fee ensures that the cost associated with late payment is not passed on to customers who do pay on time. The cost basis provided by the utility is that it takes approximately 15 minutes of employee labor to research, review, and verify that payment has not been received and the costs of stationary and postage to print and mail the bill. These costs are consistent with prior Commission decisions. Therefore, staff recommends that the utility's proposed late fee of \$5.00 is reasonable and should be approved. Staff recommends that Century-Fairfield's proposed miscellaneous service charges and late fee are reasonable and cost-based and should be approved. The charges should be effective for water services rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, F.A.C.

Issue 4: In the event of a timely protest of the Proposed Agency Action (PAA) Order, should any recommended rates and charges be approved for the utility on a temporary basis, subject to refund?

Recommendation: Yes. In the event of a protest of the PAA Order, the utility should be allowed to continue collecting the rates and charges set forth in this schedule as temporary rates and charges. However, in order to protect utility customers from potential overearnings, the utility should hold \$5,329 of annual service revenues subject to refund. Prior to implementation of any temporary rates and charges, the utility should provide appropriate security. In the event of a protest, the security should be in the form of a bond or letter of credit. Alternatively, the utility could establish an escrow agreement with an independent financial institution. If security is provided by an escrow agreement, the utility should escrow all revenues collected during the pendency of the case. In addition, after the rates and charges are in effect, pursuant to Rule 25-30.360(6), F.A.C., the utility should file reports with the Commission's Division of Economic Regulation no later than the 20th of each month indicating the monthly and total amount of money subject to refund at the end of the preceding month. The report filed should also indicate the status of the security being used to guarantee repayment of any potential refund. (Johnson)

Staff Analysis: Issues 2 and 3 of this recommendation establish water rates and miscellaneous fees and charges. A timely protest might delay what may eventually be considered reasonable and justified rates and charges potentially resulting in an unrecoverable loss of revenue to the utility. Therefore, in the event of a protest filed, staff recommends that the recommended rates and charges be approved as temporary rates and charges. The recommended rates and charges collected by the utility should be subject to the refund provisions discussed below.

The utility should be authorized to collect the temporary rates and charges upon the staff's approval of both the appropriate security for the potential refund and the proposed customer notice. Security should be in the form of a bond or letter of credit in the amount of \$5,329 or the utility may establish an escrow agreement with an independent financial institution. The \$5,329 is based upon the estimated water revenues for seven months. Using the Commission's current schedule, it could take about seven months to process the case.

If the utility chooses a bond as security, the bond should contain wording to the effect that it will be terminated only under the following conditions:

- 1) The Commission approves the rate increase; or
- 2) If the Commission denies the increase, the utility shall refund the amount collected that is attributable to the increase.

If the utility chooses a letter of credit as a security, it should contain the following conditions:

- 1) The letter of credit is irrevocable for the period it is in effect, and

- 2) The letter of credit will be in effect until a final Commission order is rendered, either approving or denying the rate increase.

If security is provided through an escrow agreement, the following conditions should be part of the agreement:

- 1) No refunds in the escrow account may be withdrawn by the utility without the express approval of the Commission;
- 2) The escrow account shall be an interest bearing account;
- 3) If a refund to the customers is required, all interest earned by the escrow account shall be distributed to the customers;
- 4) If a refund to the customers is not required, the interest earned by the escrow account shall revert to the utility;
- 5) All information on the escrow account shall be available from the holder of the escrow account to a Commission representative at all times;
- 6) The amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt;
- 7) This escrow account is established by the direction of the Florida Public Service Commission for the purpose(s) set forth in its order requiring such account. Pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments;
- 8) The Commission Clerk must be a signatory to the escrow agreement; and
- 9) The account must specify by whom and on whose behalf such monies were paid.

In no instance should the maintenance and administrative costs associated with the refund be borne by the customers. These costs are the responsibility of, and should be borne by, the utility. Irrespective of the form of security chosen by the utility, an accounting of all monies received as a result of the rate increase should be maintained by the utility. If a refund is ultimately required, it should be paid with interest calculated pursuant to Rule 25-30.360(4), F.A.C.

The utility should maintain a record of the amount of the bond, and the amount of revenues that are subject to refund. In addition, after the rates and charges are in effect, pursuant to Rule 25-30.360(6), F.A.C., the utility should file reports with the Commission Division of Economic Regulation no later than the 20th of each month indicating the monthly and total amount of money subject to refund at the end of the preceding month. The report filed should also indicate the status of the security being used to guarantee repayment of any potential refund.

Issue 5: Should this docket be closed?

Recommendation: No. If no timely protest to proposed agency action order is filed by a substantially affected person within 21 days, a Consummating Order should be issued. However, the docket should remain open pending receipt of revised tariff sheets reflecting the Commission approved rate. Upon receipt and verification of the revised tariff sheets, the docket should be administratively closed. (Bennett),

Staff Analysis: No. If no timely protest to proposed agency action order is filed by a substantially affected person within 21 days, a Consummating Order should be issued. However, the docket should remain open pending receipt of revised tariff sheets reflecting the Commission approved rate. Upon receipt and verification of the revised tariff sheets, the docket should be administratively closed

MISCELLANEOUS SERVICE CHARGES

DESCRIPTION	NORMAL HOURS	AFTER HOURS
Water Service		
Initial Connection	\$ 30.00	\$ 40.00
Normal Reconnection	\$ 30.00	\$ 40.00
Violation Reconnection	\$ 30.00	\$ 40.00
Premises Visit Charge	\$ 30.00	\$ 40.00
Late Payment Charge	\$ 5.00	Not Applicable

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Certificates to provide
water and wastewater service in Marion
County by Century-Fairfield Village, Ltd.

DOCKET NO.: 070548-WS

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made and entered into this 2nd day of ~~May~~ June, 2008, by and between CENTURY-FAIRFIELD VILLAGE, LTD. ("Century-Fairfield" or "Utility"), the OFFICE OF PUBLIC COUNSEL on behalf of the customers of Century-Fairfield ("Citizens"), and FAIRFIELD VILLAGE H.O.A., INC. ("HOA").

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WHEREAS, Century-Fairfield is located in the Southwest Florida Water Management District (SWFWMD). Because of drought conditions, the SWFWMD enacted district-wide water use restrictions. Because Century-Fairfield was making water withdrawals in excess of its water use permit, the SWFWMD found Century-Fairfield in violation of its water use permit and directed the Utility to take all necessary steps to reduce usage. As a result, the Utility implemented a plan to curb its excessive water usage by charging for water and wastewater service; and

WHEREAS, for the period May, 2007 to September, 2007, Century-Fairfield charged customers for excessive usage, and during such period, billed and collected \$7,186.20 in revenue; and

WHEREAS, by implementing an excessive usage charge, Century-Fairfield ceased to be exempt from Commission jurisdiction pursuant to Section 367.022 (5), Florida Statutes; and

WHEREAS, Century-Fairfield filed an Application for original water and wastewater certificates, which were granted in Order No. PSC-08-0067-FOF-WS, and for original rates and charges, which are pending before the Commission; and

WHEREAS, the purpose of Century-Fairfield's Application is to implement rates to curb excessive usage, and not to provide it with a reasonable revenue requirement based upon standard ratemaking principles; and

NOW THEREFORE, for and in consideration of the mutual covenants set forth below, the sufficiency of which is hereby acknowledged among the parties, the parties agree as follows:

1. RECITALS. The foregoing recitations are true and correct and incorporated herein.

2. PREVIOUS CHARGES. Century-Fairfield shall be entitled to retain the \$7,186.20 it collected from customers for excessive water usage in order to help pay for costs associated with implementing the herein described conservation rates and complying with the Florida Public Service Commission's regulatory requirements..

3. RATES. Those customers that utilize more than 7,000 gallons of water in a month shall pay the following rates:

7,001 gallons up to 12,000 gallons	\$3.50 per thousand gallons
Over 12,000 gallons	\$5.50 per thousand gallons

4. METER READINGS/BILLINGS. Century-Fairfield shall read the water meters and bill on a monthly basis those customers who utilize more than 7,000 gallons of water during that month.

5. TERM. The rates established in this Settlement Agreement shall remain unchanged for a period of two years, after which time any party may initiate appropriate

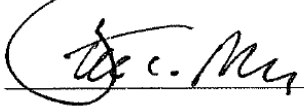
proceedings to change the rates. Until such change in rates is approved by the Commission, the rates set forth herein shall remain in effect.

6. WASTEWATER CERTIFICATE. Since only conservation water rates are being sought by the Utility, Wastewater Certificate 549-S shall be cancelled.

7. JOINT MOTION. Utility, Citizens and HOA shall file a joint motion requesting the Commission to issue a final order in this docket consistent with the terms of this Settlement Agreement

IN WITNESS WHEREOF, the parties hereto have hereunder caused this Settlement Agreement to be executed as of the date and year aforesaid, in counterparts, each counterpart to be considered an original.

CITIZENS OF THE STATE OF FLORIDA,
OFFICE OF PUBLIC COUNSEL

BY: 
Stephen C. Reilly
Associate Public Counsel

CENTURY-FAIRFIELD VILLAGE, LTD.

BY: _____
Martin S. Friedman
Attorney for Century-Fairfield
Village, Ltd.

FAIRFIELD VILLAGE H.O.A., INC.

BY: _____
Barton W. Rich
President

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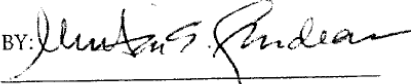
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President

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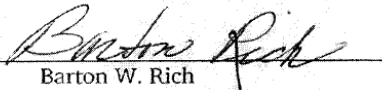
BY: _____

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Attorney for Century-Fairfield
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