



# Public Service Commission

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

RECORDS AND REPORTING  
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**DATE:** JANUARY 7, 1999

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

**FROM:** DIVISION OF WATER AND WASTEWATER (TLDAVIS)  
DIVISION OF LEGAL SERVICES (FERGUSON) *LA* *RS* *JD*

**RE:** DOCKET NO. 971673-WS - PETITION BY HACIENDA VILLAGE UTILITIES, INC. IN PASCO COUNTY FOR RULING ON APPROPRIATE AMOUNT OF REGULATORY ASSESSMENT FEES.  
COUNTY: PASCO

**AGENDA:** January 19, 1999 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\WAW\WP\971673.RCM

### CASE BACKGROUND

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

Staff, through an audit discovered that the utility revenues for the years of 1993, 1994, 1995, and 1996 were not recorded properly and regulatory assessment fees (RAFs) on those revenues were not calculated or submitted correctly. The staff audit indicated that the utility paid RAFs on the water revenue it reported in the years 1993 through 1996, and it is due a refund for this overpayment. However, the audit also revealed that the utility has been understating wastewater revenue by only recording

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revenue from customers living in the single family homes and not those residents within the mobile home park. Therefore, the utility owed additional RAFs associated with the unrecorded revenue.

When staff advised the utility of the RAF deficiency, it paid the amount due but requested a ruling on whether we are overcharging the utility for RAFs. This recommendation addresses this request of the utility.

DISCUSSION OF ISSUES

ISSUE 1: Should Hacienda Village be refunded any of the Regulatory Assessment Fees (RAFs) paid for the years 1993 - 1996?

RECOMMENDATION: No. (TLDAVIS, FERGUSON)

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

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

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

The utility paid the amount owed pursuant to staff's request on September 8, 1997. However, on December 31, 1997, the utility filed a formal request that the Commission determine whether RAFs are due for wastewater service provided to those customers within

the mobile home park. The utility does not believe that wastewater service to the mobile home park should be considered jurisdictional since that service is also provided as a landlord/tenant relationship like the water service, which is specifically exempt from PSC regulation. As support for the utility's position, Ms. Laurice Hachem, president of the utility, faxed a letter dated July 30, 1998. Included with the letter was a copy of Chapter 723, Florida Statutes. Ms. Hachem believed that she was unable to charge the mobile homeowners for wastewater service pursuant to Chapter 723, Florida Statutes. However, as stated in the case background, the wastewater system provides service to 42 individual homes outside the mobile home park. As such, Hacienda Village's wastewater system does not meet the qualifications to be exempt. Therefore, the wastewater system is under Commission regulation.

The definition of a utility includes anyone who provides water or wastewater service to the public for compensation, pursuant to Section 367.021(12), Florida Statutes. The Florida Legislature has vested exclusive jurisdiction in the Commission over each utility with respect to its authority, service, and rates pursuant to Section 367.011(2), Florida Statutes. Section 367.011(4) Florida Statutes, states that "This chapter shall supersede all other laws on the same subject." The Commission's authority also preempts any private contractual agreements or deed restrictions. See Public Service Commission v. Lindahl, 613 So. 2d 63, 64 (2nd DCA 1993) (holding "that the PSC's authority to raise or lower utility rates, even those established by a contract, is preemptive"). See Hill Top Developers v. Holiday Pines Service, 478 So. 2d 368, 371 (2nd DCA 1985) (holding that "the power and authority of the PSC are preemptive. It is plain beyond any doubt that in formulating Chapter 367, the Legislature desired exclusive jurisdiction to rest with the PSC to regulate utilities...and to fix charges..."); See also Cohee v. Crestridge Utilities Corp., 324 So. 2d 155 (2nd DCA 1975).

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

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should not be refunded any of the RAFs paid for the years 1993 through 1996.

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

**ISSUE 2:** Should Hacienda Village be required to remit additional RAFs for 1997?

**RECOMMENDATION:** Yes, Hacienda Village should be required to remit additional RAFs for 1997 in the amount of \$2,858.29 within thirty days of the effective date of this order. (TLDAVIS, FERGUSON)

**STAFF ANALYSIS:** As mentioned in the previous issue, Hacienda Village has been incorrectly reporting revenue in its annual reports. The utility has been reporting water revenue even though the water system is exempt from Commission regulation. The utility has also been understating wastewater revenue even though the entire wastewater system is under Commission regulation. The previous issue addresses the RAFs paid for the years 1993 through 1996. In 1997, the utility paid RAFs in the amount of \$361.84, which is based on reported annual revenue of \$8,040.95. However, the annual report indicates that the utility served an average of 491 customers during 1997. Applying the tariffed wastewater rates in effect during 1997 to the average number of customers results in annual revenue of \$71,558.34, calculated as follows:

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

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

Based on the above analysis, the utility underpaid its 1997 RAFs and should be required to remit the additional amount owed. This is consistent with staff's recommendation in Issue 1 regarding the jurisdictional status of the entire wastewater customer base, including those customers within the mobile home park. Hacienda Village should be given thirty days from the effective date of the order to remit payment.

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**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** Yes. If no person whose substantial interests are affected files a protest within 21 days of the issuance of the Order, then the docket should be closed. (FERGUSON)

**STAFF ANALYSIS:** If no person whose substantial interests are affected files a protest within 21 days of the issuance of the Order, then the docket should be closed. Yes, this docket should be closed if no substantially affected person files a timely protest within the 21 day protest period after issuance of the Commission Order.

Attachment A

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