

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 981342-WS  
ORDER NO. PSC-99-1228-PAA-WS  
ISSUED: June 21, 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, Anglers Cove West, Ltd. (Anglers or utility) filed an application for grandfather certificates to provide water and wastewater service in Polk County, pursuant to Section 367.171, Florida Statutes. Anglers is a Class C utility, which serves approximately 340 mobile home sites in the Anglers Cove and Anglers Cove West Mobile Home Parks. Both communities are built out. Water and wastewater lines between the two parks are interconnected but only wastewater service is provided from

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utility-owned facilities. Water is purchased from the City of Lakeland. Anglers has one water distribution system, one wastewater treatment plant, and one wastewater collection system.

According to the application, Anglers is a limited partnership formed in 1985. T & A Investments, Inc., owns 55 percent of the limited partnership; Mr. Raymond Moats owns 15 percent; ATA Properties, Inc., owns 10 percent; and Ms. Mildred Moats owns 10 percent; and Mr. John Maxwell owns the remaining 10 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, including Anglers.

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.

At the time of the August 10, 1998 letter, all of the details regarding the owner's other systems were not known. In the case of Anglers, it was subsequently determined that the system did not qualify for exemption, pursuant to Section 367.022, Florida

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Statutes, or a non-jurisdictional finding, pursuant to Section 367.021, Florida Statutes.

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 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, Anglers filed an application for a grandfather certificate on October 14, 1998.

On October 14, 1998, Anglers filed a Request for Representation by a Qualified Representative. By Order No. PSC-98-1634-PCO-WS, issued December 7, 1998, the Commission authorized Mr. Norman F. Mears to appear as Qualified Representative on behalf of Anglers in this docket.

Anglers 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

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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, Anglers requested that the Commission not require the remittance of RAFs for 1996 and 1997.

Docket No. 981912-WS was opened to address the rule waiver request. By Order No. PSC-99-0638-FOF-WS, issued on April 5, 1999, we granted the waiver, requiring instead an affidavit certifying Anglers' 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 May 3, 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. Anglers provided evidence in the form of a warranty deed 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 Anglers's application was given.

An accurate territory description and adequate service 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 Anglers has requested to serve is shown on Attachment A of this Order, which by reference is incorporated herein.

Because Anglers purchases water from the City of Lakeland, water withdrawal and environmental permits do not apply. Wastewater environmental compliance in Polk County is regulated by the Florida Department of Environmental Protection (DEP). Anglers holds DEP Permit No. D053-249486, which was issued on December 1,

1994. The permit is due to expire on June 23, 1999. According to the application, and DEP, the utility is currently in compliance with all environmental requirements.

Based on the foregoing, we find it appropriate to grant Certificates Nos. 610-W and 526-S to Anglers. The territory Anglers is authorized to serve is described on Attachment A of this Order.

Rates and Charges

Anglers's current rate of \$15.71 per month for water and wastewater services combined was put into effect for Anglers Cove on December 17, 1985, and for Anglers Cove West on October 31, 1986, pursuant to Chapter 723, Florida Statutes. A pass-through rate adjustment was administratively approved for Anglers 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. Anglers' current rates, including the pass-through rate adjustment, are shown below.

Water and Wastewater Service

Billing Period:	Monthly in advance
Base Charge	\$ 15.71

Customer Deposits

N/A

Meter Test Deposits

N/A

Miscellaneous Service Charges

None

Service Availability Charges

None

Rule 25-30.255, Florida Administrative Code, requires a utility to measure water sold on the basis of metered volume sales unless the Commission otherwise approves flat rates. The intent of the rule is to promote water conservation by providing a means by which customers can understand the impact of their consumption on their bills. Water management districts are increasingly mandating the installation of water meters, especially in water use caution areas.

However, for purposes of certificating grandfather utilities and utilities already in existence, the Commission has generally adopted 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 metered 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.

Nevertheless, 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. The utility was asked to provide additional information as to the cost and time-frame necessary to fully meter Anglers. The utility was also asked to estimate the relative costs to provide each service 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 (CHC VII, Ltd., Four Lakes Golf Club, Ltd., Plantation Landings, Ltd., S. V. Utilities, Ltd., and Hidden Cove, Ltd.), in addition to Anglers, he does not have the staff necessary to provide the information requested. In addition, changes in the rate structure would 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 be required to pay a filing fee equal to \$10.00 per lot for all of its mobile home parks simultaneously. In addition, the owner would incur the costs of acquiring and installing meters for all unmetered lots. 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 for 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.

Even though water service to Anglers is provided by the City of Lakeland, as part of the review process, the SWFWMD was contacted to determine if it had any concerns with the utility's non-metered status. SWFWMD indicated that they had not required the installation of individual meters for either Anglers Cove or Anglers Cove West because generally parks this small do not have an appreciable affect on area water withdrawal.

Based on the foregoing, we find it appropriate to approve the flat rate of \$15.71 per month for both water and wastewater service, 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 or not 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 Anglers, were jurisdictional.

On October 21, 1998, Anglers was informed of the obligation to file annual reports and to remit RAFs from May 14, 1996. On December 21, 1998, Anglers 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 Anglers 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. 981912-WS. By Order No. PSC-99-0638-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, Anglers 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 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 utilities were jurisdictional. Had we responded to the letter in a timely manner, the owner would have been informed in 1996 that the utilities were jurisdictional and would have filed applications for grandfather certificates 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.

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

It is, therefore,

ORDERED by the Florida Public Service Commission that Anglers Cove West, Ltd., Post Office Box 5252, Lakeland, Florida 33807-5252, is hereby granted Certificates Nos. 610-W and 526-S. The territory Anglers Cove West, 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 flat rate of \$15.71 for both water and wastewater service charged by Anglers Cove West, Ltd. is hereby approved, until the utility applies for rate assistance or until the utility is required to do so by this Commission in a subsequent proceeding. Anglers Cove West, 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 Anglers Cove West, Ltd.'s obligation to pay regulatory assessment fees shall commence on December 1, 1998. It is further

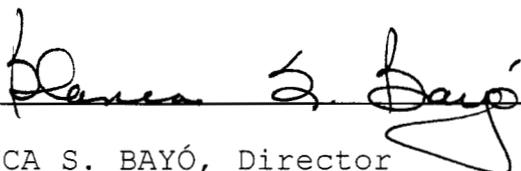
ORDERED that Anglers Cove West, Ltd. shall pay regulatory assessment fees due for 1998 within 30 days of the issuance date of this Order. It is further

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 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

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ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 21st day of June, 1999.

  
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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 32399-0850, by the close of business on July 12, 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.

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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.

**ATTACHMENT A**

**ANGLERS COVE WEST, LTD.**

**WATER AND WASTEWATER TERRITORY DESCRIPTION  
POLK COUNTY**

**ANGLERS COVE WEST**

**Township 28 South, Range 24 East**  
**Section 23**

Commence at the Southwest corner of the Northwest 1/4 of the Southwest 1/4 and run North 00°00'59" East, along the West line a distance of 340.59 feet to the Point of Beginning; thence continue North 00°00'59" East and along the aforesaid West line a distance of 70.0 feet; thence South 89°45'37" East, a distance of 255.0 feet; thence North 00°00'59" East, a distance of 250.94 feet; thence South 89°50'27" East, a distance of 8.09 feet; thence North 00°00'59" East, to the North line of the South 1/2 of South 1/2 of North 1/2 of said Northwest 1/4 of the Southwest 1/4 a distance of 165.49 feet; thence South 89°52'54" East and along said North line to the East line of said Northwest 1/4 of the Southwest 1/4 a distance of 1063.34 feet; thence South 00°00'44" East along said East line to the South line of the Northwest 1/4 of the Southwest 1/4, a distance of 831.16 feet; thence North 89°40'46" West along said South line a distance of 818.94 feet; thence North 00°00'59" East, a distance of 322.61 feet; thence North 89°50'28" West, a distance of 252.89 feet; thence North 00°00'59" East, a distance of 19.05 feet; thence North 89°45'37" West, a distance of 255.0 feet to the Point of Beginning.

**ANGLERS COVE**

**Township 28 South, Range 24 East**  
**Section 23**

Commence at the Southwest corner of Section 23, Township 28 South, Range 24 East, run South 89°57'50" East, along the South line of said Section 23, a distance of 1765.0 feet to the Point of Beginning; continue South 89°57'50" East along the South line of

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said Section 23, a distance of 673.71 feet; thence North 00°06'40" West, a distance of 1247.05 feet; thence South 89°58'40" West, a distance of 100.0 feet; thence North 00°06'40" West, a distance of 600.0 feet; thence South 89°58'40" West, a distance of 180.0 feet; thence North 00°06'40" West, a distance of 500.0 feet; thence South 89°57'48" West, a distance of 335.54 feet; thence South 00°00'05" West, a distance of 236.03 feet; thence South 89°57'48" West, a distance of 72.56 feet; thence South 73°58'03" West, a distance of 193.06 feet; thence North 51°04'05" West, a distance of 38.51 feet; thence South 85°56'05" West, a distance of 204.07 feet; thence South 00°00'05" West, along the West boundary of the Northeast 1/4 of the Southwest 1/4, a distance of 750.46 feet to the Southwest corner of the Northeast 1/4 of the Southeast 1/4; thence South 89°42'50" East, a distance of 273.04 feet, along the extended North boundary of the Southwest 1/4 of the Southwest 1/4; thence due South, a distance of 444.70 feet; thence South 89°42'50" East, a distance of 30.0 feet; thence South a distance of 120.0 feet; thence South 89°42'50" East, a distance of 70.0 feet; thence South 04°57'21" East, a distance of 752.41 feet to the Point of Beginning.

M E M O R A N D U M

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99 JUN 21 PM 1:55

June 10, 1999

RECORDS AND  
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (CROSBY) *pg*

RE: \* DOCKET NO. 981342-WS - APPLICATION FOR GRANDFATHER  
CERTIFICATES TO OPERATE WATER AND WASTEWATER UTILITY IN  
POLK COUNTY BY ANGLERS COVE WEST, LTD.

99-1228-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 - 13)

ALC/lw

Attachment

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

I:981342A.ALC

*See 3*

*4.25.*

*2/0 boxed  
- mailed*

FLORIDA PUBLIC SERVICE COMMISSION - RECORDS AND REPORTING

Requisition for Photocopying and Mailing

Date 6/33/99  
Number of Originals 13 Copies Per Original 20  
Requested By [Signature]

Item Presented  
Agenda For (Date) \_\_\_\_\_ Order No. 99-1228 In Docket No. 981342  
Notice of \_\_\_\_\_ For (Date) \_\_\_\_\_ In Docket No. \_\_\_\_\_  
Other \_\_\_\_\_

Special Handling Instructions \_\_\_\_\_

Distribution/Mailing	
Number	Distributed/Mailed To
<u>19</u>	<u>Commission Offices</u>
	<u>Docket Mailing List - Mailed</u>
<u>(2)</u>	<u>Docket Mailing List - Faxed</u>

Number	Distribution/Mailed To
<u>(1)</u>	<u>Clerk - Polk</u>
	_____
	_____

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

Print Shop Verification  
Job Number 218 Verified By Michael  
Date and Time Completed 6/24 Job Checked For Correctness and Quality (Initial) [Initials]

Mail Room Verification  
Date Mailed 6/34 Verified By [Signature]