ALJ/JBW/eap

Mailed 12/22/98

Decision 98-12-077 December 17, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of MHC Acquisition One, L.L.C. for a Certificate of Public Convenience and Necessity to Continue to Construct a Public Utility Water System and a Public Utility Sewer System Within the City of Santa Cruz in Santa Cruz County and to Establish Rates for an Interim Application Period and Ongoing Rates for Water and Sewer Service.	Application 97-03-012 (Filed March 12, 1997)

Goodin, MacBride, Squeri, Schlotz & Ritchie,
by James D. Squeri, Attorney at Law, for MHC Acquisition One, L.L.C., applicant
Jackson, Tufts, Cole & Black, L.L.P.,
by William H. Booth, Attorney at Law, and
Morgan, Franich, Fredkin & Marsh
by Mark B. Fredkin and William Siamas,
Attorneys at Law, for De Anza Santa Cruz Homeowners Association, protestant.
Laura Tudisco, Attorney at Law, and Richard Tom,
for the Commission's Water Division.

TABLE OF CONTENTS

OPINION

Statement of Facts

A. Background Situation

The De Anza Santa Cruz Mobile Home Park (Park), sited on approximately 30 acres of marine terrace fronting on the Pacific Ocean at 2395 Delaware Avenue on the western side of the City of Santa Cruz, contains about 200 mobile home sites as well as service facilities, including a clubhouse/meeting facility, a service equipment building, and a laundry facility. The Park has its own internal water distribution and sewage collection systems, which were installed when the Park was initially developed in 1971.[1] Both systems have operated continuously since 1971.

The Park purchases its water from the Santa Cruz Municipal Water Department, taking service through a 6-inch main at its Delaware Avenue entrance. This 6-inch line has a device that determines whether water should be delivered through a 2 or 4-inch service. A 6-inch check valve and meter allow for full 6-inch flow in case of fire conditions. The internal Park system then distributes the water to each mobile home site, hydrants, and to the Park's service facilities. Aside from the City there are no other water purveyors in the area that could supply the Park.

---

[1] Developed between 1970 and 1972, by a subsidiary of Boise Cascade Company, today the Park has all mobile home sites leased to the mobile home unit owners. Fireflow and pressure conditions meet local building code, City ordinances, and related requirements of the California State Division of Industrial Safety (the oversight agency responsible for safety of mobile homes used for domestic housing).

The Park's internal sewer system collects sewage from each mobile home site and from the Park's service facilities, and transports it to a dual wet well collection point from where it is discharged by pumping it into the City of Santa Cruz sewer facility at Delaware Avenue. Standby generator equipment is located adjacent to the submersible pump well station to keep pumping power on during emergencies or power outages.

California mobile home parks without their own system of water supply usually take service from a local serving utility through a master meter and provide this service as part of their rent charge, or have their tenants served directly by the serving utility which then bills the tenant directly for the service. Other master metered parks submeter the service. Since 1978 the landlord-tenant relationship between mobile home park owners and their tenants has been extensively regulated by the Mobile Home Residency Law (Civ. Code § 798, et seq.). This statute recognizes that unlike other renters, mobile home owners cannot easily relocate should their tenancy be terminated. Accordingly, their tenancy is considered "different" and the relationship is to be treated differently. Basically, Civ. Code § 798.31 provides that mobile home owners shall not be charged for other than rent, utilities, and incidental reasonable charges for services actually rendered to them. Utilities charges are most commonly thought of as charges for "essential" services provided by government regulated and sanctioned monopolies, and as the Supreme Court has noted, the Public Utilities Commission (Commission) deals with services that are "essential."[2]

---

[2] *Wood v. Public Utilities Commission* (1971) 4C 3d.288, 295.

Over the past several decades the rising cost of providing utility services increasingly has concerned park owners, particularly where service is included as part of the rent. Owners frequently had to swallow these increasing costs as local rent control agencies would not allow increases to be passed through by rent increases. The Park in this proceeding is subject to the City of Santa Cruz Mobile Home Rent/Sale Stabilization Law.[3]

In 1990, Section 798.41 was added to the Mobile Home Residency Law (with a clarification amendment in 1992)[4] giving park owners subject to rent control a way to pass utility costs directly to tenants.

Prior to August of 1993, Park's owners charged tenants, whatever the individual use, a pro rata share of the City's bills for each of the two utility services, water and sewer, as part of the monthly rent. In 1993, the new owners of the park, De Anza Santa Cruz Mobile Home Estates (De Anza) decided to install submeters for each site, and to take advantage of Civ. Code § 798.41 and bill utilities separately after reduction of the monthly rent as required by the statute. After the rent reduction was effected, De Anza began billing separately

---

[3] Which ordinance in addition to regulating rents in the Mobile home park, also caps the sale price that a mobile home unit owner may receive upon any resale of a mobile home.

[4] In local jurisdictions having rent control, the Legislature by enacting Civ. Code § 798.41 in 1990 (amended 1992) provided that those mobile home parks could elect to bill utility costs and rents separately, with any separately billed utility charges no longer to be considered rent under local rent control laws, provided that the rent charged under the local rent control was reduced at the time of the initial separation of billing, and that the reduction was equal to the average amount charged to the park management for that utility service for that space during the 12-months immediately preceding notice of the commencement of the separate billing for that utility service.

for the utility services.[5] With rent and utility costs now separated, but still desiring to maintain non-public utility status with its exemption from the jurisdiction, control or regulation of the Commission, De Anza concluded that it would have to adhere to the literal provisions of Public Utilities (PU) Code § 2705.5[6] in its now separate utility service billings to its tenants. Accordingly, in August of 1993, De Anza began billing each tenant monthly for water on a separate utility billing, charging the City's baseline rate of $0.65 per hundred cubic feet (Ccf) together with a $7.80 "readiness to serve" charge and a 7% tax.[7] De Anza noted that those rates as charged were exactly the same rates and charges that the City municipal water system would charge any residential customer located outside of the park who would receive his service directly from the City. As to sewer service, De Anza merely continued to bill separately,

---

[5] There has been no dispute regarding the owner's calculation of the rent reduction; it was effected pursuant to the provisions of Civ. Code § 798.41

[6] 2705.5. Any person or corporation, and their lessees, receivers, or trustees appointed by any court, that maintains a Mobile home park or a multiple unit residential complex and provides, or will provide, water service to users through a submeter service system is not a public utility and is not subject to the jurisdiction, control, or regulation of the commission if each user of the submeter service system is charged at the rate which would be applicable if the user were receiving the water directly from the water corporation.

[7] While the $7.80 "readiness to serve" and its 7% tax are charged individual residential users elsewhere in the City by the City, it is not the charge the City bills to De Anza. The City charges De Anza the same $0.65 per Ccf for the first 400 cf and $1.55 per Ccf for all above the first 400 cf, but De Anza pays a fixed $217.50 "readiness to serve" charge plus 7%. Thus, the difference between what De Anza collected from tenants for the "readiness to serve" plus 7%, and what De Anza paid the City for its "readiness to serve" plus 7% produced an approximate additional $1,500 each month as a consequence of unbundling utility charges and rent. De Anza's position was that these extras were to cover costs of the internal park system, including repairs and meter reading.

"passing through" the City sewer charges. The sewer charges created no controversy, but the new water service charges were disputed by the tenants.

The tenants, represented by their association, the De Anza Homeowners Association ("The Association"), in matters of common interest, called the water "readiness to serve" and the tax "false or phony." Failing to resolve the issues with De Anza, the tenants filed a Superior Court action to challenge the propriety of the charges. The tenants were ordered by the Court to pursue their administrative remedies. In June of 1995, a Hearing Officer for the City's Planning Department heard the matter. The Hearing Officer concluded that the levy of the "readiness to serve" charge and "tax" went beyond the scope and purpose of Civ. Code § 798.41, giving De Anza a windfall de facto rent increase which circumvented the statute. He found that the only allowable charges for water service were actual water usage, plus a pro rata share of the "readiness to serve" charge paid by De Anza to the City, plus tax on the amounts. De Anza was ordered to refund all excess charges collected back to August of 1993 and to discontinue billing beyond the amounts permitted under Civ. Code § 798.41. De Anza's contention that the Commission had exclusive jurisdiction over utility rates was rejected.

De Anza thereupon petitioned Superior Court for a writ of mandate. On July 26, 1996, Superior Court denied the petition, finding the Hearing Officer's findings to be supported by substantial evidence, and that there was no prejudicial abuse of discretion. De Anza then filed both an appeal from the judgment denying its petition for a write of mandate with the Sixth District Court of Appeal, and pending the appeal, also petitioned for a writ of supersedeas to stay the administrative decision ordering refund.

Meanwhile, on August 18, 1994, Manufactured Home Communities, Inc. (MHC) became the owner of the Park, purchasing it from De

Anza.[8] MHC (a Maryland publicly traded real estate investment trust, and the largest owner and operator of high quality manufactured housing in the United States, leasing over 27,000 individual sites in 92 parks in 19 states) since 1994, with its affiliates Starland Vistas, Inc. and MHC De Anza Financing Limited Partnerships, had become involved with the former owners of the Park in the legal proceedings.

B. The Present Situation

1. Application 97-03-012

Despairing of reaching an economically feasible resolution except by dedication and submission to Commission jurisdiction and rate control, on March 12, 1997, MHC Acquisition One LLC (Applicant) filed the present application.[9] By the application it seeks a Certificate of Public Convenience and Necessity to serve the park through its in place water and sewer systems. The application specifically asserts the dedication of the systems to public use. The application further seeks authorization for interim rates from March 12, 1997 to allow it to recover costs incurred pending authorization of ongoing rates which would permit recovery of reasonable costs to provide service and a return on investment. Upon approval of the application, the water and sewer facilities in the Park will be transferred to Applicant by MHC's affiliate, Starland Vistas, Inc.

---

[8] However, MHC's affiliate, Starland Vistas, Inc., is presently holding the title to the Park.

[9] Applicant is a Delaware limited liability company authorized to do business in California. It's managing member is MHC Operating Limited Partnership (an Illinois limited partnership) of which MHC is the sole general partner. Applicant was formed August 18, 1996 for the purpose of owning and operating utility systems owned and/or operated by MHC, its affiliates or subsidiaries.

a) The Protest of the De Anza Santa Cruz Homeowners' Association

The Association contends that the application, is a thinly veiled effort to circumvent (1) the City's rent stabilization ordinance; (2) provisions of Civ. Code § 798.41; and (3) the decision of the rent control Hearing Officer and the 1996 Superior Court judgment then on appeal. It is its contention that Applicant is seeking to bring a "landlord-tenant dispute" to the Commission for resolution, and would impose rates that are "excessive, unjust, and unreasonable."

By its April 11, 1997 protest, the Association sought summary dismissal of the application, leaving the issues for resolution in the civil courts, or in the alternative, if the Commission accepts jurisdiction, that the Commission deny the application on its merits. Should the Commission authorize a Certificate of Public Convenience and Necessity, the Association requests that Applicant's proposed rates and charges be rejected, and that rates be adopted which are cost based, just and reasonable. Finally, the Association asks that Applicant be ordered to pay the Association's costs and attorney fees associated with this proceeding.

b) Applicant's Reply to the Association's Protest

On April 25, 1997, Applicant in its reply denied that the issue was about violation of rent control law and overcharging. It asserts that its application is properly and lawfully before the Commission for authority to operate public utility water and sewer services, and to charge Commission authorized rates. It denies that any of the costs being incurred since unbundling in provision of the services are recovered as an element of rent. It contends that jurisdiction to grant Applicant a certificate or to determine reasonable rates is not

constrained either by the Santa Cruz rent control ordinance, any provision of Civ. Code § 798.41, or by the judgment of the Superior Court.

Noting that the 1993 rent roll back was properly effected, as affirmed by both the Hearing Officer and the Superior Court, Applicant asserts that water and sewer charges for the future were separated from the purview of the local rent control ordinance. Applicant states that it had looked to its lawful alternatives only to find that its efforts to pursue the PU Code § 2705.5 alternative (see fn. 6) were challenged and that Superior Court found that implementation of § 2705.5 was a circumvention of the intent of Civ. Code § 798.41. Faced with what it considered to be the untenable proposition of operating these two systems at below cost, with no means to accumulate necessary reserves for replacements and repairs, nor any ability to realize any return on its investment, Applicant decided to forego exemption from public utility status. It decided to exercise its lawful rights and to pursue the public utility option open under PU Code § 2701.[10]

By the present application Applicant submits to the Commission's jurisdiction and dedicates its existing utility systems to that limited portion of the general public as can be served by its system. It will own and operate the systems as water and sewer corporations. These corporations would be separate from the Park entity which is under rent control.

---

[10] PU Code § 2701 provides that any corporation owning, controlling, operating, or managing any water system, who sells or delivers water to any person, whether under contract or otherwise, is a public utility, and is subject to the jurisdiction, control, and regulation of the Commission, except as otherwise provided by PU Code §§ 2702 to 2714.

c) *Association's Motion to Dismiss the Application*

On June 2, 1997, the Association filed a motion to dismiss the application. The motion asserted (1) that the application is a sham to circumvent the local rent control law and Civ. Code § 798.41; (2) that, as the City prohibits resale of its water, Applicant may have no water source; and that as the City regulates rates applicable to City provided utility services, the Commission should not enter the dispute; and (3) that as the Applicant's systems serve only the park residents it has not dedicated its system to the general public and therefore cannot be a public utility. By its motion the Association asked for a ruling on the legal issues.

(1) Applicant's Opposition to the Dismissal Motion

On June 6, 1997, Applicant filed its opposition to the dismissed motion. Applicant asserted that no legal reason had been provided for the Commission to dismiss the application;[11] that the motion is an improper

---

[11] Applicant points out that such motions are governed by Rule 56 of the Commission's Rules of Practice and Procedure. Citing extracts from a number of Commission decisions and Civil Procedure Code § 437c giving insight on the purpose of the rule, and analogous civil practice procedures, Applicant states that the purpose is to prevent abuse of the judicial process; to determine, before hearing, if there are any triable issues as to material facts; and that the moving party has the burden of showing there are no disputable facts. Applicant contended that neither local rent control, Civ. Code § 798.41, City code sections, nor the Superior Court judgment, can be interpreted as stripping the Commission of its authority to determine whether Applicant should be authorized to provide public utility water and sewer services, or the rates to be charged. Applicant states that the Commission has jurisdiction to decide whether it can lawfully grant a certificate or whether local rent control preempts that jurisdiction, or if Civ. Code § 798.41 limits Commission authority, and asserts that the Superior Court judgment, not purporting to cover the matters raised by the application, leaves it to the independent duty of the Commission to consider the relationship, if any, between Civ. Code § 798.41 and the Commission's authority to consider the application. It notes there is no conflict between a Commission grant of public utility status and the City's

Footnote continued on next page

attempt to perpetuate an untenable situation in which the Association members actually pay less for their services than the costs of providing the services, and less than their neighbors pay in Santa Cruz.

(2) Large Water Branch's Response Supporting Dismissal

On June 13, 1997, the Large Water Branch (Branch) of the Commission's Water Division filed a response supporting dismissal. Branch urged delay on any action to await the Appeals Court decision. Branch also urged forgoing further proceedings until Applicant obtained a City approval for resale.

(3) Applicant's Reply to Branch's Support of Dismissal Motion

On June 20, 1997, Applicant replied to Branch, asserting that Branch provided no legal basis for the Commission to decline to exercise its authority; that neither the pending civil appeals nor local ordinances have any bearing, much less place any limit upon, the Commission's jurisdiction to regulate Applicant's water and sewer services, or to approve rates for those services. It pointed out that under the statutory scheme governing provision of public utility services in general, and those services provided by parks in particular, it would be irrational and unlawful to conclude Applicant has no option under the law other than to provide these services at rates that recover

---

requirement of prior consent to resale of City water, observing that since the 1970's Applicant and its predecessor-in-interest have without objection, purchased water from the City and resold it to their tenants. Finally, as it provides service to a portion of the public for compensation, and is dedicating its systems to public use, and no longer seeks to avail itself of what it considers the "safe harbor" from Commission jurisdiction contemplated by PU Code § 2707.5; it now seeks its lawful alternative, PU Code § 2701 as its solution to an untenable situation.

only wholesale costs, forcing Applicant to operate at a loss while providing utility services to a favored few, while their neighbors outside the park pay more for the same services.

(4) The ALJ's June 27, 1997 PHC Denial of Association's Motion to Dismiss

On June 27, 1997, Administrative Law Judge (ALJ) John B. Weiss held a prehearing conference (PHC) in Santa Cruz. After final oral arguments on the dismissal motion, having previously carefully considered the very extensive pleadings of the parties, the ALJ made his ruling denying the motion to dismiss, and established an evidentiary hearing schedule for the application. In making the detailed ruling (and in observing the relatively recent development of the issues now underlying this application), the ALJ noted the 1990 enactment of the Civ. Code § 798.41 in response to problems park owners encountered in recovering utility costs, particularly in rent control jurisdictions. While permitting unbundling of rent and utility billings with a fixed reduction in rent to offset the unbundling, the legislation did not provide for future increases in utility costs.

The ALJ essentially posed the issue as being how does a park operator with a submetering system recover his costs beyond the pass-through costs of purchased water and sewerage disposition service from outside sources? How does it recover the costs of operating and maintaining the in-park systems, or replacement?

The ALJ contrasted past resistance from park operators to Commission jurisdiction, regulation and control, to today's application seeking public utility status (most past cases arose from tenant complaints and found the park operators opposed). Despite the fact that those systems fell within the statutory definitions of "public utilities," the Commission

in the past accepted the parks' contentions that they never had "dedicated" their systems to public use.

The ALJ noted that the Applicant's water system squarely met the statutory definition of a "water system" and a "sewer system" under PU Code §§ 240 and 230.5 respectively; were a "water corporation" and a "sewer system corporation " under PU Code §§ 241 and 230.6 respectively; and as the services were now being provided for compensation, the systems also met the statutory definitions of a "public utility" as provided by PU Code §§ 216(b) and 2701.[12]

---

[12] PU Code § 2701 provides that any corporation owning, controlling, operating, or managing any water system, who sells or delivers water to any person, whether under contract or otherwise, is a public utility, and is subject to the jurisdiction, control, and regulation of the Commission, except as otherwise provided by PU Code §§ 2702 to 2714.

PU Code § 241: ""Water Corporation" includes every corporation or person owning, controlling, operating, or managing any water system for compensation within this State."

PU Code § 240: ""Water System" includes all...pipes...owned, controlled, operated, or managed in connection with or to facilitate the...distribution, sale furnishing...of water for...domestic, or other beneficial use."

And as to the sewer system, note:

PU Code § 216: "(a) "Public utility" includes every...water corporation, sewer system corporation...where the service is performed for, or the commodity is delivered to, the public or any portion thereof." (b) "Whenever any...water corporation...performs a service for, or delivers a commodity to, the public or any portion thereof for which any compensation or payment whatsoever is received, that...water corporation, sewer system corporation,...is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part."

PU Code § 230.6: ""Sewer system corporation" includes every corporation or person owning, controlling, operating, or managing any sewer system for compensation within this State."

Footnote continued on next page

The ALJ further noted that by the act of submitting itself to the Commission's jurisdiction, and filing the present application seeking certification and for the Commission to set its rates, the Applicant also met the dedication test laid down by the California Supreme Court in S. Edwards Associates v. Railroad Commission (1925) 196C. 62 at 70,"...as engaging in the business of supplying water to the public as a class, not necessarily to all of the public, but to any limited portion of it, such portion, for example, as could be served from his system." (Emphasis added). Here, the Applicant unequivocally evidenced its dedication to a limited portion of the general public; that being the portion that can be served within the Park's confines by its systems. And pursuant to Cal-American Water & Tel Co. v. PUC (1959) 51C 2d 478, the intent to dedicate may be based upon explicit statements, or implied from the actions of a water purveyor.

The ALJ went on to observe that at present, PU Code § 2705.5 appeared to be the only statutory exemption from public utility status open to submetering park operators under Civ. Code § 798.4, and would apply only if a park was willing to charge its submetered tenants at the rate applicable were the tenant receiving water directly from the park's external supplies - that is, a pass-through of that supplier's charges, without provision for recovery of any in-park distribution costs. If unwilling to so limit his recovery of costs, the alternative is to dedicate his system and seek public utility status.

PU Code § 230.5: "Sewer system" includes all real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate sewage collection,...including any and all lateral and connecting sewers...and any and all other works...necessary or convenient for the collection or disposal of sewage..."

The ALJ concluded that there would be no merit in deferring a ruling pending a decision from the Court of Appeals on the different pre-March 12, 1997 situation now that the Applicant had decided to dedicate its facilities and submit to Commission jurisdiction. The ALJ determined that the changed circumstances, dedication, and filing of the application as of March 12, 1997, placed the issues within the Commission's jurisdiction, and that there was present sufficient evidence of a reasonable basis upon which the Commission could grant the Applicant a certificate, and after hearing, determine future rates and charges for the in-park provision of water and sewer services.

During the PHC June 27, 1997, the ALJ accordingly ruled that the motion to dismiss was denied.

2. The Association's Notice To Claim Intervenor Compensation

On July 29, 1997, the Association filed a timely Notice of Intent (NOI) to claim intervenor compensation pursuant to PU Code § 1804, stating its anticipated claim to be $90,000. On August 28, 1997, ALJ Weiss issued his ruling finding the Association not eligible pursuant to PU Code § 1804(a)(2)(B), by reason of not having demonstrated financial hardship meeting the PU Code § 1802(g) definition of "significant financial hardship" (the NOI having evidenced an individual member economic interest larger in comparison to a member's share of the cost of participation by the Association).

However, as the ALJ's ruling was a "preliminary ruling" on eligibility (PU Code § 1804(b), he noted that the following issuance of a

Commission decision, should the Association be able to show evidence of meeting the PU Code § 1802(g) definition, it could file again.[13]

3. The Evidentiary Hearing of A.97-03-012

Following discovery and distribution of prepared testimony and rebuttal prepared testimony (as directed by the ALJ at the June 27, 1997 PHC), two days of evidentiary hearing were held before ALJ Weiss in Santa Cruz on December 1 and 2, 1997. Both were well attended.

Applicant's evidence was presented through witnesses Gary Powell, MHC's Executive Vice-President in charge of operations (who adopted the earlier prepared testimony of Thomas P. Heneghan, MHC's Executive Vice-President, Chief Financial Officer and Treasurer, who was not present for the hearing), and Thomas J. O'Rourke, CPA and Management Consultant, and the Principal of O'Rourke & Company specializing in regulatory and management assistance. The Association's evidence was presented through witnesses Herbert D. Rossman, Esq., former Professor of Law at Drexel University, and a Park resident since 1992, and Catherine E. Yap, Principal in Barkovich & Yap, Inc., a consultant in the utility regulatory area, and former Commission staff employee. Branch's evidence was presented through witnesses Richard Tom, Project

---

[13] The ALJ further reminded the Association that pursuant to PU Code § 1807: "Notwithstanding any other provision of law, any award paid by a public utility pursuant to this article shall be allowed by the [C]ommission as an expense for the purpose of establishing rates of the public utility by way of a dollar-for-dollar adjustment to rates imposed by the [C]ommission immediately upon the determination of the amount of the award, so that the amount of the award shall be fully recovered within one year from the date of the award. (Emphasis added.)

Thus in the event of an award, the homeowners in the Park may end up paying for the amount of the award through the increased rates mandated by PU Code § 1807.

Manager; Elena Perez, Public Utilities Regulatory Analyst; and Larry Hirsch, Utilities Engineer; all of the Water Division's Large Water Branch.

Following conclusion of the evidentiary hearing, the parties submitted extensive concurrent closing briefs on January 15, 1998. After receipt of concurrent reply briefs, the matter initially was submitted for decision on January 30, 1998.

4. Decision of the Sixth Appellate District of the California Court of Appeals

Before a draft decision had been completed, on March 20, 1998, the Court of Appeal issued its decision on Park's appeal from the Superior Court. On March 25, 1998, Applicant petitioned that the January 30, 1998 submission by the ALJ be set aside and for the Commission to take official notice of the appellate decision. The Association as of April 3, 1998, and Branch as of April 9, 1998 neither opposed nor supported setting aside submission for the Commission to take official notice of the appellate decision.

By a ruling issued May 5, 1998, ALJ Weiss set aside submission for the sole purpose of taking official notice of the decision of the Sixth Appellate District, and as of May 5, 1998, resubmitted A.97-03-012 for decision.

Discussion

C. The Appropriateness of an Application for a Certificate

Traditionally, whether distributing their own in-park source water, or externally purchased supplies, mobile home park operators steadfastly have resisted any effort to bring them under public utility regulation by the Commission.

Despite the fact that taken solely on a statutory basis, they met the definitions for a water utility under PU Code §§ 240, 241, and 216, and could

qualify under PU Code § 2701, in past complaint proceedings initiated by tenants with the objective of bringing park operators under Commission jurisdiction, control, and regulation, park operators have almost uniformly resisted such a determination. The operators have cited their landlord-tenant relationship, but most legally significant, they have stressed that they had not dedicated their in-park systems to public use. The Commission has accepted that argument and uniformly, has dismissed the complaints.

In a seminal decision on that issue, Fowler and Arnold v. Ceres West Investors, et al. (1987) D.87-11-020, p.11 (mimeo), the Commission stated:

> "Because defendants have not dedicated their mobile home park water systems to public use, we conclude that the defendants' water system is not a public utility."

But with changing times, different considerations and circumstances increasing came into play. In the latter 1960 period, a series of provisions defining the relationship between park operators and tenant owners of mobile homes were being enacted. In the latter 1970's these were codified in the Mobile Home Parks Law (Health & Safety. Code §§ 18200-18700) and the Mobile Home Residency Law (Civil Code § 798, et seq.), enacted to deal with the specific and critical problem of housing in California. By the latter law the Legislature evidenced its fundamental purpose of enhancing the security and stability of mobile home tenants. In an action dealing with eviction, the Court of Appeal observed (Palmer v. Agee (1978) 87 Cal App. 3d 377 at 384) that the Mobile Home Residency Law was enacted to "make it very clear that mobile home tenancies are different from the ordinary tenancy and that landlord-tenant relations involving mobile homes are to be treated differently..." But while fairly comprehensive in covering many aspects of relationship between park operators and their tenants, the Law did not constitute a general and pervasive

legislative scheme for regulation of all aspects of that relationship, as was made clear in Palos Verdes Shores Mobile Estates, Ltd. v. City of Los Angeles (1983) 142 Cal. App.3d 362. It is clear that the Law does serve to limit park operators in acting unilaterally in their landlord-tenant relationships. Section 798.31 of that Act provided that tenants "shall not be charged a fee for other than rent, utilities, and incidental charges for services actually rendered." This has been interpreted as reflecting a legislative concern that tenants should not have to pay for services conferring no appreciable benefits (Greening v. Johnson (1997) 53 Cal. App.4th 1227, 1228). With expanding rent control by local jurisdictions including mobile home tenancies, park operators who had included water utility costs (both costs of purchased water and their in-park distribution system costs) as part of their rent, encountered increasing problems in recovering these costs from the local rent control jurisdictions. Responding to their plaints and legislative efforts, in 1990 the Legislature added Section 798.41 to the Mobile Home Residency Law. This addition provided means for park operators under rent control to unbundle and separate rent and utility costs, separately bill them, and for future utility billings no longer to be subject to rent control.

The Park is in a rent control jurisdiction. Prior to 1993 it included a pro-rata share of its purchased water cost in its rent or lease billings to its tenants. After installing submeters, in August of 1993, the appropriate rent adjustment under Section 798.41 was made. Thereafter tenants were billed separately for rent and water and sewer utilities. The water billing was made under the Park's literal interpretation of PU Code § 2705.5, charging each tenant in the same manner that the City would have charged each tenant were the City directly providing the water service to the tenant as the City's customer without the park as intermediary. The Park's billing to each tenant included a charge of the City's baseline rate for all usage by the tenant, a "readiness to serve" charge

based on the City's tariff charge for the tenant's size meter, and a 7% "tax" charge on the foregoing. The Park notes that this application is exactly what the Park's residential neighbor customers of the City's system elsewhere in the City pay for service provided by the City.

But while the Park's costs from the City for water service were based on the same usage rate tariff, its "readiness to serve" charge was based on its single larger meter, and the 7% tax was based on those charges to the Park. The result was that the net received by the Park from its tenants under the Park's unbundled utility billings substantially exceeded what the Park was paying the City for water delivered to the Park's master meter. In the rent control and judicial proceedings that followed, the Park argued that this variance represented compensation for the Park's costs to maintain and operate its in-park water distribution system. And while on its face it would seem difficult to see how a charge for the costs of operating its in-park utility system would not be a cost for services conferring appreciable benefits, in these proceedings the Park apparently failed to offer and detail any substantiation of such costs. It merely characterized the variance in charges to the Superior Court as its in park utility service costs; citing and relying upon PU Code § 2705.5 as the basis, and its need to charge under its literal interpretation of that section in order to maintain its exemption from Commission regulation.

The City's rent control Hearing Officer rejected these charges, concluding that Section 798.41 of the Mobile Home Residency Law did not contemplate charges not tied to the charges assessed by the local water utility (the City) serving the park; and held that the only water charge allowable pursuant to Section 798.41 would be actual usage by each tenant, a pro-rata share of the City's "readiness to serve" charge to the Park's master meter, plus a

pro-rata share of the 7% tax on these items. After the Superior Court sustained the Hearing Officer, the park appealed the decision.

1. The Decision of the Sixth Appellate District

On March 20, 1998, the Sixth Appellate District of the California Court of Appeal issued its decision on Park's appeal from Superior Court. The Appeal Court stated that its decision was limited to the question whether the rent control Hearing Officer correctly interpreted Civ. Code § 798.41, and whether he exceeded his jurisdiction.

The Court concluded that the Hearing Officer was correct in his determination that as Park had elected to use Civ. Code § 798.41 to unbundle rent and utility charges, it could not then disregard the rest of the Mobile Home Residency Law, and found that the Hearing Officer's interpretation of Civ. Code § 798.41 which results in a pass through of the Park's actual costs of water to the tenants does not violate PU Code § 2705.5. The Court stated that the legislative history of PU Code § 2705.5 indicates that it never was intended to prohibit such a practice.

The Appeals Court looked beyond the language of PU Code § 2705.5 and referred to the Legislative Analysts' analysis of underlying Assembly Bill No. 1005 (1983-84 Session) on April 25, 1983. The Court observed that under prevailing law at that time, mobile home parks were already authorized under PU Code §§ 739 and 739.5 to provide submetered gas and electric service to their tenants without being subject to Commission regulation so long as they charged the submetered tenants the "baseline" rates set by the Commission. The existing law in 1983 provided that parks delivering water to tenants for a profit were subject to Commission regulation, whereas non-profit systems serving their members or stockholders at actual cost were not public utilities subject to Commission regulation. The Court stated that Assembly Bill 1005 was intended

to clarify that parks delivering submetered water to their tenants at the same rate as the regulated supplier would receive the same Commission exempt status as for other submetered utility services. The Court concluded that passage of PU Code § 2705.5 merely codified this practice as to water deliveries; and that parks providing submetered water as an ancillary service or convenience, and not for profit, would not be considered public utilities subject to Commission regulation. The Court finally concluded "Only if a park charged more than the local utility's rate, and thus profited from supplying water, would it be considered a utility subject to PUC jurisdiction."

The Court observed that there was no evidence, showing, or estimate of costs of installing or operating Park's water system in the case before it, and that in any case, those matters were beyond the rent control Hearing Officer's jurisdiction. As Park purportedly was operating in an exempt status from Commission regulation pursuant to PU Code § 2705.5 at the time, the Hearing Officer's interpretation of Civ. Code § 798.41 allowing it to charge only for actual costs was not an abuse of discretion, although there was an inconsistent calculation of the refund due the tenants."

The Court finally concluded that, as modified, the City's decision did not violate the PU Code, specifically § 2705.5. The Court went on to state:

" However, in that the refund ordered by the Hearing Officer failed to consider that in the Park's billing to each tenant the Park had billed all water the tenant received through the tenant's meter at the City's baseline rate of $0.65 per Ccf, whereas the Park, beyond the first 4 Ccf delivered through its master meter, was charged $1.55 per Ccf, the Court reversed the Superior Court's judgment, directing the Superior Court to issue a writ ordering the City to modify the Hearing Officer decision to provide for the variance so that the Park would not lose money on the pass-through from its election in August 1993 to proceed under Section 798.41 and unbundle.

> "However, we believe that the ultimate question of what fees and charges may or may not be assessed by the owners for submetered water, other than or in addition to passing through its costs to the tenants, must be decided by the Public Utilities Commission. To the extent that the hearing officer's decision could be construed as setting utilities rates, we find that the hearing officer exceeded the jurisdiction conferred upon the City pursuant to local ordinance and Civil Code Section 798.41."

2. How Does the Park Recover Its Internal System Costs?

While, as the Appellate Court noted, at least in theory neither the Mobile Home Residency Law nor provisions in the PU Code expressly bar master metered park operators from recovery of their costs arising from submetering in--park and park-owned water distribution systems, including those in rent control jurisdictions, the problem (as exemplified here) is that there exists no statutory or regulatory forum or rate setting mechanism for parks to prove up and obtain sanction to charge these in-park costs while continuing to retain their historic exemption from Commission regulation. What forum would hear and test these charges based on in-park systems if the parks would not be public utilities?[15]

Unlike the statutory provisions in PU Code § 739.5 applicable to gas and electric services, and related Commission implementing decisions, which created the "differential" master meter discount to parks from the serving gas or electric public utilities to cover submetering park operator's "averaged

---

[15] While it is argued that park operators could seek special relief from rent control boards in rent control jurisdictions, it was precisely the problems encountered in getting relief that led the Legislature to pass Section 798.41 to provide unbundling mechanism to obviate the problem.

costs" (although this average cost is based on the serving utility's costs, not the park's costs), master metering parks providing submetered water services through their in-park distribution systems have no statutory equivalent to PU Code § 739.5 to provide at least a reasonable recovery of costs while they retain exempt status from Commission regulation. Nonetheless, these in-park distribution costs are real. They involve initial and ongoing investment related costs, costs of maintenance and operation, costs of meter reading and billing.[16]

If a park has dedicated its in-park water distribution system and is constituted as a "public utility" for that service, it has access to the Commission with its well established procedures to assure the park of recovery of the park's provable operating and maintenance costs, a depreciation reserve, tax expense, and return on investment, and a forum is provided for tenant complaints. As provided by PU Code § 451, any charges for service under Commission regulation must also be "just and reasonable."

Accordingly, in this instance it is understandable, following the Park's ill-advised and traumatic experience after unbundling in trying to recover its costs relative to its in-park distribution system, that the Park would reconsider; decide to abandon its prior exemption status from Commission regulations; and by its March 7, 1997 application unequivocally dedicate its water distribution and sewer collection systems to the public use of its tenants, and accept public utility status. In preparation, the Park's owners caused the creation of a new legal entity, the Applicant here, and is transferring ownership, control,

---

[16] As the Commission recognized in Re Rates, charges, and practices of Electric Gas Utilities Providing Services to Master Metered Mobile Home Parks (1995) 58 CPUC 2d 709,711, most of the parks are approaching the stage where park utility systems need to be replaced, with significant financial impact facing operators and their tenants.

and operation of the Park's utility systems to this new utility entity. By its application, the Applicant voluntarily subjects itself to Commission authority, and seeks authorization for rates and charges.

There is nothing in the Mobile Home Residency Law to prevent a submetering park operator in a rent control jurisdiction who obtains his water from external sources, once he has unbundled his rent, water and sewer utility billings in accordance with Section 798.41, from thereafter electing to constitute his in-park utility systems as public utilities by making an unequivocal dedication of these systems, and by subjecting them to Commission jurisdiction, control, and regulation through an application to the PUC. And as to PU Code § 2705.5, as early as 1985, the Commission in Fowler and Arnold (supra, p10(mimeo) stated:

> "We note that PU Code § 2705.5 would not have been necessary if the legislature felt there were no circumstances under which landlords of mobile home parks or multiple unit residential complexes could be public utilities subject to the Commission's jurisdiction. We believe that those who drafted Section 2705.5 must have assumed that there were circumstances under which landlords providing water service would be public utilities subject to our regulation. This section suggests, by negative implication, that the mere existence of a landlord-tenant relationship is not sufficient to prevent the Commission from asserting jurisdiction over a landlord who provides utility services."

In the present instance, in addition to meeting the statutory definition of a "public utility" set forth in PU Code § 2701, and the supplementary definitions set forth in PU Code §§ 241, 240, 216, 230.6 and 230.5, the Applicant in its application stated its willingness, ability, and readiness to continue provision of both water and sewer services in a "public utility" capacity

to that portion of the public as can be served from its in-place systems inside of the park."[17] These assertions clearly meet the test of dedication laid down by the California Supreme Court in S. Edwards Associates v. Railroad Commission (1925) 196 C.62 at 70, where the Court stated:

> "The test to be applied...is whether or not those offering the service have expressly or impliedly held themselves out as engaging in the business of supplying water to the public as a class, 'not necessarily to all of the public, but to any limited portion of it, such portion, for example, as could be served from his system....'" (Emphasis added)

When he made his ruling denying the Association's motion to dismiss the application, ALJ Weiss at the June 27, 1997 PHC based his ruling upon his review of the Park's provision of water and sewer in park service to its tenants prior to filing of the application; the changes proposed in the application; the briefings on the application; the motion to dismiss and the responses to that motion, as well as the final comments in the PHC; and upon his review of the statutory and case law involved. First, he ruled that those issues concerning Park recovery of in-park system costs applicable before the March 7, 1997 filing of A.97-03-012 (the period during which, in the absence of any dedication of its systems, the Park was exempt from "public utility" status) were before, and would be left to the civil courts. Second, on the motion to dismiss the application, the ALJ ruled that sufficient evidence of an unequivocal dedication

---

[17] PU Code § 2701 provides that any corporation owning, controlling, operating, or managing any water system, who sells or delivers water to any person, whether under contract or otherwise, is a public utility, and is subject to the jurisdiction, control, and regulation of the Commission, except as otherwise provided by PU Code §§ 2702 to 2714.

had been presented in addition to meeting the statutory requirements so as to provide a reasonable basis upon which the Commission could grant a Certificate of Public Convenience and Necessity to the Applicant, and, following a hearing, determine appropriate rates and charges to apply to the water and sewer services the Park will furnish to its tenants.

The Commission, after review of the extensive record in this proceeding, and having taken official notice of the March 20, 1998 decision of the Sixth Appellate Division of the Court of Appeal, affirms the June 27, 1997 ruling of the ALJ denying the Association's motion to dismiss the application.

We next turn to consideration of the application. The Application is rather unusual in that it reflects an about-face from heretofore general practice in the mobile home business; a change from avoidance of "public utility" status, to a seeking of it. The water and sewer utility systems here proposed for certification have been in place and served for many years as adjunct operations of the Park's primary business of leasing space to individual owners of mobile home units. But times have changed, making it economically expedient to separate these business operations, especially in rent control jurisdictions. The process of separating these heretofore undedicated utility systems from the space leasing business was begun in 1993 when the park owners took advantage of Section 798.41. Now it is being completed through a legal separation of ownership, control, and operation of the utility systems from the park space leasing corporation to a recently organized public utility corporation, albeit both corporations being subsidiaries of the parent corporation, MHC.

The Association casts aspersions on the motives of Applicant and its corporate affiliates, calling it a "cynical plan" to double recover" from the tenants the costs for their water and sewer service; i.e.,..."to charge tenants full

cost-of-service rates for such services while continuing to charge such tenants rental amounts which heretofore have included water and sewer services."

Section 798.41 in its provision for unbundling, provided for a future reduction in rent measured by an average amount during a 12-month period as charged to the Park for that utility service. After unbundling, Section 798.41 provided that "any separately billed utility fees and charges shall not be deemed to be included in the rent charged for those spaces under the rental agreement, and shall not be deemed to be rent or rent increase for purposes of any ordinance, rule, regulation, or initiative measure adopted or enforced by any local governmental entity which establishes a maximum amount that a landlord may charge a tenant for rent,...." After the 1993 unbundling, the rent billing, reviewed annually by the rent control agency, legally reflects rent alone. There is no "double billing" as of the date of this application. And not an iota of evidence was presented during the hearing to show that the current rent billing under rent control does, or legally can, include any ingredient for in-park utility service costs.

Accordingly, it is natural that some park owners, lacking any other forum or mechanism to obtain revenues to pay their in-park distribution system costs of operation and maintenance; to obtain any return on their investment; or to obtain funds for replacements, would, as here, elect to give up their exempt status and turn to Commission jurisdiction, control, and regulation as "public utilities." And by explicit "dedication" they remove the last barrier.

D. The Certificate of Public Convenience and Necessity

In considering whether or not to grant a certificate the Commission looks to a number of factors including the requirement for the service; the availability of alternate service; the adequacy and quality of the service proposed, and the technical competence and financial ability of the applicant to

provide an adequate service at reasonable rates. Certificates are not granted merely to meet the desire of an applicant, and the applicant bears the burden of showing that grant of a certificate would be in the public interest.

Certainly there can be no question that the health and safety of the park's tenants require continuation of the services. Similarly, there is no alternative service available. The spaces leased to the park tenants are not connected to the City's water or sewer service systems; they are connected to the in-park privately owned water distribution and sewer collection systems. There are no alternate service systems available.[18] As the same systems will continue to serve under public utility status, and these systems have proved over the years to be adequate and generally to provide quality service, there is also no issue over the adequacy and quality of the proposed service.

The motivation of the park's tenants in resisting change to public utility service is understandable. It is entirely economic in nature. In the 1973 to 1997 period they have paid less for water than their City neighbors outside the park. Since unbundling, they have enjoyed subsidized service as the rents set by the rent control agency specifically must exclude all utility costs. These two utility systems represent investments for which the owners receive no return or depreciation. Unlike gas and electric services, there is no mechanism or forum available to provide a return on investment, much less funds for operation and maintenance, except for the owner to adopt public utility status.

Addressing the technical and financial competence issues, we note that both systems are fairly basic in nature and absent breakdowns and other emergency events, essentially require standby attention apart from the meter

---

[18] No presentation was made indicating the City's interest in acquiring and operating the in-park water distribution and sewer collection systems.

reading and billing functions. The Park individual who in the past managed these functions has accepted another position in the MHC corporate structure and is being replaced by a resident manager team. Just as in the past, this team will as necessary either provide or arrange through appropriate repair service companies for such service as is needed. As in the past, tenants will call this team if something goes wrong. For serious problems the team in emergency situations will have the assistance of MHC's regional managers who will arrange and contract for major work. The team service for water and sewer matters will be on a cost allocation basis. Centralized billing, collections and accounting for water and sewer (in park and purchased services) will be provided through MHC's corporate affiliate in Chicago, Illinois as with other MHC-owned parks outside of California. As a major operator of mobile home parks across the country, MHC and its affiliates and subsidiaries offer and will provide technical competence and financial stability. The applicant and MHC officers agreed that the uniform system of accounts applicable to water and sewer utilities subject to Commission jurisdiction will be adhered to. None-the-less, while MHC, a national real estate investment trust with total revenues approximately $100 million annually and New York Stock Exchange listing, has great financial flexibility, it reasonably expects the applicant to stand financially on its own operation.

It is contended that as applicant has no in-park source of supply and relies upon the City, it cannot show that it can continue to supply its tenants if it operates as a public utility. There are numerous public utility systems in California that purchase all or significant portions of their water supply from cities, districts, the State Water Project, etc.; all subject to reasonable supplier rules. Here the City of Santa Cruz municipal water system has been selling water wholesale to the Park for many years; water which (before 1993 as part of

its rent billing, and since as part of its utility billing) the Park has in turn been reselling to its tenants. This will not stop.[19] It has long been settled that where a municipal corporation has assumed the duty of operating a water system for the purpose of supplying its inhabitants with water, it acts, not in its sovereign capacity, but the capacity of a private corporation engaged in the business. And in such cases it is the duty of the city, like a private corporation, to furnish water without discrimination to all its inhabitants who apply there for a supply, subject to their compliance with such reasonable rules and regulations as it may lawfully establish for the conduct of the business (Nourse v. City of Los Angeles (1914) 2s Cal App 384).

While we dislike the prospect that this decision may well encourage other small park operators facing a similar dilemma to follow this park's example, thereby adding additional small water and sewer utilities to our roster and jurisdiction, where such are able and willing to meet the statutory and dedication criteria to qualify, they attain "de jure" status and must be recognized as "public utilities" subject to Commission jurisdiction, regulation and control.

Applicant clearly has met the criteria and qualifies for public utility water and sewer classification, and accordingly will be granted a Certificate of

---

[19] See: McQuillin Municipal Corporations, 3d Ed(rev) 1995.

Muni water systems exist for the essential and prime purpose of rendering adequate, safe, and reasonable service to the consuming public (§ 35.35.20), and its rules must be fair, just, reasonable and not oppressive. The Courts are vested with jurisdiction over disputes (§ 35.09.05).

A Muni sewer system constitutes a public service, available to all property owners who wish to connect, and this right generally may be enforced by appropriate judicial process (§ 31.30).

Public Convenience and Necessity to operate these utilities at the De Anza Santa Cruz Mobile Home Park as provided in the Order that will follow.

E. Proposed Operations - Water and Sewer Systems

Supplementing its application, the Applicant provided a report addressing its valuation of the assets and depreciation expense for the 2 entities, and its computations of consumption, revenues and expenses, rate base, and a pro forma summary of earnings. The Association and Branch, critical of Applicant's report, each prepared and introduced separate extensive reports. In the following we address and resolve the issues raised.

1. Estimates of Net Plant and Depreciation Reserve - Water and Sewer Systems

The Commission has long used original cost of the utility plant and additions thereto, less accumulated depreciation, as the basis for the rate base to be used in the rate making process. The value determination of original cost is the point in time when the asset is first placed in the utility service. The Uniform System of accounts applicable to all water and sewer utilities subject to this Commission's jurisdiction provides that utility plant cost valuations should, where possible, be obtained from accounting records. But where accounting records and/or original cost records are no longer available, cost valuations necessarily must be derived by estimating, using sources such as manufacturer's price lists, cost trend indexes, or other materials. And, as the parties to this proceeding acknowledge, where original cost records are not available, estimating requires a considerable degree of judgment. The exercise of this judgment, as the record in this proceeding shows, can produce a considerable range of differing results.

In the present proceeding, original cost records relating to the water and sewer systems constructed in the Park in 1971 were few in number.

The best sources available were the construction plans prepared for the original park owner-developer, Boise Cascade Company. A present plant inventory for each system was developed from these plans and discussions with the Resident Manager and field confirmation. Sewer plans provided footage on the plans, while water system plans required measurement and conversion using the plan scale. The length and type of pipe and depth of installation were noted along with major appurtenances. Combination assemblies such as water services/meter assemblies, fire hydrants, and sewer connection/clean outs were determined on a sample basis using estimates of the amount of pipe, fittings and distance from the main to estimate a standard quantity of material installed for each typical combination assembly item. This plan "take-off" process performed at the Park by Applicant's consultant, Thomas J. O'Rourke, the principal of O'Rourke & Company, resulted in an overall inventory of plant for the Park. The same inventory and measurements were used by protestant Association's Catherine Yap, a principal of Barkovich & Yap, and by Larry Hirsch, Branch's utilities Engineer, in preparation of each's estimates.

a) Estimate of the Respective Parties

Applicant estimated the 1971 cost to install this physical plant inventory by adopting as its benchmark a 1994 replacement cost study prepared for the City of San Jose to evaluate the reproduction cost new less depreciation of the city's water system. Applicant applied unit costs from the San Jose study to the Park's physical plant inventory, reviewing these results against a series of estimating guides known as the Richardson Rapid Construction Estimating System. Fourteen percent (14%) was added for engineering design, surveying, supervision and indirect charges. These costs were then deflated to 1971 and 1972, using cost index numbers from water utility construction in the Pacific Region from the Handy-Whitman Indices. The

resulting 1971-72 original cost estimates were then depreciated through to the present, producing Applicant's "original cost less depreciation" net plant balance of $154,498 for the Park's water system, and $232,897 for the Park's sewer system.

The Association obtained much of its unit cost data on the installation of pipe and provision of service connections based upon contemporary 1997 installed cost estimates provided to its consultant by the general engineering contractor firm of Homer J. Olsen, Inc. of Union City, California. The consultant then deflated these costs to the 1971 time frame using some of the same guides as Applicant before applying depreciation to obtain net plant balances. In one significant detail the Association's approach differed from Applicant's. As the construction plans showed that some of the utility trenches were occupied not only by water and sewer lines, but also included gas, telephone, electric, cable television, on a judgmental basis the Association allocated common costs with water and sewer receiving the larger allocation, and the balance allocated equally to other utilities in a trench. Gate valve and fire hydrant 1971 figures were used although in some instances Richardson's Guide was used to adjust for size changes. The Association excluded the Park's backflow device. Association's final estimates of original cost less depreciation net plant balances were $41,503 for the Water System and $141,292 for the Sewer System.

Branch took a different approach. Instead of relying upon contemporary 1994 and 1997 unit costs (and then deflating these to a 1971 time frame), Branch did as ALJ Weiss had instructed during the earlier June 1997 prehearing conference, and contacted water utilities to obtain at least some 1971 historical unit costs that could be used, thus limiting the necessity of deflating. Without specification on inclusions, Branch concluded that Applicant's 14% overhead was too high, and used 10%. It also considered Applicant's estimates

of unit costs for 1994 and 1971 as being too high. Branch's estimates differed in other respects as well. It shared water and sewer 6-inch lines but excluded other utilities from these trenches. Uncertain, despite the schematic drawings provided, that the lines were actually built sharing, Branch concluded that smaller water lines may have been installed using a trenching machine rather than a backhoe and would not have shared a trench (other plans provided did not show where gas, electric, telephone and cable lines were). Branch also objected to Applicant assessing all trenching costs to both sewer and water without some apportionment since both were installed in the same trench, with sewer construction being deeper and sloped and thus more expensive. Branch's estimate of net utility plant in service was $75,215 for the water system and $159,573 for the sewer system.

The wide disparity between the estimates of Applicant, the Association, and Branch were further accentuated in the briefing of the parties as highlighted in the following:

The Association points up that Applicant's high estimates or original cost are one of the principal factors that result in what the Association considers the too high revenue request Applicant seeks. It observes that Applicant's use of the Bookman-Edmonston's $41 per foot 1994 installation cost for 6-inch PVC was not supported by any explanation of the assumptions made for the estimate. Association notes that the use of that $41 per foot installation cost carries through and serves to drive about half of the historical costs in Applicant's utility plant estimate. Association also criticizes Applicant's extrapolation from the 6-inch size to other pipe size installation costs as Applicant treated the $41 per foot cost as applicable to each utility pipe (water or sewer) standing alone with no allowance for other utilities in the same trench, although the schematics provided showed sharing. The Association's estimate

apportioned 1/3 of trenching, hauling, and back filling, etc. costs to sewer, and split the other 2/3 among the other utilities. The Association also criticizes Applicant's use of a 1% change from the index for deflation purposes, extrapolated over several years back to 1971, for installed PVC when there was no existing PVC index value back further than 1975. In the Association's view it would have been more appropriate to have used the broader averages in the Mains Average All Types Installation Index values to carry deflation back from 1975 to 1971, as the Association did.[39] Association also feels that as the water and sewer systems at issue here were constructed as the overall park was built, some economies were probably incurred and credit should be imputed to lessen these utilities' costs. Association contends that the critical 1971 installation of 6-inch PVC, all things considered, should be only $3 per lineal foot, not the $21.20 cost used by applicant, or the $7.75 cost used by Branch.

Branch, in commenting on the disparity between its estimates and those of Applicant resulting from use of different unit costs, asserts that Applicant's reliance on the Bookman-Edmonston report done in 1994 on San Jose's system was not realistic. The purpose of that report was to establish for the city, for purposes of sale of its system, the upper boundaries of replacement costs. The result, after deflation techniques were applied, was higher values than those of actual 1971 installation cost records from other utilities. It also asserts that by applying the full trenching costs to an installation of each utility, water and sewer, double counting results. The schematic drawings show that sewer lines may also share a trench with water lines. Branch notes that the connection pad costs were shared only between water and sewer although schematics show

[39] This index reflexes changes between cement, steel, and cast iron pipe. However, it does not include PVC.

that these pads were also to be used for gas and electricity. Branch would also exclude the backflow device, and objects to a 14% overhead component adopted by Applicant from the Bookman-Edmonston study, and recommends limiting overhead to 10%. Branch further asserts that the San Jose study only valued installation of 6-inch or larger pipe whereas in the Park about half of the pipe installations are of smaller sized pipe, leading Applicant to questionable extrapolations. Applicant's validation of its plant investment estimate per customer by its comparison with the investment per customer of other Commission regulated utilities, both large and small, is questioned by Branch as being inconclusive, Branch arguing that there is not any support to show that any of these other utility systems are actually comparable to Applicant's.

The Applicant contends in briefing that the Association overstates alleged deficiencies in Applicant's estimate of plant investment while understating the flaws in its own comparable analysis. It objects to allocation by Association of only 1/3 of trenching costs to sewer, leaving the rest to "other" utilities including water, stating that the depth of the sewer trench always dictates the amount of excavation, hauling, and backfill. It argues that the Association substantially underestimated excavation disposal costs, hauling, and sand backfill costs, as well as the cost of concrete blocks, so that Association's estimates are even 60 to 75% lower than the Branch estimates. Applicant denies borrowing values from the Mains Average All Types Installation Index values, as Association charges, to carry deflation of 6-inch PVC back from 1975 to 1971, when the PVC index went back only to 1975. Applicant looked to the 1975 value for PVC and extrapolated back to 1971 (However, Applicant concedes it should

have used 2% instead of 1%).[21] By its use of the All Types Average, Association took advantage of an extraordinary large annual change in costs between years 1971 and 1975, according to Applicant. In rebuttal to Branch, Applicant contends its water per customer plant investment estimate of $1,483 is well within the range of investment for other Commission regulated water utilities. Of the 36 Class C and D water companies, only 33% had per customer investments under $1,100.

b) Our Adopted Estimates

Given the widely disparate and virtually irreconcilable differences in estimates provided by Applicant, Association, and Branch of portions of utility plant in service, particularly with regard to the water lines and sewer collectors, we determined to utilize basic information provided in all three parties' testimony, and develop our own estimates for the water lines and sewer collectors plants.

Branch's expert witness testified that his cost information from two water utilities indicated that the basic 6-inch water line cost $10 per lineal foot to install in 1971. We believe this pivotal benchmark cost figure is more reliable as a base point than any cost figure that any "deflating" can produce. Accordingly, we will start from that base.

Such an installation, if it involves only a 6-inch PVC water pipe, would usually require an 18-inch wide trench, 36-inch deep (to allow for the 30-inch cover over the pipe), and is usually done with an 18-inch excavation bucket on a backhoe machine. Of this $10 installed cost, approximately $1.50 per lineal foot would represent the per lineal foot cost of the

---

[21] Adoption of a 2% factor, rather than the 1% Applicant used, only adjusts Applicant's net utility plant estimate downward by $3,000.

PVC pipe. The remaining $8.50 of the cost covers excavation, placement, backfill, and other associated costs.

While in the Park some of the line installations involved either a sewer or water line alone in the trench, the majority of the installations involved both sewer and water lines in the lower portion of the trench, with other utility lines (gas, electric, cable, and television) in the upper, more shallow portion of the trench. Where such combination installations were used, the schematic plans called for a 44-inch wide trench to a depth of 42 inches. No evidence has been provided to indicate that these plans were not followed back in 1971, and we proceed on the assumption that the plans were followed. Such a 44-inch trench would necessitate use of a standard 4 foot excavation bucket on the backhoe, and it allows for minor sloughing in the resulting trench. While the unit costs for each size utility pipe installed would remain constant, the trenching cost for this far larger than the 18-inch wide, 36-inch deep water line alone trench would have increased significantly. We extrapolated this cost for a 4 foot wide, 42-inch trench, and obtained an approximate $26.44 cost, apart from pipe costs.

The design and depth of a utility trench, regardless of its use by multiple utilities, is necessarily defined by which basic utilities are to be installed and their placement in the trench, not by the number of additional installations. Where water and sewer are the basic lines, they dictate width and depth of the trench, with the sewer line being sited at the bottom, at least 12 inches below the water line. Addition of other utility lines such as gas, electric, etc., with half or less of the depth requirements of water and sewer, and none of the horizontal spacing, can save some cost, but is not of the significance Association would accord. These other utilities are not "free riders" as Applicant argues, but their inclusion at time the basic lines are trenched does serve to lessen the trenching costs attributed to water and sewer. We have allocated 25% of the

trenching cost (including excavation, hauling, disposal and backfill without attempting to guess at quantifying differences between rocky or normal excavation) where other utility lines were added to gas, electric, cable, and television installations. Of the basic 75% of costs allocated to the water and sewer, we allocated 60% to sewer and 40% to water. For the 3 types of trenches here involved, we allocated as follows for trenching costs, exclusive of pipe:

A. 18 in wide, 36 in. deep: water or sewer only: $ 8.50/ft.

B. 48 in. wide, 42 in. deep: all utilities included:

Sewer	$11.90/ft.
Water	7.93/ft.

C. 48 in. wide, 42 in. deep: water and sewer:

Sewer	$15.86/ft.
Water	10.58/ft.

Based upon the mass of evidence and briefing, we determined that the following installations were probably those made in the Park, and used these to make cost allocations for water lines and sewer collection lines:

A. There are 215 ft. of 8-inch sewer only mains.

A. There are 1150 ft. of 4-inch sewer force main installed alone.[22]

B. There are 4943 ft. each of 6-inch sewer and 6-inch water mains combined with other utilities; mostly street areas.

---

[22] This 4-inch force main runs from the pump station at the lowest end of the park, to the connection to the City's sewer system at Delaware Avenue.

B. There are 2999 ft. each of 4-inch sewer and 1-1/2-inch water laterals, combined with other utilities, to residences.

B. There are 300 ft. each of 6-inch sewer and 1-1/2-inch water laterals, combined with other utilities, to laundry and club.

A. There are 725 ft. of 1-1/2-inch water laterals to sprinklers.

C. There are 137 ft. each of 6-inch sewer and 1-1/2-inch water laterals to pool.

A. There are 697 ft. of 2-inch water lateral to the lake.

A. There are 50 ft. of 2-1/2-inch water laterals elsewhere.

The costs of plastic pipe, whether PVC or ABS, in 1997 were readily available. In 1997, 6-inch plastic pipe cost approximately $2.55 per lineal foot whether PVC or ABS. In 1971, the cost was $1.50, an approximate difference of 70%. Applying this same differential to each pipe size used, we obtained a reasonable estimate of that sized pipe's 1971 cost. Accordingly, we used those estimates for the pipe installed in 1971

Sewer		Water	
8-inch	$2.50	6-inch	$1.50
6-inch	1.50	2-1/2-inch	0.36
4-inch	0.72	2-inch	0.24
		1-1/2-inch	0.18

Turning next to the other utility plant components, for the water system valves, and hydrants we adopted Branch's estimates as being the most reasonable. Applicant's estimate of connection costs was inflated, and

Branch's independent estimate reflected the very short service lines in the Park; the fact that meter boxes were not used, and whereas Applicant apportioned the cost of the concrete service pad between only the water and sewer services, Branch more appropriately apportioned the pad cost 4 ways since it is used for gas and electric as well as water and sewer. The different overhead allowances also impacted the estimates of the parties. We followed staff's 10% allowance for overhead. Unlike the Association and Branch, we allowed inclusion of the backflow device which the City in 1991 imposed as a requirement to continue to receive City water. It protects the City water system from potential contamination from the Park's saline water well used to maintain the level of the Park lake. The well and lake were there for 20 years before the City decided to require backflow protectors on mobile home parks that are without other water supplies. Obviously, over those prior years the well and lake were not considered a risk to the City supply. For the sewer system's components other than collection lines and the force main, Branch accepted Applicant's estimates for the connections although with a 10% overhead rather than Applicant's 14% overhead. As all parties used Applicant's original lift station, 1991 rehab, and power system valves we adopted these also.

Tables A and B which follow, set forth our adopted Estimates of Utility Plant Original Cost and Depreciation Reserve for Water and Sewer.

Table A - MHC Acquisition One, L.L.C.
Adopted Estimate of Utility Plant Original Cost and Depreciation Reserve - Water

Size	Footage	Where used	Costs For Pipe	Costs For Trench	Unit	Extend	OH	Cost Hist. 1971	Life New	Life Left	Depre Accrue	Depre Reserve
Water Lines												
6	4943	Main/All Util.	1.50	7.93	9.43	46612	4661	51263	60	36	854	20496
2-1/2	50	Water Alone	.36	8.50	8.86	443	44	487	60	36	8	192
2	697	Water to Lake	.24	8.50	8.74	6092	609	6701	60	36	112	2688
1-1/2	4161											
	2999	All Util. To Res.	.18	7.93	8.11	24321	2432	26753	60	36	446	10704
	725	Wtr to Sprinkler	.18	8.50	8.68	6293	629	6922	60	36	115	2760
	137	Wtr.-Sew-Pool	.18	10.58	10.76	1474	147	1621	60	36	27	648
	300	All Util. Club/Laundry	.18	7.93	8.11	2433	243	2675	60	36	45	1080
Valves												
6	10				60	600	60	660	30	6	22	528
2-1/2	1				25	25	3	28	30	6	1	24
2	4				21	84	8	92	30	6	3	72
1-1/2	10				18	180	18	198	30	6	7	168
Other												
	204	Services			105	21420	2142	23562	30	6	785	18840
	8	Hydrants			420	3360	336	3696	50	26	74	1776
	1	Backflow						10237	30	6	341	8184
		Meters						19919	30	27	664	1992
		Orig. Meter						3000	30	6	100	2400
								157815			3604	72552

Table B - MHC Acquisition One, L.L.C.
Adopted Estimate of Utility Plant Original Cost
and Depreciation Reserve - Sewer

Size	Footage	Where used	Costs For Pipe	Costs For Trench	Unit	Extend	OH	Cost Hist. 1971	Life New	Life Left	Depre Accrue	Depre Reserve
Sewer Lines												
8	215	Main Alone	2.50	8.50	11.00	2365	237	2602	60	36	43	1032
6	5380											
	4943	Main/All Util.	1.50	11.90	13.40	66236	6624	72860	60	36	1214	29136
	300	Main Alone	1.50	11.90	13.40	4020	402	4422	60	36	74	1314
	137	Sew/Wtr.-Pool	1.50	15.86	17.36	2378	238	2616	60	36	44	1056
4	2999	All Util to Res.	.72	11.90	12.62	37847	3785	41632	60	36	694	16656
	1150	Force Main	.72	8.50	9.22	10603	1060	11663	60	36	194	4656
Connections												
	200	Residence			127	25400	2540	27940	60	36	466	11184
	1	Club			318	318	32	350	60	36	6	144
	2	Laundry			212	424	42	466	60	36	8	192
	2	Pool House			127	254	25	279	60	36	5	120
Other												
		Orig. Lift Sta.						15000	60	35	250	6250
		1991 Rehab.						101100	20	14	5055	30330
		Power System						16000	20	16	800	3200
								296920			8853	105270

In Summary, Tables C and D which follow, show the respective estimates of Utility Plant Original Cost and Depreciation Reserve provided by Applicant, Association, and Branch as contrasted to our adopted Estimates set forth in Tables A and B. (There are minor variations in internal tallies as the exhibits of the parties reflect different practices in rounding off or carry-over into extensions in calculations that produce these variations. As at best, all are judgmental estimates, the minor differences that result are not significant as to end results.)

Table C - Water System
Comparison of Estimates of Parties and Adopted Estimate
Utility Plant Original Cost and Depreciation Reserve

	Applicant		Association		Branch		Adopted	
	Orig. Cost	Depr. Reserve	Orig. Cost	Depr. Reserve	Orig. Cost	Depr. Reserve	Orig. Cost	Depr. Reserve
Water Lines								
6 in.	119475	44784	17061	6816	42139	16856	51263	20496
2-1/2 in.	997	408	135	48	495	198	487	192
2 in.	13477	5400	1845	744	6134	2454	6701	2688
1-1/2 in.	62858	25152	9480	3792	34329	13731	37971	15192
Valves								
6 in.	1729	1392	775	624	660	528	660	528
2-1/2 in.	121	96	30	24	28	24	28	24
2 in.	415	336	96	72	92	72	92	72
1-1/2 in.	692	552	180	144	198	168	198	168
Other								
Services	64052	51312	16929	14304	23562	18850	23562	18840
Hydrants	3301	1584	3876	1872	3696	1774	3696	1776
Backflow	16237	8184	0	0	0	0	10237	8184
Meters	20720	2073	19981	1998	19919	1992	19919	1992
Orig. Meter	3000	2400	3000	2400	3000	2400	3000	2400
Total Water Sys.	301074	146673	74334	32841	134252	59037	157815	72552

Table D - Sewer System
Comparison of Estimates of Parties and Adopted Estimate
Utility Plant Original Cost and Depreciation Reserve

	Applicant		Association		Branch		Adopted	
	Orig. Cost	Depr. Reserve	Orig. Cost	Depr. Reserve	Orig. Cost	Depr. Reserve	Orig. Cost	Depr. Reserve
Sewer Lines								
8 in.	5586	23184	1667	5828	2129	852	2602	1032
6 in.	123535	49416	33355	13344	47344	18938	86522	31506
4 in.	57990	2232	14811	672	23092	9237	41632	16636
Force Main	17285	6912	7071	2832	10488	4195	11663	4656
Connections.								
Residences	29005	11592	24232	9696	27940	11176	27940	11184
Clubhouse	363	144	121	48	350	140	350	144
Laundry	242	96	121	48	466	186	466	192
Pool	290	120	242	96	279	112	279	120
Other								
Orig. Lift Station	15000	6250	15000	6250	15000	6250	15000	6250
1991 Rehab	101100	30330	101100	30330	101100	30330	101100	30330
Power System	16000	3200	16000	3200	16000	3200	16000	3200
Total Sewer Syst.	366396	133476	213720	72444	244188	84615	296920	105270

2. Water Consumption

The Park purchases its water from the City on a wholesale basis, and in turn delivers water through individual residential meters to the 200 mobile home units with the balance of purchased water, apart from some water loss, going to the Park's common facilities such as clubhouse, pool, a service equipment building, 2 laundry facilities, and landscaped areas throughout the Park.

Water purchases in the recent past were heavily skewed by an open valve that was permitting considerable fresh water from the Park system to flow into the Park's saline lakes. This problem was corrected in November 1996. Thereafter, water purchases from the City dropped from the average 32,500 Ccf taken in 1995 and 1996. Based upon Park's purchases during the first 6 months of 1997, Branch projected test year 1997 water purchases of 17,409 Ccf. The Applicant estimated 11,000 Ccf, and the Association estimated 15,753 Ccf.

The major use of the purchased water is metered sales to the 200 residential units. Applicant estimated Test Year 1997 to residents to be 10,600 Ccf (The Association's estimate is 10,571 Ccf). Noting that recorded residential use from January to September of 1997 remained consistent with recorded residential use in 1995 and 1996, Branch estimated 1997 residential use to be 10,860 Ccf. We adopt Branch's estimate.

Apart from water sold to the residents, the Park itself uses unmetered water in its fairly substantial common areas. The Applicant ascribed a mere 400 Ccf for these uses. The Association's estimate was 6,717 Ccf. Branch reached its conclusion of 5,504 Ccf for Park use by adopting what was left after subtracting the 10,860 Ccf residential sales and a 6% estimate (1045 Ccf) for unaccounted water from its total 17,409 Ccf for purchased water. (The Applicant ascribes 10% loss for unaccounted water. But considering the relatively compact and simple nature of the Park system, we concluded Branch's 6% to be more reflective of the situation existing).

3. Operation and Maintenance Expenses - Water System

Purchased water costs to Applicant for Test Year 1997 were estimated by Applicant as being a total of $25,465, while the Association estimated $35,246. Based upon Branch's estimate of 17,409 Ccf, at the City's $1.81 for Ccf commodity charge, plus meter service charges monthly of $72 and $225,

respectively for the 2 and 4-inch meters, Branch estimated purchased water costs to be $35,074. We adopt Branch's estimate.

Turning to maintenance expense estimates, while Applicant based its $2,000 estimate for repair and projected maintenance expenses upon its recorded 1995 and 1996 expenses, it produced no invoices to substantiate the asserted $1,715 expense in 1995. And the $1,297 spent in 1996 was for service to the saline well which provides salt water to the Park's lakes, not for any services to the potable water system. Accordingly, Branch estimated that potential 1997 Test Year expense for repairs and maintenance would not exceed $300. However, as Applicant on brief points out, routine expense necessarily will be incurred for leak repairs of minor nature during a year in the 200 unit residential and support facilities; there can be costs to check meters, fire flow testing costs, etc. These indicate the probable inadequacy of Branch's proposed $300 allowance. The Association's estimate was $978. We will adopt $1,000 as the repairs and maintenance estimate.

Under on-site operations, for direct labor Branch adopted the Applicant's methodology of 3 times the repairs and maintenance allowance (but applied it to the $300 Branch proposed to come up with $900). The Applicant proposed $6,000; the Association $1,686. We will adopt $2,000 for the repairs and maintenance allowance.

As to on-site management, Applicant proposed to allocate 15% of the Park's $33,350 1997 allowance for a management team, or $5,000. The Association, representing that its analysis of recorded time showed management time devoted to water utility activities amounted to only 1.3% of the total. Without these time records, Branch used Applicant's $5,000 allocation. It is in the nature of the water systems to develop problems requiring immediate local management attention at any hour of the day or night. This standby availability

has a price, even though ultimately the problem will end up being handled by contract work under corporate or regional overall supervision. Local personnel are the first line of defense. While we find Applicant's $5,000 estimate excessive and the Association's estimate of $564 too little, we conclude that $1,500 would be appropriate for on-site management costs for the water utility.

The Applicant further proposes $4,000 for annual regulatory expenses involved with preparation of annual reports and advice letters. The Association would adopt $2,500, split 50-50 between water and sewer. While the reports are annual, rate matters are held to 3-year intervals. Branch would allow $2,000 for annual water regulatory expense. We will adopt Branch's $2,000 for the water utility regulatory expense.

In summary, the adopted Operation and Maintenance Total Expense for Test Year 1997 for the water system is $41,574.

4. Operations and Maintenance Expense - Sewer System

The costs of purchased sewage treatment from the City as sought by the Applicant and estimated at $45,600 ($5,800 per month) were not contested by any party. Similarly, the estimated $3,700 to cover costs for direct materials and for the contractor charges to repair and maintain sewer collection lines and lift stations were also accepted by Branch and the Association. We accept and adopt $45,600 for purchased treatment, and $3,700 for repair and maintenance costs.

Applicant also seeks a $5,000 local management allowance. The Association would allow $700 on the basis that there was evidence that the local management handles some of the less complex repair work such as drain clearances. Branch would disallow all on the assertion that contractors perform all repair work with supervision provided from Applicant's parent corporate or regional offices.

While we also note that the major repair work is to be done by contract personnel, with most supervision from corporate or regional personnel, we also recognize that local standby management is necessary to handle lessee problems and also to arrange for contract work when needed, inspection, and local supervision for intermediate level problems as they occur. We will allow $1,500 for local management.

As to the Applicant's proposed allowance of $4,000 for regulatory expense for the sewer operation, without repeating the discussion of the same proposal set forth under O & M expenses for water, we will also adopt the same $2,000 allowance for sewer regulatory expense.

In summary, our adopted Operating and Maintenance Expense Total Estimate for the sewer system for Test Year 1997 is $52,800.

5. Administration and General Expenses - Water & Sewer

Because the administrative expenses for both utilities, apart from taxes and insurance, derive from the support provided on-site management by MHC corporate and regional offices, they are discussed on a combined basis here. The expenses these corporate and regional offices incur for the Park (including the utilities), including management decisions, oversight of local capital, contract operations, and billing and collection, are corporate support activities. A share of the expenses incurred by these corporate and regional offices is allocated to Applicant. Using a 4-part allocation methodology (involving the number of home units and parks, acreage, and property values), Applicant proposes to allocate $61,517 to the Park overall for these corporate supplied services. Of this $61,517, half, or $30,754 is ascribed to the utilities (water, sewer, gas, and electrical), with 2/3 of the $30,754 to be allocated to water and sewer ($10,300 to each). These constitute the Administrative Expenses Applicant proposes.

Both Branch and the Association take exception to the proposed allocation. Both start with the fact that December 1995 statistics were applied to MHC's 1997 budget. With MHC's recent rapid growth in the number of properties, the results asserted are skewed.

The Association developed its own 2-part allocation methodology by using the 1997 numbers applicable to parks and mobile unit sites in MHC's inventory. It obtained its estimate of MHC's corporate and regional office overhead, $34,615, which it would allocate to the Park, then, building from the Association estimates of what the Park utilities' direct labor costs, direct O & M expenses, and direct plant should be, the Association developed its own 3-factor allocation methodology incorporating Park payroll records and operating reports. From this methodology it allocated of the $34,615, 4% (or $1,446) to water and 5% (or $1,630) to sewer.

Branch, while not entirely agreeing with Applicant's methodology, adopted the methodology while using December 31, 1996 property values instead of the December 31, 1995 values used by Applicant. This resulted in an overall allocation of $56,111. Branch then allocated 60% of this $56,111 to the non-utility portions of the Park, and divided the 40% utility portion ($22,444) equally among the 4 utilities (water, sewer, gas, and electric) with water and sewer each thereby allocated $5,611.

While it is generally desirable to use a closed period of accounting information (after the books are closed and audited) to apply to a historical cost data base to form a projection, as the Applicant argues on brief in objecting to Branch's substitution of the later 1996 property values for Applicant's 1995 values, here Applicant used 1995 values with its 1997 corporate budget projections, even though its application was filed on March 12, 1997, well after the close of the 1996 books. And in this instance, as Branch notes, Applicant

had reported the 1996 values to the Securities and Exchange Commission prior to its March 12, 1997 filing with the Commission. By use of 1995 values, Applicant was able to assess a higher proportion of overhead to the Park. We do not agree, and will adopt Branch's overall $56,111 allocation.

However, we do not accept Branch's 60-40 division of this overhead between Park non-utility and utility. Utility management support, involving not only individual billing and collection activities for 200 units in the park, but also contracting and supervision of repairs, maintenance, and replacements for these utilities is at least as demanding as that required for the operations, maintenance, etc. of the non-utility functions. We adopt the Applicant's 50-50 division, and applying that division to Branch's determination of a $56,110 corporate support allocation, apply $28,055 to the 4 utility functions. As nothing has been provided in evidence to support other than an equal division amongst the 4 utilities, we allocate ¼ of $28,055, or $7,014 each to water and sewer administrative expense.

Turning next to Taxes, we note that because of the pass-through nature of Applicant (a limited liability company qualifying as a limited partnership), Applicant is not subject to federal income tax. Property taxes are estimated by the Applicant, the Association, and Branch as being 1% of each estimated net rate base value of plant for each utility. One percent (1%) of our adopted rate base for water of $98,728 is $987. One percent (1%) of our adopted rate base for sewer of $206,050 is $2,060.

Insurance is estimated at 10% of property taxes. For water insurance this would be 10% of 987 or $99; sewer insurance would be 10% of $2,060 or $206.

6. Working Cash

For small water utilities with all metered customers and monthly billing, the working cash allowance generally allowed by the Commission is 1/12 of annual operating and maintenance expense. Accordingly, for the water system we adopt 1/12 of $41,574, or $3,465; for sewer 1/12 of $52,800, or $4,400.

7. Depreciation Expense

Accrual estimates were determined by dividing the plant balance by the estimated life for each category. As the estimated lives of each category reported by Applicant were within the range in Standard Practice U-4, Branch accepted the remaining lives as do we. Differences of depreciation expense were the result of differing plant valuations. The 1997 depreciation accrual for the water system we adopt is $3,604. For the sewer system it is $8,853.

8. Depreciation Reserve

Again, differences are due to differing plant valuations. The depreciation reserve adopted is $72,552 for the water system and $105,270 for the sewer system.

F. Rate Base

The Applicant's estimate of costs to be incurred for the present rate proceeding was $20,000. They included costs for plant evaluation, legal fees, and litigation expense. The Commission allows newly organized utilities reasonable regulatory costs associated with certification. While no supporting bills, etc. were supplied, it is our conclusion that the estimate, considering the complexity of the data to be included, the litigation that followed, and legal representation involved, was very conservative. Indeed, we note that the Association in opposing the application itself estimated that Association costs would approximate $90,000. During the hearing the Association accepted the

$20,000 estimate, although it would amortize it over a 10-year period. On the other hand, the Applicant proposed to include the unrecovered charges through rate base as accumulated deferred costs. We accept the amount and adopt Applicant's approach, including $10,000 each in the water and sewer rate bases as accumulated deferred costs. Using our adopted estimates of utility plant in service, working cash, depreciation reserve, and accumulated deferred costs previously set forth above, we obtain the following rate bases applicable to water and sewer as set forth in Table E below:

Table E - MHC Acquisition One, L.L.C
Adopted Rate Base - Water and Sewer

	Water System	Sewer System
Utility Plant in Service	157,815	296,920
Working Cash	3,465	4,400
Accum. Deferred Costs	10,000	10,000
	171,280	311,320
Depreciation Reserve	72,552	105,270
Average Rate Base	98,728	206,050

G. Rate of Return

The Applicant, with emphasis on its 200 customer size, increasing costs, limited revenues, and no growth status, sought a 12% rate of return in line with the base current Class D returns being authorized by the Commission. For its rationale, it cited Re Financial and Operational Risks of Commission-regulated Water Utilities (1992) 43 CPUC 2d, 568.

The Association and Branch, relying upon Applicant's affiliation with MHC and the latter's resources, contend that Applicant more closely resembles a district of a Class A utility. Accordingly, the Association

recommends a 10% rate of return, and Branch recommended a 9.32% rate of return.

In Re Financial and Operational Risks (supra), the Commission primarily addressed the problems of small independent water utilities, noting that these, with few resources or capital, a stagnant consumer growth, inability to borrow, high operating costs per customer, scant ability to earn their authorized rate of return, a declining rate base, etc., faced financial crisis. One of the measures we adopted was to adopt a higher range for rate of return, with changes each year to reflect the current situation. This year the range of rate of return applicable to Class D water utilities has been determined by the Commission to be 12.75 to 13.75%. However, as Ordering Paragraph 4 of Re Financial and Operating Risks (supra) states, "Rate of return may be set at a level above or below this range if facts so warrant in a particular rate case." While Commission policy and Applicant's small consumer base places Applicant in the Class D category, its water and sewer utilities are not entirely reflective of the small investor owned, independent utility entity whose problems were the focus in Re Financial and Operating Risks (supra). The utilities here at issue are not without capital, managerial, and operating resources, and they face few of the operating problems of the small independent utilities of the decision. With simple systems, access to water supplies and sewage disposal sources, with reasonable managerial efficiency they should face little difficulty in achieving their authorized rates of return. Both the water and sewer systems will be authorized a 10.2% rate of return.

H. Summary of Earnings - Requested/Adopted - Water & Sewer

Table F sets forth the respective requested and adopted Summary of Earnings for the water and sewer systems of Applicant.

Table F - -MHC Acquisition One, L.L.C.
Summary of Earnings

	Water Utility		Sewer Utility	
	Requested	Adopted	Requested	Adopted
Total Revenues	93100	63337	105600	92025
Operating Expenses:				
Purchased Water	24378	35074		
Sewage Treatment			45600	45600
Maintenance & Repairs		1000		3700
Direct Labor	17000	2000	12700	
On-Site Management		1500		1500
Regulatory Expenses		2000		2000
MHC Support	10300	7014	10300	7014
Insurance		99		206
Property Taxes	2800	987	2600	2060
Depreciation	6300	3604	4700	8853
Total Expenses	60778	53278	75900	70933
Net Income	32378	10059	29700	21092
Rate Base	268990	98728	247550	206050
Rate of Return	12%	10.2%	12%	10.2%

I. Rate Design - Water

Despite Applicant's small Class D water system, and that system's singular status as a water utility in MHC's California corporate family, both the Association and Branch would have us impose a Class A rate design on Applicant, allowing recovery of only 50% of fixed costs through the service charge. Applicant, asserting its Class D size under Commission definitions, seeks a 100% recovery through the service charge.

In Re Water Rate Design Policy (1986) 21 CPUC 2d 158, noting that low service charges vis-a-vis fixed costs leave water utilities extremely dependent upon sales, and thus vulnerable to weather fluctuations, with impaired ability to earn their authorized rate of return, the Commission adopted industry and staff recommendations for a statewide policy allocating a higher percentage of fixed costs to the service charge. Initially, the policy goal set by that decision was 50%. Ordering Paragraph 4 as relating to fixed charges included: maintenance, transmission and distribution, customer accounts (exclude uncollectibles), administrative and general, rent, depreciation, property tax, and gross return on rate base expense. However, 6 years later, in Re Financial and Operational Risks (supra) the Commission revisited its goals, and adopted Branch's recommendation that Class D water utilities be permitted to recover up to 100% of fixed costs in the service charge. The Commission noted that small water utilities face capital investment risk, and increased recovery of fixed costs can mitigate that risk, making the small entities more attractive for capital improvement loans and equity investment. As water commodity rates decline as fixed costs are transferred to the service charge, the effect on most ratepayers is negligible.

Total water purchases were adopted at 17,409 Ccf/year. Total revenue required was adopted at $63,337. In concept, as a Class D water utility,

we place 100% of the fixed costs of the water utility in the service charge, allocated between the metered residents and the park customer who is unmetered, based upon each's estimated use of "accounted for" water (16,364 Ccf of the 17,409 Ccf purchased). The 1,045 Ccf of "lost" water is allocated on the percentage of use of accounted for water by residents and the park; 66% to residents and 34% to the park.

As the fixed costs of the utility total $26,263, these will be recovered through the service charge: 66% or $17,334 from the residents (individual resident charge 1/200 of 17,334 or $7.22/mo.); and 34% or $8,929 from the park (monthly park service charge of $744).

After recovery of the $26,623 from the service charge, there remains $37,074 to be recovered from the commodity charge. At a commodity charge per month of $2.25/Ccf, the residents' estimated 10,860 Ccf (905 Ccf/mo.) will produce $24,435, while the park's estimated 5,508 Ccf (459 Ccf/mo) will produce $12,386; substantially the required revenues including "lost" water.

A comparison of the Applicant's requested rates and those we adopt follows for both the metered residents and the unmetered park customer:

	Metered Residential		Unmetered Park
	Requested	Adopted	Adopted
Service Charge	$22.40/mo.	$7.20/mo.	$744/mo.
Commodity Charge	3.37/mo.	2.25/Ccf/mo.	2.25/Ccf/mo.

Based upon a mean average use of 5 Ccf per month, a typical resident's bill would be $18.45 exclusive of any taxes or fees.

The Tariff Schedules for the water system to be filed and adopted by Applicant are attached to the Order that follows as Appendix A.

J. Rate Design - Sewer

The adopted total sewer revenues required were determined to be $92,025. Although while not only the 200 home sites, but also the laundries, clubhouse and pool house have sewer connections and also are discharging to the Park sewer collection system, the City bills its sewer charges to the Park on an assumed basis of 200 connections. Applicant would accordingly allocate the entire sewage collection revenue requirement to the 200 residents. We disagree.

We assume that water delivered to both the residents and to the Park's common facilities other than landscaping and to the pool, is water that ultimately ends up being discharged to the sewage collection system, and that those using it en route should bear the costs of the system.

In allocating water consumption we estimated 10,860 Ccf to the residents and 5,504 Ccf to the park, with 1,045 Ccf lost. But, as witness for the Association pointed out, between 1,438 Ccf and 4,315 Ccf of the Park's 5,504 Ccf allocation probably went to landscaping needs. With no way to quantify this, we will arbitrarily assume that 3,000 Ccf was used for landscaping and thus did not enter the sewer system. Accordingly, we will apportion the sewer system revenue requirements, computed on our 10,860 Ccf (78%) for residents and 3,000 Ccf (22%) for the Park, to allocate $71,779 to the residents, and $20,246 to the Park.

A comparison of requested on-going and adopted sewer rates for the residential customers, and the adopted sewer rates for the Park shows:

Residential		Park as Customer
Requested	Adopted	Adopted
$42.24/mo.	$29.91/mo.	$1687/mo.

The Tariff Schedules for the sewer system to be adopted by Applicant as applicable for sewer service to the residents and to the park usage is attached as Appendix B to the Order that follows.

K. Interim Rates

While Applicant requested the Commission to order the imposition of interim rates to be subject to refund pending the authorization of "on-going rates," the Commission has not done so. This proceeding, involving the application of a mobile home park heretofore actively seeking exemption from any Commission regulation, most recently pursuant to PU Code 2705.5 provisions, is one of first impression, and the complexities involved made it impractical and uncertain to impose untested and obviously high rates upon the possibly future public utility customers.

Comments on the Proposed Decision of the ALJ

In accordance with provisions of PU Code § 311 and Rule 77.1 of the Commission's Rules of Practice and Procedure, the Proposed Decision of ALJ Weiss was issued on November 19, 1998. Timely comments were filed by the Applicant, the Association, and Branch. A reply comment was timely filed by the Applicant.

While disagreeing with the refusal to authorize a 12% rate of return, the Applicant notes that a factual record does exist upon which rates have been adopted, and concluded that it cannot contend that legal error is reflected. Accordingly, it asks that the Proposed Decision be adopted by the Commission.

The Association essentially reargues its hearing and briefing position that all ownership and operating costs for the in-Park utility systems are recovered through rent. But, as set forth in the Proposed Decision, unbundling of rent and utility charges was accomplished in August 1993. It was not until March of 1997, that Applicant abandoned its exemption status, dedicated its systems, and

applied for public utility recognition, control, and regulation. Meeting the statutory and State Supreme Court dedication tests, the systems are public utilities and must be recognized as such. The Commission has exclusive jurisdiction thereafter to determine and regulate the rates of these public utilities. Its ratemaking authority may not be preempted by local ordinances or by a local rent control body. As the Court of Appeals in its decision noted, the City's hearing officer did not have power or authority under Civ. Code Section 798.41 to establish rates the Applicant can charge for the future, once the unbundling provisions of the section were fully complied with, as concededly, here they were. And it has long been established, as the Proposed Decision states, that a public utility is entitled to recover reasonable costs of operations, and a return on its investment. The rates herein set include these components.

Association's arguments that there is no necessity to confer public utility status on Applicant, and that to do so results in increased costs to the tenants were fully addressed by the Proposed Decision and need not be repeated here.

The comments by Branch also reargued its position at the hearing and in briefing that there was no necessity for certification, and that there was no source of water supply guaranteed since the City source has no resale tariff (even though it has sold the Park water for resale since August of 1993). As these contentions were adequately addressed in the decision, there is no need to readdress them here. However, Branch did disclose a technical error that has been corrected. Section G, Rate of Return, and Finding of Fact 52 contain typographic errors setting forth the rates of return for both the water and sewer systems as 10.0%. As set forth in Section H, Summary of Earnings, and as reflected in Sections I and J, Rate Design-Water and Sewer, calculations, and the resulting Appendix Tariff Schedules, the adopted rate of return is 10.2%.

Findings of Fact

1. Park is a mobile home park owned and operated today through subsidiaries and affiliates of MHC.

2. Park owns and operates a water distribution system and a sewer collection system within the confines of the park serving the approximate 200 park tenants and the parks' service facilities and landscaping.

3. Since construction of the Park in 1971, water for its proprietary water distribution system has been purchased wholesale from the municipal water utility owned and operated by the City of Santa Cruz. Similarly, sewage collected by the Park's proprietary sewer collection system has been discharged to the municipal sewer collection and treatment system owned and operated by the City.

4. Prior to August of 1993, unmetered water service and sewage collection service to and from the Park's tenants were furnished as included in the overall rent charge to a tenant by the Park.

5. Park has been and continues to be subject to the rent control provisions of the City of Santa Cruz's Mobile Home Rent/Sale Stabilization Law.

6. In partial response to pressures from mobile home park operators who were encountering difficulties in recovering the rising costs of provision of utility services to their tenants in rent control jurisdictions, the Legislature in 1990 enacted (and amended in 1992) Civ. Code § 798.41.

7. Civ. Code § 798.41 provides for separation of utility charges from rent if certain rent reduction provisions are complied with, and removes power or authority from the rent control entity to set or limit the rates for submetered utilities for the future.

8. Park submetered its proprietary water distribution lines to its tenant units, and as of August, 1993, reduced its rents in compliance with provisions of

Civ. Code § 798.41, and began separate billing of water and sewer to its tenants under its literal interpretation of PU Code § 2705.5 in its effort to retain its mobile home park exemption from Commission jurisdiction, control, and regulation.

9. Park's implementation of its literal interpretation of PU Code § 2705.5 resulted in an approximate $1,500 per month return to the park over and above its costs to the City system for purchased water.

10. Tenant objections to Park's charges resulted in proceedings before the rent control entity and an appeal to Superior Court, with the result that Park was essentially limited to a "pass-through" recovery of the City's wholesale charges to Park for water. Park thereupon appealed the Superior Court decisions.

11. Park's position is that the over and above "pass-through" recovery on the water system merely compensated Park for its costs to operate the proprietary internal park system; provided a return on its investment; and also provided a depreciation reserve for replacements; but these assertions were not presented to the Hearing Officer or Superior Court.

12. Despairing of any economically feasible resolution under the court's interpretation of PU Code § 2705.5, Park's new corporate parent MHC determined to proceed as a public utility, and caused organization of a limited liability subsidiary, Applicant, to own and operate the water and sewer proprietary systems under Commission jurisdiction, control, and regulation.

13. On March 12, 1997, the Applicant filed A.97-03-012 consistent with the provisions of PU Code § 1001, for a Certificate of Public Convenience and Necessity, and requested interim and on-going cost based rates for the utility services provided. The Applicant, in submitting the application, specifically stated it was "using property that is hereafter dedicated to public service."

14. A.97-03-012 was protested on April 11, 1997 by the Associations, followed on June 6, 1997 by the Association Motion to Dismiss the Application; a motion supported as of June 13, 1997 by Branch.

15. Prior to March 12, 1997, the fundamental issue between the Park (and the MHC corporate family) and the Association was whether or not the Park's charges for water after August 1993 were lawful under rent control restrictions, Civ. Code § 798.41, and/or PU Code § 2705.5 (the issue then before the Courts). After March 12, 1997, the issue is whether or not the Commission was in any way precluded from consideration of whether or not it could or should issue a certificate to Applicant to operate public utility water and sewer systems for compensation within the Park.

16. The Association's 6/2/97 Motion to Dismiss fails to demonstrate that the application presented no triable issues of fact. In that under the changed circumstances after Civ. Code § 798.41 unbundling, the Applicant has elected to abandon Park's PU Code § 2705.5 exemption from public utility status; has explicitly "dedicated" its systems; and has submitted itself to the Commission's jurisdiction, the application leaves it to the independent duty of the Commission to determine if the Commission is in any way precluded from considering or granting certification if the Applicant shows it meets all statutory and judicially mandated requirements.

17. The Association's 7/25/97 Notice to Claim Intervenor Compensation showed that the economic interest of an individual member exceeded that individual members share of the estimated cost of the Association participation in this proceeding.

18. Looking to the Legislative history behind PU Code § 2705.5, the Appeals Court decision issued March 20, 1998, determined that the PU Code section had merely codified prior regulatory practice of the Commission in exempting from

public utility status and regulation mobile home parks that merely passed through supplier charges to their tenants, so that Park not having public utility status, and charging tenants more than a "pass-through" purportedly under color of PU Code § 2705.5, had under Civ. Code § 798.41 effected an unlawful rent increase as found by the rent control agency.

19. The Appellate Court March 20, 1998 decision further concluded that the municipal rent control agency under Civ. Code § 798.41 lacked jurisdiction after unbundling of rent and utility charges has been accomplished, to set or limit future rates that the Park might charge for submetered water service, and that the question of what rates the park could charge to recover costs of its internal distribution system had not been before the Hearing Officer or the Court.

20. The application and evidence submitted during the hearing on the application present with reasonable certainty both the technical competence and financial ability of the Applicant and its associated or affiliated corporate entities under MHC to continue successful operation of the in-park water and sewer systems under public utility jurisdiction, control, and regulation.

21. As long as Applicant continues to comply, as its predecessors have in the past, with reasonable rules and regulations of the City owned and operated water supply and sewage disposal facilities, it is reasonable to expect that these City facilities will continue their supply and disposal services.

22. The Commission has long used original cost of the utility plant and additions thereto, less accumulated depreciation, as the basis for the rate base to be used in the ratemaking process.

23. In the present proceeding, original cost records relating to the water and sewer systems constructed in the Park in 1971 were few in number.

24. Because of the few original cost records still available, a present plant inventory was prepared by Applicant's consultant for both the water and sewer

systems from construction plans, discussions with park personnel, and field sampling. This present plant inventory was adopted by Applicant, the Association, and Branch.

25. Applicant, the Association, and Branch obtained estimated 1971 costs to install the water and sewer systems differently: Applicant used a 1994 replacement cost study for the City of San Jose as its benchmark, deflated these costs to 1971-72, and depreciated the results to 1997; the Association used 1997 installed costs estimates provided by a general engineering contractor, deflated these to 1971, and depreciated the results to 1997; Branch obtained some 1971 historical costs for typical installations in 1971 from 2 large water utilities, and depreciated these to 1997. Different overhead percentages were applied by all 3 parties.

26. Applicant's estimate of original water and sewer plant less depreciation were respectively $154,401 and $232,920; compared to the Association's $41,493 and $141,276; and Branch's $75,215 and $159,573.

27. Major differences in the parties' estimates centered in Applicant's use of Bookman-Edmonston's $41/lineal foot 1994 installation cost for 6-inch PVC (which drives about ½ of the costs) although about ½ of the installations are of lesser size pipe; Applicant's failure to allow for sharing of trenches with different utilities; the parties differing extrapolation methods in using indices; different excavation, disposal, and backfill costs, and different overhead allowances.

28. Branch's cost estimate of $10/lineal foot installed for 6-inch PVC is adopted by the Commission as the benchmark, with $1.50 of that total allocated to the cost of pipe.

29. The majority of the utility trenching, as depicted by the exhibit schematics, indicates multiple use trenching by the utilities including water and

sewer, and as reflected by the type utility line and its placement. Our allocation of respective costs is a reasonable estimate to be used.

30. The distribution of pipe to the respective utility utilization, with cost allocations for water and sewer lines, is a reasonable estimate to be used.

31. Our 70% extrapolation of present pipe costs to attain a 1971 cost for different sizes used is a reasonable estimate.

32. The 10% overhead allocation used by Branch is reasonable and was adopted in the Commission's computations.

33. The estimates obtained and as depicted in Tables A and B of Utility Plant Original Cost and Depreciation Reserve for water plant of $157,815 and $72,552, and for sewer plant of $296,920 and $105,270, as well as of each element thereof, represent a fair and reasonable determination of Original Cost and Depreciation Reserve.

34. Records for the first 6 months of total Park water purchases, after correction of the open valve problem in November 1996 reflect current conditions, and from these Branch projected its Test Year 1997 purchase estimate of 17,409 Ccf, which is used in the Commission's consumption and cost estimates.

35. Recorded residential water usage January to September of 1997 remained consistent with recorded residential use in 1995 and 1996, and formed the basis for Branch's Test Year 1997 10,860 Ccf estimate for residential use which is reasonable.

36. The 1,045 Ccf (6% of 17,409 Ccf) estimate for water loss (unaccounted for water) determined by Branch, is reasonable in view of the relative youthful age of the water system and its simplicity.

37. The Park's use of water for its in-park facilities is unmetered, and therefore allocation of the remaining water purchases after deduction of known residential use and reasonable water loss is reasonable allocation.

38. In the absence of production of any records to substantiate repair and maintenance expense, but recognizing the inevitable minor repairs that attend any water system, an allowance for $1,000 for Test Year 1997, and an allowance of $2,000 for direct labor costs is reasonable.

39. Applicant's proposed allocation of 15% of the cost of the Park's management team to the water system is not sustainable in the face of available time records of past actual application; a more sustainable allocation of $1,500 to cover possible requirements is reasonable.

40. Branch's allocation of $2,000 each for annual regulatory expense is reasonable for both water and sewer systems.

41. The Operations and Maintenance expense for the water system of $41,574 for Test Year 1997 is reasonable and should be adopted.

42. The cost of purchased sewage disposal and treatment of $45,600 was not contested by any party, as was the estimate of $3,700 for direct materials and labor; both were adopted in the Commission estimates as sustainable estimates.

43. While contractors engaged and supervised by corporate affiliates will handle major repairs, some local standby management is necessary, and the allowance of $1,500 is reasonable for sewer local management.

44. The Operations and Maintenance expense for the sewer system of $52,800 for Test Year 1997 is reasonable and should be adopted.

45. Administrative expense for both the water and sewer systems, apart from taxes and insurance, derive from the support services to be provided by the MHC family, so that a share of the costs of these corporate offices is allocated to Applicant. Using Applicant's allocation methodology, but substituting more current December 31, 1996 property values rather than Applicant's December 31, 1995 values (which older lesser values tended to inflate the base to be allocated), Branch calculated a total $56,111 allocation to the Park.

46. The Administration and General Expenses for water of $8,100, and for sewer of $9,280 are reasonable and should be adopted.

47. An equal division of the MHC corporate expense allocation between the Park's utility and non-utility operations is reasonable, as is an equal division of the utility allocation between the four utilities, which results in an allocation of $7,014 each to water and sewer operations.

48. The adopted estimates, previously summarized and discussed herein, of operating revenues, operating expenses, and rate base for the Test Year 1997 reasonable represent the cash expense required for Applicant's future operations.

49. The adopted working cash allocation follows the Commission practice relative to small, all metered, monthly billing water utilities of allowing 1/12 of each system's annual operating and maintenance expenses.

50. Computation of the Depreciation Reserve and Depreciation Expense follows Commission practice; the differences obtained by all parties are due to their differing plant valuations.

51. In accord with Commission practice to allow newly organized utilities recovery of reasonable regulatory costs associated with certification applications, the allowance adopted here takes into account the complexity of this application process, and split the $20,000 allocation, $10,000 each to water and sewer.

52. Notwithstanding the fact that by definition Applicant's systems are Class D systems, the proposed rate of return of 12% for each is excessive. Considering the compactness, limited scope of the complexity of the systems, and that Applicant is not without significant capital, managerial, and operating resources from its parent, a rate of return for the present of 10.2% for each system is reasonable, and balances the interests of the residents while providing Applicant a reasonable return.

53. The adopted Summaries of Earnings set forth in Table F for Test Year 1997, setting forth Revenues and Operating Expenses at adopted rates on the respective rate bases set forth in Table E, reasonably indicate the results of Applicant's operations which can be expected.

54. The adopted rate design set forth in Appendix A reflects just and reasonable rates for this water system and should be authorized.

55. The adopted rate design set forth in Appendix B reflects just and reasonable rates for this sewer system and should be authorized.

56. Because of the first impression nature of the application, and the complexities involved in its resolution, the Commission's action in not establishing interim rates subject to refund as requested by Applicant in its application was reasonable.

Conclusions of Law

1. Park's proprietary water and sewer systems within the confines of the park were a "water system" and a "sewer system" as defined by PU Code §§ 240 and 230.5, respectively.

2. As the proprietor of water and sewer utility systems not otherwise dedicated to public use, and with delivery of those services being only to its tenants on its property, park's provision of these services without compensation prior to August of 1993 did not serve to constitute the systems public utilities within the jurisdiction, control, and regulation of the Commission (Story v. Richardson (1921) 186 C.162).

3. Following the August 1993 separation of rent and utility charges as provided by Civ. Code § 798.41, and Park's subsequent collection of compensation for provision of these services, the water and sewer operations by Park met the statutory definitions of a "water corporation" and "sewer system corporation" as stated by PU Code §§ 241 and 230.6, respectively as well as the

statutory definitions of a "public utility" provided by PU Code §§ 216(b) and 2701.

4. A.97-03-012 meets the "dedication" tests set forth in S. Edward Associates v. Railroad Commission (supra) and Cal. American Water & Tel. Co. v. PUC (supra).

5. The ALJ's June 27, 1997 ruling denying the Association's Motion to Dismiss the Application was appropriate in that the motion did not meet its burden of showing that there were no triable issues of fact, or that the Commission was legally precluded from consideration of the application.

6. As the Association, in its Notice to Claim Intervenor Compensation, failed to demonstrate "significant financial hardship" as that term is defined in PU Code § 1802(g), the ALJ's preliminary ruling finding the Association ineligible at the time pursuant to PU Code § 1804(a)(2)(B) was appropriate and should be ratified by the Commission.

7. Nothing in the decision of the Sixth Appellate District of the Court of Appeals issued March 20, 1998 in any manner precludes the Commission from consideration of Applicant's application seeking a Certificate of Public Convenience and Necessity to serve the Park area with public utility water and sewer services for the future.

8. The ultimate question of what fees and charges may or may not be assessed, beyond external supplier pass-through charges, for in-park facilities when a mobile home park does not adhere to the provisions of PU Code § 2705.5, must be decided by the Commission.

9. Should a mobile home park elect to dedicate its in-park facilities, seek, and be granted a Certificate of Public Convenience and Necessity, both the park and its tenants obtain access to the well established procedures of the Commission for

the park to recover its reasonable and just costs relative to the in-park distribution facilities, and for tenant to obtain a forum for complaints.

10. Given the widely disparate and virtually irreconcilable differences in the estimates of the parties in this proceeding, the determination by the ALJ to proceed to develop his own estimates of utility plant original cost and depreciation reserve, using basic information provided by the application, exhibits, and testimony of the parties, was reasonable.

11. Because of the pass-through nature of Applicant as a limited liability company qualifying as a limited partnership, Applicant is not subject to federal income tax.

12. The application should be granted to the extent provided by the order that follows, the adopted rates and charges being just, reasonable, and non-discriminatory, and Applicant should be authorized to file the rates set forth in Appendices A and B.

13. Because there is an immediate need for rate relief, and as interim rates were not authorized, the order that follows should be made effective immediately.

O R D E R

IT IS HEREBY ORDERED that:

1. A certificate of public convenience and necessity is granted to MHC Acquisition One L.L.C. (Applicant) to operate the existing in-park water distribution and sewer collection systems as public utilities within the confines of the De Anza Mobile Home Park (Park) in Santa Cruz, California.

2. Applicant is authorized and directed to file with this Commission, after the effective date of this order and in conformity with General Order (GO) No. 96-A, the schedules of rates and charges shown in Appendices A & B attached hereto,

and upon not less than five days' notice to the Commission and to the residents of the Park and the Park's management, to make said rates effective for service rendered hereafter.

3. Within sixty days after the effective date of this order, Applicant shall file with the Commission, in conformity with GO 96-A, a tariff service area map applicable to the area certificated.

4. Within sixty days after the effective date of this order, Applicant shall file for each system a comprehensive map, drawn to an indicated scale not smaller than 100 feet to the inch, delineating by appropriate markings the tract of land and territory certificated herein for each utility system, the principal water distribution facilities and sewer collection facilities, and the location of the various system properties of Applicant used to provide service.

5. Beginning immediately and for future years, as long as the systems are used to render service, Applicant shall determine depreciation expense by multiplying depreciable utility plant by the same depreciation rate factors as were used in Tables A and B in the opinion portion of this order. Applicant shall review the depreciation rate, using the straight-line remaining life method, when major changes in utility plant composition occur and at intervals of not more than 5 years, and shall revise the above applicable rates in conformance with such reviews. Results of these reviews shall be submitted to the Commission.

6. Within 90 days of the effective date of this order, Applicant shall effect legal transfers to itself of the water and sewer systems herein described from the present MHC corporate entity or entities holding title to the systems and their facilities, and shall file with the Commission a copy of each appropriate document showing such transfer; it being understood that notwithstanding the transfer prices, rates for the present and future will be based upon the rate bases determined by the Commission.