

ORDINANCE NO. 77-1

AN ORDINANCE OF THE CITY OF BEACH CITY PRESCRIBING RULES AND REGULATIONS UNDER WHICH LOCAL UTILITY SERVICE SHALL BE FURNISHED, SERVICE RENDERED, AND RATES AND COMPENSATION CHARGED BY BAYRIDGE MAINTENANCE COMPANY AND ROBERT E. NESMITH'S SUNFLOWER SEWAGE TREATMENT PLANT.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BEACH CITY, TEXAS:

SECTION I.

EFFECTIVE DATE

From and after the date of the passage and approval of this Ordinance, the rules and regulations contained herein shall be and remain in full force and effect as between the City of Beach City, hereinafter referred to as "City" and the Bayridge Maintenance Company and Robert E. Nesmith's Sunflower Sewage Treatment Plant operating within the City of Beach City, hereinafter referred to as "Utility".

SECTION II.

GENERAL DEFINITIONS

A. "City Council" means the lawfully established governing body of the City of Beach City, Texas.

B. "Allocations" means for all utilities, the division of plant, revenues, expenses, taxes and reserves between cities or between cities and unincorporated areas, where such items are used for providing utility service for more than one city or for a city and unincorporated areas. Examples or items subject to allocation include general office buildings, general administrative expenses, and income taxes.

SECTION III.

DEFINITION OF STATUTORY RATE BASE

A. Fair Value. Utility rates shall be based on the fair value of property used and useful in providing service. "Fair Value" shall be a reasonable balance between original cost less depreciation and replacement or trended cost less an adjustment for both present age and condition. The adjustment for both present age and condition shall not be a lesser percentage of replacement



or trended cost than book depreciation is for original costs.

B. Balance Between Original Cost and Replacement Costs.

Unless otherwise determined by City, "reasonable balance" shall mean 69.6% weighting of original cost less depreciation and 30.4% weighting of replacement or trended costs less adjustment for both present age and condition. In City's determination of reasonable balance, it may consider inflation, deflation, quality of service being provided, growth rate of service area, and need for Utility to attract new capital.

C. Deduction. In arriving at fair value rate base, deductions shall be made for: (1) contributions in aid of construction, and (2) deferred liabilities such as deferred income taxes and investment tax credit, representing interest free capital.

D. Rate Base. When requesting a change in rates Utility shall treat, for rate base purposes, the following items as indicated.

1. Construction work in progress-shall not be included in rate base.
2. Plant held for future use-shall not be included in rate base.
3. Materials and supplies-a reasonable balance may be included in rate base unless funds sufficient for such purposes have been provided by ratepayers through advance payment for service, tax accruals or other means.

City may, in consideration of local circumstances, require or permit, by specific action, treatment of the three items enumerated above in such other manner it considers appropriate. City may include or exclude other items from the rate base for reasonable cause.

#### SECTION IV.

##### REPORTING REQUIREMENTS

A. Information to be filed. Utility shall file annually with the City Secretary of City of a complete balance sheet and operating statement. Such balance sheet and operating statement shall cover the local service area of Utility and shall be appropriate for City's use in reviewing local operations and in setting service rates. Such material shall include a statement of the

total number of customers by classes served within City and within the service territory covered by the operating statement; shall cover the fiscal year of Utility unless some other fiscal period shall be approved by City; and shall be filed with 120 days after the close of said period. In addition, Utility shall file:

- (1). A cost of service report and operating statement for City or such other service area appropriate for establishing local rates;
- (2). Copies of statistical and operating reports filed with other regulatory agencies such as the Public Utilities Commission, Texas Water Quality Board or the Federal Environmental Protection Agency;
- (3). A copy of annual and interim reports prepared for release to stockholders; and,
- (4). Such other reports or special information as may reasonably be required by City for supervision of Utility and for the regulation of local rates and service.

B. Change in Rates. In connection with consideration of a change in basic rates, Utility shall furnish to City such information as is reasonably required for City to evaluate and determine the rate base, operating income and expenses, and a fair rate of return, the burden of proof being with Utility. In addition, Utility may file, and shall file if requested by City, schedules of present and proposed rates, analysis of customer bills or such other information necessary for the verification of revenue effect of proposed rates, schedules of rates in other jurisdictions, and such other information City may reasonably request for a full and fair consideration of a change in rates or service. If appropriate for a fair determination of local rates, City may consider a service area beyond its city limits and may require information thereof from Utility.

C. Test Year. Any future requests by Utility for rate increases shall use as their "test year", the fiscal year of Utility and shall be based upon financial information pertaining to such fiscal year.

D. Certification. City hereby requires that information furnished by Utility to City be supplied under oath by an appropriate official of Utility as to correctness, authenticity and adherence to accepted practices or recognized standards. In regard

to a request by Utility for a change in rates, City hereby requires that such material filed in connection therewith that relates to Utility's set of books be audited by a Certified Public Accountant.

E. Standards. City may associate and contract with other cities and the Texas Public Utility Commission to adopt standard financial reporting forms, uniform standards of service, conditions of service, deposit requirements, etc. City may require Utility to use or follow such standards developed in an association of cities or may require Utility to use or follow such other standards or requirements as may be reasonably appropriate.

#### SECTION V.

##### EXPENSES

A. All reasonable and necessary expenses of operating Utility shall be allowed in the determination of net operating revenue. Expenses included in annual reports or other reports to City shall be actual expenses recorded on Utility's books. When filing for a rate increase, Utility shall show actual revenue and expenses recorded on books and adjustments necessary in order to properly present net operating revenue for the period under review. Depreciation expense shall be based upon original cost and not upon other measures of value of assets.

B. City may exclude charitable contributions, advertising expenses, and other expenses not reasonably related to Utility's operations. City may also question other expenses and if Utility fails to prove that these expenses are reasonable and necessary, then such expenses can be disallowed for rate making purposes.

#### SECTION VI.

##### RATE OF RETURN

Utility shall be entitled to a fair return upon the fair value rate base. The rate of return shall be based on Utility's actual cost of debt capital, a reasonable cost of equity capital, and shall not exceed eight per cent.

## SECTION VII.

### PROCEDURAL RULES

A. Expenses of Rate Cases. City shall have the right to select and employ rate consultants, engineers, accountants, auditors, attorneys and other personnel to conduct investigations, present evidence, advise the Council, and conduct litigation on the establishment of rates, charges or fares; Utility shall reimburse City for all such personnel costs and all other reasonable and necessary expenses incurred; and such rate consultants, engineers, accountants, auditors and attorneys shall be qualified, competent, and of good standing in their professions.

B. Notice of Intent to File General Rate Proceeding. Utility shall file notice of its intent to seek a general rate increase at least thirty (30) days before filing of its application. Such notice of intent shall detail proposed increases and shall be published in a newspaper of general circulation in the city of Beach City, Texas, during such notice period at the expense of Utility.

C. Ex Parte Contacts with City Councilmen. After giving notice of intent to file a general rate proceeding, no officer, employee, agent or representative of Utility shall have any contact or discussion, verbal or written, with the Mayor or any member of the City's governing body regarding an increase in rates, or directly or indirectly through others, seek to influence any City Councilman regarding any such increase, except through the application and public hearing process provided for herein.

D. Rules of Procedure. City may adopt rules of procedure for public hearings, including extent and nature of presentations, order of proceeding and extent of cross-examination.

E. Records of Utility. Copies of requested records shall be promptly provided to any designated representative of City without cost to City.

F. Hearings. No general rate increase shall be granted without public hearing at which Utility shall have burden of proving, through clear and convincing evidence, the necessity for such increase.

All hearings may be before the full City Council. At the discretion of the Council, in each case, Council may provide that hearings shall be conducted before a committee of the Council, a hearing examiner who may be an employee of City, any person designated by the City Council to act in such capacity, or an independent panel of citizens designated by the Council. A record shall be made of all hearings at the expense of Utility. In the event the full Council does not conduct the hearings, a written report and recommendation from the committee, examiner or panel shall be filed with the City Council together with the record from such hearings. In such latter case, the Council need not conduct further hearings, but may act on the basis of such report, recommendation and record together with any written argument which any citizen, the Utility, Utility representative, designated City staff member, auditor, attorney or consultant engaged by City may wish to file (within fifteen (15) days after filing of said report) in response to such report, recommendation and record.

G. Evidence. All testimony at such public hearings shall be under oath and all exhibits or documentary evidence introduced at such hearings may be supported by sworn testimony. For this purpose, oath may be administered by appropriate parties conducting the hearing.

H. Time Limitations. City shall promptly review and take action on each application for a general rate increase within ninety (90) days after its filing. Failure to act within such period shall be tantamount to a denial. In the event of such failure to act, Utility may appeal such decision as provided by law. Such ninety (90) day period may be extended through agreement with Utility, or in the event the City Council finds good cause for such extension. Good cause for extension shall include, but not be limited to, complexity or magnitude of the evidence, failure of Utility to promptly provide information requested and newly discovered evidence.

I. Council Ordinance. The Ordinance of City shall provide for an effective date of any rate revisions, may require an unqualified acceptance by Utility within a stipulated period as a condition



precedent to any rate revisions therein becoming effective and may provide for a moratorium of twelve months from the date of such Ordinance before the next application for a general rate increase within City may be filed by Utility.

J. Appeal. Utility may appeal such City Ordinance as provided by law. City shall certify as to the validity of the record, ordinance, written arguments, reports and recommendations which were before the City.

K. Standards of Service. City may promulgate reasonable standards of service and requirements for extension of facilities. Failure to substantially comply with such standards, considering the revenues and expenses of Utility, may justify a lower rate of return being granted to Utility. City's Rate Ordinance may provide for increases subject to the meeting of such standards or making certain extensions of facilities.

L. Minor Revisions. City may provide procedures for tariff filings or revisions to rates for services other than basic services which may vary from the above procedures prescribed for general rate increases.

#### SECTION VIII.

##### SEVERABILITY CLAUSE

If any section, sentence, clause or phrase of this Ordinance is for any reason held to be illegal, ultra vires or unconstitutional, such invalidity shall not affect the validity of the remaining portions of this Ordinance. All existing Ordinances and agreements and parts or Ordinances and agreements in conflict herewith are hereby repealed only to the extent of such conflict.

PASSED AND APPROVED THIS 22nd DAY OF FEBRUARY, A.D., 1977.

  
MAYOR

ATTEST:

  
CITY SECRETARY

