

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for limited proceeding for an increase and restructuring of monthly wastewater charges by BFF Corp. in Marion County.

DOCKET NO. 000662-SU  
ORDER NO. PSC-00-1507-PAA-SU  
ISSUED: August 18, 2000

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman  
E. LEON JACOBS, JR.  
LILA A. JABER .

NOTICE OF PROPOSED AGENCY ACTION ORDER  
DENYING APPLICATION FOR LIMITED PROCEEDING INCREASE  
AND RE-STRUCTURING OF MONTHLY WASTEWATER CHARGES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

BFF Corp. (BFF or utility) is a class C wastewater utility located in Marion County. Marion County came under our jurisdiction on May 5, 1981. By Order No. 11180, issued September 21, 1981, in Docket No. 810333-SU, we granted the utility's Certificate No. 318-S under the name Panamint Corporation. On July 6, 1983, we issued Order No. 12193, which approved the transfer of Certificate No. 318-S from Panamint Corporation to LTB Utility, Inc. By Order No. 22371, issued January 8, 1990, in Docket No. 890045-SU, we approved the transfer of Certificate No. 318-S from LTB Utility, Inc. to BFF and amended the utility's certificate to include additional territory.

DOCUMENT NUMBER-DATE

10147 AUG 18 8

EPSC REPORTING

BFF's 1999 annual report shows the utility serves 94 customers and had gross revenues of \$62,686 and operating expenses of \$62,006. BFF's wastewater customers receive water service from Utilities, Inc.

By Order No. PSC-98-0763-FOF-SU, issued June 3, 1998, in Docket No. 971182-SU, we established a year-end rate base at October 31, 1997 and set rates for this utility. We approved a year-end rate base to allow the utility the opportunity to earn a fair return on investments required by the Department of Environmental Protection (DEP) and to set compensatory rates. We also determined that the utility's quality of service was unsatisfactory, since the utility was not in compliance with numerous DEP requirements and had been noncompliant over an eight-year period. In addition, we determined that the utility's management had a history of poor performance dating back to 1988. Therefore, we approved a reduction in the utility's return on equity by 100 basis points due to its poor quality of service and mismanagement.

On May 31, 2000, the utility filed an application for a limited proceeding, pursuant to Chapter 367.0822, Florida Statutes, for an increase in rates of approximately 109% and a restructuring of monthly wastewater charges. The utility paid a \$100 filing fee.

#### LIMITED PROCEEDING

In its application for a limited proceeding, the utility submitted the following documents:

- stipulated order settling DEP's motion for contempt
- Boarding Data Sheet listing information about a \$40,000 loan dated January 28, 2000
- appraisal report listing the market value of land
- updated schedules for plant additions, accumulated depreciation and contributions-in-aid-of-construction (CIAC) through December 31, 1999
- calculation of a requested increased flat rate of \$103.25 per unit (approximately a 109% increase)

BFF applied for this limited proceeding to recover the cost associated with the conditions set forth in the stipulated order. In the stipulated order, BFF agreed to interconnect its sewer lines with Utilities, Inc. and to retire its spray-fields.

In Order No. PSC-98-0763-FOF-SU, we noted that according to DEP, BFF has shown a pattern of noncompliance over the past eight to ten years. This resulted in DEP filing a Stipulated Order against the utility in the Circuit Court of the Fifth Judicial Circuit in Marion County, case number 97-1704-CA-A. The stipulated order required the utility to submit a plan concerning modification of its spray-field and required the utility to complete the required improvements. Some of the DEP-required spray-field improvements were included in rate base in the utility's most recent rate case. However, the utility's spray-field continued to be noncompliant and DEP is now requiring the utility to abandon the existing spray-field and interconnect its wastewater system to Utilities, Inc. The stipulated order specifies that the interconnection must take place no later than one year from the effective date of the order, July 12, 1999. However, we have confirmed that BFF has received an extension of time to complete the interconnection from DEP. Moreover, the stipulated order states that:

If the facility's wastewater flows have not been interconnected to the Utilities, Inc. System within the one year period or if BFF determines that it cannot comply with the terms of this Order, then Department remedies shall be that the Defendant (BFF) shall give notice to and obtain reasonable concurrence by DEP either to transfer the Facility to a reasonable utility entity or abandon it pursuant to Section 367.165, Florida Statutes and Florida Administrative Code Rules 25-30.090 and 62-600.410.

BFF's request for increased rates is based on the cost associated with the interconnection with Utilities, Inc. and the loss associated with the retirement of the spray-field. The stipulated order specifies the items involved in properly retiring the plant, including:

- pumping the facility dry
- disinfecting the facility's components
- disconnecting the force mains
- disconnecting the electrical system
- removing drain plugs or installing permanent drains
- removing and disposing of any accumulated sludge and debris in the disposal system
- scarifying the pond bottoms

In addition, the stipulated order specifies that the proper abandonment of the existing spray-field includes the following:

- disinfecting and purging of the spray-field distribution system
- removing all spray-heads
- disconnecting and capping all effluent supply lines

BFF has not completed any of the items listed above. Moreover, BFF has not provided the cost or salvage values associated with the plant retirement. One of the major components needed to calculate the rate increase is the retirement loss. The retirement loss cannot be calculated without information on removal cost or salvage values. The retirement loss also includes removing the book values of the assets being retired. BFF is retiring \$208,325 of its \$278,097 net plant. Included in the net plant being retired are net plant additions since the last rate case of \$75,161. We would need to verify the additions through an audit, and an engineer would have to determine if these additions were prudent.

Another major component of the rate increase will be the cost associated with interconnecting with Utilities, Inc. as well as the bulk service charged by Utilities, Inc. At this time, BFF has not completed the interconnection. The interconnection includes new lift stations and a meter at the connection point with Utilities, Inc. Although BFF has provided bid prices for these items, it has not provided the contracted prices that would be required for us to properly verify cost. BFF provided us with the bulk service agreement with Utilities, Inc. BFF will be charged based on Utilities, Inc.'s tariffs. The base facility charge is calculated by meter size. However, since BFF has not installed a meter or given us the information on the size of the meter required, we cannot determine the base facility charge. A billing analysis will also have to be done to determine the number of customers and gallons used.

Rate base and Operation and Maintenance (O&M) expense will also have to be adjusted to determine the new rates for BFF. Rate base will be decreased by retired plant and increased by plant additions. As stated above, we cannot determine the plant increase until, at a minimum, a contract for the additions has been entered into. A substantial amount of O&M expenses will be eliminated and will need to be removed from the existing rates or substantially reduced. Some examples of these expenses are operator's salary,

sludge removal, chemicals, contractual services testing, management fees, and purchased power. O&M expense will also increase for items such as bulk service charges. As stated above, we cannot determine the bulk service charge without the meter size and without the billing analysis.

Moreover, BFF has not provided us with the source or type of financing that the utility plans to use to interconnect with Utilities, Inc. and to retire the plant. The financing could effect the capital structure of BFF, causing a different rate of return.

We are also concerned about possible mismanagement. As noted above in the utility's last rate case, the Commission reduced the utility's return on equity by 100 basis points for poor quality of service due to noncompliance with DEP requirements and mismanagement. We are concerned that this mismanagement has persisted because of the continual noncompliance with DEP regulations and the structure of the new construction contract with M.I.R.A. International (a related party). According to the contract with M.I.R.A. International, there is a 10% management fee on all new construction. This type of contract gives no incentive for management to reduce new construction costs. The fact that BFF added \$80,315 in plant over the last two years and still did not comply with DEP regulations warrants further investigation, particularly since this amount is being retired.

We cannot proceed with the limited proceeding because BFF has failed to provide us with the necessary information to calculate new rates. Even if BFF had provided this information, we would have to verify this information through an audit and an engineering investigation. We find that the scope of this case is too expansive for a limited proceeding and that the recovery of these costs and a restructuring of wastewater rates would be better addressed in a rate case. Further the limited proceeding application assumes retirement of the plant; however, it is unclear at this time if DEP will force abandonment of BFF's system. Also, a possible investigation into mismanagement may further result in a reduction in the amount of loss allowed for the retirement.

For the foregoing reasons, the utility's request for a limited proceeding to allow the recovery of costs associated with DEP's required interconnection with Utilities, Inc. and restructuring of its wastewater rates is denied. If the utility wishes to seek recovery of costs associated with the DEP-required interconnection,

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it should do so by applying for a staff assisted rate case after retiring the plant.

Based on the foregoing, it is


ORDERED by the Florida Public Service Commission that the application for a limited proceeding increase and re-structuring of monthly wastewater charges by BFF Corp. in Marion County is hereby denied. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

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

By ORDER of the Florida Public Service Commission this 18th day of August, 2000.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 8, 2000.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.