

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for ) DOCKET NO. 910560-WS  
approval of rate increase ) ORDER NO. PSC-92-0807-FOF-WS  
in Lee County by TAMIAMI ) ISSUED: 08/11/92  
VILLAGE UTILITY, INC. )  
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The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
SUSAN F. CLARK

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FINAL ORDER ESTABLISHING INCREASED RATES  
FOR WATER AND WASTEWATER SERVICE

BY THE COMMISSION:

CASE BACKGROUND

Tamiami Village Utility, Inc., (TVU) is a Class C utility providing water and wastewater service to 717 residential customers in Lee County, Florida. On November 6, 1991, TVU filed a request

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for increased water and wastewater rates. Since we found deficiencies in its filing, TVU was required to revise the information filed. On December 3, 1991, TVU filed revised information which satisfied the minimum filing requirements (MFRs) set forth in our rules. Accordingly, the official date of filing for this proceeding is December 3, 1991. The approved test year for calculating rates is the twelve months ended July 31, 1991.

TVU's MFRs show test year revenues of \$114,049 for the water system and \$95,660 for the wastewater system, with net income of (\$70,565) for the water system and (\$65,340) for the wastewater system. TVU requests final rates designed to generate \$204,045 in annual water system revenues, an increase of \$89,996 (79.91%), and \$210,491 in annual wastewater system revenues, an increase of \$114,831 (120.04%).

By Order No. 25669, issued on February 3, 1992, we suspended TVU's proposed rates and granted it an interim wastewater rate increase, subject to refund. We rejected TVU's request for interim water rates.

Pursuant to TVU's request, an administrative hearing in this matter was held in Ft. Myers, Florida, on April 29, 1992.

#### FINDINGS OF FACT, LAW, AND POLICY

Having considered the evidence presented, the brief of the utility, and the recommendation of our staff, we hereby enter our findings of fact, law, and policy.

#### STIPULATIONS

Prior to the hearing, the utility and the staff of this Commission proposed to stipulate the following: (1) TVU's facilities should be considered 100% used and useful without regard to a margin reserve; (2) Water accumulated amortization should be reduced by \$2,144, and wastewater accumulated amortization should be reduced by \$4,404; (3) Accumulated deferred income taxes should have a zero cost rate; (4) Insurance expense should be allocated based on the plant ratios of 25.71% for water and 74.29% for wastewater.

Upon consideration, we believe that these proposed stipulations are reasonable, and we hereby accept them.

QUALITY OF SERVICE

TVU is only responsible for maintaining a water distribution system since it purchases water from Lee County. Although none of the fifteen customers who testified at the hearing complained about water pressure or quality, four complained about the disruption of water service resulting from water main repairs or breaks.

Five customers testified opposing the magnitude of the requested increase; three customers supported the proposed increase. Several customers testified about not being able to turn off the water at the meter, and one customer testified about his dismay at the methods TVU uses to repair the water mains.

Staff witness Robert Crouch testified that service disruptions, which appeared to be the main service concern of the customers, should be alleviated once the utility installs shut-off valves, as it has proposed to do.

Staff witness James Grob, a compliance officer from the Florida Department of Environmental Regulation (DER), testified that TVU's wastewater treatment plant and collection system are adequately sized to serve the present customers, but the plant's effluent disposal capacity is not adequate. In April and June of 1991, Mr. Grob stated, effluent from one of TVU's percolation ponds was discharged into an adjacent stormwater drainage ditch. The DER district office then filed a case report with the DER Office of General Counsel where further disposition is pending. Mr. Grob also testified that DER's major concern about the wastewater system is the percolation pond capacity.

Utility witness Thomas testified that the discharge referred to was caused by an extraordinary amount of rainfall and did no damage to any person or property. Mr. Thomas testified that infiltration into the collection system is causing the percolation ponds to overflow during periods of heavy rain and that TVU has tried to reduce the infiltration by making repairs on the collection system in the recreational vehicle (RV) park, one of its customers.

Mr. Grob testified that TVU's treatment plant is properly staffed and maintained and that the effluent meets all permitted limits for effluent quality. He also stated that the pump and lift stations meet DER requirements for location, reliability and safety.

Based on the testimony in the record, we believe the quality of the water and wastewater service provided by TVU is satisfactory.

#### RATE BASE

Our calculation of the appropriate rate bases are depicted on Schedule No. 1-A for the water system and on Schedule No. 1-B for the wastewater system. Our adjustments are itemized on Schedule No. 1-C. Those adjustments which are self-explanatory or which are essentially mechanical in nature are reflected on those schedules without further discussion in the body of this Order. The major adjustments are discussed below.

#### Pro Forma Costs to Complete Office

In its MFRs, TVU includes a \$17,412 pro forma adjustment to rate base, allocated evenly between water and wastewater, to recover the costs of computer equipment, furniture, and fixtures to complete a its office. The utility contends that these costs are reasonable and necessary.

Exhibit No. 10, the staff audit report sponsored by staff witness Welch, states under audit disclosure No. 2 that the utility could not get an occupancy certificate for the office and that the utility did not include any rent expenses in the test year. There is no indication in the record that the utility will incur costs beyond what it requested in its MFRs in order to complete building and to furnish its office.

In consideration of the evidence on the record, we believe that the utility's pro forma allowance for office completion costs is reasonable.

#### Pro Forma Costs for Shut-off Valves

In its MFRs, TVU included a \$26,310 pro forma adjustment to rate base for the cost of installing shut-off valves in the water distribution system.

In support of its requested adjustment, TVU provided a bid from Bowler Plumbing, Exhibit No. 8, to support the cost for installing the shut-off valves. Utility witness Thomas testified that TVU would not enter into a contract to install the shut-off valves until after TVU is able to pay.

Staff witness Crouch testified that the proposed shut-off valves would enable the utility to isolate sections of the water distribution system which need repair so that TVU can make repairs without having to turn off the water for the whole service area. Mr. Crouch testified that the shut-off valves are a prudent expenditure, but TVU should provide some assurance to the Commission that the valves will be installed.

In consideration of the evidence on the record, we think that the shut-off valves will be a prudent expenditure and will improve the utility's quality of service. However, since TVU did not provide a contract for installing the valves, we hereby order TVU to install the valves within eight months of the date of this Order. TVU shall notify the Commission in writing upon completing installation of the valves.

#### Land

In its MFRs, TVU requests that the amount of land in rate base be increased by \$75,060 to a total of \$90,060. Utility witness Thomas testified that he believed that the land value in the MFRs is correctly stated; however, if land value meant market or economic value, he continued, the County taxing authority assessed the land at a value of \$110,000, and Mr. Thomas believed the land's actual market value was even higher. In its brief, the utility argues that land should be included in rate base at its value at the time TVU first dedicated the land to public use. This value was determined by the Commission at the time of transfer to TVU, and the assessments by the County taxing authority support that figure.

TVU purchased the water and wastewater systems from Tamiami Utility Company (TUC), and the Commission approved the transfer of the systems by Orders Nos. 21421 and 21421-A, issued June 20, 1989 and August 9, 1989. The utility admits in Exhibit No. 5 that it purchased the utility from TUC pursuant to contracts and other documents contained in Exhibit No. 6. According to the documents in Exhibit No. 6, TVU paid \$15,000 for the land and \$260,000 for the utility systems. Further, utility witness Ustica admitted that the \$15,000 original value of the land is what appears on TVU's books.

Section 367.081(2)(a), Florida Statutes, states that, in setting rates, the Commission must consider a fair rate of return on the utility's investment in property used and useful. It is axiomatic that the term "investment" means the original cost of property, as opposed to its "value." We find that the utility has

offered no credible justification for its disparate rate base treatment for land. In addition, the utility concedes that the original cost of the land was \$15,000.

In consideration of the evidence on the record, we believe that only the utility's \$15,000 investment in land should be included in rate base. Therefore, we have reduced the utility's requested rate base by \$75,060.

#### Test Year CIAC Amortization Rates

Exhibit No. 10, the staff audit report, states under audit disclosure No. 6 that the utility calculated amortization of contributions-in-aid-of-construction (CIAC) erroneously. According to this disclosure, the utility computed annual depreciation expense by applying guideline depreciation rates to year-end plant balances. When plant additions or adjustments were made each year, the composite depreciation rate for plant would also change. In amortizing CIAC, the disclosure explains, the utility used the amortization rates from Orders Nos. 21421 and 21421-A: 4.10% for water system CIAC and 3.51% for wastewater system CIAC. Therefore, the CIAC amortization rates the utility used remained constant, whereas the composite depreciation rate for plant changed each year. This, the disclosure states, is not appropriate, and the composite amortization rates for CIAC should have been changed annually based on depreciation expense. The principle advocated by the disclosure is that CIAC amortization is supposed to be synchronized with plant depreciation.

Notably, utility witness Ustica agreed that Rule 25-30.140(8)(a), Florida Administrative Code, requires that if a utility does not keep CIAC records by specific accounts, then a composite amortization rate should be used for the entire depreciable plant. It is evident from the MFRs that TVU does not keep CIAC records by specific accounts.

Therefore, in order to correct the utility's error in calculating the annual CIAC amortization rate, we find that accumulated amortization of CIAC must be decreased by \$1,150 for the water system and increased by \$1,581 for the wastewater system. We also find that the appropriate test year amortization rates for CIAC are 3.34% for the water system and 4% for the wastewater system and that test year amortization of CIAC must be decreased by \$795 for the water system and increased by \$1,054 for the wastewater system.

### Working Capital

The utility used the formula approach, or one-eighth of operation and maintenance expenses (1/8th of O&M), to calculate working capital. TVU's use of the formula approach is consistent with what is required by the MFRs form, Form PSC/WAS 17, which is incorporated into Rule 25-30.437, Florida Administrative Code. There was no evidence presented disputing the use of the formula method.

In consideration of the above, we have calculated working capital using the formula method. In a later section of this Order, we find that the proper amounts for test year operating and maintenance expense are \$132,589 for the water system and \$95,904 for the wastewater system. Therefore, we have included one-eighth of those amounts, \$16,574 and \$11,988, in the systems' respective rate bases for working capital. Our working capital allowance is \$4,717 less for the water system and \$3,968 less for the wastewater system than what the utility requested in its MFRs.

### Test Year Rate Base

In consideration of the above adjustments, we find that test year rate base is \$108,485 for the water system and \$256,243 for the wastewater system.

### COST OF CAPITAL

Our calculation of the appropriate cost of capital, as adjusted, is depicted on Schedule No. 2-A, and our adjustments are itemized on Schedule No. 2-B. Those adjustments which are self-explanatory or which are essentially mechanical in nature are reflected on those schedules without further discussion in the body of this Order. The major adjustments are discussed below.

### Capital Structure

As of July 31, 1990, TVU's investor-supplied capital consisted of \$92,930 (29.2%) common equity and \$225,000 (70.8%) notes payable. According to utility witness Thomas, on or before July 31, 1991, TVU converted the entire issue of 10% notes payable due November 30, 1991, to common equity. Mr. Thomas explained that TVU believed it would be unable to pay the notes upon maturity because of TVU's poor financial condition and, therefore, TVU gave its note holders the option of rolling the notes over, converting the notes into equity, or being paid off. Mr. Thomas admitted, however, that TVU hoped the noteholders would convert the notes into equity

shares, and, in fact, that is what the majority of the note holders did. As a result of this capital conversion, TVU's investor-supplied capital on July 31, 1991, consisted of \$292,500 (effectively 100%) common equity.

In its MFRs, TVU calculated its cost of capital using a year-end capital structure rather than using a beginning-and-end-of-year average as it did for calculating rate base. TVU argues that its rates should be set using this 100% equity capital structure because it is the utility's actual capital structure, reflecting a material change, and the utility cannot change its capital structure or raise new capital.

We reject the capital structure which the utility used in calculating its cost of capital. In principle, we agree that the capital structure used for calculating a utility's rates should be that which will reflect the cost of capital the utility will experience during the period the rates are in effect. However, we add the proviso that the capital structure employed must be reasonable and prudent for an entity providing regulated utility service. TVU's assertion that its capital structure is what it is and therefore TVU should be entitled to a rate of return based on that capital structure ignores any evaluation of the prudence of the capital structure.

We find that both Mr. Ustica and Mr. Thomas were not persuasive witnesses regarding capital structure issues. For instance, Mr. Ustica, a certified public accountant, conceded he was unaware of any regulated utilities with a 100% equity capital structure, yet was evasive to the suggestion that equity capital generally bears a higher risk than debt capital. Mr. Thomas advocated that the utility be allowed a higher rate of return if the Commission made any reductions to rate base or expenses--an unsound ratemaking concept not worthy of critical analysis here.

Mr. Thomas admitted that he has no experience in determining what would be an appropriate capital structure for a water and wastewater utility and that he did not prepare any comparative analysis of debt and equity ratios relative to the respective cost rates in determining TVU's requested rate of return. Further, as stated above, Mr. Thomas admitted that it was TVU's preference that the noteholders convert their debt to equity. In consideration of the foregoing, it appears clear to us that TVU never even considered the reasonableness of the capital structure that might result from its offering to convert debt to equity prior to the end of the test year. In addition, the decision which apparently compelled TVU's equity conversion in the first place--the decision

to forego obtaining any rate relief and operate at a loss for over two years rather than file for a staff-assisted rate case--lends critical factual support to our opinion that TVU should not be allowed to recover from its ratepayers costs associated with a capital structure that resulted from imprudence.

In summary, we conclude that TVU has not provided adequate support for its proposed capital structure. We find that TVU's July 31, 1991, year-end capital structure is not reasonable for a regulated water and wastewater utility. An unreasonable and imprudent change to the form of a utility's capitalization is not justification for the use of a year-end capital structure, even if the change is known.

We have therefore adjusted TVU's capital structure to reflect a beginning-and-end-of-year average, which is consistent with the method used to calculate rate base. In addition to that adjustment, we have adjusted the capital structure to recognize \$40,000 of 8% notes payable the utility issued to certain shareholders and to recognize \$13,117 of 6% notes payable it issued to employees. Although these notes payable were issued outside the test year, the utility's use of this form of financing is a known change and should be recognized. We believe that a beginning-and-end-of-year average capital structure, recognizing the subsequent issuance of notes payable, is reasonable for an entity providing regulated utility service. Cost rates for the various components of the capital structure are discussed below.

#### Equity

As set forth above, we have rejected the utility's proposed capital structure. Further, as a result of the adjustments described above, we calculate that the ratio of equity to total capital for TVU's capital structure is 58.1%. As was the case with its proposed capital structure, TVU failed to provide any credible evidence to support the return on equity it requested in its MFRs.

Utility witness Ustica testified that he relied on information he received from our staff, specifically a return on equity taken from the leverage graph formula established pursuant to Section 367.081(4)(f), Florida Statutes, in order to prepare the cost of capital schedule. On cross examination, however, Mr. Ustica admitted that he did not verify the correctness of the return on equity he was given over the telephone against the formula stated in our Order. The return on equity used in the MFRs is 13.11%. According to the leverage graph in Order No. 24246, issued March 18, 1991, which we took official notice of at the hearing, a return

on equity of 13.11% is appropriate for utilities with an equity ratio of 40% or less, whereas a return on equity of 11.22% is appropriate for utilities with a 100% equity ratio.

This error notwithstanding, we cannot help but question Mr. Ustica's credibility when, despite having used the Commission's leverage graph formula to calculate the utility's requested return on equity, he testified that he did not believe that the leverage formula could provide a reasonable rate of return for TVU.

In consideration of the above, we find that the utility failed to present sufficient proof that it is entitled to its requested rate of return on equity. However, we think that the utility should be entitled to receive some rate of return on equity investment.

Section 367.081 (4)(f), Florida Statutes, gives this Commission the authority to establish a leverage formula from which to calculate a reasonable range of returns on common equity for water and wastewater utilities. According to Section 367.081 (4)(f), a utility, in lieu of presenting evidence on its rate of return on common equity, may move the Commission to adopt the range of rates determined by the Commission's leverage formula. In this case, the utility has rejected the use of the leverage formula, but it failed to present any credible evidence to support the rate of return included in its filing. In the absence of credible evidence to support a more appropriate return on equity, we think it appropriate to use the leverage formula to determine a reasonable return on equity for TVU.

Therefore, using the leverage formula approved in Order No. 24246, we find that, with the 58.1% equity ratio approved above, TVU's approved rate of return on equity is 12.13%. In addition, for ratemaking purposes we hereby establish a range of reasonableness of plus or minus 100 basis points within which TVU may earn.

#### Accumulated Deferred Income Taxes

In its MFRs, the utility calculated its cost of capital using a year-end capital structure, rather than a beginning-and-end-of-year average. The year-end balance for accumulated deferred income taxes in the utility's capital structure was \$1,226.

As set forth above, we reject the utility's use of a year-end capital structure. Accordingly, the proper amount of accumulated deferred taxes in the capital structure is a beginning-and-end-of-

year average, \$935. As set forth in the "Stipulations" section above, the cost rate for accumulated deferred taxes should be zero, rather than the 20.72% shown in the MFRs.

Overall Cost of Capital

TVU argues it is entitled to a rate of return which fits its own unique and peculiar circumstances and which is sufficient for it to establish credit and to attract capital.

We agree that one of the objectives of setting a rate of return is to maintain a utility's financial viability. However, a Commission-approved rate of return cannot, by itself, guarantee financial viability; a regulated utility has the responsibility for making prudent business decisions. In this case, TVU decided to operate at a loss for over two years before seeking rate relief. As a result, TVU comes to us now in an extremely weak financial condition. Even utility witness Ustica admitted that as a certified public accountant he would have to disclaim an audit opinion on TVU because of its going-concern status. Needless to say, we have reservations as to whether granting TVU a rate increase will instantly reverse more than two years of financial deterioration.

As set forth above, we have found that TVU failed to present adequate evidence in support of its capital structure and cost of capital. Nonetheless, we have balanced TVU's interests with the interests of the ratepayers by establishing a cost of capital which will allow TVU the opportunity to restore its financial viability while, at the same time, not force the ratepayers to pay for TVU's failings.

We adjusted the capital components in TVU's MFRs as specified above. Further, we made a pro rata adjustment over all sources of capital to reconcile the capital structure with our approved rate base. We then applied the cost rates discussed above to the adjusted components in the capital structure and determined a weighted average cost of capital. As shown on the attached schedules, the cost rate used for customer deposits is 8.00%, the cost rate for deferred taxes is zero, the cost rate for notes payable (long-term debt) is 9.52%, which is a weighted average for all notes payable, and the cost rate for equity is 12.13%. Therefore, TVU's overall cost of capital is 10.96%.

NET OPERATING INCOME

Our calculation of net operating income is depicted on Schedule No. 3-A for the water system and on Schedule No. 3-B for the wastewater system. Our adjustments are itemized on Schedule No. 3-C. Those adjustments which are self-explanatory or which are essentially mechanical in nature are reflected on those schedules without further discussion in the body of this Order. The major adjustments are discussed below.

OPERATION AND MAINTENANCE EXPENSE (O & M)

Pro Forma Expense for Sludge Hauling

In its MFRs, TVU included an \$11,438 pro forma adjustment in order to recover the cost of sludge disposal required by Lee County Ordinances 89-20 and 90-32. These ordinances, which we took official notice of, require that Lee County wastewater utilities send their sludge to a county-approved landfill. Utility witness Thomas testified that Lee County is not currently enforcing the ordinances and he does not know when the County will begin doing so.

Considering the uncertainty over when TVU will have to incur the requested sludge hauling expense, we do not think it appropriate at this time to allow TVU to recover the expense through rates. However, we would encourage TVU to seek recovery of this expense through a limited proceeding once enforcement of the subject ordinances is more certain.

Excessive Infiltration--Chemicals and Purchased Power

Staff witness Crouch explained that infiltration refers to the leakage of groundwater or rainwater into a wastewater collection system through the pipes, while inflow refers to rainwater leakage into manholes. All collection systems, he stated, experience a certain level of infiltration, since most of the wastewater lines are below the groundwater level.

However, Mr. Crouch opined that the level of infiltration entering TVU's wastewater collection system is excessive. He calculated TVU's infiltration by comparing the flows recorded at the wastewater treatment plant's flow meter with the expected wastewater generated by the customers. To calculate expected wastewater flows, Mr. Crouch assumed that 80% of the water used by residential customers, 96% of the water used by commercial customers, and none of the water used for irrigation would be

returned to the wastewater collection system. For the test year, the wastewater plant treated 39,027,000 gallons of wastewater; the expected flows from customers, however, was 21,469,280 gallons of wastewater. This means that approximately 17,557,720 gallons of wastewater treated during the test year was infiltration and or inflow. Mr. Crouch thought that a reasonable infiltration allowance would be 500 gpd/inch diameter/mile of pipe. He then calculated that a reasonable amount of infiltration for TVU would be 9,171,178 gallons. He therefore considered 8,386,542 gallons (21.5%) gallons to be excessive infiltration.

Mr. Crouch testified that the customers should only be responsible for paying the costs of treating a reasonable amount of infiltration. Accordingly, he recommended that we disallow expenses for electricity and chlorine for treating the excessive infiltration in proportion to the 21.5% figure.

In its brief, TVU argues that a specific expense should not be disallowed unless it can be shown that the expense was imprudent, unreasonable, or excessive. TVU believes that an adjustment to power and chemical expenses is inappropriate since it did nothing to cause the infiltration and an adjustment will render it unable to pay for all of the electricity and chemicals it needs.

We conclude that even if TVU did nothing to cause the infiltration problem, the ratepayers should not be required to pay the extra costs for the treatment of excessive infiltration. Therefore, we have reduced test year chemical expense by \$307 (21.5% of \$1,430) and test year power expense by \$2,721 (21.5% of \$12,658) because of excessive infiltration.

#### Purchased Water Costs

In its MFRs, the utility requests \$116,612 in purchased water costs. This amount includes \$75,753 in test year expenses and a \$40,859 pro forma adjustment. Utility witness Thomas testified that the Lee County utility rate department had recommended rates on a four-year plan, but that the Lee County Commission had not approved the increased water rates for 1992-1993, as of the date of the hearing in this matter. When the County Commission approves the bill, the rates will be charged retroactively from October first, Mr. Thomas stated. Mr. Thomas also stated that he hoped that the County would approve the increase before August so that the utility would have the rate increase included in this rate case.

In its brief, TVU points out that its request for approval of a projected test year was denied. TVU maintains that its biggest reason for requesting approval of a projected test year was the impending, known increase in purchased water prices. It argues that the new Lee County rates will be in effect before TVU's new water rates will become effective.

We are aware that TVU's water rates from the County are scheduled to be increased close in time to when final rates in this case will become effective. However, we hesitate to allow an increase to any expense which is subject to change. Even if the utility's projected test year was approved, our thinking on the subject would be the same. With the availability of the pass-through rate increase procedures under Section 367.081(4)(b), Florida Statutes, TVU can adjust its rates 45 days after it has notified the Commission that its purchased water costs have changed. The paperwork required is minimal, and in accordance with Rule 25-30.020, Florida Administrative Code, no filing fee is required.

To calculate the appropriate amount of purchased water cost, however, we think it appropriate to take into account the 1991-1992 Lee County rate, which is currently in effect, taken from Exhibit No. 3. To calculate the adjustment required, we used test year gallons sold from MFRs Schedule No. F-1, the billing analysis which detailed the amount of gallons billed for irrigation meters, and the descriptions of the meters from which Lee County bills TVU as shown in Late-filed Exhibit No. 9. Calculating the service charge by meter type and adding to that the gallonage charge, we computed an annualized purchased water expense of \$87,351. This amount is \$11,598 higher than the test year expense, but \$29,261 less than what TVU requested.

#### Non-rate Case Legal Fees

TVU's MFRs show that it spent \$1,837 in test year non-rate case legal expenses for the water system. In addition, TVU requests a pro forma adjustment of \$3,163 for water system non-rate case legal expenses, for a total of \$5,000. Utility witness Thomas testified that TVU requested the pro forma adjustment to recover annually recurring legal expenses. Mr. Thomas also stated that TVU booked \$3,031 for non-rate case test year legal fees for the wastewater system.

The staff audit report, Exhibit No. 10, addresses legal expenses in two areas, audit exception no. 1 and audit disclosure no. 4. Audit exception no. 1 states that TVU overstated water

system legal expense by \$256 because it recorded 100% of a \$512 invoice to the water system and 50% to the wastewater system when it should have allocated the amount evenly. Audit disclosure no. 4 points out that the utility recorded a \$1,562 invoice for legal fees related to TVU's dissolution as a non-profit entity. The disclosure suggests that this expense is non-recurring and that legal expenses for both systems should be reduced by \$781.

Utility witness Ustica stated that he agreed with audit exception no. 1 and admitted that the expenses discussed in audit disclosure no. 4 were non-recurring. He continued, however, that he was extremely reluctant to agree to anything which would reduce the utility's recovery of expenses, as the utility would continue to have to spend money for legal fees.

Upon review of the record, we believe that the utility will have recurring legal fees. For instance, Mr. Thomas testified on redirect that the utility had been served a summons the day before the hearing. He further testified that DER had proposed to institute legal proceedings against the utility, as Mr. Grob had alluded to. In both cases, he said, the utility would have to hire legal counsel to defend its rights.

We believe that a total allowance of \$5,000 is reasonable for a utility of this size to recover on-going legal expenses. We have allocated this amount evenly between the water and wastewater systems to recognize that TVU, not any one system, will be incurring the expense. Accordingly, we have reduced test year legal expenses by \$2,500 for the water system and by \$832 for the wastewater system.

#### Rate Case Expense

In its MFRs, the utility included an estimate of \$88,080 for rate case costs. At the hearing, utility witness Thomas sponsored Exhibit No. 1, which showed the utility's revised estimate for rate case expense, \$85,640, with supporting documentation attached. We have reviewed the amounts and supporting documentation and present our findings as follows.

#### Options for Filing Rate Relief

Under Chapter 367, Florida Statutes, a utility has several options for pursuing rate relief: it can file MFRs and request to go directly to hearing, it can file MFRs and request proposed agency action (PAA), or, if it qualifies, it can file an application for a staff-assisted rate case (SARC). We do not think

that the presence or nature of these statutory options gives a utility license to choose carelessly. The choice of one method over another, in our view, should not escape a prudence evaluation, since to hold otherwise would allow a utility to recover rate case expense incurred because of misinformation or misrepresentation.

In this case, even though TVU qualified for a SARC, it chose to file MFRs and go directly to hearing. We are concerned with the prudence of this decision. Utility witness Thomas testified that even though TVU needed rate relief for over two years, TVU thought that applying for a SARC was such a poor option that TVU decided to wait until it could afford a general rate increase. When asked to elaborate on why TVU thought SARCs a detrimental option, Mr. Thomas focused on the case of 3-S Disposal. When asked whether he knew of the circumstances surrounding 3-S's SARC and subsequent bankruptcy, Mr. Thomas answered only that 3-S went bankrupt and he thought it had a "lot to do with DER."

We presume that Mr. Thomas and TVU were unaware that 3-S had stipulated to rates lower than what this Commission had approved in a PAA Order and also agreed to not file for rate relief for two years. See Order No. 23131, issued June 28, 1990, which we took official notice of. Thus, it would appear as though TVU did not have adequate information to make an informed decision.

Further, counsel for the utility gave us the impression that he was not consulted when the utility made its decision on how to go about obtaining rate relief. Specifically, he stated on the record, "My own view is had they asked me, I would have recommended that they not go for the staff-assisted rate case." Yet, Late-filed Exhibit No. 9, entitled Tamiami Village Utility's Board of Director's Minutes from March 1, 1991, reveals that the utility's counsel met with the board of directors and spoke very strongly against SARCs. Were his advice well-founded, perhaps we would not suggest second-guessing the utility's choice. However, according to Late-filed Exhibit No. 9, counsel told the utility's board that if it filed for a SARC, "[it] can't go again for 2 more years," and that "the PSC is going to lean in favor of the consumer." Such representations, no doubt, influenced the utility's board in making the choice it did.

In consideration of this evidence and the record as a whole, we find that the prudence of the board's decision is questionable at best.

### Accounting

Exhibit No. 1 shows that \$20,250 in accounting fees have been incurred as of the date of the hearing and that \$3,000 in fees are estimated to be incurred to complete the case. The original estimate in the MFRs for accounting fees was \$25,000. The accountant's billing rate was \$100 per hour, and, based on our experience, the time the accountant spent preparing the rate case application, answering interrogatories, and dealing with the Commission audit staff appears reasonable. The 30 hours estimated to complete the case likewise appears reasonable.

Therefore, we shall allow the utility to recover in rate case expense the \$23,250 requested in Exhibit No. 1.

### Wages

The utility has requested recovery of officers' wages and board of directors' fees as part of rate case expense. The total requested in Exhibit No. 1, \$8,721, is comprised of \$5,571 in wages for the officers and of \$3,150 in fees for the board of directors. Exhibit No. 1 reveals that these wages and fees are for overtime work in excess of normal utility business. Further, when the test year request and rate case expense amounts for wages and fees are combined the total does not appear unreasonable. We have, therefore, made no adjustments to these expenses.

### Miscellaneous Expenses

In Exhibit No. 1, the utility requests recovery of \$3,850 for supplies, travel expenses, phone, and postage and \$1,800 for bookkeeping expenses associated with preparing the MFRs. We have reviewed the invoices submitted for these charges and find them to be reasonable.

### Attorney's Fees

TVU agreed to pay its attorney a flat fee of \$48,000, exclusive of costs, to be paid in \$1,000 monthly installments over the course of four years. Utility witness Thomas indicated that this arrangement was the best way for the utility to get local, experienced legal help to file for a rate case. Mr. Thomas testified that he did not know the number of hours counsel spent working on the rate case because counsel did not provide the utility with statements detailing the work performed. Apparently, providing such statements was not a contemplated part of the

arrangement. In their meetings, Mr. Thomas explained, counsel described the work he had done and how much time it took.

As indicated above, the record contains no explicit information on the amount of time counsel worked on the case or what he did during that time. Although we have no objection to flat fee arrangements per se, we cannot accept an expense blindly and allow TVU's customers to pay an amount which we cannot verify was spent wisely.

Since the utility failed to file supporting documentation to justify its requested legal rate case expense, we find that the record fails to support the legal rate case expense requested. The burden to prove entitlement to an expense is on the utility, and with respect to legal rate case expense, TVU failed to meet that burden. From the filings and from counsel's presence, we know that counsel performed some work on behalf of the utility. The record reveals that the prehearing conference was less than a half-hour, very few motions were filed, discovery was not extensive, only one day was taken for depositions, the hearing took only one day, and counsel's brief was terse. These factors support our conclusion that this proceeding did not require extensive work on the part of TVU's counsel. Therefore, based on our past experience in determining reasonable legal rate case expense and our evaluation of the record as a whole, we find that a reasonable allowance for legal rate case fees in this case is \$12,000.

Furthermore, we find that the amount of the flat fee agreed to here, \$48,000, was not reasonable given the representation provided. Counsel's written work was replete with errors, grammatical and legal. The arguments made in the utility's testimony, motions, and brief were inferior. For example, counsel filed prepared testimony of Mr. Thomas who invoked the business judgment rule; but at the hearing, Mr. Thomas admitted he did not understand the business judgment rule. Furthermore, the business judgment rule undoubtedly has no applicability in the context of this case. We note that the utility's brief did not follow the format of the Prehearing Order as required by Rule 25-22.056(3), Florida Administrative Code, and that the utility did not file a post-hearing statement of issues and positions as required by Rule 25-22.056(3)(a), Florida Administrative Code, to avoid waiver of issues and positions. The absence of the latter document was aggravated by the utility's failure to summarize its positions in its brief, thereby making it impossible to determine if the utility's position had changed on any given issue.

In conclusion, we believe that the requested legal expense is not supported by the record. However, we think that an allowance of \$12,000 is reasonable for legal rate case expense.

#### Conclusion

In consideration of the above, we shall allow TVU to recover \$49,640 in rate case expense.

In addition, the utility shall submit a detailed statement of the actual rate case expense it incurred within 60 days after the final order is issued, or if applicable, within sixty days after the issuance of an order entered in response to a motion for reconsideration of such final order. The information should be submitted in the form prescribed for Schedule B-10 of the MFRs.

#### Acquisition and Conversion Costs

In the MFRs, the utility requests an amortization expense of \$1,369 for its water and wastewater systems. Utility witness Ustica testified that the expense amortized was \$13,690 spent to acquire the utility systems and to convert TVU from a non-profit to a for-profit corporation. He stated that he amortized the expense over five years, to be consistent with amortization for tax purposes, and allocated the amortized amounts evenly between the water and wastewater systems.

When asked whether TVU's changing from a non-profit to a for-profit entity directly benefitted the shareholders, Mr. Ustica replied that the utility thought it had to convert to a for-profit organization for legal reasons. When asked if the conversion to a for-profit corporation would likely cost the customers more in the long run, Mr. Ustica stated it was possible; but he was evasive when questioned whether the conversion would benefit the customers. He stated that he believed every legitimate business expense of the utility is properly recovered from the ratepayers.

It appears that the premise for TVU's seeking recovery of the amortized acquisition and conversion costs is Mr. Ustica's statement that every legitimate business expense should be recovered from the ratepayers. We disagree with this premise. Although an expense may be legitimate, the expense may provide no benefit to the ratepayers and should, therefore, not be borne by them. For instance, the ratepayers should not be forced to pay for expenses associated with utility assets not used for the provision of utility services.

We believe that the costs of acquiring the systems and the costs to convert TVU's corporate status should be borne by the stockholders, not the ratepayers. The evidence in the record supports the conclusion that these costs benefit the shareholders, but the record is silent as to any benefit these costs have to the ratepayers. In all likelihood, the organization structure change would only serve to increase the costs to the ratepayers.

In consideration of the foregoing, we have reduced water and wastewater systems' expenses by \$1,369 each to remove amortized acquisition and conversion expenses, as such expenses are not appropriate for recovery above-the-line.

Expenses for Reimbursed Line Breaks

In its MFRs, the utility included \$1,168 in expenses for line repairs that were reimbursed by outside parties. Audit exception no. 4 states that cash receipts were posted in the utility's general ledger for reimbursed expenses for line breaks. These amounts were not included as a reduction to expenses in the MFRs. The utility did not present any evidence to contradict what was found in the audit exception.

In consideration of the above, we have reduced water operation and maintenance expenses by \$1,168.

Expenses for Line Repair Beyond Point of Delivery

The system drawings provided by TVU as part of the MFRs indicate that there is 4,580 feet of 6 inch vitrified clay pipe of collection lines in place within the boundaries of TVU's RV park customer. The RV park receives water service through a 3" master meter. During the test year, TVU spent \$11,640 on repairs to lines in the RV park. Utility witness Thomas testified that these repairs were necessary because Rvs backed over and damaged the sewer laterals, causing infiltration.

We believe that some confusion exists as to whom should be responsible for maintaining the lines in the RV park. The utility requested that it be allowed to recover expenses for repairs in the RV park, yet utility witness Thomas testified that he believed the utility should be responsible for the lines from the meter out and the customer should be responsible for the lines from the meter in.

In addition, the contract for purchase of the utility assets, which is contained in Exhibit No. 6, supports Mr. Thomas's statement. TVU purchased the utility assets from TUC pursuant to

contracts originally entered into between TUC and Southern States Utilities, Inc. TVU took the place of Southern States under the contract. Section 16 (d) of the contract for purchase of the utility assets states, "Southern States agrees that users of the services provided by it shall be liable to maintain only those portions of the water and sewer systems on the users side of meters."

Rules 25-30.225(5), (6), and (7), and Rules 25-30.230 and 25-30.231, Florida Administrative Code, specify that a utility has the obligation to provide water and wastewater service up to the customer's point of delivery. In consideration of the evidence on the record and the direction of the above-referenced rules, we believe that the point of delivery to the RV park is the meter for water service and the property line for wastewater service. The fundamental question here is, "Who is the customer?" Clearly, the customer is the RV park, not the individual renters of spaces in the RV park.

Although we are not vested with jurisdiction to determine legal ownership of the lines in the RV park, we do have the obligation and authority to determine which costs are appropriate for ratemaking purposes. If it is resolved elsewhere that the utility has legal title to the lines in the RV park, we think that the RV park's obligation to maintain the lines should remain; in which case the RV park should either maintain the lines itself or pay the utility a charge for the costs of maintaining the lines.

Our decision regarding the point of delivery is a critical and necessary predicate to evaluating the utility's requested repairs expense. We believe that it is not appropriate for TVU to recover from the general body of ratepayers operation and maintenance costs related to lines beyond the point of delivery for the RV park, TVU's sole bulk customer.

Staff witness Crouch testified that if the RV park is responsible for these lines, then it would be fair to require the park owner to pay for their maintenance. Mr. Crouch also indicated that the general body of ratepayers should not carry the responsibility for paying costs attributable to another customer.

In consideration of the above, we shall disallow the \$11,640 which the utility spent repairing lines in the RV park.

INCOME TAX EXPENSE

The appropriate allowance for income tax expense is a mathematical calculation based on the resolution of other issues in this case. In consideration of the adjusted capital structure, revenues, and expenses we calculate that the appropriate amount of test year income tax expense is \$1,838 for the water system and \$4,341 for the wastewater system.

TEST YEAR OPERATING INCOME

We calculated test year operating income, before increased revenues, to be (\$22,463) for the water system and (\$16,209) for the wastewater system.

PROJECTED EXPENSES

TVU raised as an issue whether it should be allowed to recover "all known and predictable increases in expenses" even though the approved test year was historical, rather than projected, as the utility had requested. TVU argues that it should recover expenses such as legislated increases in rates for purchased water in this case, rather than being required to seek recovery in a separate pass-through proceeding. TVU believes that a historical test year, adjusted for pro forma items, is not adequate to set rates for the future. Only a projected test year, TVU claims, can be used to properly establish rates for a future period.

Again, we disagree with the utility in principle. A correctly adjusted historical test year can be just as accurate, if not more, than a projected test year. We point out that in this case, we have accounted for all known changes which will affect TVU for the period rates will be in effect. As evidenced by the lack of customer growth since TVU purchased the system, a projected test year is not needed to reflect any major changes due to growth.

In addition, Rule 25-30.437(3), Florida Administrative Code, states that if a utility files MFRs for a projected test year, separate sets of MFR schedules are required for the base year, the projected year, as well as any intermediate period. This filing requirement would significantly increase the cost of preparing a rate case, and we think that such added expense should be avoided when appropriate.

As indicated in our discussions above, our approval of a projected test year does not relieve the utility of the burden to show the certainty of changes to its operations and the

reasonableness and prudence of expenditures required to meet those changes. Contrary to the assertions of the utility in its brief and elsewhere, it is the utility's burden to affirmatively prove that it has acted prudently; it is not the Commission's burden to prove the converse.

In conclusion, we have accounted for all known expenses, and no additional adjustments are necessary.

#### REVENUE REQUIREMENT

In its MFRs, TVU requests final rates designed to generate \$204,045 in annual water system revenues, an increase of \$89,996 (78.91%), and \$210,491 in annual wastewater system revenues, an increase of \$114,831 (120.04%). Based on the adjustments discussed above, we find that the appropriate annual revenue requirements for this utility are \$158,829 for the water system and \$153,394 for the wastewater system. These revenue requirements represent annual increases in revenue of \$44,780 (39.26%) for the water system and \$57,734 (60.35%) for the wastewater system.

#### Rate Case Expense Apportionment

Although raised as an issue prior to hearing, the question of whether Section 367.0815, Florida Statutes, should be applied to this case has been rendered moot by that section's repeal, effective April 9, 1992, by Chapter 92-181, Laws of Florida.

#### RATES AND CHARGES

##### Monthly Service Rates

We have calculated new rates designed to allow the utility to achieve the revenue requirement approved herein. We find that these new rates are fair, just, and reasonable, and are not unduly discriminatory. The utility's existing rates, any approved interim rates, the utility's requested final rates, and the rates which we hereby approve are set forth on Schedule No. 4-A for water and Schedule No. 4-B for wastewater.

The new rates were designed using the base facility charge (BFC) rate structure. The BFC rate structure allows the utility to more accurately track its costs and allows the customers to have some control over their bills. Each customer pays for his or her pro rata share of the fixed costs necessary to provide utility service through the base facility charge and pays for his or her usage through the gallonage charge. Under the new rates, there is

a single base facility charge for all residential customers, regardless of meter size, and a base facility charge based on meter size for general service customers.

The new rates were calculated using the billing information contained in Exhibit No. 14, the utility's billing analysis. The differential in the gallonage charge for residential and general service wastewater customers recognizes that a portion of the residential customers' water usage will be used for irrigation or other outdoor purposes and not returned to the wastewater system. As stated in the following sections of this Order, we have maintained the 6,000 gallon cap on residential wastewater service and have not set a separate rate for the utility's RV park customer.

The rates which we have approved shall be effective for meter readings taken on or after thirty (30) days from the stamped approval date on the revised tariff sheets. The utility shall submit revised tariff sheets reflecting the approved rates along with a proposed customer notice listing the new rates and explaining the reasons therefor. The revised tariff sheets will be approved upon our staff's verification that the tariff sheets are consistent with our decision herein and that the proposed customer notice is adequate.

#### Four Year Statutory Rate Reduction

Section 367.0816, Florida Statutes, states,

The amount of rate case expense determined by the commission . . . to be recovered through . . . rate[s] shall be apportioned for recovery over a period of 4 years. At the conclusion of the recovery period, the rate[s] . . . shall be reduced immediately by the amount of rate case expense previously included in rates.

The question of a four-year rate reduction was not raised as an issue for hearing; regardless, we find little room for debate in the Legislature's mandate. Accordingly, we have amortized the amount of allowed rate case expense over four years and then adjusted the altered revenue requirement for RAFs. By our calculations, at the end of the four-year recovery period, the utility's water and wastewater rates should be reduced to reflect a \$6,484 reduction in each system's revenues. The rate reductions at the end of this period are shown on Schedule No. 5-A for water and Schedule No. 5-B for wastewater, which are attached hereto.

The utility shall file revised tariff sheets no later than one month prior to the actual date of the required rate reduction. The utility shall also file a proposed customer notice setting forth the lower rates and the reason for the reduction. If the utility files this reduction in conjunction with a price index or a pass-through rate adjustment, separate data shall be filed for each rate change.

#### Rate Design

The utility advocates that its fixed costs be recovered in a base rate and its variable costs be recovered through a gallonage charge. Utility witness Willet stated that TVU is currently recovering only a portion of its fixed costs through the gallonage charge. As a result, TVU has been unable to recover fixed expenses during periods when seasonal customers, of which there are a good number, are away.

The utility's concern over properly recovering its fixed costs appears valid. Upon comparing the utility's expenses with its approved charges, we note a disparity between monthly revenues and monthly expenses. For example, TVU must pay its fixed costs, and, in addition, as shown in Exhibit No. 3, the utility pays Lee County a base facility charge of \$2.91 and a service charge of \$1.65 for each mobile home on TVU's system. However, TVU's current rate allows it to collect from its residential customers a base facility charge of \$2.57, a difference of \$1.99 over what the County charges TVU per customer. Thus, although the utility may be able to recover costs over a 12-month period, it will experience cash flow problems during months when seasonal customers are away.

Despite this, however, when asked to explain the actual allocation of costs between the base facility charge and the gallonage charge, utility witness Ustica stated that "there was no proper mathematical calculation of the rate."

In absence of the utility's providing supporting documentation showing separation of the cost between the base facility charge and the gallonage charge, we have allocated fixed costs (those associated with the ability to provide service) to the base facility charge and variable costs (those associated with the actual delivery of water to the customer) to the gallonage based on standard Commission practice.

Wastewater Gallon Cap

The utility currently has a 6,000 gallons billing cap on residential wastewater service. The utility has requested to remove the cap. Utility witness Thomas testified that the cap should be removed, as it was put into effect years ago and does not reflect the current cost of operating a wastewater plant. However, upon cross examination, he apparently changed his position by stating that if the utility's rates are increased he would not be concerned about the cap.

The utility's billing analysis, Exhibit No. 14, reveals that approximately 92% of the utility's residential customers purchase 6,000 gallons of water or less. Of the remaining 8%, a number of the water bills are for consumption above 30,000 gallons per month, with some monthly bills as high as 43,000 gallons. Since the residential customers of this utility reside in mobile homes, we think it likely that high residential water consumption is the result of irrigation and other non-domestic uses, which is not collected for treatment by the wastewater system. This non-domestic use is recognized by the billing cap on residential wastewater treatment.

In this instance, we think that a cap of 6,000 gallons is appropriate. If the cap was set below 6,000 gallons, cost recovery would have to be reallocated, and residential customers who used less than 6,000 gallons per month would be forced to pay a higher gallonage rate. Likewise, if the cap were above 6,000 gallons, costs would have to be reallocated, and residential customers who used more than 6,000 gallons per month would be forced to pay for wastewater service they did not receive.

Therefore, we reject TVU's request to remove the 6,000 gallons wastewater billing cap on the residential service. We find that a 6,000 gallon cap for this utility is appropriate, as it takes into consideration residential water usage above what is collected by the wastewater system. The cap has the benefit of lowering the residential customers maximum bill. A cap on general service customer bills, however, is not appropriate since most of the water used by these customers is collected and treated by the wastewater system.

Special Rate for RV Park customer

In its MFRs and testimony, TVU requests that it be allowed to establish a special rate for an RV park customer. The information the utility presented, however, is conflicting. The rate schedules

filed as part of the MFRs indicate that a special rate for the RV Park is "To Be Determined Later." But the revenue schedules in the MFRs include rates and revenues for the RV Park that are based on the general service rate for the RV Park's meter size, not on a special rate.

In addition, utility witnesses Thomas and Willet contradicted each other. Mr. Thomas stated that the RV Park would not be paying its fair share under the utility's proposed rate structure. Ms. Willet testified that a proper rate structure would permit the utility to recover all of its fixed expenses from base rate charges and its variable costs from gallonage charges, without making exception for the RV park.

Mr. Thomas suggested that the utility could charge a higher rate for the RV Park based on the number of sites served. However, he soon after admitted that the utility had not submitted a firm proposal containing cost allocations and revenue projections for a special rate for the RV Park.

Without any supporting cost documentation, we have no way of knowing whether a special rate for the RV park is warranted. The utility argues that the RV Park is not paying its fair share, but has failed to submit any evidence supporting that claim. Therefore, we shall not venture to make the utility's case for it and risk setting a rate that might result in the RV Park's subsidizing other customers' service.

We note that under our approved general service rates, the RV park will generate \$12,285 in water and wastewater revenues, or 3.9% of the \$312,223 total revenue requirements; whereas under the utility's proposed general service rate, the RV park would generate \$13,471 in water and wastewater revenues, or 3.2% of the requested \$414,536 revenue requirements.

#### Fire Protection Charge

TVU provides fire protection service through hydrants in its service area. Utility witness Thomas stated that he thought a charge of \$100 per incident was reasonable to defray expenses associated with providing water used for fire protection.

Although the total cost of water for fire protection may vary per incident, metering such service is not practical. Therefore, we think that a flat per incident charge is appropriate. We find that the \$100 amount agreed to by the utility is reasonable and hereby approve same.

The utility should file a revised tariff sheet reflecting the approved fire protection charge. The approved charge will be effective for service rendered on or after the stamped approval date on the revised tariff sheet. The tariff sheet will be approved upon staff's verification that the tariffs are consistent with the Commission's decision and the proposed customer notice, discussed earlier, is adequate.

#### Miscellaneous Service Charges

In its MFRs, TVU requests approval for revised miscellaneous service charges, asserting that its present miscellaneous service charges are arbitrary allowances and are not compensatory. TVU's currently authorized charges are consistent with what we have approved for other water and wastewater utilities in the past. The requested charges include a proposed \$14 charge for initial connections during normal hours and after normal hours, a \$7.50 charge for violation reconnections during regular business hours, and a \$12.50 charge for violation reconnections after normal business hours. Schedule E-3 also indicates that the utility no longer desires to collect charges for premises visits or normal reconnections.

In addition, TVU's current tariff authorizes the utility to collect a single miscellaneous service charge where both water and wastewater services are provided, unless multiple actions beyond the utility's control are required. Utility witness Willett testified that the utility seeks authorization to charge separate miscellaneous service charges even if a customer receives both water and wastewater service because of the cost of maintaining separate records for each service.

The utility witnesses contradicted each other and contradicted what was in the MFRs regarding miscellaneous service charges. For example, Mr. Thomas testified that a \$10 charge for a premises visit is not close to being cost-related. Ms. Willett indicated that the utility requested an increase in the premises visit charge from \$10 to \$15. However, the proposed miscellaneous service charges in the MFRs do not include any proposed charges for this service. Also, Ms. Willett testified that the utility did not propose a change in the charges for violation reconnections, yet the MFRs indicate a requested change from \$15 to a charge of \$7.50 for each service regardless of whether multiple action is required.

More importantly, however, the utility failed to produce evidence on the record showing a cost breakdown and justification for any of its requested miscellaneous service charges. Utility

witness Willett provided a brief explanation of the type of work involved in, for instance, a violation reconnect; however, an explanation is not a surrogate for cost data. In consideration of the evidence on the record, we reject the utility's requested miscellaneous service charges as unsupported.

We note that it was fairly apparent that the utility is unfamiliar with its currently-approved charges and what charge should be collected under what circumstances. For example, Ms. Willett stated that she was not aware that the utility should charge for a normal reconnection, not for a premises visit, when the utility disconnects service at a customer's request. If properly implemented, the utility's present miscellaneous service charges should allow the utility to recover its costs for performing miscellaneous services. Perhaps if the charges had been properly implemented, the utility's concerns would have been resolved without the need for revision. Nonetheless, the utility is free to file for approval of revised miscellaneous charges at any time if it believes it is not recovering its costs. Such a filing must, however, be accompanied by supporting cost justification.

#### EXCESS INTERIM REVENUES

By Order No. 25669, issued on February 3, 1992, we authorized, subject to refund, an interim increase of \$49,074, or 51.30%, in wastewater system rates and denied TVU's request for an interim increase in water rates. The interim increase was secured by a corporate undertaking.

Since the revenue increase approved herein is greater than that approved for interim purposes, a refund of interim rates is unnecessary. Therefore, the utility is hereby released of its obligations under the corporate undertaking.

#### REFUND OF UNAUTHORIZED SERVICE AVAILABILITY CHARGES

On Schedule A-11, page 16 of the MFRs, TVU indicates that it has collected \$800 in CIAC between July 31, 1989, and September 31, 1991. On a separate schedule, Schedule E-4, the utility indicates that it has no approved charges for service availability, including meter installation charges.

Utility witness Thomas stated that TVU collected the \$800 total by charging \$50 for meter installations. When asked to show where the utility obtained approval to collect the subject charges, Mr. Thomas stated his belief that TVU's miscellaneous service

charge tariff, Exhibit No. 7, authorized a charge for initial connections, but he could not say where a specific dollar amount was authorized.

The description of an initial connection charge in the utility's tariff is not an authorization to charge for meter installation. The utility presented no evidence that it was authorized to charge for meter installations or any other type of service availability charges. Therefore, we hereby require TVU to refund with interest the \$800 in unauthorized CIAC it collected in violation of Sections 367.081(1), .091(2), and .091(3), Florida Statutes. The refunds shall be made in accordance with Rule 25-30.360, Florida Administrative Code. The refunds shall be made to the current property owners of record as of the date of the Commission vote and should be made with interest based on the thirty (30) day commercial paper rate for high grade, unsecured notes sold through dealers by major corporations as regularly published in the Wall Street Journal. Interest shall begin accruing upon Commission approval of this recommendation. The refund shall be made within ninety (90) days of the date of this Order.

#### DEFICIENCIES IN THE MFRS

The record reflects that TVU's November 6, 1991, filing was rejected because it did not meet the minimum filing requirements of Rule 25-30.443, Florida Administrative Code. TVU refiled on December 3, 1991, and its MFRs were accepted. TVU argues in its brief that a deficiency in the MFRs must be material and relate directly to the inability of the Commission staff to perform its function. The deficiencies in its original filing, TVU argues, were minor and did not justify delaying the establishment of an official date of filing.

We found the following deficiencies in the utility's original filing: (1) The filing fee was insufficient, (2) The MFRs' pages were not consecutively numbered, (3) Each section of the MFRs was not indexed and tabbed, (4) No system maps, unit prices for chemicals, DER inspection reports, list of field employees, and list of vehicles were provided, and (5) An explanation was needed for how the adjustment for contractual services for water and wastewater related to the contractual services shown on Schedules B-4 and B-5.

We are unaware of any provision in Chapter 367, our rules, or prior decisions which supports TVU's "materiality test." The only criteria for setting the official date of filing is whether or not

all filing requirements are met. See Rule 25-30.025, Florida Administrative Code. Rule 25-30.443, Florida Administrative Code, establishes the filing requirements, and TVU failed to provide all of the information required by the rule. TVU does not deny this.

Further, we reject the utility's assertion that the deficiencies found in its filing were not material. If we believed that certain information was not needed in order to begin processing the case, we would not have promulgated a rule requiring that the information be filed as part of the MFRs.

In consideration of the above, we find that there was no error in establishing the official date of filing as December 3, 1991.

#### CONCLUSIONS OF LAW

1. This Commission has jurisdiction to establish TVU's rates and charges pursuant to Section 367.081, Florida Statutes.

2. As the applicant in this case, TVU has the burden of proof that its proposed rates and charges are justified.

3. The rates approved herein are just, fair, reasonable, compensatory, not unfairly discriminatory, and set in accordance with the requirements of Section 367.081, Florida Statutes, and other governing law.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the application of Tamiami Village Utility, Inc., for an increase in its water and wastewater rates in Lee County is approved as set forth in the body of this Order. It is further

ORDERED that each of the findings made in the body of this Order are by reference incorporated herein. It is further

ORDERED that all that is contained in the schedules attached hereto are by reference incorporated herein. It is further

ORDERED that Tamiami Village Utility, Inc., is authorized to charge the new rates and charges as set forth in the body of this Order. It is further

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ORDERED that the rates approved herein shall be effective for meter readings taken on or after thirty (30) days after the stamped approval date on the revised tariff pages. It is further

ORDERED that the fire protection service charge approved herein shall be effective for service rendered after the stamped approval date on the revised tariff pages. It is further

ORDERED that prior to its implementation of the rates and charges approved herein, Tamiami Village Utility, Inc., shall submit and have approved a proposed notice to its customers showing the increased rates and charges and explaining the reasons therefor. The notice will be approved upon Staff's verification that it is consistent with our decision herein. It is further

ORDERED that prior to its implementation of the rates and charges approved herein, Tamiami Village Utility, Inc., shall submit and have approved revised tariff pages. The revised tariff pages will be approved upon Staff's verification that the pages are consistent with our decision herein. It is further

ORDERED that Tamiami Village Utility, Inc., shall install the shut-off valves described in the body of this Order within eight months of the date of this Order and shall notify the Commission in writing upon completion. It is further

ORDERED that Tamiami Village Utility, Inc., shall, as set forth in the body of this Order, refund with interest the unauthorized service availability charges it collected. It is further

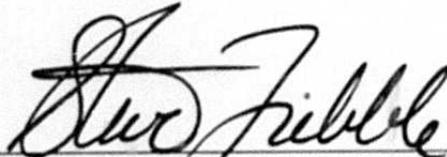
ORDERED that the corporate undertaking provided by Tamiami Village Utility, Inc., as security for interim rates is hereby released. It is further

ORDERED that Tamiami Village Utility, Inc., shall submit, within sixty (60) days of the date of this Order, an itemized report of the actual rate case expense incurred as set forth in the body of this Order. It is further

ORDERED that the docket may be closed upon our staff's verification that the utility has completed the required refunds and upon the utility's filing and staff's approval of revised tariff sheets.

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By ORDER of the Florida Public Service Commission this 11th  
day of August, 1992.

  
\_\_\_\_\_  
STEVE TRIBBLE, Director,  
Division of Records and Reporting

( S E A L )

MJF

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

TAMIAMI VILLAGE UTILITY, INC. SCHEDULE OF WATER RATE BASE TEST YEAR ENDED JULY 31, 1991			SCHEDULE NO. 1-A DOCKET NO. 910560-WS		
COMPONENT	TEST YEAR PER UTILITY	UTILITY ADJUSTMENTS	ADJUSTED TEST YEAR PER UTILITY	COMMISSION ADJUSTMENTS	COMMISSION ADJUSTED TEST YEAR
1 UTILITY PLANT IN SERVICE	\$ 202,516 \$	34,836 \$	237,352 \$	0 \$	237,352
2 LAND	0	0	0	0	0
3 NON-USED & USEFUL COMPONENT	0	0	0	0	0
4 ACCUMULATED DEPRECIATION	(86,420)	(1,074)	(87,494)	0	(87,494)
5 CIAC	(104,563)	0	(104,563)	(800)	(105,363)
6 AMORTIZATION OF CIAC	50,738	0	50,738	(3,322)	47,417
7 WORKING CAPITAL ALLOWANCE	13,017	8,274	21,291	(4,717)	16,574
RATE BASE	\$ 75,288 \$	42,036 \$	117,324 \$	(8,839)\$	108,485

TAMIAMI VILLAGE UTILITY, INC. SCHEDULE OF WASTEWATER RATE BASE TEST YEAR ENDED JULY 31, 1991			SCHEDULE NO. 1-B DOCKET NO. 910560-WS		
COMPONENT	TEST YEAR PER UTILITY	UTILITY ADJUSTMENTS	ADJUSTED TEST YEAR PER UTILITY	COMMISSION ADJUSTMENTS	COMMISSION ADJUSTED TEST YEAR
1 UTILITY PLANT IN SERVICE	\$ 562,851	\$ 8,706	\$ 571,557	\$ 0	571,557
2 LAND	15,000	75,060	90,060	(75,060)	15,000
3 NON-USED & USEFUL COMPONENT	0	0	0	0	0
4 ACCUMULATED DEPRECIATION	(213,833)	(421)	(214,254)	0	(214,254)
5 CIAC	(250,907)	0	(250,907)	0	(250,907)
6 AMORTIZATION OF CIAC	125,681	0	125,681	(2,823)	122,859
7 WORKING CAPITAL ALLOWANCE	9,724	6,232	15,956	(3,968)	11,988
<b>RATE BASE</b>	<b>\$ 248,516</b>	<b>\$ 89,577</b>	<b>\$ 338,093</b>	<b>(81,851)</b>	<b>256,243</b>

TAMIAMI VILLAGE UTILITY, INC. ADJUSTMENTS TO RATE BASE TEST YEAR ENDED JULY 31, 1991		SCHEDULE NO. 1-C PAGE 1 OF 1 DOCKET NO. 910560-WS	
EXPLANATION	WATER	WASTEWATER	
(1) LAND ----- To remove the adjustment to the cost in land.	\$0	(\$75,060)	
(2) CIAC ----- To adjust for unauthorized collection of CIAC.	(\$800)	\$0	
(3) AMORTIZATION OF CIAC ----- a) To adjust to an average balance.	(\$2,144)	(\$4,404)	
b) To adjust for yearly amortization rates.	(1,159)	1,581	
c) To remove the amortization of unauthorized collections of CIAC.	(19)	0	
Total	(3,322)	(2,823)	
(4) WORKING CAPITAL ALLOWANCE ----- To reflect the allowance for working capital using the formula method.	(\$4,717)	(\$3,968)	

TAMIAMI VILLAGE UTILITY, INC. CAPITAL STRUCTURE TEST YEAR ENDED JULY 31, 1991					SCHEDULE NO. 2-A DOCKET NO. 910560-WS				
DESCRIPTION	ADJUSTED TEST YEAR PER UTILITY	WEIGHT	COST	UTILITY WEIGHTED COST	COMMISSION RECONC. ADJ. TO UTILITY EXHIBIT	BALANCE PER COMMISSION	WEIGHT	COST	WEIGHTED COST PER COMMISSION
1 LONG TERM DEBT	\$ 0	0.00%	0.00%	0.00%	\$ 139,059	\$ 139,059	41.14%	9.52%	3.92%
2 SHORT TERM DEBT	0	0.00%	0.00%	0.00%	0	0	0.00%	0.00%	0.00%
3 CUSTOMER DEPOSITS	4,963	1.88%	8.00%	0.13%	317	5,280	1.56%	8.00%	0.12%
4 PREFERRED STOCK	0	0.00%	0.00%	0.00%	0	0	0.00%	0.00%	0.00%
5 COMMON EQUITY	292,500	97.93%	13.11%	12.84%	(69,785)	192,715	57.02%	12.13%	6.92%
6 INVESTMENT TAX CREDITS	0	0.00%	0.00%	0.00%	0	0	0.00%	0.00%	0.00%
7 DEFERRED TAXES	1,226	0.41%	20.72%	0.09%	(291)	935	0.28%	0.00%	0.00%
8 TOTAL CAPITAL	<u>\$ 298,689</u>	<u>100.00%</u>		<u>13.06%</u>	<u>\$ 66,039</u>	<u>\$ 337,989</u>	<u>100.00%</u>		<u>10.96%</u>
RANGE OF REASONABLENESS							LOW	HIGH	
RETURN ON EQUITY							11.13%	13.13%	
OVERALL RATE OF RETURN							10.38%	11.53%	

TAMIAMI VILLAGE UTILITY ADJUSTMENTS TO CAPITAL STRUCTURE TEST YEAR ENDED JULY 31, 1991		SCHEDULE NO. 2-B DOCKET NO. 910560-WS		
DESCRIPTION	SPECIFIC ADJUSTMENT (EXPLAIN)-A	SPECIFIC ADJUSTMENT (EXPLAIN)-B	PRO RATA RECONCILE	NET ADJUSTMENT
1 LONG TERM DEBT	\$ 112,500	\$ 26,559	\$ 11,001	150,060
2 SHORT TERM DEBT	0	0	0	0
3 CUSTOMER DEPOSITS	317	0	418	735
4 PREFERRED STOCK	0	0	0	0
5 COMMON EQUITY	(99,785)	0	15,246	(84,539)
6 INVESTMENT TAX CREDITS	0	0	0	0
7 DEFERRED INCOME TAXES	(291)	0	74	(217)
8 TOTAL CAPITAL	\$ 12,741	\$ 26,559	\$ 26,739	66,039

Notes  
 A-To reflect an average capital structure.  
 B-To adjust for increased notes payable not reflected in the MFR's.

TAMIAHI VILLAGE UTILITY, INC.  
 STATEMENT OF WATER OPERATIONS  
 TEST YEAR ENDED JULY 31, 1991

SCHEDULE NO. 3-A  
 DOCKET NO. 910560-WS

DESCRIPTION	TEST YEAR PER UTILITY	UTILITY ADJUSTMENTS	UTILITY ADJUSTED TEST YEAR	COMMISSION ADJUSTMENTS	COMMISSION ADJUSTED TEST YEAR	REVENUE INCREASE	REVENUE REQUIREMENT
1 OPERATING REVENUES	\$ 121,802	\$ 82,243	\$ 204,045	(\$ 89,996)	\$ 114,049	\$ 44,780	\$ 158,829
OPERATING EXPENSES						39.26%	
2 OPERATION AND MAINTENANCE	\$ 104,135	\$ 66,188	\$ 170,323	(\$ 37,734)	\$ 132,589	\$	\$ 132,589
3 DEPRECIATION	2,360	1,074	3,434	810	4,244		4,244
4 AMORTIZATION	1,369	0	1,369	(1,369)	0		0
5 TAXES OTHER THAN INCOME	5,840	4,465	10,305	(4,050)	6,255	2,015	8,270
6 INCOME TAXES	1,478	1,757	3,233	(\$ 800)	(\$ 576)	8,414	1,838
7 TOTAL OPERATING EXPENSES	\$ 115,180	\$ 73,484	\$ 188,664	(\$ 52,152)	\$ 136,512	\$ 10,429	\$ 146,941
8 OPERATING INCOME	\$ 6,622	\$ 8,759	\$ 15,381	(\$ 37,844)	(\$ 22,463)	\$ 34,351	\$ 11,888
9 RATE BASE	\$ 75,268	\$	\$ 117,324	\$	\$ 108,485	\$	\$ 108,485
11 RATE OF RETURN	8.80%		13.11%		-20.71%		10.96%

TAMiami VILLAGE UTILITY, INC. STATEMENT OF WASTEWATER OPERATION TEST YEAR ENDED JULY 31, 1991		SCHEDULE NO. 3-B DOCKET NO. 910560-WS					
DESCRIPTION	TEST YEAR PER UTILITY	UTILITY ADJUSTMENTS	UTILITY ADJUSTED TEST YEAR	COMMISSION ADJUSTMENTS	COMMISSION ADJUSTED TEST YEAR	REVENUE INCREASE	REVENUE REQUIREMENT
1 OPERATING REVENUES	\$ 94,528 \$	115,963 \$	210,491 \$	(114,831)\$	95,660 \$	57,734 \$	153,394
OPERATING EXPENSES						60.35%	
2 OPERATION AND MAINTENANCE	\$ 77,792 \$	49,855 \$	127,647 \$	(31,743)\$	95,904 \$	\$	95,904
3 DEPRECIATION	13,167	421	13,588	(1,054)	12,534		12,534
4 AMORTIZATION	1,369	0	1,369	(1,369)	0		0
5 TAXES OTHER THAN INCOME	8,451	6,654	15,105	(5,167)	9,938	2,568	12,536
6 INCOME TAXES	(1,148)	9,606	8,458	(14,965)	(6,507)	10,648	4,341
7 TOTAL OPERATING EXPENSES	\$ 99,631 \$	66,536 \$	166,167 \$	(54,298)\$	111,869 \$	13,446 \$	125,315
8 OPERATING INCOME	\$ (5,103)\$	49,427 \$	44,324 \$	(80,533)\$	(16,209)\$	44,268 \$	28,079
9 RATE BASE	\$ 248,516	\$ 338,093		\$ 256,243		\$ 256,243	
RATE OF RETURN	-2.05%		13.11%		-6.33%		10.96%

TAMIAMI VILLAGE UTILITY, INC. ADJUSTMENTS TO OPERATING STATEMENTS TEST YEAR ENDED JULY 31, 1991		SCHEDULE NO. 3-C PAGE 1 OF 2 DOCKET NO. 910560-WS	
EXPLANATION	WATER	WASTEWATER	
(1) OPERATING REVENUES			
----- To remove the utility's test year revenue request.	(89,996)	(114,831)	
(2) OPERATION AND MAINTENANCE			
-----			
a) To reduce unapproved purchased water costs.	(29,261)	0	
b) To remove nonrecurring expenses for the repair of lines in the RV park.	0	(11,640)	
c) To remove double counted test year legal expenses.	(256)	0	
d) To remove non-recurring test year legal expenses.	(781)	(781)	
e) To reallocate test year legal fees equally between water and wastewater.	(1,463)	(51)	
d) To reflect a reasonable level of legal rate case expense.	(4,805)	(4,805)	
e) To reduce power costs due to excess infiltration.	0	(2,721)	
f) To reduce chemical expense for excess infiltration.	0	(307)	
g) To remove sludge removal expense because of uninforced Lee County Ordinance.	0	(11,438)	
h) To remove reimbursement of repaired line breaks.	(1,168)	0	
Total	(37,734)	(31,743)	
(3) DEPRECIATION			
-----			
a) To adjust for unauthorized collection of CIAC.	15	0	
b) To reflect corrected amortization rate of CIAC.	795	(1,054)	
Total	810	(1,054)	
(4) AMORTIZATION			
----- To adjust for disallowance of organization expenses.	(1,369)	(1,369)	
(5) TAXES OTHER THAN INCOME			
----- To remove RAFs on the requested revenue increase.	(4,050)	(5,167)	
(6) OPERATING REVENUES			
----- To reflect the revenue requirement.	44,780	57,734	

TAMIAMI VILLAGE UTILITY, INC ADJUSTMENTS TO OPERATING STATEMENTS TEST YEAR ENDED JULY 31, 1991		SCHEDULE NO. 3-C PAGE 2 of 2 DOCKET NO. 910560-WS	
EXPLANATION	WATER	WASTEWATER	
(7) TAXES OTHER THAN INCOME	..		
----- To reflect RAFs on the revenue increase.	2,015	2,598	
(8) PROVISION FOR INCOME TAXES			
----- To reflect income taxes on the revenue requirement.	8,414	10,848	
	=====	=====	

WATER

Monthly Rates

Residential	Current	Utility Requested Interim and Final	Commission Approved Interim	Commission Approved Final
<b>Residential</b>				
-----				
Base Facility Charge:				
Meter Size:				
All meter sizes	\$2.57	\$15.00	No interim increase approved	\$8.97
Gallorage Charge per 1,000 G.	\$3.90	\$2.36	No interim increase approved	\$2.76
<b>General Service</b>				
-----				
Base Facility Charge:				
Meter Size:				
5/8"x3/4"	\$2.57	\$15.00	No interim increase approved	\$8.97
1"	\$6.42	\$37.50		\$22.44
1-1/2"	\$12.85	\$75.00		\$44.87
2"	\$20.55	\$120.00		\$71.80
3"	\$41.12	\$240.00		\$157.06
4"	\$64.25	\$375.00		\$224.37
Gallorage Charge per 1,000 G.	\$3.75	\$2.36	No interim increase approved	\$2.76

WASTEWATER

Monthly Rates

Residential	Current	Utility Requested Interim and Final	Commission Approved Interim	Commission Approved Final
-----				
Base Facility Charge:				
Meter Size:				
All meter sizes	\$6.15	\$18.63	\$9.33	\$12.17
Gallonage Charge per 1,000 G. (Maximum 6,000 G.)	\$1.52	\$1.52	\$2.31	\$1.60
General Service				
-----				
Base Facility Charge:				
Meter Size:				
5/8"x3/4"	\$6.15	\$18.63	\$9.33	\$12.17
1"	\$15.37	\$46.58	\$23.67	\$30.42
1-1/2"	\$30.73	\$93.15	\$46.62	\$60.83
2"	\$49.17	\$149.04	\$74.44	\$97.33
3"	\$98.34	\$298.08	\$149.18	\$212.91
4"	\$153.67	\$465.75	\$232.66	\$304.16
Gallonage Charge per 1,000 G.	\$1.83	\$1.83	\$2.78	\$1.92

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WATER

SCHEDULE NO. 5-A

-----  
 Monthly Rates  
 -----

Residential	Current	Utility Requested Interim and Final	Commission Approved Interim	Commission Approved Final
-----	-----	-----	-----	-----
Base Facility Charge:				
Meter Size:				
All meter sizes	\$2.57	\$15.00	No interim increase approved	\$8.97
Gallorage Charge per 1,000 G. (Maximum 6,000 G.)	\$3.90	\$2.36	No interim increase approved	\$2.76
General Service				
-----				
Base Facility Charge:				
Meter Size:				
5/8"x3/4"	\$2.57	\$15.00	No interim	\$8.97
1"	\$6.42	\$37.50	interim	\$22.44
1-1/2"	\$12.85	\$75.00	increase	\$44.87
2"	\$20.55	\$120.00	approved	\$71.80
3"	\$41.12	\$240.00		\$157.06
4"	\$64.25	\$375.00		\$224.37
Gallorage Charge per 1,000 G.	\$3.75	\$2.36	No interim increase approved	\$2.76

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WASTEWATER

SCHEDULE NO. 5-B

Monthly Rates

Residential	Current	Utility Requested Interim and Final	Commission Approved Interim	Commission Approved Final
Base Facility Charge:				
Meter Size:				
All meter sizes	\$6.15	\$18.63	\$9.33	\$12.17
Gallonge Charge per 1,000 G. (Maximum 6,000 G.)	\$1.52	\$1.52	\$2.31	\$1.60
General Service				
Base Facility Charge:				
Meter Size:				
5/8"x3/4"	\$6.15	\$18.63	\$9.33	\$12.17
1"	\$15.37	\$46.58	\$23.67	\$30.42
1-1/2"	\$30.73	\$93.15	\$46.62	\$60.83
2"	\$49.17	\$149.04	\$74.44	\$97.33
3"	\$98.34	\$298.08	\$149.18	\$212.91
4"	\$153.67	\$465.75	\$232.66	\$304.16
Gallonge Charge per 1,000 G.	\$1.83	\$1.83	\$2.78	\$1.92