

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Disposition of gain on sale of land held
for future use in Marion County by BFF Corp.

DOCKET NO. 040733-SU
ORDER NO. PSC-04-0947-PAA-SU
ISSUED: September 28, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION ORDER APPROVING
SETTLEMENT OF DISPOSITION OF GAIN ON SALE OF LAND
AND
ORDER DECLINING TO INITIATE SHOW CAUSE PROCEEDING

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action approving the settlement for disposition of gain on sale on the land 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 serving 106 residential customers in Marion County. BFF's wastewater customers receive water service from Utilities, Inc. BFF also receives wastewater treatment from Utilities, Inc. By Order No. PSC-02-0487-PAA-SU, issued April 8, 2002, in Docket No. 010919-SU, In Re: Application for staff-assisted rate case in Marion County by BFF Corp. (consummated by Order No. PSC-02-0588-CO-SU, issued April 30, 2002), the land associated with the utility's abandoned wastewater treatment plant was removed from rate base and reclassified from Land to Property Held for Future Use and recorded below-the-line. The utility was also ordered to report to this Commission any future sale, foreclosure, or any transaction involving transfer of ownership of the land and any proposed rate reduction resulting therefrom within 60 days of such occurrence.

In reviewing BFF's 2003 Annual Report, it was discovered that non-used and useful land in the amount of \$33,221 was sold sometime in 2003. A \$20,334 gain on sale of the land was reported on the Income Statement as well. The utility offered a settlement for the disposition of

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the gain on sale of the Property Held for Future Use. This Order addresses the settlement proposal and whether BFF should be show caused for failure to report the sale in accordance with Order No. PSC-02-0487-PAA-SU. We have jurisdiction pursuant to Sections 367.011, 367.121, and 367.161, Florida Statutes.

APPROVING SETTLEMENT FOR DISPOSITION OF GAIN ON SALE OF LAND

As discussed above, we had required the utility to report any future sale of the land associated with the utility's abandoned wastewater treatment plant that was classified to Property Held for Future Use. Our staff discovered that the land had been sold, and by letter dated June 16, 2004, the utility was asked to respond, in writing, with regard to the nature of the sale of the land. By letter dated June 25, 2004, the utility provided a response, which included the Closing Statement and Contract for Sale and Purchase. The utility sold the land which the retired plant was situated on September 11, 2003. Based on the information provided by the utility, we have determined that the gain on the sale of the land is \$24,990. Our staff advised the utility that the gain on sale should be amortized over 5 years with a reduction in rates of 7.59%. This is consistent with how the early retirement loss amortization was approved in the aforementioned Order. The utility agreed with the proposal, and filed a settlement offer consistent with our staff's recommended treatment and tariff sheets reflecting a reduction in rates.

We find that the proposed settlement is a reasonable resolution of this issue and it is hereby approved because it is in the public interest. Therefore, Fourteenth Revised Sheet No. 18.0, Third Revised Sheet No. 18.1 and Sixth Revised Sheet No. 17.0 are approved as filed. The tariff sheets shall be implemented on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475(1), Florida Administrative Code.

DECLINING TO INITIATE A SHOW CAUSE PROCEEDING

When our staff discovered the sale of the land, the utility was notified, by letter dated June 16, 2004, of its apparent violation of Order No. PSC-02-0487-PAA-SU. By letter dated June 25, 2004, the utility responded to staff and provided a copy of the Closing Statement and Contract for Sale and Purchase. The closing statement indicated that the land was sold on September 11, 2003. However, there was a requirement in the purchase agreement for the permitting and construction of a separate access to the master lift station be completed by a date certain. This requirement was fulfilled on June 1, 2004. The utility was under the incorrect assumption that the sale was not final until the requirement was met. Since being notified that the sale should have been reported, the utility has made a good faith effort by offering a settlement for the disposition of the gain on sale, which we approve herein. Under these circumstances, we do not find that it is appropriate to initiate a show cause proceeding.

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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that BFF Corp.'s proposed settlement is hereby approved as set forth in the body of the Order. It is further

ORDERED that the revised tariff sheets filed on July 15, 2004 are approved as filed. It is further

ORDERED that the tariff sheets shall be implemented on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475(1), Florida Administrative Code, provided the customers have received notice. It is further

ORDERED that a show cause proceeding shall not be initiated. It is further

ORDERED that if no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the Order, this docket shall be closed upon the issuance of a Consummating Order.

By ORDER of the Florida Public Service Commission this 28th day of September, 2004.



BLANCA S. BAYO, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

JSB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

As identified in the body of this order, our action approving the settlement for disposition of gain on sale on the land 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 the Commission Clerk and Administrative Services, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 19, 2004. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this order shall become effective and final upon the issuance of a Consummating Order.

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

Any party adversely affected by the Commission's final action in this matter may request: (1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services 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.