

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer
of Certificates Nos. 469-W and
358-S in Bay County from Bayside
Utilities, Inc. to Bayside
Utility Services, Inc.

DOCKET NO. 981403-WS
ORDER NO. PSC-99-1818-PAA-WS
ISSUED: September 20, 1999

The following Commissioners participated in the disposition of
this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

ORDER APPROVING TRANSFER
AND
NOTICE OF PROPOSED AGENCY ACTION
ORDER ESTABLISHING RATE BASE AND DECLINING TO
INCLUDE A NEGATIVE ACQUISITION ADJUSTMENT
IN THE CALCULATION OF RATE BASE
FOR TRANSFER PURPOSES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the actions discussed herein regarding the establishment of rate base and the decision not to include a negative acquisition adjustment in the calculation of rate base for transfer purposes are 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

Bayside Utilities, Inc. (Bayside Utilities or utility) is a Class C water and wastewater utility serving Bayside Mobile Home Park in Bay County. The utility purchases water and wastewater services from the City of Panama Beach and is considered non-jurisdictional by the Northwest Florida Water Management District.

DOCUMENT NUMBER-DATE

11244 SEP 20 99

FPSC-RECORDS/REPORTING

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According to the utility's 1998 annual report, it has approximately 304 water and 287 wastewater active connections. The utility reported combined 1998 revenues of \$124,155 with a combined net operating loss of \$16,895.

On October 26, 1998, Utilities, Inc., filed an application for transfer of Certificates Nos. 469-W and 358-S from Bayside Utilities to Bayside Utility Services, Inc. (BUSI). BUSI was incorporated on November 6, 1998, as a Florida corporation and is a wholly-owned subsidiary of Utilities, Inc., a corporation based in Illinois. The application was completed on December 31, 1998.

On November 12, 1998, three customers of the utility timely filed a letter objecting to the application for transfer. The objection was later joined by a fourth customer. Accordingly, the matter was set for hearing on February 2 and 3, 2000.

On January 26, 1999, Utilities, Inc., filed a Motion to Dismiss the Objection and Protest of the four customers. By Order No. PSC-99-0607-PCO-WS, issued April 2, 1999, we denied the motion. On April 16, 1999, Bayside Utilities timely filed a Motion to Intervene and a Motion for Reconsideration of Order No. PSC-99-0607-PCO-WS. Also on April 16, 1999, Utilities, Inc., and BUSI timely filed a joint Motion for Reconsideration of Order No. PSC-99-0607-PCO-WS, in which they adopted the exhibits and legal arguments set forth in Bayside Utilities' Motion for Reconsideration.

The customers filed a letter withdrawing their protest of the transfer application on June 15, 1999. By Order No. PSC-99-1597-FOF-WS, issued August 16, 1999, we acknowledged the withdrawal of the customers' protest and found it unnecessary to rule upon the outstanding motions, as the motions were rendered moot by the protest withdrawal.

On June 17, 1999, Bayside Utilities and BUSI closed on the transfer. Section 367.071 (1999), Florida Statutes, which became effective June 11, 1999, states that a utility shall not sell or transfer its facilities without Commission approval. However, a sale or transfer may occur prior to Commission approval if the contract is made contingent upon Commission approval. The contract between Bayside Utilities and BUSI has a provision which makes the sale contingent upon our approval.

APPLICATION

The application as filed and amended is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code. The application contained the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The utility's original certificates were returned pursuant to Rule 25-30.037(2)(t), Florida Administrative Code.

The application contained proof of compliance with the noticing requirements pursuant to Rule 25-30.030, Florida Administrative Code. As previously noted, a timely protest to the transfer was filed by four customers of the utility, and the matter was set for hearing on February 2 and 3, 2000. By letter filed June 15, 1999, the protest was withdrawn. By Order No. PSC-99-1597-FOF-WS, issued on August 16, 1999, we acknowledged the withdrawal of the customers' protest, and the hearing was canceled. No other objections to the notice of transfer were received, and the time for filing such has expired.

As required by Rules 25-30.037(2)(g), (h), (i), and (k), Florida Administrative Code, the application was accompanied by the Asset Purchase Agreement (sales contract) executed on October 7, 1998. However, the closing did not occur until June 17, 1999. The agreed upon purchase price was \$190,000. This was a cash transaction, and thus, there are no entities upon which BUSI has relied, or will rely, for funding.

Since the utility is a reseller of water and wastewater service, there are no developer agreements. The only contractual obligation conveyed in the sales contract was the 1987 agreement between the utility and the City of Panama City Beach regarding the interconnection. Also, because the utility no longer owns any plant, no real property was transferred and, therefore, the evidence of ownership required by Rule 25-30.037(2)(q), Florida Administrative Code, is not applicable. Pursuant to the Memorandum of Closing (closing document), customer deposits totaling \$4,227.30 were transferred from Bayside Utilities to BUSI.

Bayside Utilities is current on annual reports and regulatory assessment fees through 1998, and there are no penalties, interest or refunds due. In the closing document, the parties agreed that Bayside Utilities would be responsible for 1999 regulatory assessments fees on and before June 16, 1999 and that Bayside

Utilities would pay those fees directly to the Commission as soon as the fees could be computed. Our staff confirmed that we received pre-payment of 1999 regulatory assessment fees from Bayside Utilities up to the date of closing.

Pursuant to Rule 25-30.037(2)(j), Florida Administrative Code, the application states that BUSI's financial and technical ability is evidenced through its parent, Utilities, Inc., which has approximately 33 years experience in the water and wastewater utility industry. At the present time, Utilities, Inc., provides water and wastewater service to approximately 200,000 customers in 15 states. Utilities, Inc., has successfully operated water and wastewater utilities in Florida under our jurisdiction since 1976.

As also required by Rule 25-30.037(2)(j), Florida Administrative Code, Utilities, Inc., provided a statement indicating that the transfer is in the public interest. In addition to the extensive experience cited above, Utilities, Inc., was formed in 1965 with the objective of acquiring small water and wastewater companies commonly built by developers. These companies are typically troubled and undercapitalized. By centralizing the management, accounting, billing and data processing functions, these companies can achieve economies of scale that would be unattainable on a stand-alone basis. In addition, Utilities, Inc. indicates that its regulatory experience and financial resources enable its subsidiaries to provide environmentally sound day-to-day operations as well as to address unexpected emergencies. Utilities, Inc., stated its intention to fulfill the commitments, obligations and representations of Bayside Utilities with regard to utility matters.

Pursuant to Rule 25-30.037(2)(p), Florida Administrative Code, the utility provided a statement that Utilities, Inc., is not aware of any outstanding environmental violations. Our staff has confirmed with the Florida Department of Environmental Protection (DEP) that the utility's water distribution and wastewater collection systems are currently in satisfactory operating order.

Based on the foregoing, we find that the transfer of Certificates Nos. 469-W and 358-S from Bayside Utilities to BUSI to be in the public interest, and it is approved. The territory to be transferred is in Attachment A of this Order, which by reference is incorporated herein.

RATE BASE

Rate base for the utility systems, as of December 31, 1997, was established by Order No. PSC-98-1269-FOF-WS, issued September 24, 1998, in Docket No. 971401-WS, a staff-assisted rate case. Since the sales contract for the transfer was executed less than two weeks later, on October 7, 1998, we find that the net book value established by Order No. PSC-98-1269-FOF-WS shall be the same value used for purposes of setting rate base at the time of transfer.

The rate base calculations approved in Order No. PSC-98-1269-FOF-WS for the water and wastewater systems are in Schedules Nos. 1 and 2, respectively, which by reference are incorporated herein. Based on these schedules, as of December 31, 1997, rate base for Bayside Utilities was established as \$67,580 for water and \$214,694 for wastewater, for a combined rate base of \$282,274. These are full rate base calculations which include the normal ratemaking adjustments of working capital calculations and used and useful adjustments. In this case, the water distribution and wastewater collection systems are considered 100% used and useful. Therefore, we find that the combined rate base for the water and wastewater systems at the time of the transfer to be \$282,274, which is the net book value previously established by Order No. PSC-98-1269-FOF-WS.

ACQUISITION ADJUSTMENT

An acquisition adjustment results when the purchase price differs from the original cost calculation adjusted to the time of the acquisition. The acquisition adjustment resulting from the transfer of Bayside Utilities to BUSI is calculated as follows:

Purchase Price	\$190,000
Commission Established Rate Base	<u>\$282,274</u>
Negative Acquisition Adjustment	(\$ 92,274)

In the absence of extraordinary circumstances, it is the practice of this Commission that the purchase of a utility at a premium or discount shall not affect the rate base calculation. Utilities, Inc., is not requesting an acquisition adjustment and the circumstances in this case do not appear to be extraordinary.

According to the application, Utilities, Inc., was aware of, and relied on, the Commission's practice on acquisition adjustments in deciding whether to purchase Bayside Utilities. Utilities, Inc., believes granting a negative acquisition adjustment in this case would be inconsistent with our prior practice and orders, upon which Utilities, Inc., relied in making its decision to purchase this utility.

The application further states that the purchase was the result of an arms-length transaction in which a wholly-owned subsidiary of Utilities, Inc., will own and operate the purchased systems. Neither Utilities, Inc., nor BUSI are developers, nor are they developer-related.

In terms of additional benefits that accrue to customers as a result of the acquisition, the application cites the economies of scale that will be available to BUSI through its parent's management and vendor resources. Specifically, the application states that BUSI has: 1) the ability to attract capital at a reasonable cost; 2) the financial ability to commit funds necessary to operate the purchased utility; 3) a professional staff experienced in the managerial, technical and financial aspects of utility operations; 4) the ability to make necessary capital improvements; and 5) the ability to comply with DEP and other environmental agency requirements.

We note that these benefits are the types of factors which we have considered in prior orders when approving a positive acquisition adjustment. See Order No. PSC-92-0895-FOF-WS, issued August 27, 1992, in Docket No. 920177-WS. While the purchase price in this case does not exceed rate base, to be consistent, such factors should serve to mitigate a negative acquisition adjustment as well.

We also note that in Docket No. 891309-WS, we reviewed our policy concerning acquisition adjustments. By Order No. 25729, issued February 17, 1992, we acknowledged that the ability of the buyer to earn a return on an acquired utility's rate base provides an incentive for larger utilities to look for and acquire smaller, troubled systems.

With approximately 300 active connections for each service, Bayside Utilities is considered a small utility. While we determined in the utility's recent rate case that Bayside Utilities is currently providing satisfactory quality of service, there has

been a long history of discord between utility management and some of the utility customers. In addition, the utility's rates are somewhat high due to the fact that it is a small, stand alone system. In its November 25, 1998, response to the customers' protest of the transfer, Utilities, Inc., pledged to use its experience and resources to improve utility efficiency, mitigate the need for additional rate cases and provide access to lower cost capital funds over time.

Based on the foregoing, we find that the \$92,274 negative acquisition adjustment shall not be included in the calculation of rate base for transfer purposes.

RATES AND CHARGES

Bayside Utilities' current rates and charges became effective October 21, 1998, by Order No. PSC-98-1269-FOF-WS. These rates were subject to a 1998 inflation index approved effective June 21, 1999.

Rule 25-9.044(1), Florida Administrative Code, provides that:

In case of change of ownership or control of a utility which places the operation under a different or new utility, or when its name is changed, the company which will thereafter operate the utility business must adopt and use the rates, classification and regulations of the former operating company (unless authorized to change by the Commission)...

Utilities, Inc., has not requested a change in the rates and charges of the utility nor are we aware of any reason to change them at this time. Accordingly, the utility shall continue operations under the existing tariff and apply the rates and charges approved for Bayside Utilities. The utility filed a revised tariff reflecting the change in ownership. The tariff reflecting the change in ownership shall be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets.

If no timely protest is received to the proposed agency action issues, upon the expiration of the protest period, this Order shall become final and effective upon the issuance of a Consummating Order, and the docket shall be closed.

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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of Certificates Nos. 469-W and 358-S from Bayside Utilities, Inc., 6325 Big Daddy Drive, Panama City Beach, Florida 32407, to Bayside Utility Services, Inc., 200 Weatherfield Avenue, Altamonte Springs, Florida 32714, is hereby approved. It is further

ORDERED that the combined rate base for the water and wastewater systems at the time of transfer shall be \$282,274, which is the net book value previously established by Order No. PSC-98-1269-FOF-WS. It is further

ORDERED that the \$92,274 negative acquisition adjustment shall not be included in the calculation of rate base for transfer purposes. It is further

ORDERED that Bayside Utility Services, Inc., shall continue to charge the rates and charges approved for Bayside Utilities, Inc. It is further

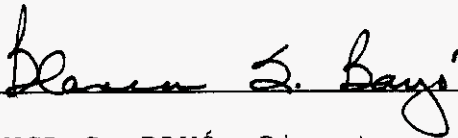
ORDERED that the tariff reflecting the change in ownership shall be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets. It is further

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

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

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By ORDER of the Florida Public Service Commission this 20th
day of September, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

SMC

DISSENT:

Commissioner J. Terry Deason dissents from the decision in this Order not to recognize a negative acquisition adjustment in the calculation of rate base.

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 regarding the establishment of rate base and our decision not to include a negative acquisition adjustment in the calculation of rate base for transfer purposes is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida

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32399-0850, by the close of business on October 11, 1999. 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 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 wastewater 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.

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ATTACHMENT A

BAYSIDE UTILITIES, INC.

TERRITORY DESCRIPTION

IN BAY COUNTY

PER ORDER NO. 16414

Township 3 South, Range 15 West
Section 28

Commence at the NW corner of the SW 1/4 of the NW 1/4 of said Section 28, and run East 33 feet to the East R/W line of Wildwood Road for the Point of Beginning, thence South along said R/W line 621 feet to the intersection of a center line of a canal extended a distance of 2,710 feet, more or less, to the intersection of the Northeasterly shore line of a canal and lagoon, thence run Southeasterly, Northeasterly along the shore line and/or bulkhead line of said canal and lagoon to where it intersects the mean high water line of West Bay, thence run Northeasterly along said mean high water line a distance of 900 feet, more or less, to the intersection with the North boundary line of the SW 1/4 of the NW 1/4 of said Section 28, thence run West along said line 5,029.31 feet to the Point of Beginning.

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SCHEDULE NO. 1

BAYSIDE UTILITIES, INC.
SCHEDULE OF WATER RATE BASE
AS OF DECEMBER 31, 1997

BALANCE PER ORDER NO.
PSC-99-0485-FOF-WS

UTILITY PLANT IN SERVICE	\$181,352
LAND/NON-DEPRECIABLE ASSETS	0
NON-USED AND USEFUL PLANT	0
CIAC	(52,911)
ACCUMULATED DEPRECIATION	(103,492)
AMORTIZATION OF CIAC	36,715
WORKING CAPITAL ALLOWANCE	<u>5,916</u>
WATER RATE BASE	<u>\$ 67,580</u>

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SCHEDULE NO. 2

BAYSIDE UTILITIES, INC.
SCHEDULE OF WASTEWATER RATE BASE
AS OF DECEMBER 31, 1997

BALANCE PER ORDER NO.
PSC-99-0485-FOF-WS

UTILITY PLANT IN SERVICE	\$349,712
LAND/NON-DEPRECIABLE ASSETS	0
NON-USED AND USEFUL PLANT	0
CIAC	0
ACCUMULATED DEPRECIATION	(140,804)
AMORTIZATION OF CIAC	0
WORKING CAPITAL ALLOWANCE	<u>5,786</u>
WASTEWATER RATE BASE	<u>\$214,694</u>