

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for allowance for funds prudently invested (AFPI) charge for additional water improvements and for additional lines associated with wastewater extension into George Mayo subdivision in Marion County, by Tradewinds Utilities, Inc.

DOCKET NO. 991835-WS
ORDER NO. PSC-00-1513-TRF-WS
ISSUED: August 21, 2000

The following Commissioners participated in the disposition of this matter:

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

ORDER DENYING WATER AFPI CHARGES

BY THE COMMISSION:

BACKGROUND

Tradewinds Utilities, Inc. (Tradewinds or utility) is a Class C water and wastewater utility located in Marion County. According to the 1999 annual report, the utility provides water service to 450 customers and recorded annual revenues of \$104,056 and expenses of \$102,902, resulting in net operating income of \$1,154 as of the year ended December 31, 1999. The utility also provides wastewater service to 270 customers and recorded annual revenues of \$166,118 and expenses of \$138,913, resulting in net operating income of \$27,205 as of the year ended December 31, 1999. The utility service area is located in the St. Johns River Water Management District.

On December 6, 1999, the utility filed proposed tariffs along with an application for authority to initiate allowance for funds prudently invested (AFPI) charges for water and wastewater, pursuant to Section 367.091, Florida Statutes, and Rules 25-30.565 and 25-30.434, Florida Administrative Code. The utility requested approval of AFPI charges to recover non-used and useful plant. The utility stated that the Department of Environmental Protection (DEP) provided a loan from the State of Florida's Revolving Fund in the amount of \$632,700, in connection with improving the quality of water being served to the utility's customers in the George Mayo

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BY THE COMMISSION REPORTING

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Subdivision in accordance with the Safe Water Drinking Act. The George Mayo Subdivision consists of 40 connections, or 133 equivalent residential connections (ERCs). Currently, according to the utility, there are 18 of these customers being served.

REQUESTED WATER AFPI CHARGES

A filing fee is not required for an AFPI proceeding. The utility requested AFPI charges for the recovery of the carrying cost for the additional water plant and lines.

By Order No. PSC-00-0368-TRF-WS, issued February 21, 2000, we suspended the utility's proposed water AFPI charges pending further investigation, and approved wastewater AFPI charges as filed. In this AFPI filing, the utility has requested approval to recover the carrying costs on the non-used and useful plant.

An AFPI charge is a mechanism designed to allow a utility to earn a fair rate of return on a portion of the plant facilities which were prudently constructed and held for future use for future customers that will be served by that plant in the form of a charge paid by those customers. This charge allows the recovery of carrying costs on the non-used and useful plant. By providing this type of charge, the existing customers do not pay for plant expansion used to serve future customers. Future customers bear their equitable share of the carrying costs related to the plant facilities being constructed to provide service to them.

This one-time charge is based on the number of future ERCs and is generally applicable to all prospective customers who have not already prepaid the service availability charge. The charge should be assessed based on the date the future customers make some form of prepayment or on the date the customer connects to the system, whichever comes first.

Commission staff sent a data request on February 9, 2000, requesting additional information. The utility responded to staff's request by a letter dated March 10, 2000. The responses included a list of Tradewinds' utility plant-in-service (UPIS) connected with the water improvements involving AFPI charges. The account numbers, plant description, date installed, and requested values submitted by the utility are listed below:

<u>Account No.</u>	<u>Plant Description</u>	<u>Date Installed</u>	<u>Amount</u>
303	Land (10 acres)	05/30/99	\$162,500
304	Struct. & Improv.	05/30/99	\$ 16,694
311	Well Pumps	04/30/99	\$ 1,367
330	Elevated Tank	05/30/99	\$267,644
331	Distr. Lines	11/01/98	\$110,883
333	Services	11/01/98	\$ 37,009
334	Meters	05/30/99	\$ 6,031
335	Hydrants	11/01/98	<u>\$ 8,000</u>
		Total	<u>\$610,128</u>

We are concerned with several of the components requested by the utility to determine the appropriate AFPI charges. Based upon our review, and for the reasons set forth herein, we find it appropriate to deny the utility's requested AFPI charges on its water system. Each concern with the utility's AFPI filing is addressed below.

Related Party Transaction - Land

The first concern is a related party transaction involving the land that occurred between the utility and its president. By Order No. PSC-94-0245-FOF-WS, issued March 4, 1994, in Docket No. 930524-WS, the Commission determined that Tradewinds' used and useful land value on its water system was \$20,000. However, this Order also states that in 1992, the utility purchased an additional 20 acre tract of land for spray irrigation in order to dispose of treated wastewater effluent. The utility recorded the value of the land at \$99,000. During that rate case, it was discovered that only 6.6 acres of the 20 acres were considered used and useful. Further, of the 6.6 acres, 4.5 acres were for the spray field and 2.1 acres were for the buffer zone. We adjusted the additional land value by (\$66,330) to reflect the 6.6 acres that were actually used and useful to an approved amount of \$32,670.

According to the utility and information from the Marion County Property Appraiser's Office (MCPAO), 10.25 acres of the 20 acres referenced above was sold from the utility to a related stockholder of the utility. It was later discovered that the related stockholder was Mr. DeMenzes, the utility's president. The County's Official Records of Transfer at the MCPAO stated that in

December of 1998 there were two separate transfers involving 10.25 acres of unqualified property. In each case, the transfer was initiated by a Quit Claim Deed.

According to Statement of Financial Accounting Standard No. 57, examples of related party transactions include, but are not limited to, transactions between an entity and its principal owners or members of their immediate families. Principal owners are defined as owners of record who own more than 10 percent of the voting interest of the company. According to Tradewinds' 1999 annual report, the stockholder in this scenario has 100% ownership in this utility. We find that the sale and resale of this property between the utility and the stockholder and vice-versa was a related party transaction.

Related party transactions require heightened scrutiny. Although a transaction between related parties is not per se unreasonable, it is the utility's burden to prove that its costs are reasonable. Florida Power Corporation v. Cresse, 413 So. 2d 1187, 1191 (Fla. 1982). This burden is even greater when the transaction is between related parties. In GTE Florida, Inc. v. Deason, 642 So. 2d 545 (Fla. 1994), the Court established that when affiliate transactions occur, that does not mean that unfair or excessive profits are being generated, without more evidence to contrary. The standard is to evaluate affiliate transactions and determine whether those transactions exceed the going market rate or are otherwise unfair.

As stated earlier, on February 9, 2000, Commission staff sent a data request concerning the land included in the AFPI filing. Staff attached a copy of the order from the utility's last rate case to its data request for review by the utility's president. Pursuant to this order, we established a value on the same land within the utility's wastewater system in connection with the sprayfield and buffer zone. The utility requested additional time to respond on March 10, 2000. However, no additional information was submitted.

We have concerns over the significant increase in land value that the utility has reported, and whether the increased cost for land is prudent. We find that it is inappropriate to include the total amount requested by the utility on the land for this filing. Further, we find that the utility has failed to meet its burden to provide the requisite information on the land transaction.

As for attempting to establish a used and useful percentage on the land mentioned previously, we could not determine what portion of the land was considered to be used and useful. However, the utility stated that the ten acres were needed for the disinstallation of a 200,000 gallon elevated storage tank, which is discussed below, but it did not provide information on the quantity of land that was needed for the tank.

We suggest that the utility consider filing for a Staff Assisted Rate Case if it wishes to recover the cost associated with this investment.

Elevated Tank

Our second concern involves the elevated storage tank. According to the guidelines in DEP's loan contract in connection with improving the water quality in the George Mayo Subdivision, the utility was to install a 200,000 gallon elevated tank for fire flow and potable water. The utility requested full recovery of installing the tank through this AFPI proceeding. The utility anticipated passing on the total cost of the tank to future customers located only in the George Mayo Subdivision.

It would not be appropriate to allocate the cost of the tank only to the customers located in this subdivision. The water distribution main/lines associated with the tank in the subdivision are interconnected with the existing water mains/lines in the service area. Because of this interconnection, we disagree with the utility's attempt to require the customers in the subdivision to pay for all the cost associated with the tank. To be more specific, the interconnection with existing lines is an indication that current customers are also benefitting from the tank investment. Due to the interconnection, the current customers in the utility's existing service area will also receive water from this tank for fire flow or potable water purposes. Therefore, we find that the current customers should be allocated their fair share of paying the cost of this investment.

In order for the utility to earn a fair rate of return on this investment, it should require existing customers and all future customers to pay their fair share of the cost of this asset. To require only the customers in the George Mayo subdivision to pay the total cost of the tank would be unfair and discriminatory.

If the utility chooses to file for a Staff Assisted Rate Case, it will be appropriate to consider a request to recover the costs of the tank from all utility customers in that proceeding. In such a proceeding, a full analysis of the utility's plant, books, and records, etc., can be completed. This will allow the utility an opportunity to earn a fair rate of return on its investment.

Used and Useful and Future ERCs

Our next concern involves the appropriate amount of used and useful percentage and future ERCs over which the AFPI charges should be spread. Upon reviewing the AFPI application, additional data responses, and analyzing the utility's 1999 annual report, we have determined that there is conflicting information concerning the utility's request for AFPI charges on its water system.

Based on information received from the utility, we could not make a determination as to what percentage of the tank is used and useful. Further, we could not make a reasonable determination from the information provided as to how many future ERCs the utility could connect.

According to its 1999 annual report, the utility is currently serving 285 ERCs, and the maximum number of ERCs to be served is 1,600. On March 30, 2000, Commission staff issued a data request for additional information involving current and maximum ERCs for the utility's water system. On April 11, 2000, the utility responded that its current number of ERCs is 260, and its maximum number of ERCs is approximately 500. The number of ERCs from the utility's 1999 annual report and the data received from the utility should be equal or similar in number. However, to reconcile the number of ERCs, we initiated our own calculations based on the annual report and information received from the utility.

It is difficult to determine an accurate used and useful percentage applicable to this plant due to the conflicting and missing flow and ERC statistics. The system is currently capable of serving approximately 943 ERCs which is derived by taking the reliable capacity of the two wells pumping for twelve hours each (283,000 gpd) plus the capacity of the new storage tank (200,000) or 483,000 gpd. When the fire flow of 120,000 gallons is subtracted, it leaves a total of 363,000 gpd available for customers. The average use per ERC is 385 gpd, resulting in 943 potential customers or ERCs. The utility has stated that it is currently serving 450 ERCs and did not provide any growth figures.

Therefore, we have calculated the used and useful percentages as follows:

Current per ERC flows gpd	173,250
GPD Fire Flow	<u>+120,000</u>
Current system's total gpd	293,250
Current system's total gpd	293,250
Divided by the full capacity	<u>483,000</u>
Used and useful percentage	60.7%

If 60.7% of the utility's plant is considered used and useful, then 39.3% is considered to be non-used and useful. Thus, 39.3% of the plant could be applied to the utility's request for AFPI charges.

It must be emphasized that many of these figures represent our best estimate due to missing and conflicting data provided by the utility. We are concerned that there is too much inaccurate information in this AFPI proceeding. According to the 1999 annual report and responses to Commission staff's data request, the dissimilarities in these numbers are too great for us to definitively calculate either the appropriate non-used and useful or future ERCs to which AFPI charges should be allocated.

Meter and Meter Installation Fees

Our next concern is the inclusion of meter costs requested by the utility. Included in its AFPI filing is the cost of installing meters in the amount of \$6,031. According to the utility's current water tariff and pursuant to Order No. PSC-94-0245-FOF-WS, issued March 4, 1994, the utility was given authorization to implement a meter installation charge. In that order, the utility was authorized to charge the following for meter installation:

5/8" x 3/4"	\$100
1"	\$130
1 1/2"	\$180
2"	Actual Cost

A meter installation fee is the mechanism in place for the utility which allows an opportunity to recover the cost of providing and installing meters for its customers. We find it inappropriate to include the cost of meter installations in the

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AFPI calculation since these amounts have already been recovered through other approved charges.

For the foregoing reasons, the utility's request for approval of water AFPI charges is hereby denied.

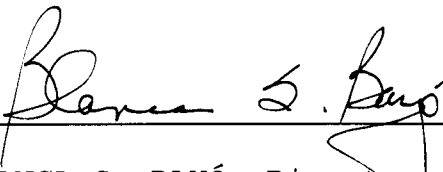
If no timely protest is received upon the expiration of the protest period, this Order will become final upon the issuance of a Consummating Order, and this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Tradewinds Utilities, Inc.'s request for approval of water AFPI charges is denied. It is further

ORDERED that if no timely protest is received upon the expiration of the protest period, this Order will become final upon the issuance of a Consummating Order, and this docket shall be closed.

By ORDER of the Florida Public Service Commission this 21st day of August, 2000.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS

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.

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

The Commission's decision on this tariff is interim in nature and will become final, unless a person whose substantial interests are affected by the proposed action files a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 11, 2000.

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

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

M E M O R A N D U M

August 21, 2000

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RECORDS AND REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (BRUBAKER) *JSB ps*

RE: DOCKET NO. 991835-WS - APPLICATION FOR ALLOWANCE FOR FUNDS PRUDENTLY INVESTED (AFPI) CHARGE FOR ADDITIONAL WATER IMPROVEMENTS AND FOR ADDITIONAL LINES ASSOCIATED WITH WASTEWATER EXTENSION INTO GEORGE MAYO SUBDIVISION IN MARION COUNTY, BY TRADEWINDS UTILITIES, INC.

1513-TRF

Attached is an ORDER DENYING WATER AFPI CHARGES, to be issued in the above-referenced docket.

(Number of pages in order - 9)

JSB/lw

Attachment

cc: Division of Economic Regulation (Willis, Butts, Rendell)

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