

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: application by DEBARY ASSOCIATES, )	DOCKET NO. 890792-WS
INC. for a staff-assisted rate case )	ORDER NO. 24396
in Volusia County )	ISSUED: 4/22/91

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
 J. TERRY DEASON  
 BETTY EASLEY  
 GERALD L. GUNTER  
 MICHAEL MCK. WILSON

ORDER APPROVING SETTLEMENT PROPOSAL,  
 SETTING RATES, AND REVIVING ORDER  
 NO. 22569, AS MODIFIED, AS A FINAL ORDER

BY THE COMMISSION:

DeBary Associates, Inc. (DeBary) is a Class C utility that provides water and wastewater service to approximately 244 residential customers in Volusia County. On June 13, 1989, DeBary applied for a staff-assisted rate case. Its application was approved by letter dated July 10, 1990. The test year for this proceeding is the twelve-month period ended June 30, 1989. During the test year, DeBary realized operating revenues of \$29,656 for water and \$29,767 for wastewater, which resulted in net operating losses of \$4,590 and \$7,635, respectively.

By Order No. 22569, issued as proposed agency action on February 19, 1990, this Commission approved increased rates for both water and wastewater service. Also by Order No. 22569, the Commission authorized the collection of such rates as temporary rates, subject to refund, in the event of a protest of Order No. 22569.

On March 12, 1990 the Office of Public Counsel (OPC) filed a protest to Order No. 22569 and this case was set for an administrative hearing. Subsequently, a number of DeBary's customers intervened in their individual capacities.

This case was originally scheduled to be heard by a Commission panel, however, it was subsequently assigned to the Division of

DOCUMENT NUMBER DATE

03817 APR 22 1991

PSC-RECORDS/REPORTING

ORDER NO. 24396  
DOCKET NO. 890792-WS  
PAGE 2

Administrative Hearings (DOAH). Prior to the scheduled hearing date with DOAH, OPC and DeBary reached a settlement. A copy of their settlement agreement is appended to this Order as Attachment A.

Pursuant to their settlement agreement, DeBary, OPC, and the individual customer intervenors have agreed to reduce the water and wastewater rate base amounts, as established by Order No. 22569, by \$32,500 each, and the revenue requirements established thereunder by \$4,250 each for water and wastewater. DeBary has also agreed not to file another rate case prior to January 1, 1993. For their part, OPC and the intervenors have agreed that there shall be no refund of the excess of temporary rates over the final rates agreed to. Finally, all parties have agreed that this settlement is res judicata to the issue of DeBary's rate base. In other words, in any future rate proceeding, none of the parties to this agreement will be able to challenge the rate base amounts agreed to.

After reviewing the proposed settlement, we have one major concern: the prohibition against any rate proceedings prior to January 1, 1993. DeBary is a utility which has had a history of service problems. Although these appear to have been corrected at this time, we cannot help but wonder about the continued viability of this utility should the Department of Environmental Regulation order it to make any major improvement prior to the expiration of the rate case "moratorium". Our concerns are, however, somewhat assuaged by the fact that the moratorium does not prevent DeBary from seeking relief under either the price index or pass-through rate adjustment provisions.

Further, by its very terms, the settlement must be approved in full, unmodified, and it has been a long-standing policy of this Commission to encourage negotiated settlements in the interest of administrative efficiency. Accordingly, having noted our concerns, we find it appropriate to approve the settlement agreement and revive Order No. 22569, as modified by the agreement, as a final and effective order.

As for the appropriate rates, we have adjusted the rate bases, revenue requirements, and base facility charges consistent with the parties' agreement. Based upon these figures, we have recalculated monthly service rates as set forth below. These rates shall be effective for service rendered on or after April 2, 1991.

ORDER NO. 24396  
 DOCKET NO. 890792-WS  
 PAGE 3

MONTHLY WATER RATES

RESIDENTIAL AND GENERAL SERVICE

BASE FACILITY CHARGE

<u>METER SIZE</u>	<u>TEMPORARY</u>	<u>FINAL</u>
5/8" X 3/4"	\$ 6.51	\$ 5.01
1"	16.58	12.53
1 1/2"	32.55	25.05
2"	52.08	40.08

GALLONAGE CHARGE  
 Per 1,000 gallons

\$ 1.81      \$ 1.81

MONTHLY WASTEWATER RATES

RESIDENTIAL SERVICE

BASE FACILITY CHARGE

<u>METER SIZE</u>	<u>TEMPORARY</u>	<u>FINAL</u>
All meter sizes	\$ 7.93	\$ 6.39

GALLONAGE CHARGE  
 Per 1,000 gallons  
 (10,000 gallons max)

\$ 1.98      \$ 1.98

GENERAL SERVICE

BASE FACILITY CHARGE

<u>METER SIZE</u>	<u>TEMPORARY</u>	<u>FINAL</u>
5/8" X 3/4"	\$ 7.93	\$ 6.39
1"	19.83	15.98
1 1/2"	39.65	31.95
2"	63.44	51.12

GALLONAGE CHARGE  
 Per 1,000 gallons

\$ 2.38      \$ 2.38

ORDER NO. 24396  
DOCKET NO. 890792-WS  
PAGE 4

Based upon the foregoing, it is

ORDERED by the Florida Public Service Commission that the settlement agreement entered into by the parties to this proceeding, which settlement is appended to this Order as Attachment A, is hereby approved. It is further

ORDERED that Attachment A is, by reference, expressly incorporated herein. It is further

ORDERED that Order No. 22569 is hereby revived, as amended herein, and made final and effective. It is further

ORDERED that Docket No. 890792-WS be and is hereby closed.

By ORDER of the Florida Public Service Commission, this 22nd  
day of APRIL, 1991.

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

( S E A L )

RJP

by: Kay Flynn  
Chief, Bureau of Records

ORDER NO. 24396  
DOCKET NO. 890792-WS  
PAGE 5

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.

ORDER NO. 24396  
 DOCKET NO. 890972-WS  
 PAGE 6

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application of DEBARY	)	
ASSOCIATES INC., for staff-assisted	)	Docket No. 890792-WS
rate case in Volusia County	)	Filed: March 13, 1991
<hr/>		

SETTLEMENT

The Citizens of the State of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, and Debary Associates, Inc. ("Utility"), by and through its undersigned attorneys, agree to the following settlement and request the Florida Public Service Commission to approve its terms.

1. This matter has been scheduled for formal hearing before the Division of Administrative Hearings to consider Citizens' Petition On Proposed Agency Action Order No. 22569.

2. Both parties acknowledge that the expense of pursuing this matter through a formal hearing and post-hearing proceedings may well far exceed any adjustments that may be made in the Commission's Proposed Agency Action.

3. Both parties have, therefore, come to agree that this docket should be settled in the following manner:

4. All provisions of the Commission's Proposed Agency Action Order No. 22569, issued February 19, 1990, shall be accepted as final by both parties, except for the following modifications.

ORDER NO. 24396  
DOCKET NO. 890972-WS  
PAGE 7

5. The net rate base amounts for the Utility were calculated in Commission Order No. 22569 based on an historical test year of June 30, 1989. Water rate base was calculated at \$69,813 and wastewater rate base was calculated at \$68,793. The parties agree that these rate bases shall be reduced by a total amount of sixty-five thousand dollars (\$65,000). One half of that total, or \$32,500, shall be deducted from the water rate base, setting water rate base at \$37,313. \$32,500 shall be deducted from the wastewater rate base, setting wastewater rate base at \$36,293.

6. Both parties agree and accept that the final rate base amounts for Debary Associates, Inc., shall be established as modified and set forth in paragraph 5, above, and shall remain inviolate except for any adjustments, such as for depreciation and plant additions, which are made subsequent to the end of the June 30, 1989 test year, on a going forward basis.

7. Further, both parties agree and accept that the individual components of the above rate base amounts, such as the net book value of or the Utility's investment in, the utility plant, shall be considered res judicata as to any future attempt to argue those components.

8. The revenue requirements of the Utility, as calculated in Order No. 22569, shall be reduced by a total amount of eight thousand five hundred dollars (\$8,500). One half of that total, or \$4,250, shall be deducted from the water revenue requirement and one half, or \$4,250, shall be deducted from the wastewater revenue requirement. Further, these revenue requirement reductions shall

ORDER NO. 24396  
DOCKET NO. 890972-WS  
PAGE 8

be applied exclusively to the base facility charge amounts that were established for both water and wastewater in Order No. 22569.

9. The utility shall not file with the Commission, before January 1, 1993, a rate case seeking a rate increase.

10. The imposition in Order No. 22569, of a \$1,400 penalty against the Utility due to the past unsatisfactory nature of the utility's quality of service, shall be eliminated and there shall be no penalty assessed.

11. The new rates which are established by Commission Final Order in this docket shall be implemented and placed into effect either on April 1, 1991 or on the date of the Commission's approval of this settlement, whichever comes later.


12. There shall be no refund of the excess of interim rates collected by the Utility pursuant to Commission Order No. 22569, over the final rates established pursuant to this settlement and Commission Final Order in this docket.

13. Should the Commission decline to approve this settlement between the parties in its entirety and without modification, the settlement shall be deemed void and without prejudice to any of the parties.

WHEREFORE, the parties respectfully request this Commission to approve the above-stated settlement in its entirety.

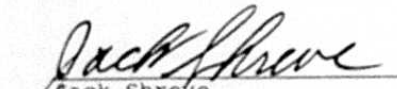


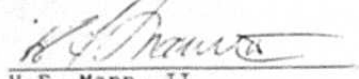
ORDER NO. 24396  
DOCKET NO. 890972-WS  
PAGE 9

  
Gary Shipman, Esquire  
Dennis, Fruetj & Collins  
Post Office Box 550  
Tallahassee, FL 32302

(904) 224-3511  
Counsel for DeBary Associates

Respectfully submitted,

  
Jack Shreve  
Public Counsel

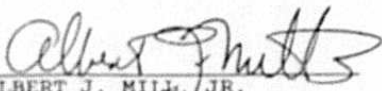


H.F. Mann, II  
Associate Public Counsel  
Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street  
Room 812  
Tallahassee, FL 32399-1400

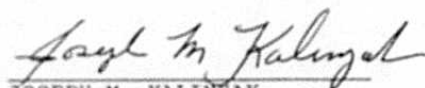
(904) 488-9330

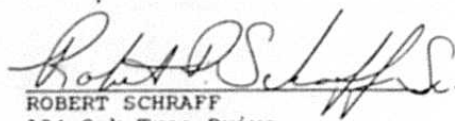
Attorney for the Citizens  
of the State of Florida

ORDER NO. 24396  
DOCKET NO. 890972-WS  
PAGE 10

  
ALBERT J. MILLS, JR.  
106 Leisure Drive, North  
DeBary, FL 32713

  
NEIL TSCHANNEN  
62 Amigos Road  
DeBary, FL 32713

  
JOSEPH M. KALINYAK  
173 Pine Tree Drive  
DeBary, FL 32713

  
ROBERT SCHRAFF  
134 Oak Tree Drive  
DeBary, FL 32713