BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 100128-WU

In the Matter of:

APPLICATION FOR INCREASE IN WATER RATES IN GULF COUNTY BY LIGHTHOUSE UTILITIES COMPANY, INC.
_______________________________________/

PROCEEDINGS:	COMMISSION CONFERENCE AGENDA ITEM 6
COMMISSIONERS PARTICIPATING:	CHAIRMAN ART GRAHAM COMMISSIONER LISA POLAK EDGAR COMMISSIONER RONALD A. BRISÉ COMMISSIONER EDUARDO E. BALBIS COMMISSIONER JULIE I. BROWN
DATE:	Tuesday, August 9, 2011
PLACE:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	JANE FAUROT, RPR Official FPSC Reporter (850) 413-6732

P R O C E E D I N G S

CHAIRMAN GRAHAM: Item Number 6.

Mr. Fletcher, you have the floor.

MR. FLETCHER: Commissioner, Item 6 is staff's recommendation to approve a rate increase for Lighthouse Utility Company, Inc. in Gulf County.

Mr. Doc Horton, utility counsel, and Mr. Ralph Robertson, the utility's accounting consultant, are here to address the Commission.

In addition, Mr. Steve Reilly and Ms. Tricia Merchant are here from Office of Public Counsel.

Staff is available for any questions you may have.

CHAIRMAN GRAHAM: Public Counsel.

MR. REILLY: Commissioner Graham, Chairman, and Commissioners, Public Counsel would have preferred greater adjustments and reductions to the proposed increase. However, taking the recommendation as a whole, it's our intention to recommend to the customers not to protest this proposed PAA order if you vote out the staff's recommendation today. We do understand the company is here to argue about several of the issues, so I would like to reserve my comments to respond to the points that they might raise in opposition to the staff recommendation. Thank you.

CHAIRMAN GRAHAM: All right.

Lighthouse.

MR. HORTON: Thank you, Mr. Chairman. Norman H. Horton, Jr. appearing on behalf of Lighthouse. Also with me to my left is Mr. Ralph Roberson, who is one of the consultants for the company. Also in attendance is Mr. Jay Rish (phonetic), the President of Lighthouse, and Mr. Michael McKenzie (phonetic), who he is an associate of Mr. Robertson.

We would like to address, basically, three points, or three of the issues. First of all, Lighthouse is a very small utility. We are not small enough for the staff-assisted rate case, but we are a very small utility, very limited area. This is our first general rate increase since 1988 when we came under the jurisdiction of the Commission. So it has been a long time since the company had any general rate relief.

I know you've heard before about small companies and the problems that face them. This is not a company that's just trying to skate by and skimping on service, though. As reflected in the first issue, the staff determined that the service quality of this company was satisfactory. We are current in all of our required standards with DEP. We have no service-related complaints. I think they noted in the recommendation in the last four years, I think there have been -- or in several years there have been four complaints that related to billing. There were no service complaints at the customer meeting. So that's something that the company is proud of. They take seriously their obligation for service and that's part of the issue.

You didn't have people parading in front of you with jars of dirty water or anything like that. The company is serious about the service they are providing. That being said -- and also let me add that during this process, it has taken awhile, staff has been most helpful with their answering our questions and providing guidance when necessary. And we do appreciate the assistance they provided, even though we don't agree with some of the portions of their recommendation. But they did offer assistance.

If I could, I'd like to address one issue, and Mr. Roberson is going to address two others. But I would like to address the issue, Issue Number 3 with respect to the disallowance of a portion of the plant-in-service due to lack of documentation. We spent a lot of effort and support -- to provide the support and level for the plant-in-service. There were some documents, invoices that simply were not found. Most, if not all, were destroyed by flooding, by water damage, but we did our best to provide support for everything that we have.

There is some precedent for including plant-in-service absent the documents, and I go back to a 1978 Supreme Court case, Florida Bridge Company versus Bevis. And it just so happens that I was a staff attorney at that time handling that particular rate case. It was the only rate case involving a toll bridge that I am aware of that ever came before the Commission, so there's some history involved with that. But in that case, staff recommended disallowing a franchise valuation because the documents supporting the franchise valuation were nonexistent.

The Supreme Court reversed the Commission on that, essentially saying there was no evidence of anything illegal, fraudulent, or inappropriate at all with the loss of those records, and they reversed the Commission on that particular one. And I would suggest to you, in this particular case, that something is similar. There is no indication whatsoever that the company has engaged in fraud or anything deceptive about these invoices. The plant is there. Staff has been down to the service area and have looked at the plant-in-service. Mr. Reilly came down and was taken around by the president and shown the plant. So it's not a matter that the plant is not there. It has been added -- the annual reports reflect the addition of plant over the years, so invoices at one time existed.

I would suggest to you that under the circumstances, and given the precedent of the Florida Bridge case, it would be appropriate to include all of the plant-in-service or to reverse the Commission staff on that particular issue and include that in the plant. With that, I would turn it over to Mr. Roberson.

MR. ROBERTSON: Thank you. My name is Ralph Robertson. I'm a CPA consulting with the Lighthouse Utility Company.

CHAIRMAN GRAHAM: Mr. Robertson, are you going to speak to Issue Number 3, or are you going to go to one of the other issues?

MR. ROBERTSON: I have two other issues.

CHAIRMAN GRAHAM: I want to move on with this one before we go on to the other two issues.

MR. HORTON: Oh, I'm sorry, Mr. Chairman. That's fine.

CHAIRMAN GRAHAM: That's all right.

Staff.

MR. FLETCHER: Yes, Commissioner. I'll defer to Keino Young regarding the 1978 Bevis case that Mr. Horton mentioned, but as far as staff in analyzing in its recommendation here, it was brought to my attention by another staff member that we dealt with a similar situation in the Chesapeake Gas. Although it was not initially in the recommendation due to it was immediately prior to filing it regarding how the Commission has decided with the loss of records as it relates to a hurricane, in the Chesapeake case it was Hurricane Jeanne that destroyed part of the records. And in that case, what the Commission had relied on was audited financials, so that is done by -- audited by a third-party, and as far as support for those lost records, it represented almost 10 percent of their total plant. I can tell you that what is distinguishable for the Chesapeake and this case is the fact that this is the second time that records have been destroyed for this company as a result of a hurricane. In 1985, Hurricane Kate had destroyed the records and the current owners of the utility now in that last SARC had to perform an original cost study, and that was taking the physical inventory of the plant that you have utilized, and some of it is above ground and some of it is below ground with the lines. But taking that physical inventory, doing a replacement cost for 1986 and indexing it down to the year it was placed into service.

Now, in this case, we have met with the company several times regarding what is required to support the plant where the records were destroyed. We have provided an original cost study that was performed by a professional engineer in Utilities Inc. System for Alafaya, and they had similar situations where in Alafaya they had to go back to the mid-'80s, 1985 from that point and going all the way to 2004, where if they could not find an invoice from a vendor, reach out to vendors that they knew were on those projects, and they could not produce an invoice, what they did is they did a physical inventory and indexed it using the Handy-Whitman Index in that Alafaya case to the year that those facilities were placed into service.

So in this case, absent audited financials, you know, many times what's on the annual report, and in this case you have an audit done, and we make adjustments to their plant items that they report on their annual report, expenses, the cost of capital, many times we have that. So merely relying on unaudited annual reports, staff is not comfortable with regard to that, and we stand by our recommendation based on the distinguishable facts in Chesapeake. And I will turn it over to Keino to address --

MR. YOUNG: Good morning, Commissioners. We are pulling the Bevis case right now; we weren't aware of that. But I stand by what -- we feel comfortable with what Mr. Fletcher said in terms of the case we believe that possibly you can rely on is the In re: Petition for Increasing Rates by Florida Division of Chesapeake Gas case. That's number one.

Number two, I think Mr. Fletcher mentioned it, but I think it needs to be stated again, staff worked with the utility on numerous occasions, held informal meetings where we asked the company to provide the documentation for the plant-in-service use. We actually offered assistance. The company, I think, and Mr. Fletcher can correct me if I'm wrong, on the last informal meeting we deferred the item and the company indicated that we should go with what we have.

MR. FLETCHER: And the only thing I would add is because it was mentioned that a staff engineer, and Stan can correct me if I'm wrong, is we do, whenever we have a field inspection, the utility goes down and looks at the utility's facilities. But, again, you're talking about above-ground facilities. We don't know what is in a particular subdivision under the ground, the linear feet that might not be supported as it relates to the unsupported adjustment that we have on Issue 3 of the 292,000. What is that? Is that below the ground? There was never a physical inventory outside of what was presented in an invoice to staff.

CHAIRMAN GRAHAM: OPC.

MR. REILLY: Yes. A few comments in support of staff's adjustment. First, on the comments about customers not coming in with colored water vials, that is true, but that is largely because this company is fortunate to have very --

CHAIRMAN GRAHAM: Mr. Reilly, let's just stick to Issue Number 3.

MR. REILLY: Number 3. It has quality raw water. As to Number 3, be aware that the staff did allow for the original cost study to be done to compliment and supplement what documentation they did have. I would point that in this recommendation the customers are actually recommending to put the cost, the $17,640 cost of the original cost study in rate case expense. So actually it's really not the customers' responsibility for the company to preserve its records and to maintain its burden of proof, and yet I think as an argument for staff is the customers actually end up paying for the company to try to make up for the fact that it didn't preserve its books and records.

And I think that Ms. Merchant has actually some additional comments on the background and the fact that this company has, in the past, failed to maintain its books and records properly.

CHAIRMAN GRAHAM: Ms. Merchant.

MS. MERCHANT: Good morning. Tricia Merchant with Office of Public Counsel. I would certainly agree with Mr. Fletcher in his comments that this is not the first time that the Commission has dealt with this issue with Lighthouse. In fact, the auditors in 2001 in an audit report of an overearnings investigation, they found that the company did not support their books and records for plant.

The other concern -- we certainly support staff in their adjustment, but we'd like to take it a little step further. By rule, the company is required to keep their books and records and the documentation to support their plant according to the NARUC Uniform System of Accounts. They are also required to notify the Commission within 90 days if they do lose their books and records. Obviously, 2004 is quite a ways away from today to come in for a rate case and, oh, by the way, we lost our books and records.

So what we would like is in the PAA order a statement that says please be aware of the requirements to maintain your books and records. And if you lose your books and records again, notify the Commission in compliance with the rule. And those are our concerns about that issue.

CHAIRMAN GRAHAM: Thank you, ma'am.

Mr. Horton, or Mr. Robertson, whichever.

MR. ROBERTSON: Okay. Thank you. Just a couple more comments on Item 3. You know, hurricanes are a natural disaster. The company's records were not stored in the same place the second time they were the first time. The company is located in a very precarious area. Cape San Blas is a long narrow strip of land that's surrounded by the Gulf on one side and the bay on the other, so they are exposed to undue risk. They understand that. They took what they thought was reasonable precautions, but it turned out to be not such.

In regard to the audits, this, again, is a small company. Audits are expensive. They relied on financial statement compilations that were done by outside CPAs. The annual reporting to the Public Service Commission reported asset additions and deletions. This was prepared by an outside CPA, although it was not audited, but it was prepared and submitted to the Public Service Commission for their review on an annual basis.

And also, these asset additions and deletions are reported to the IRS as part of their tax return. And this was reported under penalties of fraud if they are not reported correctly. So, notwithstanding, no, they didn't have audits, but there were other controls, I think, in place that would ensure that this company would make the best effort to properly report their asset base.

I would like to address Item Number 11.

CHAIRMAN GRAHAM: Hold on. Let's finish with this one first.

MR. ROBERTSON: Okay.

CHAIRMAN GRAHAM: Commissioner Brown.

COMMISSIONER BROWN: Thank you, Mr. Chairman.

I would like the utility, if you have provided -- if you have extra copies of the Bevis case to pass them out for the Commissioners' review.

MR. HORTON: I only have one copy, but I'll give it to counsel.

COMMISSIONER BROWN: Thank you.

And a question for staff regarding whether there is a conflict. I don't know if you had an opportunity to refresh your memory on the Bevis case, but if there is a conflict between the Chesapeake case and the Bevis case, I'd like to have a clear understanding on that, because from what the utility company pointed out, Bevis focused a little bit on the lack of fraud and the lack of deception and reversing the Commission's decision; whereas, the Chesapeake case focused more on an audited -- I just want to see if there is a distinction between the two, if it has been Shepherdized, if there is any conflict. If we can have that information, I think it is very relevant to the issue.

MR. YOUNG: Yes, ma'am. We are running it down right now.

CHAIRMAN GRAHAM: I'll let you guys look at that. Let's go on. Mr. Robertson, your next issue.

MR. ROBERTSON: Okay. Thank you. I do want to express appreciation to be able to appear and also thank the staff for their diligent work. Because there has not been a rate case since 1988, it presented some significant challenges for the staff and for the company. And I appreciate their diligence in that.

Again, this is a small company. The numbers that we are dealing with here are small numbers, but to the company they are rather significant. On the rent issue, the company pays --

CHAIRMAN GRAHAM: Which issue?

MR. ROBERTSON: This is Number 11, I'm sorry. Number 11, rent. The company pays $500 a month for rent. That includes office space, utilities, access to the telephone system, access to a copier, access to a receptionist that's there to handle walk-ins and messages, and also the infamous record storage.

We think the staff's recommendation to disallow 50 percent of this expense is somewhat arbitrary and not justified. I know they cited that the office is in a shared building, and it's space shared with a real estate company, but that factor has already been factored into the rent amount. You certainly could not rent that entire building for $500 a month with all of these amenities. And I really don't think this company could go out and find a space with these amenities for $250 a month. So we think that's a little unjust when you consider that the -- and I understand the issues with shared space, but that has already been factored into this rent amount. That's all of my comments on Number 11.

CHAIRMAN GRAHAM: I have a question for you. So what would the rent amount be for the entire building; do you know what that is, considering the real estate side and the utility side?

MR. ROBERTSON: The rent value on that entire building would be approximately $1,500 a month.

CHAIRMAN GRAHAM: Is that what is currently being paid, or where did that number come from?

MR. ROBERTSON: Well, that is another company, so I'm not privy to that. But that is -- knowing the market and knowing the size of the building, that would be an approximate value of that entire building.

CHAIRMAN GRAHAM: Now, did you provide any of that documentation to the staff?

MR. ROBERTSON: I'm not sure what they looked at when they determined their adjustment.

CHAIRMAN GRAHAM: Mr. Fletcher.

MR. FLETCHER: Commissioners, we relied on the utility's response to the audit and how it was, basically, in Audit Finding 5. The auditors looked at what the utility was paying for the rent, and in their observations and their field inspection they believe that they were using half of the space of the rental amount that was being paid. And in that one, the auditors just through their observations, since they are using half of it, we're going to take half of the rental expense.

I do want to point out that in their response the utility said that due to the fair market value of other rentals, the $500 is reasonable. We have not received any, I guess, documentation regarding what the fair market value is for other leased space. That was not provided in the utility's audit response. I just would submit to you that in every rate case related-party transactions that are not, per se, unreasonable, but they require greater scrutiny, and in providing that additional support documentation regarding the fair market value, the $1,500 that was mentioned, we would need that support. So we basically relied our recommendation on the auditors' observations during their field inspection.

CHAIRMAN GRAHAM: Was there a reason why that documentation wasn't provided?

MR. ROBERTSON: Pardon?

CHAIRMAN GRAHAM: Was there a reason why any further documentation wasn't provided?

MR. ROBERTSON: Not to my knowledge. And I really wasn't aware of this adjustment that was going to be made until later in the game after the auditors had made their visit.

CHAIRMAN GRAHAM: I have to tell you this is something that caught my eye, as well. And the thing that skewed me was because there was no further documentation that was provided, even after staff had asked for documentation.

MR. ROBERTSON: Okay. You know, we could certainly provide documentation, but looking at it from a reasonableness basis, I just don't see -- and I don't think they really factored in the other amenities, and I don't think they really understood that utilities were included in the rent amount. And I don't know that that question came up. And maybe it should have been incumbent upon us to make sure that that was part of the discussion, but we just didn't realize that that fact may not have been known.

CHAIRMAN GRAHAM: All right. What other issue did you have?

MR. ROBERTSON: The other item is Item Number 12 regarding the directors' fees. The company has seven directors and a staff of three people. The president is basically part-time. You have a full-time utility manager and you have a full-time assistant.

Again, we respectfully disagree with the staff's recommendation to disallow four directors and their fees totalling $24,000 per year. Because of the limited staff, the directors are much more involved in the operations and decisions of the company. The company felt it was more economical to utilize the directors rather than hiring additional staff.

And, in addition, these directors are also the funding source of this company. They own or hold 100 percent of the loans to this company, so they obviously have a vested interest in the operations of the company, and they wanted to be involved in those operations. And so the company felt it was prudent to have the seven directors, to utilize them in helping with management decisions and operation decisions, and to compensate them fairly for that rather than looking at hiring additional staff that they felt would be more expensive.

CHAIRMAN GRAHAM: Staff.

MR. FLETCHER: With regard to the directors fees, given a utility this size, seven directors seemed like it was a bit excessive. Staff did look at the prior case and what was embedded into rates as far as the level of directors fees in the '88 order. There were four directors at the time and only one was paid $6,654. What staff is recommending in Issue 12 here is three directors at 6,000, which is a total of 18,000, and it represents conservatively to match the number of employees. That represents a $11,346 increase in directors fees. We stand by our recommendation. We believe it's reasonable and sufficient, given what was allotted in, or embedded in rates last time.

And I wanted to point out one more item on Issue 3 that I discovered -- or, excuse me, Issue 11 regarding the rental. And Mr. Robertson mentioned that it included the power, electric, as well as the rent. I looked at the rent expense in the 1988 case. It was $1,125 total. When you index that up using the Commission price indexes that is $2,000. We are recommending 3,000, just as added information with regard to the rental expense.

CHAIRMAN GRAHAM: Has the size of this utility changed since '88?

MR. FLETCHER: Yes, it has.

CHAIRMAN GRAHAM: How much?

MR. FLETCHER: In the last case -- pardon me one moment. I was trying to find the -- it is not clearly spelled out in the order, but I have noticed over the years in the annual reports by thousands of customers. It has increased substantially. More than doubling in what was the time in the last case. I don't have that exact number, but just looking at the annual reports it has been significant growth since the last rate case.

CHAIRMAN GRAHAM: So it's possible that the four directors that they had back then, where only one was being paid, or let's just say one was out there with a shovel doing work, and now the other three are out there with shovels doing work.

MR. FLETCHER: That is correct, Chairman.

CHAIRMAN GRAHAM: Is there a requirement for us to show or justify -- I mean, is their a time sheet or something like that that needs to be added if you declare that, you know, a director is actually doing some work as opposed to them not having another added employee?

MR. FLETCHER: As the Commission has looked at and reviewed director fees in the past, there is no time sheets required; typical directors don't have the time sheets. What the Commission has looked at is if there has been no minutes taken regarding the board of directors meeting, that the amount of fees requested be disallowed. We have requested the board of directors minutes. They have continually met. We have asked what their -- they have provided the experience, some of the business experience of some of the directors, or all of the directors, seven, and their stated benefit in data request responses is because of that years of experience in business, they help the utility as far as long range planning. You know, if there is any kind of financing matters, that they can provided advice to the utility. So that is the only -- that is what staff relied on is basically the business experience that they stated of the directors and what they provide assistance on. The directors minutes as far as whether they were reasonable or not, and we believe that at least equal to the amount of employees would be appropriate, given the information provided by the utility.

CHAIRMAN GRAHAM: OPC.

MR. REILLY: We support staff's adjustment. There's no evidence of the directors doing any work. There's no codification or documentation as to even how much they are consulted on a weekly or monthly basis. There was just no support whatever for what the directors are really doing. There was evidence that there was an annual shareholders meeting that was attended, but other than that, there was really just no documentation. When you look at the magnitude of these directors fees, 42,000 out of potentially here a total rate increase of $50,000-something, we really agree with staff, it was just way out of magnitude for the customers to bear in light of the size of this utility.

Further, I would argue to you that as admitted by the company, these directors are, in fact, the shareholders and lenders of this utility. And this very recommendation provides an 11.6 percent return on equity for the shareholder equity position, and an 8.06 percent return on loans to the utility. In this economic market, I think those two measures of compensation to the people involved in the utility to then be added this excessive directors fees on top of those compensations, I think is more than the customers should have to bear.

So, I think, once given, the staff has worked hard to try to balance these things and really even allow a pretty steep directors fee, given the size of this utility. So we would ask the Commission to hold the line and certainly not approve anything more than what the staff has recommended to you. Thank you.

CHAIRMAN GRAHAM: The utility currently has three employees?

MR. FLETCHER: That is correct.

CHAIRMAN GRAHAM: And they had three employees back in '88?

MR. FLETCHER: The information outlined in the order, I'm unable to distinguish how many employees were in effect back then. I can tell you with the massive growth it wouldn't have been more than three, because of the substantial increase in the facilities in ground and more attention regarding the additional facilities that have been installed that would be required.

CHAIRMAN GRAHAM: Mr. Robertson, do you know how many employees you guys had back in '88?

MR. ROBERTSON: I think basically the same number. In fact, it may have been only two. It may have been only two in '88, but certainly no more than three.

CHAIRMAN GRAHAM: All right. My board is lighting up. Commissioner Brown was first, followed by Commissioner Brisé. I'm sorry, Commissioner Balbis.

COMMISSIONER BROWN: Thank you, Mr. Chairman. I was just going to ask for about a ten-minute recess. I don't know if it is appropriate at this time, since there's going to be obvious discussion on this issue, but I wanted an opportunity to read the cases.

CHAIRMAN GRAHAM: Hold that thought.

Commissioner Balbis.

COMMISSIONER BALBIS: Thank you, Mr. Chairman.

I just have a quick question for staff. For a utility of this size, are three employees appropriate, or is that understaffed or overstaffed, in your experience?

MR. FLETCHER: Well, we looked at the -- it is appropriately staffed because particularly with the quality of service. They are not suffering on the maintenance, they are not -- as far as that regards, staff is recommending quality of service is satisfactory. As addressed in Issue 1, there has been a few billing complaints that has been filed that we have on file for this utility. So given that, the overall end goal, yes, it is appropriately staffed in that regard.

COMMISSIONER BALBIS: And the utility represents that these directors also perform work; so, alternatively, do you feel that having ten staff members is overstaffed?

MR. FLETCHER: We agree with that. Given a utility this size, and especially the comments that were made by the utility that there were only two or three employees at that time, and there was only one working, as was said, one shoveling, the one director that was managing back in the '88 case, that, yes, it is excessive, particularly for a utility of this size.

COMMISSIONER BALBIS: And, again, I think you answered this before, or stated this before, but just, again, to summarize, the utility has not provided any detailed information on the duties of these directors that would indicate they are performing actual work, or they have?

MR. FLETCHER: It has been -- generally, as far as they meet with them regarding any kind of financing matters, long-range planning. I imagine it's like the going concerns of the utility as far as to provide advice to the utility as far as that goes, but there has not been any detail. There's no time sheets. There's limited information regarding exactly the detail that was discussed in the board of directors meetings. It has been generally what was discussed. So, no, we don't have the exact delineation of exactly what they do. It's more broad information.

COMMISSIONER BALBIS: And your recommendation of reducing the salaries and wages by 24,000, the directors will be compensated just at a reduced amount, which reflects the type of work that you have seen provided to you from the utility.

MR. FLETCHER: Based on the information provided by the company, we believe that it should just be limited to the compensation of the three directors. Of course, the utility could pay those directors, it just wouldn't -- it would be nonutility below-the-line for the remaining four, if they continue on.

COMMISSIONER BALBIS: Okay, thank you. That's all I have.

CHAIRMAN GRAHAM: Well, I think considering that they had four directors, or had indicated they had four directors back in '88, and we don't seem to be the questioning the amount that we were paying the directors, just how many directors we are going to be paying, and with the growth the utility has seen over the past 23 years -- 23 years? -- 23 years, I don't have a problem with paying the set amount for four directors. I think the three directors that staff came up with -- I mean, it's a good theory on how you got to three, but it's a pretty arbitrary number, just like my number of four is a pretty arbitrary number. So I don't have a problem with going with four directors being paid in that position just because they had four directors back in '88, even though only one of the three -- only one of the four was being paid back then. Of course, I have the gavel in my hand, so I can't make that motion.

But, Mr. Robertson, did you have any other issues?

MR. ROBERTSON: That's all of the issues. Just a further comment on the directors fees. Again, I would like to reiterate that, you know, as a small company they don't meet in a board room, they meet on the go as things happen. They discuss by telephone or in other ways. The director fees, I understand just looking at numbers appear to be on the high side, but when you consider that it's really more than just a directors fee, it's fair compensation for their time that they spend doing things outside of what would take place in a normal board room meeting on a monthly or bi-monthly basis. So that's the -- you know, that's our position on that.

I would like to say that this is a mature company. It has been around for a long time, but because of the lack of rate increases, and certainly the company has to bear some responsibility for that, but their cash reserves are extremely low for a company of that maturity -- of the maturity level that they're at. They are constantly in the position of salt air, which means maintenance and repair expense, breakdowns, untimely breakdowns, hurricanes, things that can put a lot of cash demands on the company.

The company is -- you might say is mired in a desert, and we need two canteens of water to get out of this desert. We are very appreciative of the canteen of water that we are being offered by staff, but we are not sure that that is going to get us out of the desert. We may still die in the desert.

So the issue is just a little bit more than just the rates, but putting the company -- trying to put the company into a position where they can have a fair reserve to handle the issues so they can protect their customer base and provide the services that need to be provided. And I think if you look at the record of the company, they have been operated very conservatively. The newest vehicle in the company is a 2004 Chevrolet truck. The other vehicle is a 1995 Chevrolet truck. So they don't squander the money. They try to do things conversative, and maybe a little too conservatively at times.

But we appreciate your considering these adjustments that we are requesting, and thank you for your time.

CHAIRMAN GRAHAM: Sir, I have to tell you, I appreciate the fact that you guys have only had four complaints, and they are more towards billing, and the fact that you don't have a whole bunch of people here yelling and screaming complaining about the service. I have been involved in businesses, and I understand what some of the investors in the business have to do from time to time, and stopping what you are doing and giving of your weekends, spending a lot of time going through books, so I feel your pain.

We are going to take a ten-minute recess. We are going to take a ten-minute recess so the lawyers can confer. So we will be back here at 22 after.

(Recess.)

CHAIRMAN GRAHAM: Commissioner Brown.

COMMISSIONER BROWN: Thank you, Mr. Chairman. I would like staff to go over the cases with the Commission and related distinctions. I have had an opportunity to read them, and I'd like staff's input first, before I give my opinion.

CHAIRMAN GRAHAM: Okay.

MR. YOUNG: Let's start with the Florida Bridge Company versus Bevis. And I had a chance to talk to counsel on this case, and he can correct me if I'm wrong. This case turns on whether there was fraud or any indication of fraud in terms of their filings. In the case, the court noted that the company put -- the capitalized franchise valuation costs was included on the company's IRS filings and included in Commission audits at the time -- from the time of, I think, eight years to the Commission making a decision. Thus, if the Commission had a problem or questioned the costs they should have raised it during that time. Because the Commission did not raise any issues as relates to the costs for the franchise evaluation, the capitalized franchise valuation, the court said that there is no evidence to refute the costs.

As it relates to the Bevis -- excuse me, as it relates to the Chesapeake Gas case, the Chesapeake Gas case turns on the fact that Chesapeake did not provide an original cost study in terms of everything they were asking for. However, they did provide subsequent documentation or secondary documentation. And staff felt, and the Commission felt comfortable allowing the company to recover those costs in terms of the plant, the plant costs.

COMMISSIONER BROWN: And just as a follow-up. In the instant case, and I do see the distinction here, but in the instant case the Commission did not receive audited financial statements nor did the company receive audited annual reports. Did we receive tax returns?

MR. FLETCHER: They were available upon inspection by staff. That's is common in their MFRs; they are available for inspection. Again, I didn't learn of the Chesapeake case until pretty immediately prior to filing the recommendation in Lighthouse, but you are still looking in conjunction -- even if you have the tax returns, you still need audited information. That compilation, the tax returns doesn't necessarily go down like an audit would do, and go down to the source documentation 100 percent of the facilities that are devoted to public use.

COMMISSIONER BROWN: Thank you.

Mr. Chairman, if I may ask the utility a question.

And I appreciate you bringing to light the Bevis case, and although I don't think it is necessarily analogous, it does provide some relevant information, so I appreciate that. I do believe that the Chesapeake may be more on point, so I thank staff for providing that to us. Why did the company not provide audited -- why was the company not audited or provide audited annual reports or financial statements?

MR. ROBERTSON: The shareholders did not require it. They did not have outside loans, so there were no bank requirements. There was no other regulatory requirement for them to have an audited financial statement. And because of the expense of an audited financial statement, they didn't feel like it was in the best interest of the company or the consumers to pay for an audit that was not required or in their judgment was not needed.

I would like to say that as a preparer of many, many corporate tax returns, when you look at assets and asset additions, it's very common to look at invoices to get particular information that you need in preparing depreciation schedules, taking advantage of certain tax codes. Although that information is not presented in an audited format with an audited statement, in many cases it does rise to that same standard that it is examined and looked at in detail when it's added to the fixed asset schedule of that company.

COMMISSIONER BROWN: If I may. In the Chesapeake case, the company tried to contact the -- to get duplicate invoices, they tried to contact the vendors. Has the company attempted to do that?

MR. ROBERTSON: Yes, that was attempted. Of course, we are talking about a 23-year span, and at times it was difficult to even determine who the vendors were, but every effort was made. An engineering company was hired to do a study to verify much of the information, which the staff graciously accepted, and so every effort was made to document everything that could be documented, but there were some holes in the documentation. But when you looked at the financial records and the reports that went annually to the PSC, it was very consistent as to the assets that were reported and recorded on the books of the company. We just could not in every case find -- get down to that level of detail that the staff was asking for.

COMMISSIONER BROWN: I will defer -- if any other Commissioners have comments on this or questions on this issue, I'll defer.

CHAIRMAN GRAHAM: It's all you.

COMMISSIONER BROWN: Staff, based on your review of both cases, and the Bevis case obviously focused on different issues than the Chesapeake, and I think Chesapeake is more on point. Is your recommendation still the same?

MR. FLETCHER: Yes, Commissioner.

COMMISSIONER BROWN: Okay. I would support the staff recommendation, and I move to support staff recommendation on Issue 3.

CHAIRMAN GRAHAM: Was that Issue 1 through 10?

COMMISSIONER BROWN: Certainly. So moved.

CHAIRMAN GRAHAM: That's what I thought I heard. It has moved and seconded, staff recommendations on Issues 1 through 10. Any further discussion? Seeing none. All in favor, say aye.

(Vote taken.)

CHAIRMAN GRAHAM: Any opposed?

By your action, you have approved the staff recommendation on Issues 1 through 10. That brings us to --

Commissioner Brisé.

COMMISSIONER BRISÉ: Thank you, Mr. Chairman.

And I just have a question on Issue 12 with respect to the directors fees and all of that. My question is that if the three directors or the six directors that are contemplated --

CHAIRMAN GRAHAM: Seven.

COMMISSIONER BRISÉ: Seven, rather, that are contemplated, if they weren't filling the functions that are outside the normal functions of directors, would that require hiring of an additional staff?

MR. ROBERTSON: It's the company's position that they would need additional help if they didn't have the assistance of these directors participating in management decisions that have to be made through the course of events.

COMMISSIONER BRISÉ: Okay. One more. Do we have a sense of what that compensation would entail for that additional person, and how does that balance out with what is being recommended by staff?

MR. ROBERTSON: Well, the compensation amount that's being disallowed is $24,000. That would hardly fund a full-time position. And, again, it goes back to the fact that the company made the decision to compensate directors in lieu of going into the marketplace and hiring an additional person which they felt would certainly exceed this amount of money.

CHAIRMAN GRAHAM: Anything further?

COMMISSIONER BROWN: I did want to point out that I think Chairman Graham's argument made a lot -- was more reasonable in terms of allowing four directors based on the previous rate case. It makes more rational sense to go ahead and approve that amount.

CHAIRMAN GRAHAM: Is that a motion?

COMMISSIONER BROWN: It is.

CHAIRMAN GRAHAM: It has been moved and seconded to increase the directors, or the compensated directors to four.

Any other discussion? That is on Issue Number 12.

Seeing none, all in favor, say aye?

(Vote taken.)

CHAIRMAN GRAHAM: Any opposed?

By your action, you have gone with the Brown amendment on Issue Number 12.

Okay. Since Issue 13 through --

MR. FLETCHER: Chairman, if I may. Issue 11 was not voted on.

CHAIRMAN GRAHAM: We're not done yet.

Issue 13 through 25 -- I'm sorry, 26. It doesn't seem like anybody has got an issue on those. So can I get somebody to move staff recommendation?

Commissioner Edgar.

COMMISSIONER EDGAR: Mr. Chairman, I would move the staff recommendation on Issues 13 through 26 with the direction to staff to make any adjustments necessary in light of the vote on the previous issue.

CHAIRMAN GRAHAM: You can tell she has been here for awhile, because she was just getting ready to say that.

It has been moved and seconded, staff recommendation on 13 through 26 with staff making changes that would check out the changes that we made.

Any further discussion on those?

Seeing none, all in favor, say aye.

(Vote taken.)

CHAIRMAN GRAHAM: Any opposed?

By your action, you have approved the Edgar amendment, or the Edgar motion.

Okay. Issue Number 11. I guess I'll speak. I understand where you guys are coming from on this, but short of not having the documentation, there's nothing I can do for you. And all you can go off of is what the staff is saying, that they have asked for it and it just wasn't given to them. Because I thought the splitting of the baby in half as a 50 percent just, once again, was arbitrary because just because you're using half the building doesn't mean that is half the cost. And then Mr. Robertson's explanation that this rental price is actually just for half the building and not the entire building. But, once again, unless there's something that we can table this and come back to it, or there's some documentation that is readily available, I don't see what we can do on Issue Number 11.

Mr. Robertson.

MR. ROBERTSON: If I could, I just want to make sure that we are clear that the $500 -- and when we talk about the shared building and half the building, this building, the value -- the value of this building is more than $500. Just the rent, not to mention utilities and the other amenities that are afforded. So we are really -- I mean, even if you took a conservative position that this building has a rental value of $1,000 a month, then you would be entitled to 500 just for the rent, not including the utilities and other amenities. I mean, what the staff is doing is cutting the $500 to $250. And that's -- I mean, I just want to make sure we are clear on that point.

CHAIRMAN GRAHAM: No, you just confused me. (Laughter.)

MR. ROBERTSON: I'm sorry; I'm sorry. I confused myself. (Laughter.)

The 500 is the half, but it includes the other amenities; the utilities, telephone, copy machine, use of a receptionist, which has value. And so our position remains unchanged on that. And I just want to -- I didn't do a good job of clarifying, did I? But clarifying the point that this includes more than just the square footage rental with the other amenities that are included. And if you look at the total value of rental property in that market, we feel that the rent that the company is paying is more than fair. And certainly much cheaper than had the company bought a piece of property, constructed a building, and had its own facility.

CHAIRMAN GRAHAM: Sir, I'm not denying any of that, and I can't say that anybody else back here is denying any of that, but lack of documentation.

Commissioner Balbis.

COMMISSIONER BALBIS: Thank you, Mr. Chairman.

I have a question for the utility. Based on staff's site visit where they determined that half of the rented space was being used for an unaffiliated real estate company, which I believe is the basis for disallowing the $3,000, correct?

MR. FLETCHER: Yes, Commissioner, that is basis. And, like I said, the related party transactions are not, per se, unreasonable, but they require greater scrutiny. And it comes down to the fair market value in the utility's audit response, documentation regarding the fair market value.

COMMISSIONER BALBIS: Thank you.

And, again, for the utility. Wouldn't the unaffiliated real estate company have access to the same amenities that you had listed that you are getting for the $500 per month?

MR. ROBERTSON: I'm not privy to that information as far as what the real estate company pays or what their lease information is.

COMMISSIONER BALBIS: Okay. Well, again, I agree with the Chairman's comments that our hands are tied here without proper documentation to go against staff's recommendation.

COMMISSIONER BROWN: Second.

CHAIRMAN GRAHAM: Was that moving of staff recommendation; was that second to it?

COMMISSIONER BROWN: Yes.

COMMISSIONER BALBIS: Yes. I move that we approve staff's recommendation on Issue 11.

CHAIRMAN GRAHAM: No further discussion?

Seeing none. All in favor, say aye.

(Vote taken.)

CHAIRMAN GRAHAM: Any opposed?

By your action, you have approved staff recommendation on Issue Number 11.

Staff, is that everything on our agenda?

MR. FLETCHER: Yes, Chairman.

CHAIRMAN GRAHAM: That being said, we are adjourned. And we will reconvene Internal Affairs at ten till 12:00 -- five till 12:00.

* * * * * * *

STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 23rd day of August, 2011.

Jane Faurot

JANE FAUROT, RPR
Official FPSC Hearings Reporter
(850) 413-6732

Parties/Staff Handout
Internal Affairs/Agenda
on 8/09/11
Item No. 6
100128-WU

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for increase in rates by Florida Division of Chesapeake Utilities Corporation.	DOCKET NO. 090125-GU ORDER NO. PSC-10-0029-PAA-GU ISSUED: January 14, 2010

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
NANCY ARGENZIANO
NATHAN A. SKOP
DAVID E. KLEMENT

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING A GAS RATE INCREASE
AND
REQUIRING ADDITIONAL FILINGS
REGARDING THE CONSUMMATED MERGER

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action 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.

I. BACKGROUND

This proceeding commenced on July 14, 2009, with the filing of a petition for a permanent rate increase by Florida Division of Chesapeake Utilities Corporation. Florida Division of Chesapeake Utilities Corporation (Chesapeake or Company) is an operating division of Chesapeake Utilities Corporation (CUC). The Company is engaged in business as a public utility providing distribution and transportation of gas as defined in Section 366.02, Florida Statutes (F.S.), and is subject to the jurisdiction of this Commission. Chesapeake serves approximately 14,500 customers in Winter Haven, Plant City, St. Cloud, Inverness, Crystal River, and other nearby communities. The Company also provides service to industrial customers in DeSoto, Gadsden, Gilchrist, Holmes, Jackson, Liberty, Suwannee, Union, and Washington Counties, and is ready to provide service, pursuant to an approved territorial agreement, to customers in portions of Pasco County.

Chesapeake requested an increase in its retail rates and charges to generate an increase in annual revenues of $2,965,398. This increase would allow Chesapeake to earn an overall rate of heaters, fire logs, and outdoor kitchens. The large volume therm user forecast was based primarily on individual contacts with each customer and a discussion of consumption projections for 2009 and 2010.

We find that the billing determinants contained in the MFR Schedule G-2 are appropriate. We find that the projected number of bills and therms by rate class as contained in MFR Schedule G-2, pages 10-12, for test year 2010 are appropriate for this rate case.

III. QUALITY OF SERVICE

Customer meetings were held in Winter Haven on October 14, 2009, and in Crystal River on October 15, 2009. The purpose of the meetings was to gather information from customers regarding the Company's quality of service and its request for a permanent rate increase. No customer attended the meeting in Winter Haven and three customers attended the meeting in Crystal River. Two of the customers voiced opposition to the proposed rate increase.

Quality of service was reviewed by analyzing all complaints taken by our Division of Service, Safety, and Consumer Assistance, which is an exhibit provided by the Company. This exhibit summarizes complaints from January 1, 2000, to May 31, 2009. The numbers from the testimony exhibit match our records. Over this nine year period, there were a total of 80 complaints, of which 55 involved billing and 25 involved service. Of the 80 complaints, our complaint staff determined that 25 of the complaints should be designated as apparent infractions; 23 of the infractions related to Chesapeake's failure to timely respond to complaints within 15 days as required by Rule 25-22.032, F.A.C.; one violation involved the refund of a deposit, and one related to the crediting of an account. During 2008 and 2009, our complaint staff determined that three complaints should be classified as apparent infractions.

The number of complaints per customer compares favorably with other large Florida Natural Gas utilities. With respect to service quality, our records indicate that Chesapeake has not experienced a natural gas outage that would be reportable to this Commission per Rule 25-12.084, F.A.C.

Considering all of the above, we find that the Company's quality of service is satisfactory.

IV. RATE BASE

A. Adjustments for Unsupported Plant in Service

The Company's records reflected a $32.75 million net increase to the plant in service accounts for the 9 year period ending December 31, 2008. As part of their work to verify the plant balances, ~~our~~ staff auditors requested supporting documentation for 244 plant in service transactions totaling $6.19 million (Requests Nos. 7, 25, 41 and 45). The Company provided support for 165 of the 244 transactions, totaling $4,052,190. During the audit, Chesapeake stated that documentation for the remaining 79 transactions totaling $2,142,413 either could not be located or was not available.

Chesapeake filed an affidavit with us on August 31, 2009, attesting that Hurricane Jeanne struck Winter Haven, Florida in September 2004, and caused serious structural damage, including severe roof damage, to its office located in Winter Haven, Florida. As a result of the structural damage, some records were destroyed and others lost.

In its written response to Audit Finding No. 2, Chesapeake attached additional documentation totaling $1,946,636. The Company stated that it obtained the support documentation by contacting vendors and asking them to provide duplicate invoices. As some of the missing invoices relate to plant installed 9 years ago, some vendors were no longer in business; as such, Chesapeake was unable to obtain invoices to support all plant. The remaining undocumented amount of plant in service additions is $195,777 ($2,142,413 - $1,946,636). Chesapeake stated that virtually all of the records that remain outstanding and cannot be located are those records that were destroyed by Hurricane Jeanne.

Chesapeake did, however, provide secondary support documentation to justify the remaining plant in service amount of $195,777 which has been verified by our staff. The secondary support documentation consisted of the Company's audited FERC Form 2 (annual report) filed with us, CUC's U.S. Corporate Tax returns, and CUC's audited Financial Statements. We have reviewed the reconciliation and find the balance of plant in service on the Company's books and shown in the MFRs reflects the assets that used in providing utility service.

As the $195,777 represents .6 percent (.006) of the $32,750,000 in plant additions over the nine-year period ending December 31, 2008, and the fact that Chesapeake provided secondary support documentation to justify the plant additions, we find that no adjustment is required. Thus, no adjustment is necessary to the 2010 Plant in Service balance because additional documents were provided by Chesapeake in its response to the audit report.

B. Adjustments for Unsupported Amounts in Account 473.1, Mains - Steel

We note that Rule 25-7.014(2), F.A.C., Records and Reports in General, requires that the records shall be maintained in such a manner as to meet the following objectives:

a. An inventory of property record units which may be readily checked for proof of physical existence;

b. The association of costs with such property record units to assure accurate accounting for retirements; and

c. The determination of dates of installation and removal of plant to provide data for use in connection with depreciation studies.

The Company provided our staff auditors with its property records for a sample of fifteen utility accounts. Our staff auditors were able to reconcile the prior rate case balance as of December 31, 1999, with the current continuing property records (CPR), except for one material

Parties/Staff Handout
Internal Affairs/Agenda
on 8/09/11
Item No. 6
100128-WU

FLORIDA BRIDGE COMPANY, Petitioner, v. WILLIAM H. BEVIS, PAULA F. HAWKINS, and WILLIAM T. MAYO, as and constituting the Florida Public Service Commission, Respondents

No. 52341

Supreme Court of Florida

363 So. 2d 799; 1978 Fla. LEXIS 4941

October 5, 1978

COUNSEL: [**1] Peter J. Winders and James W. Ault of Carlton, Fields, Ward, Emmanuel, Smith & Cutler, Tampa, for petitioner.

Prentice P. Pruitt, Legal Director, and Norman H. Horton, Jr., Staff Counsel, Tallahassee, for Florida Public Service Commission, respondents.

OPINION BY: ENGLAND

OPINION

[*800] ENGLAD, Chief Justice.

Section 347.08, Florida Statutes (1975), authorizes the Public Service Commission to fix and regulate the tolls and charges of any toll bridge in the State of Florida. Florida Bridge owns the bridge and causeway in Charlotte County running between Placida and Gasparilla Island across Gasparilla Sound. Following an investigation of the earnings, rates and charges of Florida Bridge, the Commission ordered a reduction in the rates which the company charges bridge users. The company has asked us to review the Commission's order, alleging several defects.

1. *President's salary*. Florida Bridge's president is paid an annual salary of $ 25,000 and, in addition, receives a $ 7,000 expense account for time spent in the home office of the company in Venice, Florida. The Commission determined that the president was in his office only 142 days out of approximately 250 working days during the 1974 test [**2] year, and on that basis disallowed 108/250Ths of the president's combined compensation of $ 32,000. The Commission's justification for reducing the salary allowance is the absence of evidence to establish that the president acted as chief officer of the company on a full-time basis during the days he was away from the home office.

The Commission's action was arbitrary and constitutes a substantial departure from the essential requirements of law. The record reflects no evidence that the company president rendered services for any business other than Florida Bridge while not present in the company's home office, nor is there evidence to suggest that the president's duties were confined to those which he could perform while sitting at his desk in the home office. Indeed, the Commission has made no attempt to determine [*801] whether the president's compensation is excessive in view of the services he provides. The arbitrary ratio by which the Commission reduced the salary and expense account the ratio of days physically absent from the home office to the total number of workdays in the test year has no support in logic, precedent, or policy. *Metropolitan Dade County Water* [**3] *& Sewer Board v. Community Utilities Corp., 200 So.2d 831 (Fla. 3d DCA 1967)*. As to this expense item, the Commission's order is reversed.

2. *Nonrecurring legal fees*. The Commission identified a $ 5,014.93 legal expense paid in the test year for a challenge to the tax valuation of company property in Charlotte County, and it directed that the fee be spread over five years. By capitalizing and prorating the fee, only $ 1,002.93 was included as an expense in the test year.

We have held that the Commission has discretion in rate making proceedings to remove from a test year computation items which are nonrecurring in nature.

Gulf Power Co. v. Bevis, 289 So.2d 401 (Fla. 1974). Rather than entirely removing Florida Bridge's tax litigation expense from the test year, the Commission, in effect, deleted from the test year those legal expenses which exceeded the average legal fees for a period of five years. Such treatment of legal fees is clearly within the Commission's authority. See *Westwood Lake, Inc. v. Metropolitan Dade County Water & Sewer Board, 203 So.2d 363 (Fla. 3d DCA 1967).*

3. *Maintenance expense.* The Commission found that maintenance expenses incurred during the 1974 [**4] test year were extraordinary and should be allocated over a five-year period rather than all to a single year. Florida Bridge complains that the Commission failed to consider supportive evidence, tendered after the hearing was over but before the Commission's final decision, showing that the maintenance expenses were not extraordinary. We have previously held that the Commission has discretion to terminate its data-gathering function, [1] and we find no abuse of that discretion here. The reports which Florida Bridge tendered to the Commission after the hearing were newly prepared and had not been subjected to examination by the Commission and its staff, cross-examination or other evidentiary evaluation.

1 *United Telephone Co. v. Mayo, 345 So.2d 648, 651-52 (Fla. 1977).*

Florida Bridge also contends that the Commission improperly determined that test-year maintenance expenses were extraordinarily high. On this point, there was conflicting evidence before the Commission. It is within the Commission's authority [**5] to evaluate conflicting testimony and accord to each opinion whatever weight it deems appropriate. *United Telephone Co. v. Mayo, 345 So.2d at 654 (Fla. 1977).* Consequently, the Commission did not depart from the essential requirements of law in spreading extraordinary maintenance expenses over more than one year for rate making purposes.

4. *Capitalized franchise valuation.* In 1968 petitioner recorded on its books an intangible asset entitled "unpaid franchise valuation" in the amount of $ 657,700. This amount represents losses sustained by the predecessor of Florida Bridge. A witness for Florida Bridge testified that $ 657,700 was the actual cost of securing the bridge franchise under accepted accounting practices. The Commission found, however, that the franchise entry violated generally accepted accounting principles, and it refused to consider the franchise value in its determination of the company's rate base. The Commission also maintains that Florida Bridge failed to provide documentary evidence that losses of its predecessor actually correlate to the amount expended for the predecessor's franchise.

The evidence of record indicates that the original records which established [**6] the predecessor company's losses were destroyed in the ordinary course of business in 1970. Florida Bridge points to other evidence, however, which correlates the amount of loss with capitalized franchise value. Both the Internal Revenue Service and the Commission audited the company [*802] prior to 1970, when this franchise entry appeared on the company's books, and neither objected to the treatment of the franchise value at that time. In addition, the company's accountant gave unrefuted testimony that he entered the franchise asset on the company's books in 1968 when, as required by accounting practices acceptable at that time, he relied upon supporting documentation then available showing that the actual out-of-pocket expenditures equalled the amount which was capitalized. The accountant testified further that he would not have capitalized this intangible asset without some evidence of a cost justification at the time.

In light of the record evidence, and in the absence of any charge by the Commission that the company falsified accounts or otherwise attempted to avoid substantiation, the Commission's rejection of the capitalized franchise value was arbitrary and constitutes [**7] a departure from the essential requirements of law. See *Deltona Corp. v. Mayo, 342 So.2d 510 (Fla. 1977).* While the Commission is ordinarily free to disbelieve the testimony of any witness, the combination of circumstances offered in explanation by Florida Bridge was legally sufficient to require the Commission to produce, by some means, competent evidence of a malevolent or fraudulent purpose for the destruction of the records, of inaccuracy in the accountant's testimony, or of impropriety in the dollar amount assigned to the franchise asset. The Commission did none of these and must, therefore, be reversed on this point.

5. *Extraordinary maintenance fund.* In its order the Commission directed Florida Bridge to freeze a reserve account which had been established for extraordinary maintenance, and to deposit $ 35,788 [2] each year into the account until it has accumulated a reserve of $ 200,000. The purpose of these directives to ensure that funds would be available for extraordinary maintenance to the company's bridge facilities was laudable. Florida Bridge asserts, however, that these directives exceed the Commission's authority to "fix and regulate tolls, charges, uses and hours" [**8] of the Florida Bridge facility. [3] We agree with the company. As stated in *City of Cape Coral v. GAC Utilities, Inc., 281 So.2d 493 (Fla. 1973),*

2 This figure represents the amount which the Commission determined to be excess annual revenue for the company after taxes.

3 § 347.08, Fla.Stat. (1975).

> "[T]he Commission's powers, duties and authority are those and only those that are conferred expressly or impliedly by statute of the State. Any reasonable doubt as to the lawful existence of a particular power that is being exercised by the Commission must be resolved against the exercise thereof, and the further exercise of the power should be arrested." (Citations omitted.)[4]

4 *281 So.2d at 496.*

See also *Deltona Corp. v. Mayo, 342 So.2d 510, 512 n. 4 (Fla. 1977)*. The Commission's directives relating to the extraordinary [**9] maintenance fund are reversed.

Florida Bridge challenges four other aspects of the Commission's order, but we deem it unnecessary to consider these matters. [5] The Commission's modified order is set aside, and this case is remanded for further proceedings not inconsistent with this opinion.

> 5 Two of these issues concern the Commission's compliance with Florida's Administrative Procedure Act, Chapter 120, Florida Statutes (1975 and 1976 Supp.). As to these the Commission met the essential requirements of the Act, and no additional action is required to vindicate the company's procedural rights. The two remaining points raise constitutional issues which are mooted by our remand to the Commission for further proceedings.

It is so ordered.

BOYD, SUNDBERG, HATCHETT and ALDERMAN, JJ., concur.