

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** August 26, 2004

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bayó)

**FROM:** Division of Economic Regulation (Hudson)  
Office of the General Counsel (Brubaker)

**RE:** Docket No. 040733-SU – Disposition of gain on sale of land held for future use in Marion County by BFF Corp.  
County(ies): Marion

**AGENDA:** 09/07/04 – Regular Agenda – Proposed Agency Action for Issue 1 – Interested Persons May Participate

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\040733.RCM.DOC

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### Case Background

BFF Corp. (BFF or utility) is a Class C wastewater utility serving 106 residential customers in Marion County. BFF's wastewater customers receive water service from Utilities, Inc. BFF also receives wastewater treatment from Utilities, Inc.

By Order No. PSC-02-0487-PAA-SU, issued April 8, 2002, in Docket No. 010919-SU, In Re: Application for staff-assisted rate case in Marion County by BFF Corp. (consummated by Order No. PSC-02-0588-CO-SU), the land associated with the utility's abandoned wastewater treatment plant was removed from rate base and reclassified from Land to Property Held for Future Use and recorded below-the-line. In the aforementioned order, it was also ordered that the utility report to this Commission any future sale, foreclosure, or any transaction involving transfer of ownership of the land and any proposed rate reduction resulting therefrom within 60 days of such occurrence.

In reviewing BFF's 2003 Annual Report, it was noted that non-used and useful land in the amount of \$33,221 was sold sometime in 2003. A \$20,334 gain on sale of the land was reported on the Income Statement as well. By letter dated June 16, 2004, the utility was asked to respond, in writing, with regard to the nature of the sale of the land. By letter dated June 25, 2004, the utility provided the Closing Statement and Contract for Sale and Purchase. The utility sold the land which the retired plant was situated on September 11, 2003. The utility realized a gain as a result of the sale. The utility offered a settlement for the disposition of the gain on sale of the Property Held for Future Use. Issue 1 of this recommendation addresses the settlement proposal. Issue 2 addresses whether BFF should be show caused for failure to report the sale in accordance with Order No. PSC-02-0487-PAA-SU. The Commission has jurisdiction pursuant to Sections 367.011, 367.121, and 367.161, Florida Statutes.

### **Discussion of Issues**

**Issue 1:** Should BFF Corp.'s proposed settlement for the disposition of the gain on the sale of the land be approved?

**Recommendation:** Yes. The utility's proposed settlement should be approved as discussed in the Staff Analysis. The utility's revised tariff sheets filed on July 15, 2004 should be approved as filed. The tariff sheets should be implemented on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475(1), Florida Administrative Code, provided the customers have received notice. (Hudson)

**Staff Analysis:** As discussed in the case background, by Order No. PSC-02-0487-PAA-SU, issued April 8, 2002, in Docket No. 010919-SU, the utility was required to report any future sale of the land associated with the utility's abandoned wastewater treatment plant that was classified to Property Held for Future Use. Staff discovered that the land had been sold and contacted the utility by letter dated June 16, 2004. The utility responded by letter dated June 25, 2004. Based on the information provided by the utility, staff has determined that the gain on the sale of the land is \$24,990. Staff advised the utility that it thought the gain on sale should be amortized over 5 years with a reduction in rates of 7.59%. This is consistent with how the early retirement loss amortization was approved in the aforementioned order. The utility agreed with the proposal (Attachment 1), and filed a settlement offer consistent with staff's recommended treatment and tariff sheets reflecting a reduction in rates.

Therefore, staff recommends that Fourteenth Revised Sheet No. 18.0, Third Revised Sheet No. 18.1 and Sixth Revised Sheet No. 17.0 should be approved as filed. The tariff sheets should be implemented on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475(1), Florida Administrative Code.

**Issue 2:** Should the Commission order BFF Corp to show cause, in writing within 21 days, why it should not be fined for its apparent violation of Order No. PSC-02-0487-PAA-SU?

**Recommendation:** No. A show cause proceeding should not be initiated. (Brubaker, Hudson)

**Staff Analysis:** When staff discovered the sale of the land, the utility was notified, by letter dated June 16, 2004, of its violation of Order No. PSC-02-0487-PAA-SU, issued April 8, 2002, in Docket No. 010919-SU. By letter dated June 25, 2004, the utility responded to staff and provided a copy of the Closing Statement and Contract for Sale and Purchase. The closing statement indicated that the land was sold on September 11, 2003. However, there was a requirement in the purchase agreement for the permitting and construction of a separate access to the master lift station be completed by a date certain. This requirement was fulfilled on June 1, 2004. The utility was under the assumption that the sale was not final until the requirement was met.

Section 367.161(1), Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated, any Commission rule, order, or provision of Chapter 367, Florida Statutes. Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Thus, any intentional act, such as the utility's failure to report the sale of the land within sixty days of its occurrence would meet the standard for a "willful violation." In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." *Id.* at 6.

In failing to timely notify the Commission regarding the sale of the land, BFF is in apparent violation of Order No. PSC-02-0487-PAA-SU. However, as stated above, the utility was under the misapprehension that the sale would not be final until June 1, 2004. Since being notified that the sale should have been reported, the utility has made a good faith effort by offering a settlement for the disposition of the gain on sale. As stated above, in Issue 1, staff is recommending that the utility's offer of settlement be approved. Under these circumstances, staff does not recommend that a show cause proceeding should be initiated.

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**Issue 3**: Should the docket be closed?

**Recommendation**: Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a Consummating Order. (Brubaker)

**Staff Analysis**: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a Consummating Order.

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Attachment 1

**BFF Corp**  
P.O. Box 5220  
Ocala, Fl 34478  
352-622-4949

July 13, 2004

Mr. Troy Rendell  
Florida Public Service Commission  
2540 Shumard Oak Blvd  
Tallahassee, Fl 32399-0850

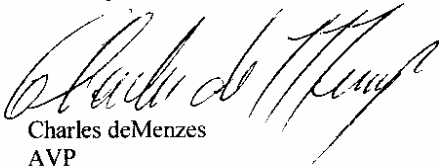
Re: BFF Corp. proposed settlement

Dear Mr. Rendell,

BFF Corp. has accepted staff's recommendation as to a rate reduction of 7.59% as a result of the gain on sale of excess land.

Enclosed are the tariff sheets reflecting said reduction.

Sincerely,

  
Charles deMenzes  
AVP

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REGULATION