

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a staff-)	DOCKET NO. 900530-WS
assisted rate case by PINE ISLAND)	ORDER NO. 24132
UTILITY CORPORATION in Volusia County)	ISSUED: 2-18-91
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The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 BETTY EASLEY
 FRANK S. MESSERSMITH
 MICHAEL McK. WILSON

ORDER REQUIRING DOCUMENTS AND
CLOSING DOCKET

BY THE COMMISSION:

CASE BACKGROUND

Pine Island Utility Corporation (Pine Island or utility) is a class "C" utility located in Volusia County. The utility's service area is located in the northwestern portion of Volusia County, approximately three miles west of the community known as Seville.

On June 6, 1990, the utility applied for the instant staff-assisted rate case, and it paid the appropriate filing fee. We have completed an audit and have conducted an engineering investigation. We have also completed an engineering report and an accounting report. On November 27, 1990, a customer meeting was held in the service territory.

APPARENT TRANSFER

Order No. 9054, issued September 14, 1979, granted Pine Island Utility Corporation Certificate Nos. 326-W and 274-S. That order listed the following as Pine Island's corporate officers: James D. Millican, President and Director; Mary L. Millican, Secretary and Treasurer; and Carolyn L. Smith, Director.

According to the records of the Secretary of State, as of January 7, 1991, James D. Millican resigned February 16, 1990. We have also learned Mr. Millican and Mrs. Millican have transferred their shares in the corporation to a Mr. Raymond Daniel. Mr. Daniel is purportedly the new vice-president of the corporation,

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and a Mr. Robert McTeer is purportedly the new president. However, according to the records of the Secretary of State's Office neither Mr. Daniel or Mr. McTeer are officers of the corporation.

Based on the above information, it appears that the utility may have undergone a transfer of majority organizational control, and it may be necessary for the utility to submit an application requesting Commission approval of such. Therefore, in order to be certain who owns and runs the utility--which we deem to be pertinent to this or any rate case--we hereby order the utility to submit within 30 days of the date of this Order a notarized affidavit by one of its duly-elected officers, wherein that officer avers to a complete and up-to-date history of the corporation's ownership, including the names of its owners and the percentage interest held by each.

UTILITY LAND AND ASSETS

It is Commission policy to require that a utility either own the land on which its utility facilities are located or have continuous access to said land, preferably by a 99-year lease. Under Docket No. 860415-WS, and by Order No. 16771, issued October 24, 1986, it was established that the land on which Pine Island's water treatment and wastewater treatment facilities are located is owned by the utility's shareholders.

The utility was made aware by the October 31, 1990, accounting report that this Commission required proof of ownership of or continuous access to the land in this case. Furthermore, by letter dated November 20, 1990, our staff specifically requested proof of ownership or continuous access as well as other documents. On December 20, 1990, a follow-up letter was sent reiterating the need for documentation. On December 21, 1990, we received two lease agreements from the utility. By the first lease agreement, dated December 10, 1990, it appears as though one of the utility's owners leased to the utility not only the land on which the wastewater treatment facilities are located, but also the facilities themselves. By the second lease agreement, dated May 10, 1990, it appears as though the property leased is, again, the land and the facilities located thereon. Moreover, under the second lease, the property is apparently being leased to an officer of the corporation in his individual capacity, and not in his capacity as an agent or representative of the corporation.

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Because of the problematic nature of the information submitted by the utility in this case, we find that the documentation offered by the utility to show that it owns or has continuous access to the land on which utility facilities are located is insufficient. The utility is therefore ordered to submit within 30 days of the date of this Order either a copy of a warranty deed vesting title to the land on which the facilities are located in the utility corporation or a copy of a warranty deed vesting title to the land in someone who has a valid lease agreement with the utility corporation and a copy of the lease agreement. Any lease agreement(s) submitted must: lease to the utility corporation the land on which facilities are located, be for a 99-year term, contain no conditions or provisions for unilateral termination, and contain a statement that land is dedicated to use for utility purposes.

As noted above, it appears as though the shareholders of the utility corporation, and not the utility corporation itself, own at least part of the water treatment and wastewater treatment assets/facilities. When a utility earns a return on the investment made in the assets dedicated to public use, it must own those assets.

Because of the problematic nature of the information produced by the utility, we are unsure that the utility owns certain of its assets/facilities. Accordingly, the utility is hereby ordered to submit the following within 30 days of the date of this Order: a bill of sale reflecting transfer of all assets/facilities used for utility purposes to the utility corporation and an affidavit by one of the utility's duly-elected officers, wherein that officer avers to the utility corporation's owning all of the assets/facilities used for utility purposes.

CLOSING DOCKET

The official filing date for this rate case is August 2, 1990. The utility has paid the appropriate filing fee. Section 367.0814(2) of the Florida Statutes requires that the Commission complete staff-assisted rate cases within 15 months of the official filing date of the case. The 15-month period in the instant case expires on November 2, 1991. Because of the delay in receipt of the aforementioned documents and the problematic nature of the documents that were finally submitted, the utility has jeopardized our meeting the 15-month deadline set forth in the Florida Statutes.

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Therefore, in consideration of the above, we hereby close this docket. If the utility still wishes to request rate relief from this Commission, it must file a new rate case application. If the documents which we have demanded above are timely received and if the new rate case application is filed within 60 days from the close of this docket, the filing fee paid for this docket will be carried over to the new docket. We believe that the information obtained through the audit and engineering investigation in the instant case would still be representative of an appropriate test year and could be used in such a subsequent filing. However, if the new rate case application is filed more than 60 days after the close of this docket, the utility will be required to pay the corresponding filing fee for the new application. If the utility waits longer than 60 days to file its new application, a new test year would need to be selected and a new audit and engineering investigation would have to be conducted.

It is, therefore,

ORDERED by the Florida Public Service Commission that within thirty (30) days of the date of this Order, Pine Island Utility Corporation shall file a notarized affidavit reflecting the history of the utility corporation's ownership as set forth in the body of this Order. It is further

ORDERED that within thirty (30) days of the date of this Order, Pine Island Utility Corporation shall file copies of the deed(s) and lease agreement(s) as required in the body of this Order. It is further

ORDERED that within thirty (30) days of the date of this Order, Pine Island Utility Corporation shall file the documents proving asset ownership as set forth in the body of this Order. It is further

ORDERED that this docket is closed.

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By ORDER of Florida Public Service Commission this 18th day
of February, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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by: Kary Flynn
Chief, Bureau of Records

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.