

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-

DATE: October 4, 2012

TO: Office of Commission Clerk (Cole)

FROM: Division of Accounting and Finance (T. Brown, Fletcher, Maurey)
Office of the General Counsel (Barrera, Jaeger)

RE: Docket No. 110200-WU – Application for increase in water rates in Franklin County by Water Management Services, Inc.

AGENDA: 10/16/12 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\AFD\WP\110200.RCM.DOC

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Case Background

Water Management Services, Inc. (WMSI or Utility) is a Class A utility providing service to approximately 1,808 water customers in Franklin County. For the year ended December 31, 2010, the Utility reported operating revenues of \$1,291,712 and a net operating loss of \$145,071. WMSI's last rate case was in 2010.¹

On November 7, 2011, the Utility filed an application for approval of interim and final rate increases for its water system. By Proposed Agency Action (PAA) Order No. PSC-12-0435-

¹ See Order No. PSC-11-0010-SC-WU, issued January 3, 2011, in Docket No. 100104-WU, In re: Application for increase in water rates in Franklin County by Water Management Services, Inc.

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Docket No. 110200-WU
Date: October 4, 2012

PAA-WU (PAA Order), issued August 22, 2012, the Commission approved rates that were designed to generate a total water revenue requirement of \$1,811,648.

On September 12, 2012, the Office of Public Counsel (OPC) timely filed a protest of portions of the PAA Order. By letter dated September 13, 2012, WMSI gave notice that it has elected to put the rates approved in the PAA Order into effect during the pendency of the administrative hearing pursuant to Section 367.081(8), Florida Statutes (F.S.).

On September 19, 2012, WMSI timely filed a cross-petition to protest the PAA Order pursuant to Rule 25-22.029(3), Florida Administrative Code (F.A.C.).

This recommendation addresses the implementation of the PAA rates by WMSI and the security to guarantee the increased revenues collected subject to refund. The Commission has jurisdiction pursuant to Section 367.081, F.S.

Discussion of Issues

Issue 1: Should the Commission acknowledge the implementation of the PAA rates by Water Management Services, Inc.?

Recommendation: Yes. The Commission should acknowledge the Utility's implementation of the PAA rates and charges on a temporary basis, subject to refund with interest, pending the outcome of this rate proceeding. (T. Brown, Fletcher)

Staff Analysis: As discussed in the case background, the PAA Order was protested by OPC and cross-protested by the Utility. On September 13, 2012, WMSI submitted its notice of intent to implement the PAA rates pursuant to Section 367.081(8), F.S., pending the resolution of the protest filed in this docket. The Utility also submitted tariff sheets, a proposed customer notice, and an escrow agreement to secure any potential refund.

Section 367.081(8), F.S., states:

At the expiration of 5 months following the official filing date, if the commission has not taken action or, if the commission's action is protested by a party other than the utility, the utility may place its requested rates into effect under bond, escrow, or corporate undertaking subject to refund, upon notice to the commission and upon filing the appropriate tariffs.

The filing of OPC's objection triggers the applicability of subsection 367.081(8), F.S., and WMSI is allowed to implement the PAA rates as requested by the Utility. Although the Utility has the right to implement its requested final rates, WMSI has elected to implement the rates and charges approved by the Commission in the PAA Order. The Commission-approved rates and charges are lower than the rates requested by the Utility in its filing.

Staff reviewed the tariff sheets, customer notice, and security provided by WMSI, and determined that the Utility has met the requirements of Section 367.081(8), F.S. The security for the rate increase is discussed further in Issue 2. Based on the above, staff recommends that the Commission acknowledge the Utility's implementation of the PAA rates and charges, subject to refund with interest, on a temporary basis pending the outcome of this rate proceeding.

Issue 2: What is the appropriate security to guarantee the increased revenues collected under the PAA rates and charges?

Recommendation: The Utility should be required to open an escrow account to guarantee any potential refund of revenues collected under the PAA rates and charges. The Utility should deposit 38.76 percent of water revenues into the escrow account each month. In addition, the Utility should also deposit into escrow any incremental amounts received from the increased service availability charges (SACs). Pursuant to Rule 25-30.360(6), F.A.C., the Utility should provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund. Should a refund be required, the refund should be with interest and undertaken in accordance with Rule 25-30.360, F.A.C. (T. Brown, Fletcher, Maurey, Barrera)

Staff Analysis: As discussed in Issue 1, the Utility may place its requested rates and charges into effect under bond, escrow, or corporate undertaking subject to refund pursuant to Section 367.081(8), F.S. In addition to allowing the Utility to implement its requested rates and charges, the statute requires that “The utility shall keep accurate records of amounts received as provided by subsection (6).” Subsection (6) specifies that “[t]he utility shall keep accurate, detailed accounts of all amounts received because of such rates becoming effective under bond, escrow, or corporate undertaking subject to refund, specifying by whom and in whose behalf such amounts were paid.”

Pursuant to the PAA Order, the Commission-approved PAA rates and charges represented an annual revenue increase of \$506,061. The PAA Order required WMSI to escrow 35.25 percent of all monthly revenues.² This amount was designed to cover the Utility’s Florida Department of Environmental Protection (DEP) loan and any loan obtained to finance pro forma improvements. Commission staff was also given administrative authority to approve any withdrawals from the escrow account to make payments on construction loans as they become due or to make the DEP loan payments as they become due.³ Since the PAA Order has been protested, staff believes that it is more appropriate to require that the entire increase be escrowed to guarantee the funds collected subject to refund. As such, the Utility should deposit 38.76 percent of revenues into the escrow account each month. In addition, staff believes the Utility should also deposit into the escrow account any incremental amounts received from the difference in its existing SACs and the PAA SACs.

Based on the PAA Order and the recommendation here, staff provides several conditions that it believes should be part of the agreement. Staff notes that, while provision two (provided below) is not typically contained in escrow agreements, it was not referenced in OPC’s petition or WMSI’s cross-petition as a point of contention. As provided by Section 120.80(13)(b), F.S., any issues not in dispute should be deemed stipulated. As such, the following conditions should be part of the agreement:

- 1) The Commission Clerk shall be a party to the written escrow agreement and the Commission Clerk shall be a signatory to any such escrow agreement with any disbursements requiring approval through the Commission Clerk.

² See Order No. PSC-12-0435-PAA-WU, pp. 13, 28.

³ Id.

- 2) Commission staff shall have administrative authority to authorize all payments from this escrow account on the bank loan for construction contracts for the pro forma plant, the interest payments on the loan while the pro forma plant items are being constructed, and the DEP loan as these amounts become due.
- 3) The escrow account shall be an interest bearing account.
- 4) All information concerning the escrow account shall be available from the financial institution to the Commission or its representative at all times.
- 5) This escrow account is established by the direction of the Florida Public Service Commission for the purpose(s) set forth in its order requiring such account. Pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments.
- 6) The Utility shall be required to deposit into the escrow account each month 38.76 percent of all revenues collected through the water rates approved in the PAA Order.
- 7) The Utility shall also be required to deposit into the escrow account each month any incremental amounts received from the difference in its existing SACs and the PAA SACs.
- 8) The amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt.
- 9) No funds in the escrow account may be withdrawn by the Utility without the express approval of the Commission.
- 10) If a refund to the customers is not required, the interest earned by the escrow account shall revert to the Utility.

The Utility should keep an accurate and detailed account of all monies it receives. Pursuant to Rule 25-30.360(6), F.A.C., the Utility should be required to provide a report by the 20th day of each month indicating the monthly and total revenue collected subject to refund. Should a refund be required, the refund should be with interest and undertaken in accordance with Rule 25-30.360, F.A.C.

In no instance should maintenance and administrative costs associated with any refund be borne by the customers. The costs are the responsibility of, and should be borne by, the Utility.

Docket No. 110200-WU

Date: October 4, 2012

Issue 3: Should this docket be closed?

Recommendation: No. This docket should remain open to complete the hearing process.
(Barrera, T. Brown)

Staff Analysis: Because a protest has been filed to the PAA Order, the docket should remain open to complete the hearing process.