

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 110200-WU

APPLICATION FOR INCREASE IN WATER
RATES IN FRANKLIN COUNTY BY WATER
MANAGEMENT SERVICES, INC.

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COMMISSION
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PROCEEDINGS: COMMISSION CONFERENCE
ITEM NO. 8

COMMISSIONERS
PARTICIPATING: CHAIRMAN RONALD A. BRISÉ
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER ART GRAHAM
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Tuesday, October 16, 2012

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
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P R O C E E D I N G S

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2 **CHAIRMAN BRISÉ:** Now we are moving on to
3 Item Number 8.

4 You may proceed.

5 **MR. BROWN:** Good morning, Commissioners.
6 I'm Todd Brown with Commission staff. Item 8 is
7 staff's recommendation addressing the implementation
8 of the PAA rates by WMSI and the security to
9 guarantee the increased revenues collected subject
10 to refund.

11 Representatives from the utility and the
12 Office of Public Counsel are here to address the
13 Commission this morning. Staff is prepared to
14 answer any questions you may have.

15 **CHAIRMAN BRISÉ:** All right.

16 Commissioners, I understand that the
17 Office of Public Counsel would like to address us.
18 So, Mr. Sayler, you may go right ahead.

19 **MR. SAYLER:** Thank you, Mr. Chairman,
20 Commissioners. I have provided to staff a handout
21 that I was asking them to circulate, so at whatever
22 convenient time -- I will address that handout a
23 little bit later in my opening comments.

24 Erik Sayler appearing on behalf of the
25 Office of Public Counsel and the customers of Water

1 Management Services. We are here reluctantly today
2 to raise a couple of concerns that we have in
3 staff's recommendation as it relates to the escrow
4 agreement and the amount being recommended for
5 escrow.

6 We have reviewed staff's recommendation,
7 and we have been unable to reconcile it with the
8 statutorily mandated escrow requirements that the
9 entire rate increase be protected and held subject
10 to refund as well as parts of the PAA order which
11 required that 35.25 percent of revenues be escrowed
12 for the purposes of paying the DEP loan payment and
13 the other pro forma plant debt service.

14 As you are aware, and as described in
15 staff's recommendation, Section 367.081, Subsection
16 8 requires that a revenue increase during a PAA
17 protest may be implemented so long as the entire
18 revenue increase is held subject to refund. In this
19 case the utility proposed to place the revenue
20 increase that was approved by the Commission of
21 \$506,061, which you can see that amount on Schedule
22 3-A of the PAA. According to that schedule, the
23 Commission approved a 38.76 percent rate increase
24 over the prior adjusted revenues. However, if you
25 do the math now, \$506 (sic) mathematically is only

1 28 percent of the \$1.8 million revenue requirement
2 approved. According to statute, the entire revenue
3 increase of \$506,000 is required to be held subject
4 to refund and cannot be touched or reduced under the
5 Commission's final order that resolves the PAA
6 protest at issue.

7 The statute doesn't provide any latitude
8 to reduce the amount that is being protected and
9 held subject to refund, and to do so, in our
10 opinion, would be harm to the ratepayers and also
11 violate the statute. As noted earlier, staff is
12 recommending that more than the statutorily required
13 amount be held subject to refund; that is 38 percent
14 of the escrow requirement of the PAA-approved
15 \$1.8 million. If you do the math, that is \$702,000
16 on an annual basis. This amount is more than
17 200,000 more than what the PAA approved rate
18 increase is.

19 Under normal circumstances, OPC would not
20 be protesting more revenues being held subject to
21 refund than less. However, if you look at the
22 escrow agreement language, Provision 2, that is on
23 Page 5 of staff's recommendation, that Provision 2
24 states Commission staff shall have the
25 administrative authority to authorize all payments

1 from this escrow account on bank loan for
2 construction contracts, pro forma plant, interest
3 payments, et cetera, and the DEP debt service
4 payments.

5 And our concern is this; you know, OPC
6 really does not oppose any disbursements from this
7 escrow account so long as the statutorily mandated
8 amount that goes into this escrow account is
9 protected and untouched. And the question that I
10 have is staff's recommendation doesn't provide any
11 guidance or any instruction on what amount of the
12 38.76 shall go into that escrow account that cannot
13 be touched for debt service or for other things that
14 are made pursuant to Proviso Number 2.

15 If you take a look at the graphic that I
16 distributed, it is a table that is based upon
17 staff's recommended 38 percent escrow account. And
18 the blue portion is the amount that is, in my
19 opinion, statutorily required to be escrowed and
20 held untouched by Provision 2. Just a little bit of
21 background. I know there is a lot of moving parts
22 to this, and I have worked hard to try to sum it up
23 and make it as simple as possible. If you take the
24 702,000 on an annual basis, divide it by 12, you are
25 going to get about \$58,000 a month on an annual

1 basis that should go into this escrow account.

2 And as we are all aware, revenue amounts
3 go up and down. During summer months they are
4 higher, during winter months they are lower, and
5 this escrow account is going to be in effect during
6 the winter months for this utility, so potentially
7 less than \$58,000 a month will actually go into this
8 escrow account.

9 I just used a hard dollar amount to try to
10 explain what would be -- on an idealized basis
11 should go into the escrow account, and how much
12 should be in the escrow account by May when this
13 Commission renders its final order on the PAA
14 protested issues. And according to the statute, my
15 calculation is about \$253,000, or whatever that
16 proper percentage is should be in that escrow
17 account that should be protected and held inviolate
18 so that the customers will be assured of a refund
19 should the Commission order any refunds. If no
20 refunds are ordered, then the Commission will
21 dispose of that escrow account as needed by the PAA
22 order.

23 But our concern is this, that that only
24 leaves about \$100,000 difference to be disbursed
25 under Provision Number 2. And this utility already

1 has two pending requests under Provision Number 2
2 that will exceed \$100,000. And then in May, right
3 about the time this rate case is wrapping up, they
4 need to make their next DEP -- their May DEP payment
5 in an amount of \$171,000.

6 So you can quickly see that 100 plus 171
7 vastly outstrips and dips deeply into the
8 PAA-protected amount that should be held subject to
9 refund. So OPC would ask that this Commission
10 provide some guidance and clarity as it relates to
11 how much of the amount that is going to be going
12 into this escrow account will be protected and held
13 inviolate and be available at the end of the day in
14 May to be held subject to refund.

15 The amount above and beyond that amount is
16 fine. It should be distributed pursuant to the
17 provisions of Proviso Number 2 and the escrow
18 agreement. That is OPC's first main concern. We
19 want to protect the ratepayers and make sure that
20 there is some money there for refunds on issues that
21 we believe that are strong and that we potentially
22 can see it on, and if we prevail that refund should
23 be ordered. If we don't prevail, that's down the
24 road.

25 The other question that we have, in

1 addition to protecting the statutorily mandated
2 escrow account, is the staff's recommendation does
3 not squarely or separately address the
4 implementation of the PAA ordered 35.25 percent
5 escrow account requirement. This separate escrow
6 account requirement was solely intended to allow the
7 utility to collect money to this escrow account in
8 order to ensure that the utility has funds available
9 to meet its DEP debt payment obligations and other
10 pro forma debt service payments.

11 The utility didn't protest this issue or
12 Proviso Number 2. Our office, we didn't protest it.
13 We reviewed it, and after a little bit of concerns
14 that we expressed at the Agenda Conference with
15 escrowing money for the pro forma plant, we looked
16 at the PAA order and were completely satisfied that
17 this would protect the customers because this
18 separate escrow account requirement of 35 percent
19 would be implemented. And it was my understanding
20 it would be implemented regardless of whether we
21 protested it or the utility protested it.

22 If that issue was not protested, that
23 issue became final and should be implemented. That
24 was our legal understanding. And I had had a
25 conversation with Commission staff prior to our

1 protest to understand if that's what their thinking
2 was on that as well.

3 Well, our question is this; staff's
4 recommendation doesn't recommend staying the
5 35.25 percent escrow requirement or delaying it or
6 specifying a time when that amount will be -- will
7 actually go into effect. Instead it seems like the
8 statutorily mandated escrow requirement and the PAA
9 order escrow requirement has been kind of mushed --
10 legal term -- into one agreement. So those are our
11 two main questions which we could not reconcile with
12 the statute and with the PAA order, and we wanted to
13 raise those concerns with you today.

14 Thank you very much.

15 **COMMISSIONER EDGAR:** Thank you,
16 Mr. Sayler.

17 Commissioners, any questions for Mr.
18 Sayler before I go to Mr. Friedman?

19 Okay. Mr. Friedman.

20 **MR. FRIEDMAN:** Thank you, Mr. Chairman,
21 Commissioners. My name is Martin Friedman, the law
22 firm of Sundstrom Friedman and Fumero, and we
23 represent Water Management Services, Inc.

24 And we concur in the staff recommendation.
25 What Public Counsel is asking you to do is really

1 unprecedented. They want you to make sure that you
2 escrow additional funds under the presumption that
3 they are going to prevail on every issue that they
4 have protested. And I have not seen, at least in a
5 water and sewer case, any instance where the
6 Commission has required an escrow based upon a
7 presumption of what some party believes that they
8 can prevail on.

9 In fact, I'm not sure that Public Counsel
10 has ever asked this Commission in any other case,
11 including the Aqua case when they protested the PAA
12 in Aqua, to ask for that. And when they protested
13 this case, it seems like it's the first case that I
14 have seen that they have ever come up with this
15 novel concept of, gee, what if we prevail on every
16 issue that we think we are prevailing on? We want
17 the company to have to escrow those additional
18 funds. And I have never seen this Commission do
19 that, and I don't think that we should start -- I
20 don't think the Commission should start doing that
21 today.

22 So we agree with the staff's
23 recommendation, and I think that some of the issues
24 that Public Counsel raised are issues that are
25 theoretical only, and the staff recommendation

1 adequately addresses the security for the utility.

2 Thank you.

3 **CHAIRMAN BRISÉ:** Thank you.

4 Commissioners? Commissioner Brown.

5 **COMMISSIONER BROWN:** Thank you. I have a
6 couple of questions for staff regarding OPC's
7 arguments that are be raised now that were not
8 protested.

9 Isn't this something that should have been
10 protested, for us to hear it at this time?

11 **MR. MAUREY:** Andrew Maurey, Commission
12 staff.

13 Yes, ma'am. In staff's recommendation, we
14 have recommended that the full amount of increase
15 granted be set subject to refund and protected, and
16 that's what you have before you. To go where OPC is
17 requesting would go beyond the increase that was
18 granted and go into an issue of what was the
19 appropriate rate of return. That was not protested
20 in this case. It would be putting more money
21 subject to refund than was granted by the Commission
22 in the PAA order.

23 **COMMISSIONER BROWN:** Can you also address
24 OPC's -- how OPC derived its calculations? Do you
25 have any comments or responses to Mr. Sayler's

1 arguments?

2 **MR. MAUREY:** Staff is not privy to how
3 they calculated the additional increase above the
4 38 percent. We do not know how that was calculated.

5 **COMMISSIONER BROWN:** Mr. Sayler.

6 **MR. SAYLER:** OPC supports the 38 percent
7 escrow agreement. We are not asking that any more
8 than 38.76 be put into escrow. That was the
9 proposal we had floated before the utility and staff
10 last week at an informal meeting. We thought that
11 two escrow accounts should be put into effect. Do
12 the 35 percent that's required by the PAA and then
13 add an additional incremental amount to protect the
14 customers on the protest.

15 Today we are not suggesting that. We are
16 saying that this is the 38.7 percent of the revenue
17 requirement that is supposed to be escrowed. The
18 rate increase was \$506,000. Mathematically, the
19 rate increase that this recommendation is requiring
20 is \$702,000, which is \$200,000 more than what was
21 granted.

22 That is an interesting inconsistency in
23 staff's recommendation. We don't oppose more being
24 escrowed. We're just saying that if more is going
25 to be escrowed that a certain percentage of what is

1 being put in staff's 38 percent recommended escrow
2 agreement, that a certain percentage of that be
3 protected absolutely so that will be there in May.

4 **COMMISSIONER BROWN:** So effectively you
5 want two separate escrow accounts.

6 **MR. SAYLER:** No. We're happy with one
7 escrow agreement. We would just like dollars that
8 are identified in this escrow account to be held
9 absolutely protected from any disbursements under
10 Provision 2 of the escrow agreement.

11 **COMMISSIONER BROWN:** Mr. Sayler, you were
12 talking to this Commission about deciding not to
13 protest this issue, and then you started going on a
14 path. Do you feel that your rights here at this
15 point for not protesting are truncated at this
16 juncture?

17 **MR. SAYLER:** Honestly, I don't think our
18 rights are truncated. And, honestly, I don't think
19 this issue of getting the escrow account percentage
20 correct has anything to do with the protested
21 proceeding that is coming before this Commission in
22 January. Our concern is that the PAA ordered
23 35 percent be subject to refund. If that agreement
24 or that requirement was not in the order, we
25 wouldn't be worried about that 35 percent.

1 According to the statutory formula, if we had
2 protested this and the utility didn't protest, then
3 500,000 of revenues would go in subject to refund,
4 which mathematically is 28 percent of the utility's
5 approved revenue increase.

6 **COMMISSIONER BROWN:** Again, that's based
7 on presumptions, though.

8 **MR. SAYLER:** Yes. That's what the
9 statutory formula would require is 28 percent of all
10 utility revenues to be held subject to refund.
11 Staff is recommending that 38 percent, or almost
12 39 percent be held subject to refund. And we're
13 just trying to isolate of that 38.76 percent how
14 much will be there protected and not be tapped into
15 for pro forma plant or DEP debt service payment.

16 **COMMISSIONER BROWN:** And my question
17 really is, but you are just basing that on the
18 presumption that the Commission down the road after
19 the hearing will vote in your favor. So you are
20 basing that amount on that, correct?

21 **MR. SAYLER:** That was my presumption last
22 week when we talked to staff. This week my
23 presumption is that the statute requires X amount of
24 dollars to be held subject to refund and --

25 **COMMISSIONER BROWN:** Okay.

1 **MR. SAYLER:** -- this escrow agreement with
2 Provision 2 does not guarantee that X, which at the
3 end of the day is \$253,000 in that escrow account
4 will be there at the end of the day. And we are
5 concerned with protecting the blue amount on this
6 chart.

7 **COMMISSIONER BROWN:** I'm done.

8 **CHAIRMAN BRISÉ:** Commissioner Balbis.

9 **COMMISSIONER BALBIS:** Thank you, Mr.
10 Chairman. I have one or two questions for staff,
11 because when I reviewed this item it seemed fairly
12 simple, and I'm kind of confused as to why there's
13 this much discussion on it. Because the plain
14 language of the statute, I thought, clearly stated
15 that any rate increase will be held subject to
16 refund. And their rate increase in the PAA process
17 was 38.76 percent, and staff's recommendation is to
18 put 38.76 percent subject to refund, is that
19 correct?

20 **MR. MAUREY:** That's correct.

21 **COMMISSIONER BALBIS:** Okay. That's all I
22 had.

23 **CHAIRMAN BRISÉ:** All right.
24 Commissioners, any further questions or comments?

25 Okay. I think we may be in a posture to

1 entertain a motion.

2 Commissioner Balbis.

3 **COMMISSIONER BALBIS:** Thank you, Mr.

4 Chairman.

5 I move staff's recommendation on all

6 issues for this item.

7 **COMMISSIONER GRAHAM:** Second.

8 **CHAIRMAN BRISÉ:** Okay. It has been moved

9 and seconded.

10 All in favor say aye.

11 (Vote taken.)

12 **CHAIRMAN BRISÉ:** All right. So we have
13 approved staff's recommendation on all items on Item

14 Number 8.

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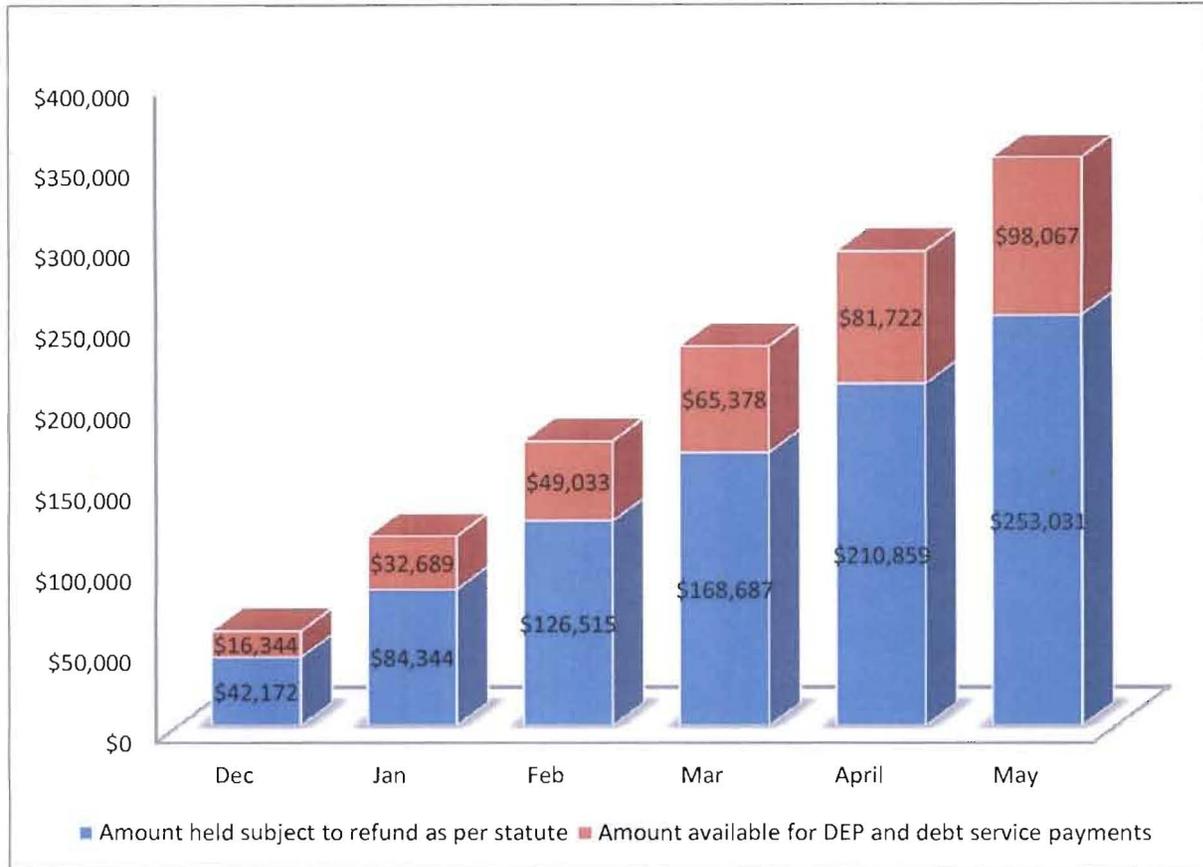
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Statutory Required Escrow Amount

Table based on Staff's Recommended 38.76% escrow amount



Amount held subject to refund as per statutory formula

Section 367.081(8), F.S., requires that the requested rate increase, if implemented, must be held subject to refund. The Utility is requesting permission to implement only the PAA approved rate increase which was \$506,061 (or \$42,172 on annualized monthly basis). From December until May 2013, approximately \$253,031 should accrue in this escrow account to be held subject to refund.

Using the staff's recommended 38.76% escrow amount, approximately \$58,516 will be escrowed each month. Approximately \$351,097 should be in the escrow account by May 2013 when the Commission issues its final order resolving the PAA protested issues. After deducting \$253,031 which is required by statute, that leaves approximately \$98,067 in the escrow account for DEP and other debt service payments as permitted by the PAA order. The Utility already has two pending requests for escrow account disbursements that exceed \$100,000, as well as a scheduled payment to DEP in May 2013 for approximately \$171,000. If the Utility's requests are granted, that would leave less than \$253,031 in the escrow account as mandated by statute.

The recommendation does not address how to ensure that statutorily mandated escrow amount remains protected and untouched in the escrow account until the conclusion of the PAA protest.

Parties/Staff Handout
 Internal Affairs/Agenda
 on 10/16/12
 Item No. 8
 110200-WU