

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in water rates in
Franklin County by Water Management
Services, Inc.

DOCKET NO. 110200-WU
ORDER NO. PSC-12-0641-PCO-WU
ISSUED: December 4, 2012

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman
LISA POLAK EDGAR
ART GRAHAM
EDUARDO E. BALBIS
JULIE I. BROWN

ORDER GRANTING IN PART AND DENYING IN PART WATER MANAGEMENT
SERVICES, INC.'S MOTION TO ALLOW WITHDRAWALS FROM ESCROW

BY THE COMMISSION:

This Order addresses whether Water Management Services, Inc. (WMSI or Utility) should be permitted to withdraw funds from a previously established escrow account for a scheduled Department of Environmental Protection (DEP) loan payment and for recurring payments to Centennial Bank to extend the closing date on a parcel of land needed for a pro forma project. We have jurisdiction pursuant to Section 367.081, Florida Statutes (F.S.).

WMSI 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-PAA-WU (PAA Order), issued August 22, 2012, we approved rates that were designed to generate a total 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 elected to put the rates approved in the PAA Order into effect during the pendency of the hearing pursuant to Section 367.081(8), 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.).

On September 21, 2012, the Utility filed a Motion to Allow Withdrawals from Escrow (Motion) requesting that it be allowed to withdraw funds from the interim and the PAA escrow

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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accounts. OPC filed its response to the Utility's motion on September 28, 2012. On October 11, 2012, WMSI withdrew the portion of its motion pertaining to the request to withdraw funds from the interim escrow account.

On October 16, 2012, we approved WMSI's implementation of the PAA rates and the security to guarantee the increased revenues collected subject to refund.² These rates became effective on October 17, 2012. We ordered WMSI to place 38.76 percent of revenues collected in an escrow account (PAA escrow account). It is from this PAA escrow account that the Utility now requests that it be allowed to withdraw funds. We do not expect the Utility to collect and deposit any incremental PAA revenue amounts until December 2012. As such, there are currently no funds available in the PAA escrow account. Given the above, the Utility's Motion to Allow Withdrawals from Escrow is denied at this time.

We hold that when funds are available in the PAA escrow account, WMSI will be allowed to make withdrawals contingent upon our staff's approval and as more specifically set forth in the body of this order.

Based on test year billing determinants, we conservatively estimate that the Utility will receive and deposit approximately \$58,000 in the PAA escrow account by December 2012. We address WMSI's requested withdrawals for its DEP loan and land acquisition more fully below.

DEP Loan

Pursuant to the PAA Order, the Commission-approved PAA rates and charges represent an annual revenue increase of \$506,061. The PAA Order required WMSI to escrow 35.25 percent of all monthly revenues.³ This amount was designed to cover the Utility's DEP loan and any loan obtained to finance pro forma improvements. The Order also granted our staff the administrative authority to approve any withdrawals from the PAA escrow account to make payments on construction loans and DEP loan payments as they become due.⁴ These provisions are not in dispute by any party and should be deemed stipulated as provided by Section 120.80(13)(b), F.S.

As stated in its Motion, the Utility asserts that DEP has agreed to accept \$40,000 on or before November 15, 2012, with the next payment to be due May 15, 2013, in the amount of \$171,408.⁵ The Utility's requested withdrawal explicitly meets our directive to make the DEP loan payments as they become due. However, as discussed above, there are no funds currently available in the PAA escrow account. As such, the Utility will need to rely on other sources of funds to meet the November 15, 2012, deadline. In accordance with the undisputed portions of the PAA Order, our staff will not authorize withdrawal of funds for the DEP loan payments until

² See Order No. PSC-12-0605-PCO-WS, issued November 6, 2012, in Docket No. 110200-WU, In re: Application for increase in water rates in Franklin County by Water Management Services, Inc. These rates became effective on October 17, 2012.

³ See Order No. PSC-12-0435-PAA-WU, pp. 13, 28.

⁴ Id.

⁵ DEP verified the Utility's statement via e-mail.

funds are available in the PAA escrow account and verification of the DEP loan payment requirements.

Land Acquisition

In its September 28 response to WMSI's motion, OPC acknowledged that it had declined to protest the proposed pro forma projects and land requested by the Utility. OPC acknowledged that the Utility had performed additional due diligence by continuing to seek a lower cost alternative to the purchase of the seven plots in the PAA Order. However, OPC objected to the approval of the requested escrow withdrawals for several reasons. The first was that it appeared, from its review of a Google map of the land, that a number of lots were underwater and a fill permit might be needed to develop the land. Second, WMSI's motion had not demonstrated a need to purchase all 24 lots. OPC also questioned what would happen to the land if the agreement with the bank required the purchase of all 24 lots, but WMSI utilized less for the pro forma plant. OPC requested that any gain on sale of the remaining lots be retained by WMSI and amortized to the benefit of the customers consistent with the treatment of a similar gain on sale.

In the PAA Order, we recognized \$420,000⁶ in pro forma plant for the purchase of seven lots deemed necessary for the construction of a new water storage tank and related improvements. We found that the Utility made an attempt to investigate other properties close to the existing plant that could support the pro forma projects while working to minimize the cost before deciding on the parcel recognized in the PAA Order. It appears that WMSI has continued to look for a lower cost alternative to the lots recognized in the PAA Order by executing a contract to purchase 24 bank-owned lots for \$190,000. These lots represent a substantial savings over the original lots recognized in the PAA Order. Since the Utility will only use 12 lots for its new water storage tank and related improvements, the Utility is proposing to sell the remaining 12 lots to further reduce the cost of the project.⁷

In addition, WMSI provided a diagram of these new proposed lots and estimated that the pro forma costs to re-route piping to these lots would total \$37,944. Under this proposed scenario, the total proposed cost would be approximately \$227,944 (\$190,000 + \$37,944). The differential in the cost of the land recognized in the PAA Order and this proposed scenario is \$192,056 (\$420,000 - \$227,944). If this proposed scenario were to come to fruition, the \$192,056 differential could be even greater if the remaining 12 lots were sold as proposed. If or when the remaining unused lots are sold, the proceeds from the sale shall be deposited in the PAA escrow account for final disposition by us.

⁶ The negotiated contract price of \$425,000 is \$325,000 less than the seller's original asking price of \$750,000. However, the appraisal came at \$5,000 (\$425,000 - \$420,000) under the contract price for the parcel. Accordingly, the pro forma cost for land was reduced by \$5,000 to account for the difference between the sales price and the appraisal.

⁷ See WMSI's Motion to Allow Withdraws from Escrow, p. 2, dated September 21, 2012.

In the PAA Order, the purchase price and associated expenses were to be covered by a new pro forma loan.⁸ Like the DEP loan discussed above, our staff was given administrative authority to approve any withdrawals from the PAA escrow account to make payments on the pro forma construction loans as they become due. However, the purchase being contemplated here is different than the purchase of land addressed in the PAA Order in that WMSI will be purchasing the land outright through periodic payments. The PAA Order was very specific in what was allowed in regard to withdrawals from the escrow account. While we believe that the purchase of the lots referenced in WMSI's Motion appears reasonable on its face, this payment arrangement is outside the parameters set forth in the PAA Order.

The Utility contends that it does not have the resources to close on the purchase of the bank-owned lots by the November 8, 2012, closing date. The owner of the lots, Centennial Bank, has agreed to allow WMSI to pay \$15,000 a month to extend the closing date until after a final order has been issued in this case, not to exceed one year. The payments will be applied towards the purchase price of the lots. WMSI contends that it does not have the resources to make these payments either, and is seeking permission to withdraw funds from the PAA escrow account to make a \$10,000 payment on November 15, 2012, and additional payments of \$15,000 on the 15th of each month.

As discussed above, there are no funds currently available in the PAA escrow account. Given the lack of funds and the fact that the Commission will not make a decision until almost three weeks after the proposed closing date, the Utility will have to rely on other sources of funds to meet the November 8 closing date and the November 15 payment deadline. As such, we believe it is likely that the payment arrangements may need to be modified.

We find that the purchase of the lots referenced in WMSI's Motion appears reasonable on its face, is consistent with the existing terms and conditions of the PAA Order, and in the long-term is in the best interest of both the Utility and its customers. Therefore, upon verification of no material modifications to the Land Purchase and Sale Agreement dated October 11, 2012, our staff is given administrative authority to authorize payments for the Utility's requested land acquisition provided that there are sufficient funds in the PAA escrow account.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that because there are currently no funds available in the Proposed Agency Action escrow account, the Utility's Motion to Allow Withdrawals from Escrow is denied at this time. It is further

ORDERED that when funds are available in the Proposed Agency Action escrow account, Commission staff may administratively authorize payments for the Department of Environmental Protection loan in accordance with the undisputed portions of the Proposed Agency Action Order. It is further

⁸ According to WMSI's MFR Schedule D-5 Final, the pro forma long-term debt was estimated to include a new loan with a five-year balloon payment.

ORDERED that when funds are available and upon verification of no material modifications to the Land Purchase and Sale Agreement dated October 11, 2012, our staff is given administrative authority to authorize payments for the Utility's requested land acquisition provided that there are sufficient funds in the Proposed Agency Action escrow account. It is further

ORDERED that if or when the remaining unused lots are sold, the proceeds from the sale shall be deposited in the Proposed Agency Action escrow account for final disposition by us. It is further

ORDERED this docket shall remain open to complete the hearing process.

By ORDER of the Florida Public Service Commission this 4th day of December, 2012.



ANN COLE
Commission Clerk
Florida Public Service Commission
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, 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 wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.