

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request to remove the fines imposed for
the delay of filing annual reports for Cedar
Acres, Inc.

DOCKET NO. 130272-WU
ORDER NO. PSC-14-0694-PAA-WU
ISSUED: December 15, 2014

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER WAIVING ANNUAL REPORT FINES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

Background

Cedar Acres, Inc. (Cedar Acres or Utility) is a Class C water utility located in Sumter County and is currently serving 216 customers as reported in its 2013 Annual Report. The Utility was first organized in 1985 as a business entity filing with the IRS as an 1120 Corporation. In 2009, we approved Cedar Acres' certificate and approved the Utility's rates it was charging at that time.¹

Rule 25-30.110(3), F.A.C., provides that each utility shall file with us an annual report. Rule 25-30-110(6), F.A.C., provides that a penalty shall be assessed against any utility that fails to file unless the utility demonstrates good cause for noncompliance. On November 14, 2013,

¹ See Order No. PSC-09-0541-FOF-WU, issued August 4, 2009, in Docket No. 080098-WU, In re: Application for certificate to provide water service in Sumter County by Cedar Acres, Inc. (The Utility was subject to Sumter County's jurisdiction when the development was designed and the Utility was established. The County turned over jurisdiction to the Commission in 1987. Cedar Acres was unaware of the change in jurisdiction. As a result, the Utility operated without a certificate from 1987 until 2009. The Utility became aware of the change in jurisdiction when it contacted Sumter County for approval to change rates. Based on this information, Cedar Acres filed an application for a certificate with this Commission.)

the Utility requested the fines for delinquent annual reports from 2008-2011 be waived. We have jurisdiction pursuant to Section 367.121, Florida Statutes (F.S.).

Decision

Cedar Acres provided staff a detailed explanation of events which led to the accumulation of fines assessed on the Utility resulting from the failure of prior management to timely submit three annual reports. In October 2011, the management was changed and the new president of Cedar Acres was informed that the 2008-2010 Annual Reports had not been filed. The new president directed the compilation of the delinquent annual reports. Due to the poor record-keeping of prior management, completion of the annual reports required time-consuming reconstruction of the Utility's financial records. The Utility filed the 2008-2011 Annual Reports on July 30, 2012. With regard to the late submission of the 2012 Annual Report, Cedar Acres stated it was the result of an original consultant's failure to prepare this report which necessitated the services of another consultant. While the delay was again the result of prior management, the Utility corrected the situation and paid the penalty for 2012.

The following table shows the annual report recap of Cedar Acres and the penalties by years:

<u>Cedar Acres, Inc. Annual Report Late Penalties @ \$3/day</u>			
<u>Report Year</u>	<u>Date Filed</u>	<u>Days Late</u>	<u>Penalty</u>
2013 (a)	9/26/2014	29	\$87
2012 (b)	3/27/2014	361	\$1,083
2011	7/30/2012	121	\$363
2010	7/30/2012	487	\$1,461
2009	7/30/2012	852	\$2,556
2008	7/30/2012	1,064	<u>\$3,192</u>
TOTAL			<u>\$8,742</u>

(a) Two extensions requested. Report 29 days late & fine has been paid.

(b) 2012 penalties have also been paid.

The Utility has asked that we waive \$7,572 (\$3,192+\$2,556+\$1,461+\$363) in penalties resulting from late submissions of Cedar Acres' 2008 to 2011 Annual Reports as required by Rule 25-30.110(3), F.A.C.

In this case, we find that due to mitigating circumstances, the Utility's request to waive the imposed fines is warranted. First, Cedar Acres has now completed all annual reports from 2008 to 2013, which required reconstruction of the Utility's financial records.

Second, in addition to failing to timely file annual reports for the period 2008-2010, the prior management also failed to pay regulatory assessment fees (RAFs) for this period. However, the Utility is now current on payment of RAFs and paid all penalties and interest associated with the past due RAF payments.

Third, based on the 2008 to 2013 Annual Reports, Cedar Acres has reported net operating losses the last six years. Currently, the Utility has over \$200,000 in outstanding loans and negative common equity of over \$109,000. We note that, in spite of Cedar Acres' financial condition, in 2012, the Utility replaced a well as required by the Florida Department of Environment Protection. Also, Cedar Acres' 2012 and 2013 consumer confidence reports revealed no water quality violations.

Fourth, the Utility's management had expressed its desire to file a Staff Assisted Rate Case (SARC). We note that this Utility has not had a rate case since 1987. We find that the waiver of these fines would help the Utility in paying the required filing fees associated with its desired SARC which is estimated to be \$1,000 in accordance with Rule 25-30.020, F.A.C.

Pursuant to Rule 25-30.110(6)(c), F.A.C., we may not impose the \$3 per day penalty pursuant to the rule, upon a showing of good cause for the noncompliance, which we find that the Utility has done. With the reasons set forth above, we find that a waiver of these fines is in the best interest of the ratepayers because it will allow the Utility to continue to focus its limited resources on its statutory mandate to provide safe and reliable water service. Accordingly, we grant Cedar Acres' request to waive the fines imposed for the delay of filing the Utility's annual reports for 2008, 2009, 2010, and 2011. We would note that our decision is consistent with a prior decision in 2008 regarding another small water utility.²

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Cedar Acres Inc.'s request to waive the fines imposed for the delay of filing the Utility's annual reports for 2008, 2009, 2010, and 2011 shall be granted. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

² See Order No. PSC-08-0044-FOF-WU, issued January 22, 2008, in Docket No. 070580-WU, In re: Initiation of Show Cause Proceedings against Kincaid Hills Water Company in Alachua County for violation of Rule 25-30.110, F.A.C., Records and Reports; Annual Reports; Rule 25-30.120, F.A.C., Regulatory Assessment Fees; Water and Wastewater Utilities; and of Order PSC-04-0615-FOF-WU.

By ORDER of the Florida Public Service Commission this 15th day of December, 2014.



CARLOTTA S. STAUFFER
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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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 that is available under Section 120.57, 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 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.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 5, 2015.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.