

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request to establish payment plan for
2008 regulatory assessment fees by O&S
Water Company, Inc. in Osceola County.

DOCKET NO. 090322-WU
ORDER NO. PSC-10-0655-PAA-WU
ISSUED: November 1, 2010

The following Commissioners participated in the disposition of this matter:

NANCY ARGENZIANO, Chairman
LISA POLAK EDGAR
NATHAN A. SKOP
ART GRAHAM
RONALD A. BRISÉ

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING REQUEST FOR PAYMENT PLAN AND
REQUIRING PAYMENT OF REGULATORY ASSESSMENT FEES

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

O&S Water Company, Inc. (O&S or Utility) is a Class A water utility located in Osceola County. According to the Utility's 2009 Annual Report, it serves approximately 2,186 residential customers, 29 commercial customers, and 858 irrigation customers. O&S is in the South Florida Water Management District. The Utility's 2009 Annual Report reflected annual operating revenues of \$1,205,487 and net operating income of \$56,008.

On May 4, 2009, the Utility requested a payment plan for the outstanding balance of its 2008 regulatory assessment fees (RAFs). In its request, O&S indicated that it would make monthly payments of \$2,500 until the 2008 RAFs were paid. In response to Commission staff's data request filed on June 3, 2009, the Utility requested that its 2009 RAFs be included in the payment plan. In addition, the Utility stated that it would increase its monthly RAF payment to \$4,500 until the 2008 and 2009 RAFs were paid. The last payment received was \$2,500 on November 24, 2009. O&S has paid a total of \$30,000 toward its 2008 RAF balance of \$58,505. However, the last payment made by O&S was \$2,500 submitted on November 24, 2009. The Utility was sent delinquent notices on May 4, 2009, and February 17, 2010. In addition, the Commission Office of the General Counsel sent a letter to O&S dated July 27, 2010, detailing

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the amount of RAFs owed. No payments of \$4,500 were made in 2009 or 2010 as offered by the Utility. Further, O&S failed to pay its 2010 RAFs, which were due on July 31, 2010. At the October 12, 2010 Agenda Conference, we voted to open a formal overearnings investigation of the Utility and to hold revenues subject to refund under an appropriate security in Docket No. 100400-WU. This Order addresses O&S's request for a payment plan. We have jurisdiction pursuant to Sections 367.145 and 350.113, Florida Statutes (F.S.).

Analysis and Decision

As of October 29, 2010, O&S will owe a total of \$127,789 for RAFs, penalties and interest for 2004, 2008 and 2009, as summarized in the following table.

Table 1-1	
Summary of RAFs, Penalties and Interest Tables 1-2, 1-3 and 1-4	
As of October 29, 2010	
2004	\$ 7,277
2008	\$ 46,526
2009	\$ 73,986
Total Due	\$127,789

According to its 2004 Annual Report, O&S had gross operating revenues of \$357,505. Accordingly, the amount owed for RAFs on March 31, 2005, was \$16,088 (.045 x \$357,505). According to our records, it appears that O&S incorrectly deducted \$83,750 from its gross operating revenues for water purchased from the Florida Governmental Utility Authority (FGUA), and thus underpaid RAFs in the amount of \$12,317 for the year 2004. Because we have found the FGUA to be an exempt non-regulated utility, it appears that O&S may have incorrectly applied Rule 25-30.120(5), F.A.C. This rule allows a utility that purchases water from another Commission-regulated utility to deduct the annual expense for purchased water from its gross operating revenue before calculating the amount of RAFs due. Further, Rule 25-30.120(8), F.A.C., states that if a utility remits less than 90 percent of RAFs owed, penalties and interest will be calculated on a going-forward basis.

A more detailed breakdown of the RAFs, penalties and interest due for 2004, 2008 and 2009 is shown on the following tables.

Table 1-2					
<u>2004</u>	<u>RAFs Due</u>	<u>RAFs Paid</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total Due</u>
Due March 31, 2005	\$16,088	\$12,317	\$942	\$2,564	\$7,277
Owed as of October 29, 2010					\$7,277

Table 1-3					
<u>2008</u>	<u>RAFs Due</u>	<u>RAFs Paid</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total Due</u>
Due July 30, 2008	\$30,827	\$15,000	\$4,582	\$5,132	\$25,540
Due Jan. 30, 2009	\$27,677	\$15,000	\$4,419	\$3,889	\$20,986
Owed as of October 29, 2010					\$46,526

Table 1-4					
<u>2009</u>	<u>RAFs Due</u>	<u>RAFs Paid</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total Due</u>
Due July 30, 2009	\$18,516	None	\$4,629	\$2,962	\$26,108
Due Jan. 30, 2010	\$35,730	None	\$8,932	\$3,215	\$47,878
Owed as of October 29, 2010					\$73,986

As of September 30, 2010, the Utility has also failed to pay its 2010 RAFs that were due on July 30, 2010. Based on O&S's RAF Return for the January 1 to June 30, 2009 period, the unpaid RAFs for 2010 are estimated to be approximately \$18,500, plus penalties and interest.

Pursuant to Section 350.113(4), F.S., and Rule 25-30.120(7)(a), F.A.C., a statutory penalty plus interest shall be assessed against any utility that fails to timely pay its RAFs, in the following manner:

1. 5% of the fee if the failure is for not more than 30 days, with an additional 5% for each additional 30 days or fraction thereof during the time in which failure continues, not to exceed a total penalty of 25%.
2. The amount of interest to be charged is 1% for each 30 days or fraction thereof, not to exceed a total of 12% per annum.

When the Utility requested to include the delinquent 2009 RAFs in the payment plan, it proposed to increase its \$2,500 monthly payment to \$4,500. However, O&S never increased its monthly payment and ceased making any payments after November 24, 2009, as shown on Table

1-5 below. Even with a payment plan for the prior years' delinquent RAFs, the Utility would still be in arrears concerning the payment of its past due 2010 RAFs.

In addition, we have analyzed O&S's 2009 annual report, and based on the reported data, it appears that O&S is in a possible overearnings position. Accordingly, we voted to approve an overearnings investigation of the Utility in Docket No. 100400-WU at the October 12, 2010 Agenda Conference. We believe that if a utility is overearning, it would be inappropriate to grant a payment plan.

O&S's 2008-2009 RAF Payments	
7/29/08	\$10,000
1/30/09	\$ 5,000
4/27/09	\$ 2,500
6/25/09	\$ 2,500
7/15/09	\$ 2,500
9/10/09	\$ 2,500
10/14/09	\$ 2,500
11/24/09	\$ 2,500
Total Payments	\$ 30,000

Based on O&S's potential overearnings, failure to pay its RAFs currently due for 2010, and its failure to make any monthly payments since November 2009, a payment plan shall not be approved for the past due 2004, 2008 and 2009 RAFs. If O&S does not pay the 2010 RAFs owed and the unpaid 2004, 2008 and 2009 RAFs by October 29, 2010, staff shall open a new docket to file a show cause recommendation to address the nonpayment of the unpaid RAFs.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that O&S Water Company, Inc.'s request for a payment plan is hereby denied. It is further

ORDERED that O&S Water Company, Inc. shall pay the 2010 Regulatory Assessment Fees owed and the unpaid 2004, 2008 and 2009 Regulatory Assessment Fees by October 29, 2010. If O&S Water Company, Inc. does not pay the 2010 Regulatory Assessment Fees owed and the unpaid 2004, 2008 and 2009 Regulatory Assessment Fees by October 29, 2010, staff shall open a new docket to file a show cause recommendation to address the nonpayment of the unpaid Regulatory Assessment Fees. It is further

ORDER NO. PSC-10-0655-PAA-WU
DOCKET NO. 090322-WU
PAGE 5

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.

By ORDER of the Florida Public Service Commission this 1st day of November, 2010.



ANN COLE
Commission Clerk

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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 November 22, 2010.

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.