

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-12-0605-PCO-WS
ISSUED: November 6, 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 ACKNOWLEDGING IMPLEMENTATION OF PROPOSED AGENCY ACTION
RATES BY WATER MANAGEMENT SERVICES, INC.

BY THE COMMISSION:

This Order addresses the implementation of Proposed Agency Action (PAA) rates by Water Management Services, Inc. (WMSI or Utility) and the security to guarantee the increased revenues collected subject to refund. 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 Order No. PSC-12-0435-PAA-WU (PAA Order), issued August 22, 2012, we 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. 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.).

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

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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FPSC-COMMISSION CLERK

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 Utility also submitted tariff sheets, a proposed customer notice, and an escrow agreement to secure any potential refund.

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 we approved in the PAA Order. These approved PAA rates and charges are lower than the rates requested by the Utility in its November 7, 2011 filing.

The Utility shall 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. Our 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, we find 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 shall deposit 38.76 percent of revenues into the escrow account each month. In addition, the Utility shall also deposit into the escrow account any incremental amounts received from the difference in its existing service availability charges and the PAA service availability charges.

Several conditions shall be made a part of the escrow agreement. We note 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, all conditions, including condition two, shall be part of the escrow agreement:

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

³ Id.

- 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) 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.

We have reviewed the tariff sheets, customer notice, and security provided by WMSI, and have determined that the Utility has met the requirements of Section 367.081(8), F.S. Accordingly, we 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. The Utility shall open and maintain an escrow account to guarantee any potential refund of revenues collected under the PAA rates and charges. The Utility shall deposit 38.76 percent of water revenues into the escrow account each month. In addition, the Utility shall deposit into escrow any incremental amounts received from the increased service availability charges. The Utility shall keep an accurate and detailed account of all monies it receives. Pursuant to Rule 25-

30.360(6), F.A.C., the Utility shall 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 shall be with interest and undertaken in accordance with Rule 25-30.360, F.A.C. In no instance shall 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.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Water Management Services, Inc.'s implementation of the Proposed Agency Action rates and charges are hereby acknowledged, subject to refund with interest, on a temporary basis pending the outcome of this rate proceeding. It is further

ORDERED that Water Management Services, Inc. shall open an escrow account to guarantee any potential refund of revenues collected under the PAA rates and charges. Water Management Services, Inc. shall deposit 38.76 percent of water revenues into the escrow account each month. In addition, the Water Management Services, Inc. shall deposit into escrow any incremental amounts received from the increased service availability charges. It is further

ORDERED that Water Management Services, Inc. shall keep an accurate and detailed account of all monies it receives. Pursuant to Rule 25-30.360(6), F.A.C., Water Management Services, Inc. shall provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund. It is further

ORDERED that should a refund be required, the refund shall be with interest and undertaken in accordance with Rule 25-30.360, F.A.C. In no instance shall maintenance and administrative costs associated with any refund be borne by the customers. The costs are the responsibility of, and should be borne by, Water Management Services, Inc. It is further

ORDERED that this Docket should remain open to complete the hearing process.

By ORDER of the Florida Public Service Commission this 6th day of November, 2012.



ANN COLE
Commission Clerk
Florida Public Service Commission
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Tallahassee, Florida 32399
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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.

LCB

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.

Any party adversely affected by this order, which is non-final 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. Citizens of the State of Florida v. Mayo, 316 So.2d 262 (Fla. 1975), states that an order on interim rates is not final or reviewable until a final order is issued. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.