

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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RECORDS AND REPORTING

DATE: JUNE 24, 1999
TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)
FROM: DIVISION OF LEGAL SERVICES (VACCARO)
DIVISION OF WATER AND WASTEWATER (CHASE, CLAPP, KAPROTH, MERCHANT, MESSER)
DIVISION OF ADMINISTRATION (KNIGHT, SEWELL)
RE: DOCKET NO. 971504-WU INVESTIGATION OF WATER RATES OF A. P. UTILITIES, INC. IN MARION COUNTY FOR POSSIBLE OVEREARNINGS.

AGENDA: 07/06/99 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\971504.RCM

CASE BACKGROUND

A.P. Utilities, Inc. (APU or utility) is a Class B water utility operating in Marion County. APU provides water service to approximately 1,200 customers. In its 1997 annual report, the utility reported water operating revenues of \$219,215 and operating expenses of \$200,051, resulting in net operating income of \$19,164.

By Order No. 21762, issued August 21, 1989 in Docket No. 881603-WU, the Commission granted a transfer of Certificate No. 380-W from North Central Florida Utilities, Inc. to APU. On November 30, 1990, Philip Woods purchased the assets of APU from Michael Blake, and by Order No. 24977, issued August 26, 1991 in Docket No. 910117-WU, the Commission approved the transfer of majority organizational control. The purchase also included the Aqua Pure Water Company (Aqua Pure) and Marico Properties, Inc. (Marico). By Order No. 25063, issued September 13, 1991 in Docket No. 910119-WU, the Commission approved the transfer of assets from

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

DOCKET NO. 971504-WU
DATE: JUNE 24, 1999

Marico to APU, and by Order No. 25075, issued September 17, 1991 in Docket No. 910118-WU, the Commission approved the transfer of assets from Aqua Pure to APU.

Since the transfer of assets of APU to Philip Woods, the utility has failed to correct deficiencies in its 1993 annual report, failed to timely file its 1994, 1995, 1996 and 1997 annual reports, failed to file its 1998 annual report, and failed to pay its regulatory assessment fees (RAFs) for each of the years 1991 through 1998.

SHOW CAUSE RELATED TO 1993-95 ANNUAL REPORTS & 1991-95 RAFS

By Order No. PSC-97-0286-FOF-WU, issued on March 13, 1997, in Docket No. 961141-WU, the Commission ordered the utility to show cause, in writing, within 20 days why it should not remit a penalty for failure to file its 1994 and 1995 annual reports, failure to pay its RAFs for each of the years 1991 through 1995, and failure to correct deficiencies in its 1993 annual report. The utility failed to respond to the Commission order, and by that order the utility's failure to respond was deemed an admission of the facts. The delinquent RAFs, associated penalties and interest, and penalties associated with delinquent annual reports for these years totaling \$94,326.75, were referred to the Department of Banking and Finance's Office of the Comptroller (Comptroller's Office) for collection (RAFs: \$44,159.36; penalty: \$11,039.83; interest: \$14,895.06; and penalty for delinquent annual reports: \$24,232.50).

The Comptroller's Office referred these amounts to a collection agency. APU has been making monthly payments in the amount \$2,000 of which \$360 goes to the collection agency. As a result, APU has remitted all of the RAFs owed for 1991 and 1992 as well as \$8,260.12 for 1993. However, no penalty or interest associated with these RAFs has been paid, nor has any payment been made toward RAFs owed for 1994 or 1995. Further, no penalty associated with 1993-1995 annual reports has been paid.

SHOW CAUSE RELATED TO 1996 ANNUAL REPORT & RAFS

By Order No. PSC-97-1556-PCO-WU, issued December 11, 1997, in Docket No. 971076-WU, the Commission ordered APU to show cause, in writing, within 20 days of the order, why it should not remit a penalty for failure to timely file its annual report and failure to remit its RAFs for 1996. The order also directed the utility to immediately remit RAFs to the Commission for 1996. The utility failed to respond to the Commission order, and by that order the utility's failure to respond was deemed an admission of the facts.

DOCKET NO. 971504-WU
DATE: JUNE 24, 1999

The delinquent RAFs, associated penalties and interest, and penalties associated with the untimely filed 1996 annual report totaling \$17,501.26, were referred to the Comptroller's Office on March 5, 1998 for further collection efforts (RAFs: \$10,992.47; penalty: \$2,748.12, interest: 1,209.17; and penalty for untimely filed 1996 annual report \$2,551.50). The Comptroller's Office has not forwarded this matter to a collection agency to date.

SHOW CAUSE RELATED TO OVEREARNINGS BASED ON 1996 ANNUAL REPORT

In addition to the utility's failure to file annual reports and pay RAFs, it also appeared that the utility was overearning. By Order No. PSC-98-0044-PCO-WU, issued January 6, 1998, in Docket No. 971504-WU, the Commission initiated an investigation into APU's rates and charges for potential overearnings. By that order, the Commission required APU to perform the following: (1) hold its revenues subject to refund pending the Commission's investigation of the utility's possible overearnings; (2) provide security in the form of a bond, letter of credit or escrow agreement to guarantee any potential refund of its revenues; and (3) escrow 4.5% of its revenues to ensure payment of APU's 1998 RAFs. APU failed to comply with the Commission's order. Furthermore, the staff audit in the investigation of the utility's potential overearnings indicates that APU failed to maintain its books and records in compliance with the 1994 National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA), as required by Rules 25-30.115, Florida Administrative Code.

SHOW CAUSE RELATED TO FAILURE TO CORRECT DEFICIENCIES IN 1996 ANNUAL REPORT, REMIT 1997 RAFS, AND FAILURE TO ESTABLISH ESCROW ACCOUNTS REQUIRED BY OVEREARNINGS ORDER

Although the utility untimely filed its 1996 annual report on October 6, 1997, the annual report contained deficiencies. By letter dated October 16, 1997, staff notified the utility of the deficiencies. The utility was given until November 10, 1997, to correct them. The utility never responded. The utility also owed \$10,992.47 in RAFs for 1997. By letter dated December 9, 1997, staff notified the utility that the RAFs were due on March 31, 1998. The utility neither filed for an extension nor remitted the fees.

By Order No. PSC-98-1005-SC-WU, issued July 24, 1998, in Dockets Nos. 980729-WU and 971504-WU, APU was ordered to show cause, in writing, within 20 days, why it should not remit a penalty in the amount of \$3,037.50 for failure to correct deficiencies in its 1996 annual report, and why it should not remit

DOCKET NO. 971504-WU
DATE: JUNE 24, 1999

a penalty of \$2,198.49 and interest in the amount of \$439.70 for failure to remit 1997 RAFs. In addition, the order required APU to immediately remit \$10,992.47 in delinquent RAFs for 1997. The utility was also ordered to show cause, in writing, within 20 days, why it should not remit a penalty in the amount of \$5,000 per day for violation of Order No. PSC-98-0044-PCO-WU for failure to escrow all required funds as required by that order. APU was further ordered to bring its books and records into compliance with the 1994 NARUC USOA in accordance with Rule 25-30.115, Florida Administrative Code, within six months of the date of the order.

APU failed to file a timely response to this order to show cause, and the penalties and interest set forth in that order were recorded as a statutory lien pursuant to Chapter 85, Florida Statutes, on the real and personal property of A.P. Utilities, Inc., and its directors, Philip and Joan Woods. Further, pursuant to Section 55.10, Florida Statutes, that same order was recorded as a lien on the real and personal property of A.P. Utilities, Inc., and its directors, for the amount of the utility's delinquent regulatory assessment fees being duly recorded with the Clerk of the County Court in Marion County, Florida. The liens total \$16,668.16 (RAFs: \$10,992.47; penalty and interest: \$5,675.69). Subsequent to the filing of liens, Mr. Woods brought the escrow accounts for overearnings and RAFs for 1998 into compliance with the order.

PENDING TRANSFERS OF CERTAIN A.P. SYSTEMS

Currently, Hawk's Point Water System and the 49th Street Village Water System are under the Commission's consideration for approval of the transfer/sale to Ocala Oaks Utilities, Inc. in Docket No. 981030-WU. Further, staff has determined through telephone conversations with the utility and Marion County that the Board of County Commissioners for Marion County voted to purchase the following systems from APU: Raven Hill, South Oak, and Peppertree. Should the Commission approve the sales of the systems to Ocala Oaks Utilities, Inc., and Marion County, the Quail Run system (Quail Run) would be the only remaining system owned by APU. Quail Run is located outside of the city limits of Ocala, Florida and serves approximately 66 customers.

UTILITY PROPOSED SETTLEMENT OFFER

Mr. Woods filed a settlement offer on June 24, 1999, as a solution of all unpaid accounts owed by APU to the Commission. This recommendation addresses the settlement offer.

DISCUSSION OF ISSUES

ISSUE 1: Should APU's June 24, 1999 offer of settlement be approved?

RECOMMENDATION: Yes, APU's settlement offer should be approved. In addition, the overearnings escrow account should be closed and the proceeds of the account released to the Commission for payment towards fees owed by the utility; the escrow account established to guarantee payment of regulatory assessment fees should be continued and the utility required to deposit 4.5 percent of its revenue each month until the Quail Run system is sold; and APU should be required to file a 1998 annual report for the Quail Run system within 60 days of the effective date of this order unless the system has been sold by that date. (VACCARO, CHASE, CLAPP, KAPROTH, MERCHANT, MESSER)

STAFF ANALYSIS:

The following table summarizes the amounts owed by APU for the years 1991 through 1998 relating to RAFs, associated penalties and interest, and penalties related to deficient or unfiled annual reports. The amount of penalties and interest have been calculated up to the date of the agenda conference. The table also indicates the amount collected by the collection agency and the total amount outstanding for each year prior to settlement. As discussed further in this recommendation, the table also includes an amount paid by the utility towards the settlement of this matter and amounts still owing.

<u>Year</u>	<u>RAF Amount</u>	<u>RAF Penalty</u>	<u>Interest</u>	<u>Del. AR Penalty</u>	<u>Total Amount Collected</u>	<u>Amount Outstanding Per Year</u>
1991	\$ 7,522.29	\$ 1,880.57	\$ 4,438.15	\$ 0.00	\$ 7,522.29	\$ 6,318.72
1992	8,667.59	2,166.90	4,073.77	\$ 0.00	8,667.59	6,240.67
1993	9,107.01	2,276.75	3,187.45	12,190.50	8,260.12	18,501.59
1994	9,340.15	2,335.04	2,148.23	7,668.00		21,491.42
1995	9,522.32	2,380.57	1,047.46	4,374.00		17,324.35
1996	10,992.47	2,748.12	1,209.17	5,589.00		20,538.76
1997	10,992.47	2,198.49	439.70	4,820.00		18,450.66
1998	10,992.47	0.00	0.00	1,229.00		12,221.47
TOTAL	77,136.73	15,986.44	16,543.93	35,870.50	24,450.00	121,087.64

DOCKET NO. 971504-WU
DATE: JUNE 24, 1999

1999	Settlement Offer Collection to PSC	\$57,050.00
	Amount due the Commission	\$64,037.64

Total Amount Due the Collection Agency

Amount Due \$94,327.75 X 22.7% =	\$21,412.39
Amount Paid	<u>18,500.00</u>
Amount Owed the Collection Agency	\$ 2,912.39

As stated in the case background, by letter dated, June 14, 1999, Philip Woods made a settlement offer as a resolution of all unpaid accounts owed by APU to the Commission. The settlement offer provides for payment of all monies owed to the Commission. What makes this a "settlement" is the method by which funds are applied to the various outstanding accounts. Staff notes that due to the history of this utility, the settlement process has been long and complicated. The terms of the settlement are summarized as follow:

1. 1991-95 RAFs and 1993-1995 Annual Reports: APU will pay \$70,000 toward those amounts owed for delinquent 1991-95 RAFs and associated penalties and interest, and penalties for failure to correct deficiencies in its 1993 annual report and for failure to file its 1994-95 annual report. APU has already made this payment (\$57,050 remitted to PSC and \$12,950 retained by the collection agency).

2. Outstanding Balance for Accounts in Paragraph 1: APU will remit any outstanding balance for accounts in paragraph No. 1 above, including any amounts which were applied to collection agency fees on those accounts, from the proceeds of its sale of the Raven Hill, South Oak and Peppertree systems to Marion County.

3. 1996 RAFs and 1996 and 1998 Annual Reports: APU will remit its delinquent 1996 RAFs, associated penalty and interest, and penalty for failure to timely file its 1996 and 1998 annual reports from the proceeds of its sale of the Raven Hill, South Oak and Peppertree systems to Marion County.

4. 1997 RAFs and 1996 Annual Report deficiencies: APU will remit its delinquent 1997 RAFs, associated penalty and interest, and penalty for failure to correct deficiencies in its 1996 annual report from the funds escrowed for potential overearnings. Any excesses not covered by the escrow account will be paid from the sale of its Hawk's Point and 49th Street Village water systems to Ocala Oaks Utilities.

5. 1998 and 1999 RAFs: APU's 1998 and 1999 RAFs have been deposited in the Regulatory Assessment Fee Escrow Account required by Order No. PSC-98-0044-SC-WU.

As noted above, as part of the settlement offer, Mr. Woods proposes that the escrow account established in the overearnings investigation be used to pay the outstanding 1997 RAFs, associated penalty and interest, and penalty for failure to correct the deficiencies in the 1996 annual report. This escrow account was established to provide security for a potential refund to the customers if the utility is found to be in an overearnings position. Based on staff's analysis, the utility's books and records are in such poor shape that it would be very difficult to make an accurate determination of earnings. Based on the available records, at first glance it may appear that the utility is overearning. However, staff believes that a full analysis would show that the opposite is true. If the utility were to hire the necessary administrative help that it is lacking, such as accounting and bookkeeping, its earnings would decrease and the utility would most likely need increased rates. Accordingly, we believe that it is reasonable to discontinue the amounts held subject to refund for possible overearnings. Once the funds are released from being held subject to refund, those funds belong to the utility. Because the utility has agreed to use the amounts escrowed to pay off amounts owed to the Commission, staff believes that this is reasonable and should be approved.

In addition to the escrow account established to provide security for a potential refund, the utility was required to establish a second escrow account in order to guarantee the payment of RAFs for 1998 and beyond. The balance in the two escrow accounts as of June 21, 1999, is \$12,784.23 for Account No. 2090001734817 (RAF escrow account) and \$14,194.31 for Account No. 2090001734820 (overearnings escrow account).

As can be seen from the chart provided in the staff analysis, excluding the \$24,450 in payments previously received, the utility owes a total of \$121,088 to the Commission for fees, penalties and interest. As mentioned, Mr. Woods has already paid a total of \$70,000, of which the Commission has received \$57,050. This leaves an amount owed the Commission of \$64,037.64. Applying the balance in the two escrow accounts of \$26,979 leaves an amount of \$35,059.64 to be paid by the utility from the proceeds of the sale of five of its systems to Marion County and Ocala Oaks Utilities. Additionally, APU will pay the balance owed for collection agency fees of \$2,912.39 from proceeds of the sale of the Raven Hill, South Oak and Peppertree systems.

Staff believes that this settlement offer is in the public interest and provides a reasonable resolution to this matter. With the exception of Quail Run, Mr. Woods will be relieved from continuing in the utility business. Further, the Commission will be recovering the costs of regulation, and appropriately depositing penalties and interest in the General Revenue Fund. Accordingly, Staff believes the utility's settlement offer should be approved.

THE QUAIL RUN SYSTEM

As stated in the case background, the Quail Run system will be the only remaining system owned by APU after the sale of the other five systems to Marion County and Ocala Oaks Utilities. Mr. Woods has stated that he is attempting to sell this system as well. However, to date there has been no contract for sale of the Quail Run system. Based on this utility's poor track record of paying RAFs when due, staff recommends that the Commission order the utility to continue escrowing 4.5 percent of its revenue from the Quail Run system each month for payment of such fees. This should continue until the Quail Run system is sold and the transfer approved, if necessary, by this Commission.

In addition, because five of the six systems are being sold to other entities, there is no need for a 1998 annual report for the entire utility. However, because APU has not yet sold the remaining Quail Run system, the utility should be required to file a 1998 annual report for this system within 60 days of the effective date of this order. If the utility sells the system within that time, a 1998 annual report will not be necessary.

CONCLUSION

Based on the foregoing, staff recommends the following: (1) that APU's settlement offer be approved; (2) that the overearnings escrow account be closed and the proceeds of the account be released to the Commission for payment towards fees owed by the utility; (3) that the escrow account established to guarantee payment of RAFs be continued and the utility required to deposit 4.5 percent of its revenue each month until the Quail Run system is sold; and (4) the utility should be required to file a 1998 annual report for the Quail Run system within 60 days of the effective date of this order unless the system has been sold by that date.

DOCKET NO. 971504-WU
DATE: JUNE 24, 1999

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. If no timely protest is received upon expiration of the protest period, the order shall become final and effective upon the issuance of a Consummating Order. This docket should remain open following the issuance of the Consummating Order until all terms of the settlement offer have been met and to monitor the continuing escrow account for regulatory assessment fees. (VACCARO)

STAFF ANALYSIS: No. If no timely protest is received and a Consummating Order is issued, this docket should remain open until all terms of the settlement offer have been met and to monitor the continuing escrow account for regulatory assessment fees.

A.P. UTILITIES, INC.

3925 Southeast 45th Court Suite E · Ocala, Florida 34480-7431
352/694-7474

June 14, 1999

Ms. Blanco Bayo
Division of Records and Reporting
State of Florida - Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: A.P. Utilities, Settlement Offer

Dear Ms. Bayo,

A.P. Utilities, Inc. (APU) hereby offers the following settlement offer as a resolution of all unpaid accounts owed by APU to the Commission:

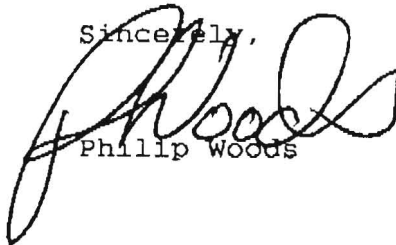
1. APU offers to pay \$70,000 for those amounts owed for delinquent 1991-1995 Regulatory Assessment fees and associated penalties and interest, and penalties for failure to timely file its 1993 annual reports and for failure to correct deficiencies in its 1994-1995 annual reports as required by Order No. PSC -97-0286-FOF-WU. APU has already made this payment (\$57,050 remitted to the PSC and \$12,950 retained by the collection agency).
2. APU offers to remit any outstanding balance for the account in paragraph 1. plus outstanding collection fees for those accounts from the proceeds of its sale of APU's Raven Hill, South Oak and Peppertree Systems to Marion County.
3. APU offers to remit its delinquent 1996 regulatory assessment fees, associated penalty and interest, and penalty for failure to timely file its 1996 annual report, as required by Order No. PSC-97-1556-PCO-WU, and penalty for its failure to timely file its 1998 annual report from the proceeds of its sale of APU's Raven Hill, South Oak and Peppertree Systems to Marion County.
4. APU offers to remit its delinquent 1997 regulatory assessment fees, associated penalty and interest, and penalty for failure to correct deficiencies in its 1996 annual report, as required by Order No. PSC-98-1005-SC-WU, from the funds escrowed for potential APU overearnings required by Order No. PSC-98-0044-PCO-WU. APU offers to pay any excesses not covered by the escrow account from the Sale of its Hawk's Point and 49th Street Village Water Systems to Ocala Oaks Utilities.

Page 2.
Settlement Offer
6-14-99

5. APU 1998 and 1999 Regulatory Assessment fees have been deposited in the Regulatory Assessment Fee Escrow Account Required by Order No. PSC-98-044-SC-WU.

If you have any questions concerning this offer, please do not hesitate to contact this office.

Sincerely,

A handwritten signature in cursive script, appearing to read "P. Woods", is written over the typed name "Philip Woods".

Philip Woods