

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for an increase in water rates)
in Franklin County by Water Management) Docket No: 110200-WU
Services, Inc.)
) Filed: September 29, 2014
)
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**CITIZEN'S RESPONSE TO WATER MANAGEMENT SERVICES, INC.'S MOTION
FOR EXTENSION OF TIME TO COMPLETE FINANCING
AND CONSTRUCTION REQUIREMENTS**

The Citizens of the State of Florida, through the Office of Public Counsel (OPC), pursuant to Section 350.0611, Florida Statutes (F.S.), and Rule 28-106.204, Florida Administrative Code (F.A.C.), hereby files its response in opposition of Water Management Services, Inc.'s (WMSI) Motion for Extension of Time to Complete Financing and Construction Requirements (Motion) filed September 22, 2014, and state:

1. In Order No. PSC-12-0435-PAA-WU (PAA Order) this Commission ordered WMSI to secure financing and complete certain pro forma projects within 18 months of issuance of the Consummating Order.¹
2. After a protest of the PAA Order by OPC and a cross-protest by WMSI, this Commission issued Order No. PSC-13-1097-FOF-WU (Final Order) on May 16, 2013. The issuance of the Final Order commenced the 18 month deadline for the pro forma projects' financing and completion required by the PAA Order. Based on the issuance date of the Final Order, the required completion date for the pro forma projects is November 17, 2014.
3. On September 22, 2014, WMSI filed the Motion requesting an additional 18 months to obtain financing and complete the pro forma items.

¹ Order No. PSC-12-0435-PAA-WU, p. 38, issued Aug. 22, 2012, in Docket No. 110200-WU, In re: Application for increase in water rates in Franklin County by Water Management Services, Inc.

4. As grounds for materially changing the pro forma completion date beyond the time frame set in the PAA Order and commenced by the Final Order, WMSI alleges that the pro forma projects' completion was delayed due to financing difficulties; however, WMSI includes no attachments or other documentation to support this assertion.

5. Although the Final Order left the present Docket open, the Commission specifically enumerated the portions of the PAA Order and Final Order that the Commission retained jurisdiction over. The Final Order states the "Docket shall remain open to allow our staff to verify the pro forma items have been completed...[and] that once these actions are complete, this docket shall be closed administratively."²

6. In the Final Order, this Commission specifically listed the items that Commission staff would consider before closing this Docket administratively. Extending deadlines is not included in the Final Order's list of items for which this Docket remains open. The legal maxim that inclusion of one thing in a list is the exclusion of others³ dictates that the Final Order did not leave the Docket open for revision of items not included in the list.

7. Furthermore, the doctrine of administrative finality states:

The effect of these decisions is that orders of administrative agencies must eventually pass out of the agency's control and become final and no longer subject to modification. This rule assures that there will be a terminal point in every proceeding at which the parties and the public may rely on a decision of such an agency as being final and dispositive of the rights and issues involved therein. This is, of course, the same rule that governs the

² Order No. PSC-13-0197-PAA-WU, p. 42, issued May 16, 2013, in Docket No. 110200-WU, In re: Application for increase in water rates in Franklin County by Water Management Services, Inc. [Hereinafter Final Order]. The Final Order also states the Docket will remain open for true-up of pro forma plant additions, to verify tariff sheets and customer notice, as well as to process future escrow requests.

³ See Expressio unius est exclusion alterius, Black's Law Dictionary, 7th ed. (1999).

finality of decisions of courts. It is as essential with respect to orders of administrative bodies as with those of courts.⁴

8. During the discussion at Commission Conference when the Commission voted on the PAA Order, Commission staff suggested a 12 month deadline for the pro forma projects. Counsel for WMSI requested 18 months to account for any unexpected delays, and this Commission voted for an 18 month timeframe in accordance with WMSI's request.⁵ The Commission included a buffer, at WMSI's request, for unexpected delays within the 18 month timeframe for pro forma plant project financing and completion.

9. Finally, the deadline to request reconsideration or appeal of the Final Order has passed. Therefore, a motion is not adequate to alter terms of the Final Order that are not part of the specific list for which this Docket remains open.

10. WMSI's Motion does not include any evidence or proof that would support the request to alter a deadline set at WMSI's request that is not part of the list of future matters contemplated by the Final Order's "Docket Shall Remain Open"⁶ clause. Furthermore, the Motion contains no evidence that would warrant the application of an exception to the doctrine of administrative finality.

WHEREFORE, the Office of Public Counsel, on behalf of the customers of WMSI, respectfully requests the Commission deny the Motion for Extension of Time to Complete Financing and Construction Requirements or, in the alternative, require that WMSI submits

⁴ Reedy Creek Utilities, Co. v. Florida Public Service Commission, 418 So. 2d 249, 253 (Fla. 1982) (quoting Peoples Gas System v. Mason, 187 So. 2d 335, 339 (Fla. 1966)). Reedy Creek also discusses exceptions to this rule when the public interest is at stake. See also Florida Power & Light Company v. Beard, 626 So. 2d 660 (Fla. 1993) (discussing another exception for significant change of circumstances); Taylor v. Department of Business of Professional Regulation, Board of Medical Examiners, 520 So. 2d 557 (Fla. 1988) (recognizing an exception to finality where final orders contain an error).

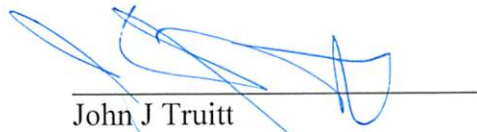
⁵ Transcript of Commission Conference Item No. 7, In re: Application for Increase in Water Rates in Franklin County by Water Management Services, Inc., pp.61-64 (Aug. 2, 2012).

⁶ Final Order, p. 42.

evidence that would warrant the application of an exception to the doctrine of administrative finality.

Respectfully submitted by:

J.R. KELLY
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A handwritten signature in blue ink, appearing to be "John J. Truitt", is written over a horizontal line.

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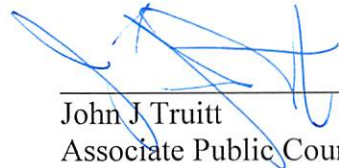
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing **CITIZEN'S RESPONSE TO WATER MANAGEMENT SERVICES, INC.'S MOTION FOR EXTENSION OF TIME TO COMPLETE FINANCING AND CONSTRUCTION REQUIREMENTS** has been furnished by electronic mail and U.S. Mail to the following parties on this 29th day of September, 2014, to the following:

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