BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in water rates in Franklin County by Water Management Services, Inc.	DOCKET NO. 100104-WU ORDER NO. PSC-11-0250-FOF-WU ISSUED: June 13, 2011

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman
LISA POLAK EDGAR
JULIE I. BROWN

ORDER CLOSING SHOW CAUSE PROCEEDING

BY THE COMMISSION:

I. Background

Water Management Services, Inc. (WMSI or Utility) is a Class A water utility providing service to approximately 1,805 water customers in Franklin County. On May 25, 2010, the Utility filed its application for the rate increase at issue in the instant docket, and requested that the application be set directly for hearing. After a full evidentiary hearing, we issued Order No. PSC-11-0010-SC-WU (Final Order), on January 3, 2011, approving a slight increase in rates.[1]

In the Final Order, we also required WMSI to show cause in writing, within 21 days, why it should not be fined $1,000 for its apparent failure to comply with the requirements of Order No. PSC-94-1383-FOF-WU (1994 Order).[2] In the 1994 Order, we discussed the inadequate records for calculating transportation expense, and ordered the Utility to "hereinafter keep accurate mileage records."[3]

On January 24, 2011, WMSI filed its timely written response to the Final Order's requirement to show cause, stating that it had complied with the 1994 Order, and that there were both issues of fact and law concerning whether the Utility had maintained travel records as required and whether it complied with the 1994 Order. Based on these disputed issues of fact and law, WMSI requested a hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes (F.S.). OPC did not respond to the Utility's Response.[4]

[1] Although OPC filed a Motion for Reconsideration and/or Clarification of the Final Order, we denied reconsideration, but clarified the Final Order on February 22, 2011.
[2] Issued November 14, 1994, in Docket No. 940109-WU, In re: Petition for interim and permanent rate increase in Franklin County by St. George Island Utility Company, Ltd.
[3] See 1994 Order, at page 79.
[4] Counsel for OPC has stated verbally that it takes no position on the action that we should take in regards to the Utility's response to the requirement to show cause.

DOCUMENT NUMBER-DATE
04056 JUN 13 =
FPSC-COMMISSION CLERK

This Order addresses WMSI's response and the appropriate actions for us to take in regards to this response. We have jurisdiction pursuant to Sections 367.081 and 367.161, F.S.

II. Show Cause Proceeding

This show cause proceeding was initiated when it appeared that WMSI had failed to comply with the requirements of the 1994 Order to keep accurate mileage records. The requirements of the 1994 Order, the Utility's timely response to the requirement to show cause in the Final Order, and our analysis and conclusion are set out below.

A. Requirements of 1994 Order and Show Cause Issue in This Docket

The appropriate amount of travel expenses was an issue in the 1994 case. After a full evidentiary hearing, in discussing the appropriate travel expenses to be allowed, we divided our analysis into two parts: (1) the appropriate amounts for the field employees; and (2) the appropriate amounts for the administrative employees (Tallahassee based employees). For the administrative employees, we found that the Utility did not provide any evidence to support the requested amounts for Ms. Chase ($2,600) and Ms. Hill ($1,300) and disallowed the entire amounts. Also, for Mr. Brown, we found he was not an employee of the Utility and disallowed his entire requested amount of $3,900.[5]

For the field employees, we noted in the 1994 Order that the Utility did not own any vehicles, but had promised an adequate transportation allowance to them if the field employees used their own vehicle. Mr. Garrett (a field employee), Mr. Seidman (an accounting witness), and Mr. Brown all testified as to the appropriateness of the amount requested for the field employees ($5,200 for Mr. Garrett and $2,600 for Mr. Shiver).[6] Mr. Garrett testified that the conditions on St. George Island (salt air, sand, and other adverse conditions) warranted a mileage allowance of $.40 per mile. Mr. Garrett further noted that he had kept mileage records for one month before the hearing, and had driven 2,381 miles in that month, for what would have been a travel allowance of $952 (2,381 x $.40) just for him for that month.[7]

Although OPC argued that only half of the requested $7,800 travel expense for field employees should be allowed, we found that the full amount should be allowed.[8] In the body of the 1994 Order regarding the field employees, we stated as follows:

> Upon consideration of Mr. Garrett's testimony regarding the conditions on St. George Island and his one-month travel records, it appears that the requested transportation allowance for field employees is reasonable. However, these employees shall maintain travel records prospectively so that we may adequately consider the level of such expenses in future proceedings.

[5] See 1994 Order, at pages 43-44.
[6] Mr. Shiver did not testify, and only Mr. Garrett kept mileage records for one month.
[7] See 1994 Order, at page 43.
[8] Considering Mr. Garrett's recorded mileage for one month, and multiplying by $.40, we calculated the one-month expense to be $952. Multiplying this figure by 12, we calculated his annual expense alone would have been $11,424 ($952 x 12), and the Utility was only requesting $7,800 for Mr. Garrett and Mr. Shiver combined.

1994 Order, at page 44. As to the Utility's administrative employees, in the body of the 1994 Order, we made no such directive, but disallowed all administrative travel expenses. In the ordering paragraphs, we "Ordered that St. George Island Utility Company, Ltd., shall hereinafter keep accurate mileage records." See ordering paragraphs of 1994 Order, at page 78.

Based on the above-noted provisions, and the filings of the Utility, the following issue was listed as an issue in the Prehearing Order for this 2010 rate case:[9]

> ISSUE 49: Did the Utility fail to maintain field employee travel records pursuant to Order No. PSC-94-1383-FOF-WU? If so, should the Utility be ordered to show cause why it failed to maintain field employee travel records pursuant to Order No. PSC-94-1383-FOF-WU, issued November 14, 1994?

The show cause issue (Issue 49) only addressed whether the Utility had violated the 1994 Order with regards to field employees, and the issues in dispute at the formal hearing did not include any show cause issue regarding the administrative employees. In the Final Order, in addressing the show cause issue for field employees, we noted that the 1994 Order made it clear that the Utility must document travel expenses. Therefore, based on inadequate recordkeeping for Ms. Chase, we concluded that the Utility had apparently failed to maintain travel records in accordance with the requirements of the 1994 Order, and required the Utility to show cause, in writing, why it should not be fined a total of $1,000 for its apparent failure to timely comply with the requirements of the 1994 Order.

B. Utility's Response

In its timely response to the requirement to show cause set out in the Final Order, the Utility argues that the ordering paragraph found on page 78 of the 1994 Order must be read in context with the facts of that case and the discussions found on pages 42-44 of the 1994 Order. Based on our discussion in the body of the 1994 Order, WMSI argues that the directive to maintain travel records was for field employees. In any event, WMSI argues that it

> . . . has gone above and beyond the mandate of the '94 Order by keeping the following records regarding transportation expenses:
>
> > A. Employee Owned Vehicles. For each mile driven for utility purposes by any employee owned vehicle, WMSI requires a reimbursement request from each employee which details the date and miles driven. Each of these are reviewed and approved by management to insure that they are reasonable and that the miles were driven for utility purposes prior to reimbursement to the employee at the IRS approved rate. This procedure is applied evenly and consistently to all WMSI employees, not just "field employees," as referenced in the order.

[9] See Order No. PSC-10-0601-PHO-WU, issued September 30, 2010, in this docket.

> B. Company Owned Vehicles. For each company owned vehicle, WMSI maintains "accurate mileage records," as referenced in the '94 order. In addition, WMSI maintains detailed and accurate gasoline records to document that all gas purchased by WMSI was used in a company owned vehicle. The utility also maintains detailed repair and maintenance expense records on all company owned vehicles, as well as accurate lease and finance expense records.

WMSI Response, at page 2.

WMSI concludes its response, by stating that the record "demonstrates a good faith effort to comply with" the 1994 Order, and there has been "nothing wilful or intentional in anything WMSI has done or not done with regard to transportation expenses." Therefore, there being a disputed fact as to whether WMSI "has complied with the 1994 Order regarding transportation expenses," WMSI requests a hearing pursuant to Sections 120.569 and 120.57(1), F.S. WMSI Response, pages 2-3.

C. Analysis/Conclusion

Upon close review of the 1994 Order, WMSI's response, and the record evidence in this case, we find the arguments of the Utility have merit. First, the show cause issue in the Prehearing Order itself is phrased such that it addresses "field employees" only, i.e., the show cause issue before us in this case was whether the Utility maintained field employee records in accordance with the 1994 Order. Inadequate travel records for field employees driving their own vehicles appears to be a specific problem that we were struggling with in the 1994 Order. Regarding the travel records for the field employees in this case, we found: "There does appear to be support or adequate records when field employees use their personal vehicle." See Final Order, at page 60. Therefore, we find that the Utility has complied with the 1994 Order as regards the field employees, and any show cause, whether under Issue 49 or as set forth in the Final Order, should be closed.

While the Utility appears to have corrected the problem with its field employees noted in the 1994 Order, we noted in the Final Order in this docket that the Utility still has problems with the appropriate documentation for its administrative employees. It is a fundamental ratemaking concept that a utility must provide record evidence if travel expenses are to be allowed, whether for field employees or administrative employees. However, upon reading our discussion in the 1994 Order, there is ambiguity concerning whether the directive for maintenance of accurate travel records found in the ordering paragraphs of the 1994 Order was directed solely at field employees, or if it included administrative employees. Even if it included administrative employees, there is some question whether the recordkeeping contemplated in the 1994 Order contemplated the specific facts in this case.

In the 1994 Order, we did not face the situation of utility ownership or lease of vehicles driven by administrative employees,[10] and whether the Utility's investment and expenses for operations of those vehicles should be included in rate base and expenses. In the Final Order in this 2010 case, we again disallowed all of the requested travel expense for Ms. Chase, and only allowed travel expenses for Mr. Brown based on the finding that he made four trips a month to St. George Island from Tallahassee.

However, in the Final Order, we went beyond the show cause issue concerning field employees as set forth in Issue 49, and noted that the Utility had again failed to document travel expenses, specifically, Ms. Chase's travel expenses for the vehicle used by her for Utility purposes. Ms. Chase is an administrative employee and there was some question about the ownership or leasing of her vehicle for Utility purposes. In the 1994 Order, the Utility neither owned nor leased any vehicles for the benefit of its employees. Therefore, the situation in this case was not addressed at all by the 1994 Order. Because this situation was not considered in the 1994 Order, we find that it cannot be said that the Utility violated the 1994 Order. Clearly, the Utility was warned that it needed to keep better travel records, and it has. It just has not kept sufficient travel records for the vehicle driven by Ms. Chase. The remedy for this insufficiency was to disallow all of Ms. Chase's travel expenses. This appears to be an appropriate remedy and we find that no further remedy is warranted. In the Final Order in this docket, we directed WMSI to "maintain travel records or logs for all vehicles used for utility purposes to enable this Commission to evaluate the appropriate level of Utility-related usage in future rate case proceedings." Hopefully, this directive will alleviate any problems in the future.

As regards show cause proceedings, utilities are charged with the knowledge of our rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Section 367.161(1), F.S., authorizes this Commission to assess a penalty of not more than $5,000 for each offense if a Utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, F.S., or any lawful order of the Commission. If the Utility failed to comply with the above-noted requirements of the 1994 Order, the Utility's acts could be said to be "willful" in the sense intended by Section 367.161, F.S. In Commission Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., having found that the company had not intended to violate the rule, the Commission nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "willful" implies an intent to do an act, and this is distinct from an intent to violate a statute or rule. As regards compliance with the 1994 Order, we agree with the Utility that there are changed circumstances and there is sufficient uncertainty in the wording of the 1994 Order, such that it cannot be said that the Utility violated that Order. Moreover, the only show cause issue in this case was whether WMSI violated the 1994 Order in regards to its field employees. Based on all the above, we find that no further action shall be taken in regards to any show cause proceeding in this docket, and the show cause proceeding shall be terminated with no further action taken against the Utility.

[10] The 1994 Order specifically noted that the Utility did not own any vehicles. See 1994 Order, at page 43.

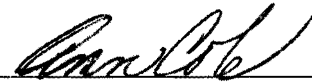
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the show cause proceeding initiated by Order No. PSC-11-0010-SC-WU issued in this docket shall be closed and terminated with no further action taken against the Utility. It is further

ORDERED that this docket shall remain open until the appeal is completed and our staff confirms that the appropriate refunds of the interim increase have been made. It is further

ORDERED that upon the above being accomplished and verified by staff, the docket may be closed administratively pursuant to Order No. PSC-11-0010-SC-WU.

By ORDER of the Florida Public Service Commission this 13th day of June, 2011.



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

(S E A L)

RRJ

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 the Commission's final action in this matter regarding the termination of the show cause proceeding may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.