



Public Service Commission

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

-M-E-M-O-R-A-N-D-U-M-

RECEIVED-FPSC
01 FEB 22 AM 9:15
RECORDS AND REPORTING

DATE: FEBRUARY 22, 2001

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (DAYO)

FROM: DIVISION OF ECONOMIC REGULATION (RENDELL, BUTTS, WALKER) *SMC*
DIVISION OF LEGAL SERVICES (CIBULA)

RE: DOCKET NO. 001682-WU - APPLICATION FOR STAFF-ASSISTED RATE
CASE IN COLUMBIA COUNTY BY CONSOLIDATED WATER WORKS, INC.
COUNTY: COLUMBIA

AGENDA: 03/06/01 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: 15-MONTH EFFECTIVE DATE: WAIVED

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\ECR\WP\001682.RCM

CASE BACKGROUND

On November 6, 2000, Consolidated Water Works, Inc., (CWWI or utility) a Class C water utility operating in Columbia County, filed an application for a staff-assisted rate case (SARC). CWWI currently owns and provides water services to the following three subdivisions: Azalea Park, Shady Oaks, and 242 Village. These three water systems provide service to approximately 229 residential customers and 2 general service customers in the utility's certificated territory. According to its 1999 Annual Report, CWWI reported gross revenues of \$38,572 and operating expenses of \$30,002, for an operating income of \$8,570.

On February 7, 2001, Mr. Jack Espenship, the owner of the utility, requested a waiver of penalties and interest associated with delinquent regulatory assessment fees (RAFs) for the periods of 1998 and 1999. In a second letter, he waived the statutory timeframe for the utility's SARC set forth in Chapter 367.0814(2), Florida Statutes. This recommendation addresses the delinquent

DOCUMENT NUMBER-DATE

02453 FEB 22 01

FPSC-RECORDS/REPORTING

DOCKET NO. 001682-WU
DATE: FEBRUARY 22, 2001

RAFs for the periods of 1998 and 1999, and the utility's request to waive the penalties and interest for those respective years.

The Commission has jurisdiction to consider this matter under Section 350.113(4), Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should CWWI's request to waive all penalties and interest for delinquent payment of RAFs be approved?

RECOMMENDATION: No. CWWI's request to waive all penalties and interest for delinquent RAF payments should be denied. (BUTTS, RENDELL, CIBULA)

STAFF ANALYSIS: Pursuant to Section 350.113, Florida Statutes, the Commission is required to collect penalties, interest, and collection costs from a utility that fails to pay its RAFs by March 31 of the year the RAFs are due.

On May 19, 1999, the Commission mailed the utility a penalty and interest letter after the Commission received a payment of \$150. A notice of delinquency for failure to remit its 1999 RAFs was mailed to CWWI on May 31, 2000, and a true-up letter was mailed on December 11, 2000. As of March 6, 2001, the Agenda date that this recommendation will be heard by the Commission, the utility will owe the following: \$5,282.59 (\$2,134.87 for 1998, \$1,735.74 for 1999) in RAFs, as well as \$257.38 in interest for 1997, \$512.37 in interest for 1998, and \$433.94 in penalties and \$208.29 in interest for 1999. Thus, the total amount the utility owes as of March 6, 2001 is \$5,282.59. Staff calculated the penalties and interests based on the number of days elapsed since the RAFs were due and the date of the vote Commission's in this matter. March 6, 2001, is included in computing the amount of time elapsed.

In a letter dated February 7, 2001, the utility's owner stated, "in the years from 1995 through 1997 and part of 1998, there was an embezzlement and fraud within the company. Funds in excess of \$40,000 were converted by a previous bookkeeper. The discrepancies were not discovered for an extended period of time and Consolidated Water Works and Jack Espenship Construction Company (JECC) are now in the process of turning over all related materials to the Columbia County Sheriff's Criminal Investigative Division and the State Attorney's office."

Further, the utility stated in its letter that during that period of time monies from CWWI and JECC were converted to other unrelated accounts. Numerous bank deposit slips were shorted and converted to cash, and there were credit card cash advances that were converted to various unrelated accounts.

Finally, the letter stated that, "CWWI and JECC have been squandered and there are not sufficient revenues coming in to cover

these expenses and the fees due to governmental agencies. The misuse of monies has pulled these companies in extreme financial difficulties, and the police report will be forwarded to the Public Service Commission as soon as the utility is in receipt of the paper work and any other pertinent information to the case."

In reference to the SARC application, past Commission practice has been to not accept a SARC filing without RAFs and annual reports being current. Pursuant to Rule 25-30.455(8)(c)(d), Florida Administrative Code, the Commission, when determining whether to grant or deny the petition, should consider the following: whether the petitioner has filed annual reports; and whether the petitioner has paid applicable regulatory assessment fees. However, staff believes this SARC docket should remain open at this time to give the utility the opportunity to pay the delinquent RAFs, penalties, and interest, and to allow staff to work with the utility to improve the utility's condition.

On November 29, 1999, the Department of Environmental Protection (DEP) issued a Consent Order against CWWI. DEP identified the problems with quality of service from CWWI consistent with the provisions of the Florida Safe Water Drinking Act and stated that: "as a result of customer complaints, operator reports, and inspections, Azalea Park has a well supply that is pumping sand, a severely corroded hydropneumatic tank, inadequate chlorination equipment, and an inoperable flow meter; Shady Oaks has a well supply that is pumping sand, and a severely corroded hydropneumatic tank that have a previously patched weak spot that continually leaks."

On December 6, 1999, the utility responded to DEP's sanctions on Azalea Park and Shady Oaks, and refused to sign the Consent Order claiming that it did not have the money to comply with the corrective items listed in the Order. The utility indicated that it was unaware of the present situation involving the water systems in Azalea Park and Shady Oaks. Further, the utility stated, "it cannot meet the 60 day limit on Azalea Park and Shady Oaks Subdivisions because of the time limits specified by the department which are extremely unreasonable to comply with." According to the letter, the utility did purchase and deliver one hydropneumatic tank to Azalea Park which was ordered by DEP, and the utility stated that the flow meters will be repaired when the tank is installed. Another DEP order required the utility to pour a concrete pad for the tank. In the letter, the utility indicated that the concrete pad for Shady Oaks had been poured.

On January 31, 2001, staff met with representatives from DEP, and the owner of the utility to discuss DEP sanctions and to notify the utility that the Commission may not process the SARC unless the utility pays the delinquent RAFs for 1998 and 1999. Further, staff requested information from DEP on all circumstances involving the utility, and to specify the problems with this utility as to what needs to happen first to bring CWWI in compliance with DEP rules. DEP advised staff and the owner that one of the most critical issues with this utility is the submitting of the results of the utility's chemical testing reports for review. To date, DEP does not have any knowledge as to the safety of the water that is being provided to customers in Azalea Park and Shady Oaks. In fact, DEP strongly believes the customers in the Azalea Park and Shady Oaks subdivisions are receiving unsafe water.

During the meeting, staff discussed the possibility of a payment plan with the utility's owner to bring the delinquent RAFs up to date. It was mentioned that if the Commission moves forward with the SARC, and a rate increase is granted, the monies could be escrowed and released after the utility has made the necessary improvements to its facilities. Staff discussed briefly the possibility of abandonment of the utility as being the worst case scenario.

On February 2, 2001, staff made a telephone call to the utility and discussed the payment plan for the delinquent fees and what was needed to proceed with the SARC. The utility responded on February 6, 2001 with its proposal. The utility's proposal is addressed in Issue 2 of this recommendation.

It is Commission practice that when establishing rates, to include the utility's obligation to pay RAFs in the determination of revenue requirement. CWWI failed to pay the total amount of its 1998 RAFs. According to Commission documents, the utility paid \$150 as a payment toward its 1998 RAFs. To date, the utility has not paid the remaining balance due on 1998 RAFs. On the other hand, CWWI did not submit the RAF return nor any monies associated with its 1999 fees. The utility, as of the date of this recommendation, owes the full amount of its 1999 RAFS.

Pursuant to Section 350.113(4), Florida Statutes, and Rule 25-30.120(7)(a), Florida Administrative Code, a statutory penalty plus interest shall be assessed against any utility that fails to timely pay its regulatory assessment fees. Rule 25-30.120(7)(a), Florida Administrative Code, states that the penalties and interest for delinquent RAFs shall be assessed in the following manner:

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

In addition, pursuant to Rule 25-30.120(7)(b), Florida Administrative Code, the Commission may impose an additional penalty upon a utility for failure to pay regulatory assessment fees in a timely manner under Section 367.161, Florida Statutes.

The law is clear that penalties and interest must be assessed upon delinquent RAFs. The law is also clear that the Commission lacks the statutory authority to grant a waiver of the requirement to pay penalties and interest on delinquent RAFs. See Order No. PSC-96-0834-FOF-WS, issued July 1, 1996, in Docket No. 960540-WS, wherein the Commission construed Section 350.113, Florida Statutes, and Rule 25-30.120, Florida Administrative Code, to bar the waiver of RAFs penalties, and interest, but not to preclude a reasonable payment schedule to redress a utility's delinquency in payment of its RAFs. See also, Order No. 24290, issued March 26, 1991, in Docket No. 900961-SU, wherein the Commission stated that it had no statutory authority to grant a waiver, and that Section 350.113(5), Florida Statutes, permitted a fee deadline to be extended 30 days for good cause shown. Also see, Order No. PSC-97-0767-FOF-FU, issued June 30, 1997, in Docket No. 970360-GU, wherein the Commission found that it lacked the authority to waive the statutory penalty and interest assessments on late RAFs, and stated:

It is the function of the legislature and not the courts or administrative agencies to change the law. 1 Fla. Jur. 2d, Administrative Law, Section 32. The grant of a waiver of the regulatory assessment fee penalty statute, in the absence of any waiver provisions, express or implied, contained in the statute, would be a modification of the statute. This is a function reserved solely for the legislature. In addition, there is no basis for interpretation of Section 350.113(4), F.S. The statute is clear and unambiguous on its

face. If the terms and provisions of a statute are plain, there is no room for administrative interpretation. Southeastern Utilities Service Co. v. Redding, 131 So. 2d 1 (Fla. 1950).

In Order No. PSC-94-1464-FOF-WU, issued November 29, 1994, in Docket No. 940973-WU, the Commission denied Water Spectrum, Inc.'s (WSI) request to waive all penalties and interest for delinquent payment of RAFs. Further, the Commission noted that since the penalties and interest due for delinquent RAFs cannot be waived, WSI must pay the penalties and interest associated with all past due RAFs.

Additionally, by Order No. 24290, issued March 26, 1991, in Docket No. 900961-SU, In Re: Request for waiver of penalty and interest added to regulatory assessment fees for 1989, by St. George Island, Company, Ltd., in Franklin County, the Commission permitted the utility to submit a proposed payment schedule for its outstanding regulatory assessment fees, penalties and interest. The Commission noted that it had no statutory authority to grant a waiver, and that Section 350.113(5), Florida Statutes, permitted a fee deadline to be extended 30 days for good cause shown.

The utility requested that staff take its request before the Commission to waive the penalties and interests associated with 1998 and 1999 RAFs. Staff believes that the utility is liable for the outstanding fees. Based on the cases cited above, neither the Florida Statutes nor the Commission's rules provide the Commission with the discretion to waive fees, penalties, or interest. Therefore, staff recommends that CWWI's request to waive penalties and interests for its 1998 and 1999 RAFs should be denied.

ISSUE 2: Should the proposed payment plan for past due regulatory assessment fees for CWWI be approved?

RECOMMENDATION: Yes. The proposed payment plan should be approved as outlined in the staff analysis below. The first payment should be received by March 20, 2001 and all subsequent payments should be due on the twentieth day of each month. If CWWI fails to make a monthly payment by the twentieth day of the month, this docket should be closed. Further, if this docket is closed, show cause and revocation proceedings should be initiated. (BUTTS, RENDELL, CIBULA)

STAFF ANALYSIS: As stated before, on February 7, 2001, Jack Espenship, the owner of the utility, submitted a request to pay the utility's delinquent RAFs by way of a payment plan.

In Order No. PSC-94-1464-FOF-WU, issued November 29, 1994, in Docket No. 940973-WU, the Commission established a payment schedule for delinquent regulatory assessment fees, including penalties and interest for Landis Enterprises, Inc. Further, in Order No. PSC-96-0834-FOF-WS, issued July 1, 1996, in Docket No. 960540-WS, the Commission construed Section 350.113, Florida Statutes, and Rule 25-30.120, Florida Administrative Code, to bar the waiver of RAFs penalties, and interest, but not to preclude a reasonable payment schedule to redress a utility's delinquency in the payment of its RAFs.

As stated in Issue 1, staff believes that this SARC docket should remain open at this time to allow the utility the opportunity to pay the delinquent RAFs, penalties, and interest, and to allow staff to work with the utility to improve the utility's condition. On January 31, 2001, staff visited the service area of the three water systems and performed a visual inspection of the three plant systems. The overall condition of the three water treatment plants is unsatisfactory. For example, only one of the five wells (242 Village) is fenced or protected, sanitary seals around the well heads are cracked and leaking, electrical wiring at all wells is exposed and dangerous, the chlorine room at the Azalea Park plant had no door and could be easily accessed by anyone, and numerous customer meters are inoperative making it impossible to determine just how much water has been sold.

In its last rate case, the utility was ordered to complete several corrective actions, several of which still have not been accomplished. For example, both plant sites with wells were ordered to be fenced. Only one plant and none of the wells

specified in that Order have been fenced. The three systems have deteriorated to an unacceptable condition due to lack of normal operation and maintenance caused, according to the owner, by lack of money. Staff will address these issues in its SARC recommendation, and staff will monitor this utility to make sure it follows the orders issued by the Commission. Further, to assure that the utility completes its proforma, staff will recommend that the utility be required to place all funds collected in an escrow account.

Staff is recommending a proposed payment plan for this utility of five monthly payments in the amount of: \$1,320.65. If the Commission approves staff recommended plan, CWWI's payments for outstanding RAFs will begin with the first payment on March 20, 2001, and all subsequent payments or the four remaining monthly installments should be due to the Commission on the 20th of each month with the final payment due July 20, 2001. If the utility fails to make the required monthly installments by the due date of any month, the docket should be closed. Further, if this docket is closed, show cause and revocation proceedings should be initiated.

DOCKET NO. 001682-WU
DATE: FEBRUARY 22, 2001

ISSUE 3: Should this docket be closed?

RECOMMENDATION: No, this docket should remain open pending payment of the delinquent RAFs in order to process the utility's SARC application. If CWWI does not make a payment in accordance with the payment schedule addressed in Issue 2, the docket should be closed administratively and show cause and revocation proceedings will be initiated. (CIBULA, BUTTS, RENDELL)

STAFF ANALYSIS: This docket should remain open pending payment of the delinquent RAFs. If CWWI does not make a payment in accordance with the payment schedule addressed in Issue 2, the docket should be closed administratively and show cause and revocation proceedings will be initiated.