

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 120031-WS

REQUEST FOR REGULATORY ASSESSMENT
FEE INSTALLMENT PAYMENT PLAN BY
WATER MANAGEMENT SERVICES, INC.

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 7

COMMISSIONERS
PARTICIPATING: CHAIRMAN RONALD A. BRISÉ
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER ART GRAHAM
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Tuesday, March 27, 2012

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
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1 P R O C E E D I N G S

2 CHAIRMAN BRISÉ: All right. Item Number 7,
3 Docket Number 120031.

4 MS. GARDNER: Good morning, Commissioners. I
5 am Betty Gardner of Commission staff.

6 Commissioners, my recommendation for Issue 7
7 addresses whether Water Management Services, Inc.'s
8 motion be granted and be permitted to pay its July 1st
9 through December 31st, 2011, regulatory assessment fees
10 by a payment schedule. Staff recommends that the
11 payment schedule should continue to be made in
12 accordance to the schedule set out by staff.

13 The utility has made two payments currently
14 for January the 30th and February the 29th in the
15 amount of 14,898, which includes penalties and interest
16 with the remaining balance of approximately \$19,953,
17 plus penalties and interest.

18 Commissioners, this case was deferred from
19 the March 13th agenda. We have speakers from the
20 Office of Public Counsel and probably from Water
21 Management Services who would like to address the
22 Commission at this time. Staff is available to the
23 Commission for any questions.

24 CHAIRMAN BRISÉ: Thank you very much. So at
25 this time we'll ask the representative from WMSI to

1 address us, and then we will go to OPC.

2 **MR. FRIEDMAN:** Yes. This is Marty Friedman
3 of Sundstrom, Friedman, and Fumero. We represent Water
4 Management Services, and we agree with the staff's
5 recommendation. And I would think it would be more
6 appropriate if I wait until I hear what objections that
7 Public Counsel may have to this, because I'm pretty
8 perplexed at it, before I'm provided an opportunity to
9 respond.

10 Thank you.

11 **CHAIRMAN BRISÉ:** All right.

12 Mr. McGlothlin.

13 **MR. MCGLOTHLIN:** Joe McGlothlin with the
14 Office of Public Counsel, and Denise Vandiver of our
15 office is with me.

16 Good morning, Commissioners. OPC does not
17 oppose the specific payment plan that is requested in
18 this case. However, especially at a time when this
19 utility is before the Commission with a request for an
20 increase in rates, we did not want it to appear that we
21 acquiesce to the claim of hardship that accompanies
22 that request, and I'll use one example to explain the
23 basis for that disagreement. And this would be of
24 particular interest to those Commissioners who were not
25 participants in the last rate case before this

1 Commission.

2 In the last rate case, the Commissioners who
3 presided instructed its auditing staff to perform a
4 cash flow audit of this utility. That was completed
5 last summer, and your auditors concluded that over the
6 space of several years the president of the utility had
7 transferred from the utility to himself or his
8 unregulated business entity more than one million
9 dollars of cash from the utility to himself or to the
10 unregulated business and your auditors also concluded
11 that those cumulative transfers should be reclassified
12 and regarded as accounts receivable owed to the
13 utility.

14 Why is that important and why do I bring it
15 up today? Because the utility has attached to its
16 request an excerpt from its 2010 were annual report and
17 relies on that for the claim that it experienced
18 hardship. Well, one of the entries on that excerpt is
19 a high amount of interest payments for debt owed by the
20 utility.

21 In the response that we filed last summer to
22 the original request for deferral of the RAFs, we
23 pointed out that this utility owes about \$8 million of
24 debt at a time when it has only about \$5 million of
25 plant. Over time it has transferred cash out of the

1 utility instead of using that cash to pay down its
2 debt. As a consequence, its interest payments are
3 higher than they would otherwise be, and we contend as
4 a consequence it is in the posture where it's unable to
5 pay its regulatory assessment fees timely and without
6 penalties.

7 We bring this to your attention not to expect
8 you to resolve any of these things today, but to inform
9 you that there is more to this case than meets the eye
10 when you look at the limited proceeding before you. In
11 the past the company has claimed that its president has
12 taken out personal loans and has used the proceeds to
13 subsidize the utility. We make the point today that in
14 the last rate case order the Commission rejected that
15 based on lack of evidence and the staff's auditors work
16 product reflects that same conclusion.

17 So just be aware that there is involved in
18 this request a continuing live dispute about which you
19 will hear more in the future. Thank you.

20 **CHAIRMAN BRISÉ:** All right. Would you like
21 to comment?

22 **MR. FRIEDMAN:** Thank you, Mr. Chairman and
23 Commissioners.

24 Again, I am perplexed by that. I mean, it
25 sounds like that he is discussing issues that have

1 absolutely nothing to do with what's before us today.
2 I think it's clear that the Commission in this rate
3 case we have pending is not going to let the company
4 recover from its ratepayers the interest and penalties
5 it's paying on this, so I'm perplexed as to anything
6 that Mr. McGlothlin has to say has anything to do with
7 this.

8 He's talking about what transpired in the
9 last rate case, and I take exception with what we says.
10 In fact, the Commission dealt with his arguments in a
11 rehearing, as well, and about this \$1.2 million they
12 claim was taken from the company. And this isn't the
13 place to argue that, and I just think everything he
14 said is completely irrelevant to the simple issue here,
15 which is can this company be allowed to continue to do
16 the monthly payments that it has done for the last
17 months and pay the penalties and interest that's
18 provided for in the statute. And I suggest to you that
19 it's appropriate to adopt the staff's recommendation
20 and allow them to continue to do so. Thank you.

21 **CHAIRMAN BRISÉ:** Thank you. Commissioners.

22 Commissioner Edgar.

23 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

24 First, a question to our staff about the
25 rule. My understanding of the rule that we would be

1 acting under while we make a determination on this
2 request is that it does not require a finding one way
3 or another of financial hardship, is that correct?

4 **MS. GARDNER:** That is correct.

5 **COMMISSIONER EDGAR:** But it does go on to say
6 that, and I'm quoting, that the request for an
7 extension will be granted if the utility has applied
8 for the extension within the time required, the utility
9 does not have any unpaid regulatory assessment fees,
10 penalties, or interest due. My understanding is that
11 the company is currently situated that it meets all of
12 those requirements, is that accurate?

13 **MS. GARDNER:** That is correct, Commissioner.

14 **COMMISSIONER EDGAR:** And then as part of that
15 the rule says that if those conditions are met that the
16 request for extension will be granted. So I guess I
17 would ask the same question I raised earlier, which is
18 do we have discretion if, indeed, those preconditions
19 are met?

20 **MS. ROBINSON:** No, not at this time.

21 **COMMISSIONER EDGAR:** That's the way I read
22 it. Then, Commissioners, what I would say is I believe
23 I understand the concerns and the comments that OPC has
24 raised. I certainly -- and I was a participant as was
25 Commissioner Graham in the last rate case hearing for

1 this utility, I understand that there is another case
2 pending. I have not reviewed it in any way
3 whatsoever. I certainly understand and believe that
4 any action we take today has no bearing on our
5 consideration in that future case.

6 And then I have one more question which is if
7 the extension were to be granted by this Commission,
8 would that have any additional burden or cost to the
9 consumers?

10 **MS. ROBINSON:** No, not at this time.

11 **COMMISSIONER EDGAR:** Thank you. And that was
12 my understanding, as well. So with that, I believe
13 that the appropriate action in this case would be to
14 grant the extension and deal with the issues ahead of
15 us through the normal and appropriate procedures.

16 **CHAIRMAN BRISÉ:** Thank you, Commissioner
17 Edgar.

18 Commissioner Balbis.

19 **COMMISSIONER BALBIS:** Thank you, Mr.
20 Chairman.

21 And I agree with Commissioner Edgar on this
22 issue and these comments specifically to the rule
23 itself. And I appreciate staff's answers to her
24 questions. And I think what may help, if the
25 Commission, if we will later decide, is make sure that

1 the order is clear that we are granting this extension
2 because they have made the request and met the
3 conditions in the rule and no mention of financial
4 hardship. I think that might help alleviate concerns
5 that are out there because that is what is before us as
6 to whether or not we should grant this according to the
7 rule, which we have to do so, and they have met the
8 requirements.

9 **CHAIRMAN BRISÉ:** Commissioner Graham.

10 **COMMISSIONER GRAHAM:** Thank you, Mr.
11 Chairman.

12 This question is to staff, and I guess it
13 will be right along the lines of the questions I asked
14 quite a bit. Back to what Commissioner Edgar said, if
15 they meet the criteria that's laid out in the rules and
16 they met all of them that we have no option, I guess my
17 question is why is this before us? Why is this not
18 just an administrative function?

19 **MS. ROBINSON:** Well, the rule also requires
20 Commission action in certain items, and this falls
21 within that category.

22 **COMMISSIONER GRAHAM:** But my question is --

23 **MS. HELTON:** Commissioner Graham, staff has
24 been given administrative -- you have delegated to
25 staff administrative authority to take certain actions

1 when it is laid out like this in a statute or a rule.
2 It's my understanding that this is not one of those
3 types of activities so, therefore, we are bringing it
4 to you for your decision.

5 **COMMISSIONER GRAHAM:** All right.

6 **MS. HELTON:** But it could be, if you were to
7 decide.

8 **COMMISSIONER GRAHAM:** That is my very next
9 question. Is there a reason why it's not an
10 administrative function, other than the fact that
11 somebody back when they wrote the rule way back when
12 chose not to do it?

13 **MS. HELTON:** During your time here I'm sure
14 you have seen the pendulum swing a little bit this way
15 or that way. We have had Commissioners in the past who
16 have not liked the thought that staff has been
17 delegated certain authority, so I'm assuming this is
18 one of those that were caught up in that, but it's
19 something that I do believe that it would be
20 appropriate for you to delegate to staff. That would
21 take an action, I think, at Internal Affairs.

22 **COMMISSIONER GRAHAM:** Mr. Willis.

23 **MR. WILLIS:** Commissioner, on that ground, if
24 the Commission's blessing is to go forward with an
25 administrative procedure for staff to follow through on

1 these things if all conditions are met, we can draft up
2 language for the administrative procedure manual which
3 delegates that authority to staff and bring that to an
4 Internal Affairs upcoming.

5 **COMMISSIONER GRAHAM:** Mr. Chairman, I guess
6 my question is -- and I'm throwing this out to staff or
7 to the Commission board -- is there a foreseeable
8 reason why it's not an administrative function?

9 **MR. WILLIS:** Probably, Commissioner, the
10 reason why is we don't see too many of these, and the
11 Commission normally let's staff know when they desire
12 staff to have that authority to approve these. And the
13 Commission in the past has not shown that desire at
14 that point, but that doesn't mean that this current
15 panel can't decide that.

16 **COMMISSIONER GRAHAM:** Thank you, Mr.
17 Chairman.

18 **CHAIRMAN BRISÉ:** Thank you.

19 Commissioner Brown.

20 **COMMISSIONER BROWN:** At this time I would
21 move staff recommendation.

22 **COMMISSIONER EDGAR:** Second.

23 **CHAIRMAN BRISÉ:** All right. It has been
24 moved and seconded. All in favor say aye.

25 (Vote taken.)

1 **CHAIRMAN BRISÉ:** All right. Now we are done
2 with Item 7. And I think the next appropriate one, if
3 I'm not mistaken, is Item 9, and we will reconvene at a
4 time certain of 1:00 p.m.

5 We are going to move into IA in about 15
6 minutes. I would actually make that about 20 minutes
7 or 19 minutes, so that is 10:45 in the IA room for IA.

8 Commissioner Graham.

9 **COMMISSIONER GRAHAM:** Thank you, Mr.
10 Chairman. I just wanted to be clear that that item we
11 just passed, Item Number 7, did we instruct staff to
12 come back with that rule change?

13 **CHAIRMAN BRISÉ:** No.

14 **COMMISSIONER GRAHAM:** Okay. So I guess the
15 question is if we did not, do we need to do that, or is
16 the board choosing not to do that?

17 **MS. HELTON:** Based on the discussion today,
18 Commissioner, I believe that staff can draft something
19 to bring to you at Internal Affairs to seek your
20 guidance and your permission, if that is the will of
21 the entire Commission to have staff administratively
22 handle these installment plan issues based on RAF fees.

23 **CHAIRMAN BRISÉ:** Before we do that, I just
24 want to make sure that the full Commission board is
25 clear on that intent. Maybe we need to have some

1 discussion on that if we wanted to move in that
2 direction. So I wasn't sure if we were clear and in
3 agreement with that. So at this time it would be
4 appropriate if there are any objections or questions or
5 concerns to that issue.

6 Commissioner Edgar.

7 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

8 And I don't have a strong opinion one way or
9 the other on this specific point, but I would suggest
10 many of the delegations that are currently in existence
11 and have been in place for quite awhile, most probably
12 even before I was here, if indeed this is something
13 that we would like to consider as a Commission perhaps
14 it would be appropriate to ask our staff to take a
15 little more comprehensive review to look at those
16 delegations that are currently in place in case some
17 things have changed. And I'm not suggesting they are,
18 but just so that we have done a timely review and
19 analysis of those that exist, and if there are others
20 similar to this that staff would recommend be
21 considered by this Commission for administrative
22 delegation, I would like to take a little more
23 comprehensive approach if the Commission would be
24 amenable to that.

25 **CHAIRMAN BRISÉ:** All right. Before we go to

1 our Executive Director, we'll take comments from our
2 two Commissioners who the lights are on.

3 So, Commissioner Balbis.

4 **COMMISSIONER BALBIS:** Thank you, Mr.
5 Chairman.

6 And I am always interested in reducing
7 administrative effort, bureaucracy, et cetera. I just
8 want to make sure that we don't spend hours in a
9 workshop on a rule that normally is probably once or
10 twice a year, I don't know, and maybe that is
11 information we need that is on Move Staff, and this one
12 was not because of OPC's objection to it. So, again, I
13 would be more than happy to look into it as long as the
14 effort of looking into it is more than the actual
15 effort of bringing it to us.

16 **CHAIRMAN BRISÉ:** Commissioner Brown.

17 **COMMISSIONER BROWN:** Thank you.

18 And I would support the delegation of
19 authority for this particular rule, but I'm always
20 concerned that we, as a Commission board, need to at
21 least be given courtesy notice when we delegate the
22 authority to our staff. So in that proposed rule I
23 would suggest that at least it comes back to the
24 Commission at some point, not in this formal
25 proceeding, but at least provided a courtesy copy to

1 the Commissioners so that we know what is being
2 conducted, what staff is approving.

3 **CHAIRMAN BRISÉ:** Commissioner Graham.

4 **COMMISSIONER GRAHAM:** I would agree with all
5 of my colleagues. We have done at least one of these
6 before that I brought up before the staff. You know, I
7 guess maybe its one of those internal things with me.
8 If it's something that I have no option and somebody
9 checks all the boxes, then why are you wasting your
10 time and my time bringing it to me?

11 And what we did before, basically what
12 Commissioner Balbis had said -- or, I'm sorry,
13 Commissioner Brown had said that we get the courtesy
14 notice and it comes a week or two prior to the final
15 action of the staff. I mean, I think they have already
16 put the template out there for this, and my
17 understanding would be that they have come back with
18 something roughly about the same that they came back
19 with last time which I think addressed all our issues.

20 **CHAIRMAN BRISÉ:** Mr. Baez.

21 **MR. BAEZ:** Thanks, Mr. Chairman.

22 Taking all of your comments as one, I think
23 Commissioner Balbis' comment is well taken and in line
24 with what Commissioner Edgar said. If this is you all
25 creating some consensus to direct us to take a look at

1 opportunities, whether it be opportunities where you
2 might prefer a little bit more of your say, of your
3 process which would signify walking back a delegation,
4 but certainly taking the whole delegation issue into
5 consideration of all our rules as they exist and as
6 they should be delegated, that's fine.

7 I mean, I think a bigger look is necessary.
8 It's not just on this rule. There are instances, and
9 you should know, as well, what those are. I'm not
10 sensing that there is a good idea as to what the
11 Commission over the years has delegated to staff and
12 not. And I think, you know, Ms. Helton's comment is a
13 good one, it kind of changes with the times.

14 So to the extent that you're all agreeing to
15 have a broader look at it, we would like some time,
16 obviously, to do it, but put that on the front burner
17 for you.

18 **CHAIRMAN BRISÉ:** Okay. This is what I would
19 like to have done. For us to take a comprehensive look
20 at the delegation process that we have in place and to
21 identify some others which meet the criteria which I
22 think all of us agree upon, that there is -- no real
23 decision has to be made that it's by rule, and we can
24 come up with those as a first bite and we'll discuss
25 the time for a meeting on that at an IA. And we can

1 have those put together, and then we could have a
2 second set which may require a little more work, and
3 then we can deal with those at a later time.

4 **MR. BAEZ:** That are really judgment calls on
5 you all's part, but, yes, I agree. Thank you.

6 **CHAIRMAN BRISÉ:** Okay. I don't know if that
7 satisfies the Commission's desire? With that, we stand
8 in recess until 1:00 p.m., and then we will convene IA
9 at 10:45.

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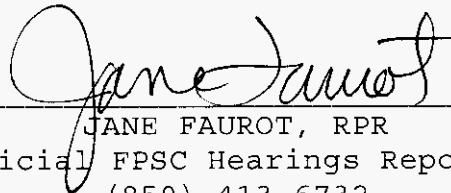
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 : CERTIFICATE OF REPORTER
COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 30th day March, 2012.



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