

**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 ORDER APPROVING INTERCREDITOR AGREEMENT AND AMENDING  
ESCROW REQUIREMENT**

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 Order Approving Intercreditor Agreement and Amending Escrow Requirement (Motion) filed September 22, 2014, and state:

1. In Order No. PSC-12-0435-PAA-WU (PAA Order), this Commission ordered WMSI to establish an escrow account with the Commission maintaining approval authority over escrow disbursements to ensure pro forma projects were completed in a timely fashion and financing was paid off.<sup>1</sup>

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 Final Order affirmed the escrow requirements set forth in the PAA Order.<sup>2</sup> No party took an appeal of the Final Order.

<sup>1</sup> Order No. PSC-12-0435-PAA-WU, pp. 13, 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. [Hereinafter PAA Order].

<sup>2</sup> 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].

3. On September 22, 2014, WMSI filed the Motion requesting the Commission enter into an Intercreditor Agreement wherein the Commission would relinquish approval of and control over escrow disbursements to a private financial institution,<sup>3</sup> which would undo the customer protections carefully crafted by this Commission in the PAA Order.

4. During the discussion at Commission Conference when the Commission voted on the PAA Order, this Commission thoroughly discussed the options available to provide oversight and protect customers. After a lengthy discussion,<sup>4</sup> this Commission chose to use an escrow account where the Commission would maintain oversight by verifying the need for escrow disbursements and controlling when disbursements occurred.<sup>5</sup>

5. WMSI's Motion contains neither a legal argument nor a compelling factual argument as to why this Commission should modify a fundamental provision of the Final Order and transfer control of the escrow account, which was designed to protect customers, to a private financial institution. In fact, relinquishing control of the escrow account to a private entity goes against the rationale for its creation.

6. In the Final Order, this Commission specifically listed the items that Commission staff would consider before closing this Docket administratively. Relinquishing control of the escrow account is not included in the Final Order's list of items for which this Docket remains open. The Final Order specifically kept this Docket open "to process future escrow requests,"<sup>6</sup> which clearly refers to processing payment requests from the escrow account, not relinquishing

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<sup>3</sup> Intercreditor Agreement filed with WMSI's Motion for Order Approving Intercreditor Agreement and Amending Escrow Requirement, pp. 3-4, Sept. 14, 2014, in Docket No. 110200-WU, In re: Application for increase in water rates in Franklin County by Water Management Services, Inc.

<sup>4</sup> See Transcript of Commission Conference Item No. 7, In re: Application for Increase in Water Rates in Franklin County by Water Management Services, Inc., (Aug. 2, 2012) (in depth discussion of escrow account begins on p. 59).

<sup>5</sup> PAA Order, p. 13, affirmed by Final Order, p. 42.

<sup>6</sup> Final Order, p. 42.

control. The legal maxim that inclusion of one thing in a list is the exclusion of others<sup>7</sup> 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 finality of decisions of courts. It is as essential with respect to orders of administrative bodies as with those of courts.<sup>8</sup>

8. 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.

9. WMSI's Motion does not provide sufficient evidence to support this Commission's relinquishment of the escrow account that is not part of the list of future matters contemplated by the Final Order's "Docket Shall Remain Open"<sup>9</sup> clause. Furthermore, the Motion contains insufficient evidence to warrant the application of an exception to the doctrine of administrative finality.

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<sup>7</sup> See *Expressio unius est exclusion alterius*, Black's Law Dictionary, 7th ed. (1999).

<sup>8</sup> 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).

<sup>9</sup> Final Order, p. 42.

WHEREFORE, the Office of Public Counsel, on behalf of the customers of WMSI, respectfully requests the Commission deny the Motion for Order Approving Intercreditor Agreement and Amending Escrow Requirement or, in the alternative, require that WMSI submits compelling evidence that shows customers would be just as protected and that warrants the application of an exception to the doctrine of administrative finality.

Respectfully submitted by:

**J.R. KELLY**  
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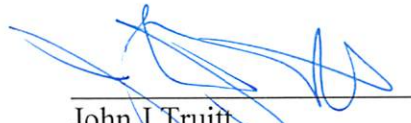
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing **CITIZEN'S RESPONSE TO WATER MANAGEMENT SERVICES, INC.'S MOTION FOR ORDER APPROVING INTERCREDITOR AGREEMENT AND AMENDING ESCROW REQUIREMENT** 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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