

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for staff-assisted rate case in Columbia County by Consolidated Water Works, Inc.

DOCKET NO. 001682-WU
ORDER NO. PSC-01-0720-FOF-WU
ISSUED: March 22, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER DENYING REQUEST FOR WAIVER OF PENALTIES AND INTEREST ASSOCIATED WITH DELINQUENT REGULATORY ASSESSMENT FEES AND ESTABLISHING A SCHEDULE FOR THE PAYMENT OF DELINQUENT REGULATORY ASSESSMENT FEES, PENALTIES, AND INTEREST

BY THE COMMISSION:

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. 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 two general service customers.

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. Our records indicate that the utility is delinquent in the payment of its 1998 and 1999 regulatory assessment fees (RAFs).

On November 29, 1999, the Department of Environmental Protection (DEP) issued a Consent Order against CWWI. DEP identified problems with quality of service for the utility

DOCUMENT NUMBER-DATE

03659 MAR 22 01

PSC-REG. RE. REPORTING

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 has a previously patched weak spot that continually leaks.

On December 6, 1999, the utility responded to DEP's sanctions for Azalea Park and Shady Oaks, but 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 as 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, our 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. Only one of the five wells, that of 242 Village, is fenced or protected, sanitary seals around the well heads are cracked and leaking, electrical wiring at all of the 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.

By Order No. 15124, issued October 1, 1985, in Docket No. 840250-WU, the utility was ordered to complete several corrective actions, a number of which still have not been completed. 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.

On January 31, 2001, our staff met with representatives from DEP and the owner of the utility to discuss DEP sanctions and to notify the utility that this Commission may not process the staff-assisted rate case application unless the utility pays the RAFs due for 1998 and 1999. Further, our staff requested information from DEP on all circumstances involving the utility and requested that DEP specify what problems need to be corrected to bring CWWI in compliance with DEP rules. DEP advised our staff and the utility owner that one of the most critical issues with this utility is the submittal of the results of the utility's chemical testing reports for review. DEP stated that, to date, it 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 stated that it strongly believes the customers in the Azalea Park and Shady Oaks subdivisions are receiving unsafe water.

During the meeting, our 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 this Commission moves forward with the staff-assisted rate case application, and a rate increase is granted, the monies could be escrowed and released after the utility has made the necessary improvements to its facilities. Our staff briefly discussed the possibility of abandonment of the utility as being the worst case scenario.

On February 2, 2001, our staff contacted the utility to discuss the possibility of a payment plan for the delinquent RAFs and what needed to be done by the utility to proceed with the staff-assisted rate case application. The utility responded on February 6, 2001, with its proposal. By letter dated February 7, 2001, the utility requested a waiver of the penalties and interest associated with the delinquent RAFs for the periods of 1998 and 1999. In a second letter, the utility waived the statutory deadline for staff-assisted rate case applications set forth in Section 367.0814(2), Florida Statutes.

This Order addresses the utility's request to waive the penalties and interest associated with its delinquent RAFs and its proposed payment plan for the payment of its delinquent RAFs. We have jurisdiction to consider these matters pursuant to Section 350.113(4), Florida Statutes.

REQUEST FOR WAIVER OF PENALTIES AND INTEREST
ASSOCIATED WITH DELINQUENT RAFS

As previously stated, our records indicate that the utility is delinquent in the payment of its 1998 and 1999 RAFs. On May 19, 1999, the utility was mailed a letter indicating that it owed a penalty and interest after payment of \$150 was received for the utility's 1998 RAFs. Further, 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 utility owes \$2,134.87 for 1998 and \$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. The penalties and interests are calculated based on the number of days elapsed since the RAFs were due and the date of our vote on this matter. March 6, 2001, is included in computing the amount of time elapsed.

In a letter dated February 7, 2001, in which the utility requested a waiver of the penalties and interest associated with its delinquent RAFs, the utility stated that:

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. The utility stated that numerous bank deposit

slips were shorted and converted to cash, and that 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.

Rule 25-30.455(8)(d), Florida Administrative Code, states that when determining whether to grant or deny a staff-assisted rate case application, we should consider whether the applicant has paid applicable RAFs. It has been past Commission practice to reject staff-assisted rate case applications if the utility's RAFs and annual reports are not current. However, we find it best to keep this docket open at this time to allow the utility the opportunity to pay the delinquent RAFs, penalties, and interest, and to allow our staff to work with the utility to improve the utility's condition.

It is Commission practice to include the utility's obligation to pay RAFs in the determination of revenue requirement when establishing rates. 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 RAFs. 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% per annum.

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

In Order No. 24290, issued March 26, 1991, in Docket No. 900961-SU, we found that we had no statutory authority to grant a waiver of the penalties and interest associated with delinquent RAFs. Moreover, in Order No. PSC-97-0767-FOF-FU, issued June 30, 1997, in Docket No. 970360-GU, we found that we 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).

Further, by Order No. PSC-94-1464-FOF-WU, issued November 29, 1994, in Docket No. 940973-WU, we denied Water Spectrum, Inc.'s request to waive all penalties and interest associated with delinquent RAFs.

We find that the utility is liable for the outstanding fees. Based upon the foregoing, we do not have the authority to waive the penalties or interest associated with delinquent RAFs. Therefore, CWWI's request to waive penalties and interests for its 1998 and 1999 RAFs is denied.

PAYMENT PLAN

As previously stated, on February 7, 2001, the utility submitted a request to pay its delinquent RAFs by way of a payment plan.

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, we permitted the utility to pay its outstanding RAFs, penalties, and interest via a payment plan. Also, by Order No. PSC-94-1464-FOF-WU, issued November 29, 1994, in Docket No. 940973-WU, we established a payment schedule for delinquent RAFs, 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, we construed Section 350.113, Florida Statutes, and Rule 25-30.120, Florida Administrative Code, to bar the waiver of the penalties and interest associated with delinquent RAFs, but not to preclude a reasonable payment schedule to redress a utility's delinquency in the payment of its RAFs.

Our staff will address the issues pertaining to the condition of the utility in its recommendation disposing of the staff-assisted rate case application and will monitor this utility to make sure it follows our orders. Further, to assure that the utility completes its pro forma plant improvements, our staff will include in the staff-assisted rate case recommendation that the utility be required to place all funds collected in an escrow account.

We find that a payment plan consisting of five monthly payments in the amount of \$1,056.52 is reasonable. Pursuant to this payment plan, CWWI's payments for outstanding RAFs shall begin with the first payment on March 20, 2001. All subsequent payments for the four remaining monthly installments shall be due on the 20th of each month, with the final payment due July 20, 2001.

Moreover, we note that the utility's 2000 RAFs are due March 31, 2001. The utility shall pay the full amount of its 2000 RAFs by March 31, 2001.

ORDER NO. PSC-01-0720-FOF-WU
DOCKET NO. 001682-WU
PAGE 8

If the utility fails to make any of the required monthly installments by the date due or if it fails to pay its 2000 RAFs by March 31, 2001, this docket shall be closed administratively and show cause and revocation proceedings shall be initiated.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Consolidated Water Works, Inc.'s request for waiver of penalties and interest on its delinquent regulatory assessment fees is denied. It is further

ORDERED that Consolidated Water Works, Inc.'s delinquent 1998 and 1999 regulatory assessment fees, plus penalties and interest, shall be paid in five monthly installments of \$1,056.52. The first payment is due on March 20, 2001. All subsequent payments for the four remaining monthly installments shall be due on the 20th of each month, with the final payment due July 20, 2001. It is further

ORDERED that Consolidated Water Works, Inc., shall pay the full amount of its 2000 regulatory assessment fees by March 31, 2001. It is further

ORDERED that this docket shall remain open. However, if Consolidated Water Works, Inc., fails to make any of the required monthly installments by the date due or if it fails to pay its 2000 RAFs by March 31, 2001, this docket shall be closed administratively and show cause and revocation proceedings shall be initiated.

By ORDER of the Florida Public Service Commission this 22nd day of March, 2001.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: _____

Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)
SMC

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 may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 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 Director, Division of Records and reporting 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.