

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in water rates in
Franklin County by Water Management
Services, Inc.

DOCKET NO. 110200-WU
ORDER NO. PSC-13-0045-PCO-WU
ISSUED: January 24, 2013

ORDER DENYING WATER MANAGEMENT SERVICES, INC.'S MOTION FOR ORDER
PROHIBITING INTERFERENCE WITH FINANCING

On November 7, 2011, Water Management Services, Inc. (WMSI or Utility) filed its application for increased water rates for its water system located on St. George Island in Franklin County. On January 23, 2012, the Commission issued Order No. PSC-12-0034-PCO-WS, acknowledging the Office of Public Counsel's (OPC) intervention in this docket. By Order No. PSC-12-0435-PAA-WU (PAA Order), issued August 22, 2012, the Commission approved rates that were designed to generate a total water revenue requirement of \$1,811,648.

On September 12, 2012, OPC timely filed a protest of portions of the PAA Order. On September 19, 2012, WMSI timely filed a cross-petition to protest the PAA Order pursuant to Rule 25-22.029(3), Florida Administrative Code (F.A.C.). An evidentiary hearing on the protest was held on January 16 and 17, 2013. On January 7, 2013, WMSI filed a Motion for Order Prohibiting Interference with Financing. On January 14, 2013, OPC filed its response to WMSI's motion.

In its motion, WMSI requests an order enjoining OPC, its employees and agents from interfering with WMSI's efforts to comply with Commission orders. As grounds for its request, WMSI states that OPC interfered with WMSI's efforts to obtain financing from Fidelity Bank. WMSI states that in response to discovery, Gene Brown, WMSI's president, revealed the name of another bank with which he is currently negotiating financing on behalf of the Utility, and requests that OPC be prohibited from contacting this or any other bank with which WMSI will negotiate financing. WMSI cites Section 367.121(1)(g), Florida Statutes (F.S.), as Commission authority to issue the order. In its response, OPC states that the Commission has no jurisdiction to order injunctive relief on a party intervening in a Commission proceeding.

Ruling

Administrative agencies are creatures of statutes and have only those powers conferred by the Legislature. Dep't of Revenue ex rel. Smith v. Selles, 47 So. 3d 916, (Fla. 1st DCA 2010). The Commission, as an administrative agency, has only those powers conferred upon it by the legislature in order to carry out the aims for which it is established, and reasonable doubts as to the existence of a particular power of the Commission must be resolved against the exercise of that power. City of Cape Coral v. GAC Utilities, Inc., 281 So. 2d 493, 494 (Fla. 1973); Teleco Communs. Co. v. Clark, 695 So. 2d 304, 308 (Fla. 1997).

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Section 367.121(1)(g), F.S., cited by WMSI, provides the Commission with the power to “exercise all judicial powers, issue all writs, and do all things necessary or convenient to the full and complete exercise of its jurisdiction and the enforcement of its orders and requirements.” However, this section does not confer upon the Commission all-encompassing jurisdiction.¹ Section 367.011(2), F.S., grants the Commission jurisdiction over water and wastewater utilities “with respect to its authority, service, and rates.” WMSI seeks relief in the nature of an injunction against OPC. These statutes do not address authority for the Commission to issue injunctions against non-regulated entities. Thus, there is no authority for the Commission to grant the requested injunctive relief against OPC.


For the above stated reasons, WMSI’s Motion for Order Prohibiting Interference with Financing is hereby denied.

Based on the foregoing, it is

ORDERED by Commissioner Julie I. Brown, as Prehearing Officer, that the Motion for Order Prohibiting Interference with Financing filed by Water Management Systems, Inc. is hereby denied, as set forth herein.

¹ See, City of Cape Coral v. GAC Utilities, Inc., at 494, citing, Deltona Corp. v. Mayo, 342 So. 2d 510 (Fla. 1977) (PSC has no authority to vindicate breaches of private contracts); Southern Bell Telephone & Telegraph Co. v. Mobile America Corp., 291 So. 2d 199 (Fla. 1974) (PSC has no authority pursuant to Chapter 364 to enter award of money damages for past failures to provide telephone service meeting statutory standards); Cohee v. Crestridge Utilities Corp., 324 So. 2d 155 (Fla. 2d DCA 1975) (only court of law empowered to adjudicate whether utility breached contract by going to higher rates); Winter Springs Development Corp. v. Florida Power Corp., 402 So. 2d 1225 (Fla. 5th DCA 1981) (PSC has no jurisdiction to award money damages in action on contract).

By ORDER of Commissioner Julie I. Brown, as Prehearing Officer, this 24th day of January, 2013.



JULIE I. BROWN
Commissioner and Prehearing Officer
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, 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 or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.