

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation of water rates of A.P. Utilities, Inc. in Marion County for possible overearnings.

DOCKET NO. 971504-WU
ORDER NO. PSC-99-1459-PAA-WU
ISSUED: July 27, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING SETTLEMENT, CLOSING OVERTURNINGS ESCROW ACCOUNT,
RELEASING ESCROWED FUNDS AND
REQUIRING CONTINUED ESCROW FOR REGULATORY ASSESSMENT FEES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

A.P. Utilities, Inc. (APU or utility) is a Class B water utility operating in Marion County. APU provides water service to approximately 1,200 customers. In its 1997 annual report, the utility reported water operating revenues of \$219,215 and operating expenses of \$200,051, resulting in net operating income of \$19,164.

By Order No. 21762, issued August 21, 1989 in Docket No. 881603-WU, we approved a transfer of Certificate No. 380-W from North Central Florida Utilities, Inc. to APU. On November 30, 1990, Mr. Philip Woods purchased the assets of APU from Mr. Michael Blake, and by Order No. 24977, issued August 26, 1991, in Docket No. 910117-WU, we approved the transfer of majority organizational

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control. The purchase also included the Aqua Pure Water Company (Aqua Pure) and Marico Properties, Inc. (Marico). By Order No. 25063, issued September 13, 1991, in Docket No. 910119-WU, we approved the transfer of assets from Marico to APU, and by Order No. 25075, issued September 17, 1991, in Docket No. 910118-WU, we approved the transfer of assets from Aqua Pure to APU.

Since the transfer of assets of APU to Mr. Philip Woods, the utility has failed to correct deficiencies in its 1993 annual report, failed to timely file its 1994, 1995, 1996 and 1997 annual reports, failed to file its 1998 annual report, and failed to pay its regulatory assessment fees (RAFs) for each of the years 1991 through 1998.

Show Cause Related To 1993-95 Annual Reports and 1991-95 RAFS

By Order No. PSC-97-0286-FOF-WU, issued on March 13, 1997, in Docket No. 961141-WU, we ordered the utility to show cause, in writing, within 20 days, why it should not remit a penalty for failure to file its 1994 and 1995 annual reports, failure to pay its RAFs for each of the years 1991 through 1995, and failure to correct deficiencies in its 1993 annual report. The utility failed to respond to our order, and, by that order, the utility's failure to respond was deemed an admission of the facts. The delinquent RAFs, associated penalties and interest, and penalties associated with delinquent annual reports for these years totaling \$94,326.75, were referred to the Department of Banking and Finance's Office of the Comptroller (Comptroller's Office) for collection (RAFs: \$44,159.36; penalty: \$11,039.83; interest: \$14,895.06; and penalty for delinquent annual reports: \$24,232.50).

The Comptroller's Office referred these amounts to a collection agency. APU has been making monthly payments in the amount of \$2,000, of which \$360 goes to the collection agency. As a result, APU has remitted all of the RAFs owed for 1991 and 1992 as well as \$8,260.12 for 1993. However, no penalty or interest associated with these RAFs has been paid, nor has any payment been made toward RAFs owed for 1994 or 1995. Further, no penalty associated with 1993-1995 annual reports has been paid.

Show Cause Related To 1996 Annual Report and RAFS

By Order No. PSC-97-1556-PCO-WU, issued December 11, 1997, in Docket No. 971076-WU, we ordered APU to show cause, in writing, within 20 days of the order, why it should not remit a penalty for

failure to timely file its annual report and failure to remit its 1996 RAFs. We also directed the utility to immediately remit RAFs for 1996. The utility failed to respond to our order, and, by that order, the utility's failure to respond was deemed an admission of the facts. The delinquent RAFs, associated penalties and interest, and penalties associated with the untimely filed 1996 annual report totaling \$17,501.26, were referred to the Comptroller's Office on March 5, 1998 for further collection efforts (RAFs: \$10,992.47; penalty: \$2,748.12; interest: 1,209.17; and penalty for untimely filed 1996 annual report \$2,551.50). The Comptroller's Office has not forwarded this matter to a collection agency to date.

Show Cause Related To Overearnings Based On 1996 Annual Report

In addition to the utility's failure to file annual reports and pay RAFs, it also appeared that the utility was overearning. By Order No. PSC-98-0044-PCO-WU, issued January 6, 1998, in Docket No. 971504-WU, we initiated an investigation into APU's rates and charges for potential overearnings. By that order, we required APU to perform the following: (1) hold its revenues subject to refund pending our investigation of the utility's possible overearnings; (2) provide security in the form of a bond, letter of credit or escrow agreement to guarantee any potential refund of its revenues; and (3) escrow 4.5% of its revenues to ensure payment of APU's 1998 RAFs. APU failed to comply with our order. Furthermore, our staff audit in the investigation of the utility's potential overearnings indicated that APU failed to maintain its books and records in conformance with the 1994 National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA), as required by Rule 25-30.115, Florida Administrative Code.

Show Cause Related To Failure To Correct Deficiencies In 1996 Annual Report, Remit 1997 RAFS, And Failure To Establish Escrow Accounts Required By Overearnings Order

Although the utility untimely filed its 1996 annual report on October 6, 1997, the annual report contained deficiencies. By letter dated October 16, 1997, our staff notified the utility of the deficiencies. The utility was given until November 10, 1997 to correct them. The utility never responded. The utility also owed \$10,992.47 in RAFs for 1997. By letter dated December 9, 1997, our staff notified the utility that the RAFs were due on March 31, 1998. The utility neither filed for an extension nor remitted the fees.

By Order No. PSC-98-1005-SC-WU, issued July 24, 1998, in Dockets Nos. 980729-WU and 971504-WU, we ordered APU to show cause, in writing, within 20 days, why it should not remit a penalty in the amount of \$3,037.50 for failure to correct deficiencies in its 1996 annual report, and why it should not remit a penalty of \$2,198.49 and interest in the amount of \$439.70 for failure to remit 1997 RAFs. In addition, the order required APU to immediately remit \$10,992.47 in delinquent RAFs for 1997. The utility was also ordered to show cause, in writing, within 20 days, why it should not remit a penalty in the amount of \$5,000 per day for violation of Order No. PSC-98-0044-PCO-WU for failure to escrow all required funds as required by that order. APU was further ordered to bring its books and records into conformance with the 1994 NARUC USOA in accordance with Rule 25-30.115, Florida Administrative Code, within six months of the date of the order.

APU failed to file a timely response to this order to show cause, and the penalties and interest set forth in that order were recorded as a statutory lien pursuant to Chapter 85, Florida Statutes, on the real and personal property of APU, and its directors, Philip and Joan Woods. Further, pursuant to Section 55.10, Florida Statutes, that same order was recorded as a lien on the real and personal property of APU, and its directors, for the amount of the utility's delinquent RAFs being duly recorded with the Clerk of the County Court in Marion County, Florida. The liens total \$16,668.16 (RAFs: \$10,992.47; penalty and interest: \$5,675.69). Subsequent to the filing of liens, Mr. Woods brought the escrow accounts for overearnings and RAFs for 1998 into compliance with the order.

Pending Transfers Of Certain APU Systems

Currently, APU's Hawk's Point Water System and 49th Street Village Water System are under our consideration in Docket No. 981030-WU for approval of the transfer/sale to Ocala Oaks Utilities, Inc. Further, our staff has determined through telephone conversations with the utility and Marion County that the Board of County Commissioners for Marion County voted to purchase the following systems from APU: Raven Hill, South Oak, and Peppertree. Should we approve the sales of the systems to Ocala Oaks Utilities, Inc. and Marion County, APU's Quail Run system (Quail Run) would be the only remaining system owned by APU. Quail Run is located outside of the city limits of Ocala, Florida, and serves approximately 66 customers.

SETTLEMENT OFFER

Mr. Woods filed a settlement offer on June 24, 1999, as a solution to all unpaid accounts owed by APU which, by reference, is incorporated herein as Attachment A. The following table summarizes the amounts owed by APU for the years 1991 through 1998 relating to RAFs, associated penalties and interest, and penalties related to deficient or unfiled annual reports. The amount of penalties and interest have been calculated up to the date of our decision in this matter. The table also indicates the amount collected by the collection agency and the total amount outstanding for each year prior to settlement. As discussed later in this Order, the table also includes an amount paid by the utility towards the settlement of this matter and amounts still owing.

<u>Year</u>	<u>RAF Amount</u>	<u>RAF Penalty</u>	<u>Interest</u>	<u>Del. AR Penalty</u>	<u>Total Amount Collected</u>	<u>Amount Outstanding Per Year</u>
1991	\$ 7,522.29	\$ 1,880.57	\$ 4,438.15	\$ 0.00	\$ 7,522.29	\$ 6,318.72
1992	8,667.59	2,166.90	4,073.77	\$ 0.00	8,667.59	6,240.67
1993	9,107.01	2,276.75	3,187.45	12,190.50	8,260.12	18,501.59
1994	9,340.15	2,335.04	2,148.23	7,668.00		21,491.42
1995	9,522.32	2,380.57	1,047.46	4,374.00		17,324.35
1996	10,992.47	2,748.12	1,209.17	5,589.00		20,538.76
1997	10,992.47	2,198.49	439.70	4,820.00		18,450.66
1998	10,992.47	0.00	0.00	1,229.00		12,221.47
TOTAL	77,136.73	15,986.44	16,543.93	35,870.50	24,450.00	121,087.64
1999	Settlement Offer Collection to PSC				\$57,050.00	
	Amount Due the Commission				\$64,037.64	
Total Amount Due the Collection Agency						
	Amount Due \$94,327.75 X 22.7% =				\$21,412.39	
	Amount Paid				<u>18,500.00</u>	
	Amount Owed the Collection Agency				\$ 2,912.39	

APU's settlement offer provides for payment of all monies owed to the Commission. What makes this a "settlement" is the method by which funds are applied to the various outstanding accounts. The terms of the settlement are summarized as follow:

1. 1991-95 RAFs and 1993-1995 Annual Reports: APU will pay \$70,000 toward those amounts owed for delinquent 1991-95 RAFs and associated penalties and interest, and penalties for failure to correct deficiencies in its 1993 annual report and for failure to file its 1994-95 annual report. APU has already made this payment (\$57,050 remitted to PSC and \$12,950 retained by the collection agency).

2. Outstanding Balance for Accounts in Paragraph 1: APU will remit any outstanding balance for accounts in paragraph No. 1 above, including any amounts which were applied to collection agency fees on those accounts, from the proceeds of its sale of the Raven Hill, South Oak and Peppertree systems to Marion County.

3. 1996 RAFs and 1996 and 1998 Annual Reports: APU will remit its delinquent 1996 RAFs, associated penalty and interest, and penalty for failure to timely file its 1996 and 1998 annual reports from the proceeds of its sale of the Raven Hill, South Oak and Peppertree systems to Marion County.

4. 1997 RAFs and 1996 Annual Report deficiencies: APU will remit its delinquent 1997 RAFs, associated penalty and interest, and penalty for failure to correct deficiencies in its 1996 annual report from the funds escrowed for potential overearnings. Any excesses not covered by the escrow account will be paid from the sale of its Hawk's Point and 49th Street Village water systems to Ocala Oaks Utilities.

5. 1998 and 1999 RAFs: APU's 1998 and 1999 RAFs have been deposited in the Regulatory Assessment Fee Escrow Account required by Order No. PSC-98-0044-SC-WU.

As noted above, Mr. Woods proposes that the escrow account established in the overearnings investigation be used to pay the outstanding 1997 RAFs, associated penalty and interest, and penalty for failure to correct the deficiencies in the 1996 annual report. This escrow account was established to provide security for a potential refund to the customers if the utility is found to be in an overearnings position. The utility's books and records are in such poor shape that it would be very difficult to make an accurate determination of earnings. Based on the available records, it may appear at first glance that the utility is overearning. However, we believe that a full analysis would show that the opposite is true. If the utility were to hire the necessary administrative help that it is lacking, such as accounting and bookkeeping, its

earnings would decrease and the utility would most likely need increased rates. Accordingly, we find that it is reasonable to discontinue the amounts held subject to refund for possible overearnings in light of APU's settlement offer.

In addition to the escrow account established to provide security for a potential refund, the utility was required to establish a second escrow account in order to guarantee the payment of RAFs for 1998 and beyond. The balance in the two escrow accounts as of June 21, 1999, is \$12,784.23 for Account No. 2090001734817 (RAF escrow account) and \$14,194.31 for Account No. 2090001734820 (overearnings escrow account).

As indicated in the chart on page 5 of this Order, excluding the \$24,450 in payments previously received, the utility owes a total of \$121,088 for fees, penalties and interest. As previously discussed, Mr. Woods has already paid a total of \$70,000, of which we have received \$57,050. This leaves an amount owed the Commission of \$64,037.64. Applying the balance in the two escrow accounts of \$26,979 leaves an amount of \$35,059.64 to be paid by the utility from the proceeds of the sale of five of its systems to Marion County and Ocala Oaks Utilities. Additionally, APU will pay the balance owed for collection agency fees of \$2,912.39 from proceeds of the sale of the Raven Hill, South Oak and Peppertree systems.

We find that APU's settlement offer is in the public interest and provides a reasonable resolution to this matter. With the exception of Quail Run, Mr. Woods will be relieved from continuing in the utility business. Further, we will recover the costs of regulation, and will be able to appropriately deposit penalties and interest in the General Revenue Fund. Accordingly, APU's settlement offer is hereby approved. The escrow account for potential overearnings shall be closed, and its proceeds shall be released to the Commission for payment towards fees owed by the utility.

THE QUAIL RUN SYSTEM

As discussed earlier in this Order, the Quail Run system will be the only remaining system owned by APU after the sale of the other five systems to Marion County and Ocala Oaks Utilities. Mr. Woods has stated that he is attempting to sell this system as well. However, to date, there has been no contract for the sale of the Quail Run system. Based on the utility's poor track record of

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paying RAFs when due, the utility shall continue to escrow 4.5 percent of its revenue from the Quail Run system each month for payment of such fees. APU shall continue to escrow these funds until the Quail Run system is sold and the transfer approved, if necessary, by this Commission.

In addition, because five of the six systems are being sold to other entities, there is no need for a 1998 annual report for the entire utility. However, because APU has not yet sold the remaining Quail Run system, the utility shall file a 1998 annual report for this system within 60 days of the effective date of this Order. If APU sells the system within that time, a 1998 annual report will not be necessary.

CLOSING OF THE DOCKET

If no timely protest is received upon expiration of the protest period, this Order shall become final and effective upon the issuance of a Consummating Order. This docket shall remain open following the issuance of the Consummating Order until all terms of the settlement offer have been met and to monitor the continuing escrow account for regulatory assessment fees.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that A.P. Utilities, Inc.'s June 24, 1999, offer of settlement which, by reference, is incorporated herein as Attachment A, is hereby approved. It is further

ORDERED that A.P. Utilities, Inc.'s escrow account for potential overearnings shall be closed, and its proceeds shall be released to this Commission for payment towards fees owed by the utility. It is further

ORDERED that A.P. Utilities, Inc. shall continue to escrow 4.5 percent of its revenue from the Quail Run system each month for payment of such fees until the Quail Run system is sold and the transfer approved, if necessary, by this Commission. It is further

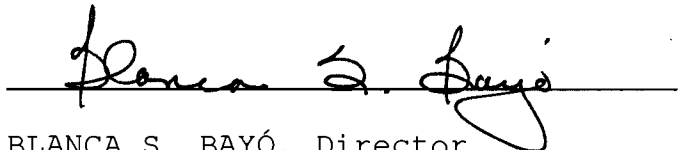
ORDERED that A.P. Utilities, Inc. shall file a 1998 annual report for the Quail Run system within 60 days of the effective date of this Order. If the utility sells the system within that time, a 1998 annual report will not be necessary. It is further

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ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall remain open until all terms of the settlement offer have been met and to monitor the continuing escrow account for regulatory assessment fees.

By ORDER of the Florida Public Service Commission this 27th day of July, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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 that is available under Section 120.57, 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 will be granted or result in the relief sought.

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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.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 17, 1999.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.