

RECEIVED-PPSC

State of Florida



# Public Service Commission

10 SEP 30 AM 10:53

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

COMMISSION  
CLERK

**-M-E-M-O-R-A-N-D-U-M-**

**DATE:** September 30, 2010

**TO:** Office of Commission Clerk (Cole)

**FROM:** Division of Economic Regulation (Kaproth) *KK JS*  
Office of the General Counsel (A. Williams) *ARW SC* *ALM*

**RE:** Docket No. 090322-WU – Request to establish payment plan for 2008 regulatory assessment fees by O&S Water Company, Inc. in Osceola County.

**AGENDA:** 10/12/10 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Skop

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** Note that this recommendation should be taken up after the recommendation for Docket No. 100400-WU.

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\090322.RCM.DOC

### Case Background

O&S Water Company, Inc. (O&S or Utility) is a Class A water utility located in Osceola County. According to the Utility's 2009 Annual Report, it serves approximately 2,186 residential customers, 29 commercial customers, and 858 irrigation customers. O&S is in the South Florida Water Management District. The 2009 Annual Report reflected annual operating revenues of \$1,205,487 and net operating income of \$56,008.

On May 4, 2009, the Utility requested a payment plan for the outstanding balance of its 2008 regulatory assessment fees (RAFs). In its request, O&S indicated that it would make monthly payments of \$2,500 until the 2008 RAFs were paid. In response to staff's data request

DOCUMENT NUMBER DATE

08158 SEP 30 09

PPSC-COMMISSION CLERK

Docket No. 090322-WU  
Date: September 30, 2010

filed on June 3, 2009, the Utility requested that its 2009 RAFs be included in the payment plan. In addition, the Utility stated that it would increase its monthly RAF payment to \$4,500 until the 2008 and 2009 RAFs were paid. The last payment received was \$2,500 on November 24, 2009. O&S has paid a total of \$30,000 toward its 2008 RAF balance of \$58,505. However, the last payment made by O&S was \$2,500 submitted on November 24, 2009. The Utility was sent delinquent notices on May 4, 2009, and February 17, 2010. In addition, the Office of the General Counsel sent a letter to O&S dated July 27, 2010, detailing the amount of RAFs owed. No payments of \$4,500 were made in 2009 or 2010 as offered by the Utility. Further, O&S failed to pay its 2010 RAFs, which were due on July 31, 2010. This recommendation addresses O&S's request for a payment plan. The Commission has jurisdiction pursuant to Sections 367.145 and 350.113, Florida Statutes (F.S.).

Additionally, at the October 12, 2010 Agenda Conference, the Commission will consider staff's recommendation in Docket No. 100400-WU to open a formal overearnings investigation of the Utility and to hold revenues subject to refund under an appropriate security.

**Discussion of Issues**

**Issue 1:** Should a payment plan be approved for the Regulatory Assessment Fees, Penalties, and Interest owed for 2004, 2008 and 2009?

**Recommendation:** No. O&S should be required to pay the past due RAFs of \$127,789, including penalty and interest, for 2004, 2008, and 2009 by October 29, 2010. In addition, O&S should also be required to pay the past due RAFs, plus penalty and interest, for the January 1 to June 30, 2010 period by October 29, 2010. If O&S does not pay the 2010 RAFs and the unpaid 2004, 2008 and 2009 RAFs in full by October 29, 2010, staff should file a show cause recommendation to address the nonpayment of the unpaid RAFs. (Kaproth, A. Williams)

**Staff Analysis:** As of October 29, 2010, O&S will owe a total of \$127,789 for RAFs, penalties and interest for 2004, 2008 and 2009, as summarized in the following table.

<b>Table 1-1</b>	
<b>Summary of RAFs, Penalties and Interest Tables 1-2, 1-3 and 1-4</b>	
<b>As of October 29, 2010</b>	
2004	\$ 7,277
2008	\$ 46,526
2009	\$ 73,986
Total Due	\$127,789

According to its 2004 Annual Report, O&S had gross operating revenues of \$357,505. Accordingly, the amount owed for RAFs on March 31, 2005, was \$16,088 (.045 x \$357,505). According to our records, it appears that O&S incorrectly deducted \$83,750 from its gross operating revenues for water purchased from the Florida Governmental Utility Authority (FGUA), and thus underpaid RAFs in the amount of \$12,317 for the year 2004. Because the Commission has found the FGUA to be an exempt non-regulated utility, it appears that O&S may have incorrectly applied Rule 25-30.120(5), Florida Administrative Code (F.A.C.). This rule allows a utility that purchases water from another Commission-regulated utility to deduct the annual expense for purchased water from its gross operating revenue before calculating the amount of RAFs due. Further, Rule 25-30.120(8), F.A.C., states that if a utility remits less than 90 percent of RAFs owed, penalties and interest will be calculated on a going-forward basis.

A more detailed breakdown of the RAFs, penalties and interest due for 2004, 2008 and 2009 is shown on the following tables.

<b>Table 1-2</b>					
<b><u>2004</u></b>	<b><u>RAFs Due</u></b>	<b><u>RAFs Paid</u></b>	<b><u>Penalties</u></b>	<b><u>Interest</u></b>	<b><u>Total Due</u></b>
Due March 31, 2005	\$16,088	\$12,317	\$942	\$2,564	\$7,277
Owed as of October 29, 2010					\$7,277

<b>Table 1-3</b>					
<b><u>2008</u></b>	<b><u>RAFs Due</u></b>	<b><u>RAFs Paid</u></b>	<b><u>Penalties</u></b>	<b><u>Interest</u></b>	<b><u>Total Due</u></b>
Due July 30, 2008	\$30,827	\$15,000	\$4,582	\$5,132	\$25,540
Due Jan. 30, 2009	\$27,677	\$15,000	\$4,419	\$3,889	\$20,986
Owed as of October 29, 2010					\$46,526

<b>Table 1-4</b>					
<b><u>2009</u></b>	<b><u>RAFs Due</u></b>	<b><u>RAFs Paid</u></b>	<b><u>Penalties</u></b>	<b><u>Interest</u></b>	<b><u>Total Due</u></b>
Due July 30, 2009	\$18,516	None	\$4,629	\$2,962	\$26,108
Due Jan. 30, 2010	\$35,730	None	\$8,932	\$3,215	\$47,878
Owed as of October 29, 2010					\$73,986

As of September 30, 2010, the Utility has also failed to pay its 2010 RAFs that were due on July 30, 2010. Based on O&S's RAF Return for the January 1 to June 30, 2009 period, the unpaid RAFs for 2010 are estimated to be approximately \$18,500, plus penalties and interest.

Pursuant to Section 350.113(4), F.S., and Rule 25-30.120(7)(a), F.A.C., a statutory penalty plus interest shall be assessed against any utility that fails to timely pay its RAFs, in the following manner:

1. 5% of the fee if the failure is for not more than 30 days, with an additional 5% for each additional 30 days or fraction thereof during the time in which failure continues, not to exceed a total penalty of 25%.
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.

When the Utility requested to include the delinquent 2009 RAFs in the payment plan, it proposed to increase its \$2,500 monthly payment to \$4,500. However, O&S never increased its monthly payment and ceased making any payments after November 24, 2009, as shown on Table 1-5 below. Even with a payment plan for the prior years' delinquent RAFs, the Utility would still be in arrears concerning the payment of its past due 2010 RAFs.

In addition, Staff has analyzed O&S's 2009 annual report and based on the reported data, O&S is in a possible overearnings position. Staff believes that if a utility is overearning, it would be inappropriate to grant a payment plan.

<b>O&amp;S's 2008-2009 RAF Payments</b>	
7/29/08	\$10,000
1/30/09	\$ 5,000
4/27/09	\$ 2,500
6/25/09	\$ 2,500
7/15/09	\$ 2,500
9/10/09	\$ 2,500
10/14/09	\$ 2,500
11/24/09	\$ 2,500
<b>Total Payments</b>	<b>\$ 30,000</b>

Based on O&S's potential overearnings, failure to pay its RAFs currently due for 2010, and its failure to make any monthly payments since November 2009, a payment plan should not be approved for the past due 2004, 2008 and 2009 RAFs. If O&S does not pay the 2010 RAFs owed and the unpaid 2004, 2008 and 2009 RAFs by October 29, 2010, staff should file a show cause recommendation to address the nonpayment of the unpaid RAFs.

Docket No. 090322-WU  
Date: September 30, 2010

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. If no person whose interests are substantially affected timely files a protest to the Commission's proposed agency action order, this docket should be closed upon issuance of a consummating order. If O&S does not pay the 2010 RAFs and the unpaid 2004, 2008 and 2009 RAFs by October 29, 2010, staff should open a new docket to file a show cause recommendation to address the nonpayment of the RAFs. (A. Williams)

**Staff Analysis:** If no person whose interests are substantially affected timely files a protest to the Commission's proposed agency action order, this docket should be closed upon issuance of a consummating order. If O&S does not pay the 2010 RAFs and the unpaid 2004, 2008 and 2009 RAFs by October 29, 2010, staff should open a new docket to file a show cause recommendation to address the nonpayment of the RAFs.