

State of Florida



Public Service Commission

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

11 SEP -8 AM 8:51

COMMISSION
CLERK**-M-E-M-O-R-A-N-D-U-M-****DATE:** September 8, 2011**TO:** Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Marsh, Gardner, Cicchetti, Fletcher, Salnova, Slemkewicz) *JS*
Office of the General Counsel (Robinson) *PER AS*

RE: Docket No. 110237-WS – Request for Regulatory Assessment Fee installment payment plan by Water Management Services, Inc.

AGENDA: 09/20/11 – Regular Agenda – Interested Persons May Participate**COMMISSIONERS ASSIGNED:** All Commissioners**PREHEARING OFFICER:** Administrative**CRITICAL DATES:** None**SPECIAL INSTRUCTIONS:** None**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\110237.RCM.DOC

Case Background

Water Management Services, Inc. (WMSI or Utility) is a Class “A” water utility providing service to approximately 1,808 customers in Franklin county. WMSI reported gross revenues of \$645,747 in its estimated 2011 regulatory assessment fee return and, as a result, the Utility owes approximately \$29,059 in regulatory assessment fees (RAFs) for the period of January 1, 2011 through June 30, 2011. By a motion¹ filed June 8, 2011, WMSI requested a payment plan for the amount owed. On June 17, 2011, the Office of Public Council (OPC) filed a response to WMSI’s motion. On August 30, 2011, WMSI submitted its first payment of

¹ These documents were originally filed in Docket No. 100104-WU, In re: Application for increase in water rates in Franklin County by Water Management Services, Inc.

DOCUMENT NUMBER-DATE

06443 SEP-8 =

FPSC-COMMISSION CLERK

Docket No. 110237-WS
Date: September 8, 2011

\$7,556, pursuant to its requested payment plan. The purpose of this recommendation is to address the Utility's request.

The Commission has jurisdiction over this matter pursuant to Sections 350.113 and 367.145, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should Water Management Services, Inc.'s (WMSI) Motion be granted and WMSI be permitted to pay its January 1 through June 30, 2011 regulatory assessment fees in accordance with a payment schedule?

Recommendation: Yes. The Commission should grant WMSI's Motion and the Utility should be allowed to pay its RAFs that were due on August 1, 2011 at a minimum of \$5,812 per month, plus penalties and interest, until all fees for the first six-month period for 2011 have been paid. Subsequent to the first payment that was made on August 30, 2011, payments should be made, at a minimum, in accordance with the schedule set out by staff. (Marsh, Gardner)

Staff Analysis: On June 8, 2011, WMSI filed a motion requesting that the Commission allow it to pay its regulatory assessment fee due August 1, 2011,² in five equal installments, beginning August 31, 2011. The motion stated that the Utility is currently suffering severe financial hardship and would not be able to pay by the due date. In 2010, the Utility faced similar circumstances, but in a timely manner, requested an extension of 30 days. The automatic extension was approved because there were no outstanding payments for the previous five years, including the penalties and interest. The 2010 payment was made within the extension period. The Utility is also current on its Annual Reports.

Rule 25-30.120 (1), Florida Administrative Code (F.A.C.), requires utilities to pay a regulatory assessment fee in the amount of 4.5 percent of gross revenues for the entire year. Rule 25-30.120 (2) (a), F.A.C., provides that

. . . regulatory assessment fees shall be filed with the Commission on or before July 30 for the preceding period or any part of the period from January 1 until June 30, and on January 30 for the preceding period or any part of the period from July 1 until December 31. Commission Form PSC/ECR 10-WL (02/05) entitled "Large Water System Regulatory Assessment Fee Return" . . . [is] incorporated into this rule by reference. . . .

If the due date falls on a Saturday, Sunday, or a legal holiday, the due date is extended to the next business day, pursuant to Rule 25-30.120 (3), F.A.C. If a utility fails to timely pay the regulatory assessment fee pursuant to Rule 25-30.120 (1), F.A.C., a penalty will be assessed and interest charged, pursuant to Section 350.113 (4), F.S., and Rule 25-30.120 (7), F.A.C. The Commission, in other dockets, has used these provisions to bar waiver of regulatory assessment fees, penalties, and interest, but not to preclude a reasonable payment schedule to redress a utility's delinquency.³

² The due date of July 30 fell on a weekend. Thus, the due date became August 1.

³ See Order Nos. 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 Utility Company, Ltd. in Franklin County; PSC-95-1514-FOF-WS, issued December 6, 1995, in Docket No. 951244-WS, In re: Request for Establishment of Payment Plan for Delinquent 1992 and 1994 Regulatory Assessment Fees in Martin County by Fisherman's Cove of Stuart, Inc.; PSC 94-1464-FOF-WU, issued November 29, 1994, in Docket No. 940974-WU, In re: Application for a staff-assisted rate case in Putnam County by Landis Enterprises, Inc.; PSC-04-0615-FOF-WU, issued June 21, 2004, in Docket No. 040248-WU, In re: Initiation of show cause proceedings against Kincaid

WMSI provided a cash flow analysis filed as Document No. 03960-11 on June 8, 2011 in Docket No. 100104-WU as evidence of its financial difficulties. OPC responded, stating that it did not take issue with the extension, but that it did not believe that the cash flow analysis was a basis to grant it. Staff notes that the cash flow analysis and other issues in that docket will be addressed at a later date. Rule 25-30.120 (6)(a), F.A.C, provides that “[t]he request for extension will be granted if the utility has applied for the extension within the time required . . . and the utility does not have any unpaid regulatory assessment fees, penalties or interest due from a prior period.” Staff believes it is appropriate to grant the payment plan, since the Utility is otherwise up to date with its RAF and annual report requirements.

On August 1, 2011, the Utility filed an “Estimated Return” for the six-month period from January 1 through June 30. According to Commission Form PSC/ECR 10-WL (205), a utility receives an automatic 30-day extension to file an actual return by checking the “Estimated Return” space in the top left-hand corner of the form, and including the estimated payment. As reported for the first six months, WMSI estimated gross revenues are \$645,747 for water. As a result, the Utility owes RAFs of \$29,059, plus interest and penalties as outlined below. While WMSI filed the estimated return, no payment was made. Staff notes that the automatic extension only applies where at least 90 percent of the payment due has been made with the estimated return, as stated in Section 350.113(5). Because no payment was made, the automatic extension does not apply.

Interest and penalties are calculated based on Chapter 350.113(4), F.S., and Rule 25-30.120(7)(a), F.A.C. The statute provides that

If any regulated company fails to pay the required fee by [the due date], the commission . . . shall add 5 percent of such amount to the fee as a penalty 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 the failure continues, not to exceed a total penalties of 25 percent.

Additionally, interest of one percent for each thirty days or fraction thereof is charged, not to exceed a total of 12 percent per annum, as stated in Rule 25-30.120(7)(a)2., F.A.C. Neither the Florida Statutes nor the Commission rules provide the Commission with discretion to waive fees, penalties, and interest. Accordingly, staff has calculated the associated amounts below.

The due dates set out by staff minimize the amounts of penalties and interest, which are calculated on the outstanding balance based on 30-day periods, not on months. Where due dates fall on a weekend, the due date is not adjusted to the next business day; payment must be made no later than the due date. Any late payments will result in additional penalties and interest, even if only one day late. Larger principal payments, if timely made, may reduce the penalties and interest.

Due Date 2011	August 31 ⁴	September 30	October 30	November 29	December 29
RAF Installment	\$5,812	\$5,812	\$5,812	\$5,812	\$5,812
Penalties @ 5% per month	\$1,453	\$1,162	\$872	\$581	\$291
Interest @ 1% per month	\$291	\$232	\$174	\$116	\$58
Total Payment	\$7,556	\$7,206	\$6,858	\$6,509	\$6,161

Based on the above discussion, staff recommends that the Utility be allowed to pay its RAFs that were due on August 1, 2011, including interest, by December 31, 2011, at a minimum of \$5,812 per month, plus penalties and interest, until all fees for the first six-month period for 2011 have been paid. Subsequent to the first payment that was made on August 30, 2011, payments should be made, at a minimum, in accordance with the schedule set out by staff.

⁴ The first payment was made, postmarked August 30, 2011 in the amount of \$5,812.48, with a penalty of \$1,452.93 and interest of \$290.59.

Docket No. 110237-WS
Date: September 8, 2011

Issue 2: Should the docket be closed?

Recommendation: Yes. (Robinson)

Staff Analysis: The RAF payments are due in accordance with the schedule contained in the body of the recommendation. No further action is required in this docket. Therefore, this docket should be closed.