

State of Florida



# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

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COMMISSION CLERK

**DATE:** March 1, 2012

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

**FROM:** Division of Economic Regulation (Gardner, Kaproth) *BAW*  
Office of the General Counsel (Robinson) *PER AT* *KKJS* *CROB* *ALM* *@*

**RE:** Docket No. 120031-WS – Request for Regulatory Assessment Fee installment payment plan by Water Management Services, Inc.

**AGENDA:** 03/13/12 – 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\120031.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 2011 gross operating revenues of \$1,384,769. For the January 1 through June 30, 2011 period, WMSI reported revenues of \$645,747 which resulted in regulatory assessment fees (RAFs) due of \$29,060. WMSI requested, and was granted, a payment schedule for the January 1 through June 30, 2011 period.<sup>1</sup> The Utility made timely payments and completely paid the outstanding RAF balance in accordance with the approved payment schedule.

<sup>1</sup> See Order No. PSC-11-0440-FOF-WS, issued October 3, 2011, in Docket No. 110237-WS, In re: Request for Regulatory Assessment Fee installment payment plan by Water Management Services, Inc.

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Docket No. 120031-WS  
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WMSI reported gross operating revenues of \$739,022 for the July 1 through December 31, 2011 period resulting in RAFs due of \$33,255. On January 25, 2012, WMSI filed a motion requesting a payment plan for the RAFs owed of \$33,255. The Utility submitted a payment of \$6,651 on the January 30, 2012, due date. As a result, there remains an outstanding RAF balance of \$26,604, plus penalties and interest, for the July 1 through December 31, 2011 period. This recommendation addresses WMSI's request to establish a payment plan for the outstanding RAF balance due of \$26,604.

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 motion be granted and WMSI be permitted to pay its July 1 through December 31, 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 January 30, 2012 at a minimum of \$6,651 per month, plus penalties and interest, until all fees for the second six-month period for 2011 have been paid. Payments should be made, at a minimum, in accordance with the schedule set out by staff. (Gardner, Kaproth)

**Staff Analysis:** On January 25, 2012, WMSI filed a motion requesting that the Commission allow it to pay its RAFs due January 30, 2012, in five equal installments, beginning February 29, 2012. 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 asserted that it faced similar hardships, and requested a 30-day extension. 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. In addition, the Utility requested a payment schedule for the RAFs due for the period of January 1 through June 30, 2011, claiming continued financial hardship. The Commission approved the payment schedule, and the Utility made all payments in a timely manner, including penalties and interest. The Utility is also current on the filing of its Annual Report.

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 RAFs, penalties, and interest, but not to preclude a reasonable payment schedule to redress a utility's delinquency.<sup>2</sup>

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<sup>2</sup> 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.; and PSC-04-0615-

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 January 30, 2012, the Utility filed an “Actual Return” for the period of January 1 through December 31, 2011. As reported, WMSI’s actual annual gross revenues for water were \$1,384,769, which includes the first six-month period from January 1 through June 30 estimated revenues of \$645,747. This resulted in gross revenues for the last six-month period from July 1 through December 31 of \$739,022. The total actual RAF for the year totaled \$62,315 which included \$29,060 for the first six-month period. As a result, the Utility owes RAFs in the amount of \$33,255 plus interest and penalties as outlined below. WMSI filed its actual return with a payment of \$6,651.

Interest and penalties are calculated based on Chapter 350.113(4), F.S., and Rule 25-30.120(7)(a), F.A.C., provides, in part, 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 penalty 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’s 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 months. Where due dates fall on a weekend, the due date is not adjusted to the next business day and 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 2012	January 30 <sup>3</sup>	February 29	March 30	April 30	May 30
RAF Installment	\$6,651	\$6,651	\$6,651	\$6,651	\$6,651
Penalties @ 5% per month	\$0	\$1,330	\$998	\$665	\$333
Interest @ 1% per month	\$0	\$266	\$200	\$133	\$67
Total Payment	\$6,651	\$8,247	\$7,849	\$7,449	\$7,051

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FOF-WU, issued June 21, 2004, in Docket No. 040248-WU, In re: Initiation of show cause proceedings against Kincaid Hills Water Company in Alachua County for violation of Rule 25-30.110, F.A.C., Records and Reports; Annual Reports, and Rule 25-30.120, F.A.C., Regulatory Assessment Fees; Water and Wastewater Utilities.

<sup>3</sup> The first payment was made, postmarked January 30, 2012 (the due date) in the amount of \$6,651, with no penalty and interest.

Based on the above discussion, staff recommends that the Utility be allowed to pay its RAFs that were due on January 30, 2012 by May 30, 2012, at a minimum of \$6,651 per month, plus penalties and interest, until all fees for the second six-month period for 2011 have been paid. Subsequent to the first payment that was made on January 30, 2012, payments should be made, at a minimum, in accordance with the schedule set out by staff.

Docket No. 120031-WS

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

**Recommendation:** Yes. The RAF payments are due in accordance with the schedule contained in the body of the recommendation. (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.