

State of Florida



Public Service Commission

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

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

DATE: November 13, 2014

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Accounting and Finance (Polk, Fletcher) *of Boy*
Office of the General Counsel (Young) *CRAB ALM*

RE: Docket No. 130272-WU – Request to remove the fines imposed for the delay of filing annual reports for Cedar Acres, Inc.

AGENDA: 11/25/14 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

Cedar Acres, Inc. (Cedar Acres or Utility) is a Class C water utility located in Sumter County and is currently serving 216 customers as reported in its 2013 Annual Report. The Utility was first organized in 1985 as a business entity filing with the IRS as an 1120 Corporation. In 2009, the Commission approved Cedar Acres' certificate and approved the Utility's rates it was charging at that time.¹

¹ See Order No. PSC-09-0541-FOF-WU, issued August 4, 2009, in Docket No. 080098-WU, In re: Application for certificate to provide water service in Sumter County by Cedar Acres, Inc. (The Utility was subject to Sumter County's jurisdiction when the development was designed and the Utility was established. The County turned over jurisdiction to the Commission in 1987. Cedar Acres was unaware of the change in jurisdiction. As a result, the Utility operated without a certificate from 1987 until 2009. The Utility became aware of the change in jurisdiction when it contacted Sumter County for approval to change rates. Based on this information, Cedar Acres filed an application for a certificate with the Commission.)

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Rule 25-30.110(3), Florida Administrative Code (F.A.C.), provides that each utility shall file with this Commission an annual report. Rule 25-30-110(6), F.A.C., provides that a penalty shall be assessed against any utility that fails to file unless the utility demonstrates good cause for noncompliance. On November 14, 2013, the Utility requested the fines for delinquent annual reports from 2008-2011 be waived. The Commission has jurisdiction pursuant to Section 367.121, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission approve the request to waive the fines imposed for the delay of filing annual reports for Cedar Acres, Inc.?

Recommendation: Yes. Cedar Acres' request to waive the fines imposed for the delay of filing the Utility's annual reports for 2008, 2009, 2010, and 2011 should be granted. (Polk)

Staff Analysis: Cedar Acres provided staff a detailed explanation of events which led to the accumulation of fines assessed on the Utility resulting from the failure of prior management to timely submit three annual reports. In October 2011, the management was changed and the new president of Cedar Acres was informed that the 2008-2010 Annual Reports had not been filed. The new president directed the compilation of the delinquent annual reports. Due to the poor record-keeping of prior management, completion of the annual reports required time-consuming reconstruction of the Utility's financial records. The Utility filed the 2008-2011 Annual Reports on July 30, 2012. With regard to the late submission of the 2012 Annual Report, Cedar Acres stated it was the result of an original consultant's failure to prepare this report which necessitated the services of another consultant. While the delay was again the result of prior management, the Utility corrected the situation and paid the penalty for 2012.

The following table shows the annual report recap of Cedar Acres and the penalties by years:

Cedar Acres, Inc. Annual Report Late Penalties @ \$3/day			
<u>Report Year</u>	<u>Date Filed</u>	<u>Days Late</u>	<u>Penalty</u>
2013 (a)	9/26/2014	29	\$87
2012 (b)	3/27/2014	361	\$1,083
2011	7/30/2012	121	\$363
2010	7/30/2012	487	\$1,461
2009	7/30/2012	852	\$2,556
2008	7/30/2012	1,064	<u>\$3,192</u>
TOTAL			<u>\$8,742</u>

(a) Two extensions requested. Report 29 days late & fine has been paid.

(b) 2012 penalties have also been paid.

The Utility has asked that the Commission waive \$7,572 (\$3,192+\$2,556+\$1,461+\$363) in penalties resulting from late submissions of Cedar Acres' 2008 to 2011 Annual Reports as required by Rule 25-30.110(3), F.A.C.

In this case, staff believes that due to mitigating circumstances, the Utility's request to waive the imposed fines is warranted. First, Cedar Acres has now completed all annual reports from 2008 to 2013, which required reconstruction of the Utility's financial records.

Second, in addition to failing to timely file annual reports for the period 2008-2010, the prior management also failed to pay regulatory assessment fees (RAFs) for this period.

However, the Utility is now current on payment of RAFs and paid all penalties and interest associated with the past due RAF payments.

Third, based on the 2008 to 2013 Annual Reports, Cedar Acres has reported net operating losses the last six years. Currently, the Utility has over \$200,000 in outstanding loans and negative common equity of over \$109,000. Staff notes that, in spite of Cedar Acres' financial condition, in 2012, the Utility replaced a well as required by the Florida Department of Environment Protection. Also, staff would point out that Cedar Acres' 2012 and 2013 consumer confidence reports revealed no water quality violations.

Fourth, the Utility's management had expressed its desire to file a Staff Assisted Rate Case (SARC). Staff notes that this Utility has not had a rate case since 1987. Staff believes the waiver of these fines would help the Utility in paying the required filing fees associated with its desired SARC which is estimated to be \$1,000 in accordance with Rule 25-30.020, F.A.C.

Pursuant to Rule 25-30.110(6)(c), F.A.C., the Commission may not impose the \$3 per day penalty pursuant to the rule, upon a showing of good cause for the noncompliance, which staff believes the Utility has done. With the reasons set forth above, staff believes a waiver of these fines is in the best interest of the ratepayers because it will allow the Utility to continue to focus its limited resources on its statutory mandate to provide safe and reliable water service. Accordingly, staff recommends that the Commission grant Cedar Acres' request to waive the fines imposed for the delay of filing the Utility's annual reports for 2008, 2009, 2010, and 2011. Staff would note that its recommendation is consistent with a prior decision in 2008 regarding another small water utility.²

² See Order No. PSC-08-0044-FOF-WU, issued January 22, 2008, in Docket No. 070580-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; Rule 25-30.120, F.A.C., Regulatory Assessment Fees; Water and Wastewater Utilities; and of Order PSC-04-0615-FOF-WU.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (Young)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.