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STATE OF FLORIDA



KEITH C. HETRICK
GENERAL COUNSEL
(850) 413-6199

Public Service Commission

July 29, 2016

VIA ELECTRONIC MAIL

davidjsimons@aol.com

Mr. David J. Simons
Cedar Acres, Inc.
4700 Sheridian Street
Suite N
Hollywood, FL 32301

RE: Docket No. 140217-WU – Application for staff-assisted rate case in Sumter County by Cedar Acres, Inc.

Dear Mr. Simons:

In response to your email of July 8, 2016¹, please note that, at the current procedural stage of this docket, Cedar Acres, Inc. (Cedar Acres) is the only party required to submit information, and that staff is under no obligation to provide responses to the types of questions submitted by Cedar Acres. In addition, staff would remind Cedar Acres of its May 17, 2016, telephone conference (May conference call) with Commission staff, wherein staff provided thorough responses to Cedar Acres' questions. On May 24, 2016, staff also provided Cedar Acres with additional information it requested during the May conference call.² In the interest of cooperation, however, staff will respond to Cedar Acres' questions once more.

First, staff will address your disagreement with the Commission not allocating a salary for Cedar Acres' officers when it approved the rate increase in October 2015, and your mistaken characterization of the salary reallocation as a salary reduction. As staff explained during the May conference call, the Commission did not "reduce" the salaries of Cedar Acres' President or officers when it approved the rate increase for Cedar Acres. At the time Cedar Acres filed its request for a Staff-Assisted Rate Case, Cedar Acres was not recording a salary for any of its officers and was only recording a nominal amount for the three Cedar Acres directors.

¹ See, Attachment, "Cedar Acres Email to Staff re: Demand for Response to Questions," dated July 8, 2016; and "Cedar Acres Email to Staff re: Questions," dated April 6, 2016.

² See, Attachment, "Staff Email to Cedar Acres re: Additional Information," dated May 24, 2016.

On October 1, 2015, Commission staff filed its recommendation on Cedar Acres' rate case, in which staff recommended salary amounts for Cedar Acres' officers.³ However, as the title suggests, the contents of Staff's Recommendation, including recommended salaries, are only staff's recommendations to the Commission, and are not findings. The Commissioners are the ultimate decision-makers and may approve, disregard, or modify, in whole or in part, staff's recommendation.

On October 13, 2015, the Commission considered Cedar Acres' rate case and staff's recommendation at the Commission Agenda Conference.⁴ No representative from Cedar Acres attended the Agenda Conference.⁵ The Commission ultimately found the quality of Cedar Acres' service unsatisfactory.⁶ Upon finding the quality of service unsatisfactory, the Commission rejected the salary allocations staff recommended for Cedar Acres' financial manager, President and directors, and reallocated the amounts to expedite Cedar Acres' meter replacement program.⁷

As staff previously explained, the Commission has exclusive jurisdiction over any utility holding a certificate of authority from the Commission with respect to service and rates.⁸ The Commission's rate-setting authority includes reviewing and setting the compensation of a utility's employees and officers, based on the unique facts and circumstances of each utility's rate case. In most of the instances when the Commission reduced utility salaries, the Commission found that the utility provided unsatisfactory quality of service,⁹ such as in the case of Cedar Acres. Upon making such a finding, the Commission has discretion to financially penalize the utility, including issuing fines, reducing the utility's rate of return, and/or reducing or reallocating utility expenses, such as salaries.¹⁰ In Cedar Acres' case, the Commission rejected the salary allocations recommended by staff, and reallocated the amounts to the meter replacement program.¹¹

³ Document No. 06181-15, "Staff's Recommendation," filed October 1, 2015, in Docket No. 140217-WU, p. 13.

⁴ Document No. 06748-15, "Transcript of October 13, 2016 Commission Agenda Conference – Item 4," filed in Docket No. 140217-WU.

⁵ *Id.*, p. 29.

⁶ Order No. PSC-15-0535-PAA-WU, issued on November 19, 2015, in Docket No. 140217-WU *In Re: Application of Cedar Acres, Inc. for Staff Assisted Rate Case in Sumter County*, p. 3

⁷ *Id.*, p. 4.

⁸ §§350.111 and 367.011, Florida Statutes.

⁹ *See*, Order No. PSC-11-0010-SC-WU, Issued January 3, 2011, in Docket No. 100104-WU, *In Re: Application for increase in water rates in Franklin County by Water Management Services, Inc.* (stating, upon finding indication of mismanagement or unsatisfactory quality of service, in addition to requiring specific improvements when quality of service is affected, Commission remedies include: (1) removing funds from equity or reducing the return on equity; (2) reducing president/officer's salary; or (3) ensuring any imprudent expenditures and associated costs do not increase the rates of the customers.); *see also* Docket No. 140219-WS, *In Re: Application for staff-assisted rate case in Polk County by Alturas Utilities, L.L.C.*; Docket No. 140220-WS, *In Re: Application for staff-assisted rate case in Polk County by Sunrise Utilities, L.L.C.*; Docket No. 110200-WS, *In Re: Application for increase in water rates in Franklin County by Water Management Services, Inc.*; and Docket No. 910637-WS, *In Re: Application for a Rate Increase in Pasco County by Mad Hatter Utility, Inc.*

¹⁰ §§367.011, 367.081, 367.0812, 367.161, Florida Statutes.

¹¹ *Supra* 7.

Staff provides the following written responses to the questions submitted by Cedar Acres:

1. What is the average staff level of a utility the size of Cedar Acres?

As explained during the May conference call, each utility rate case is processed on an individual basis. Each utility, particularly water and wastewater utilities, is unique and varies in size, location, age, customer bases, customer usage, etc. Moreover, subject to a review for prudence, each utility has discretion in the operation and composition of many aspects of its business, such as how it staffs the utility and the number of personnel it employs. Thus, it is not possible to calculate a specific average staff level of a utility the size of Cedar Acres. There is simply no “one size fits all” model or standard.

Although staff is unable to provide a specific numerical average, staff notes that you can review the Annual Reports of other Class C utilities, which are available online on the Commission website,¹² and compare the information to Cedar Acres.¹³ However, please be mindful that any comparison between a particular utility and Cedar Acres would only serve as a point of reference since each utility rate case is processed individually, based on the unique characteristics and operations of that specific utility.

2. What is the average staff and officer expense, including salary, bonus, pension, etc., for a utility the size of Cedar Acres?

See response to question 1 above.

3. What is the average manager salary, including pension, etc., for a utility the size of Cedar Acres?

See response to question 1 above.

4. What is the average utility president's compensation for a utility the size of Cedar Acres?

See response to question 1 above.

5. What is the average director's compensation for a utility the size of Cedar Acres?

See response to question 1 above.

¹² <http://www.floridapsc.com/UtilityRegulation/AnnualReport>

¹³ See, Attachment, “Staff Email to Cedar Acres re: Additional Information,” dated May 24, 2016.

6. Has the PSC ever reduced officer compensation to 0 [zero] and still required them to work?

As noted above, the Commission has broad authority to in setting the rates of a utility holding a certificate of authority from the Commission, including the authority to financially penalize the utility if the Commission finds it warranted.¹⁴ Examples of financial penalties include issuing fines, reducing the utility's rate of return, and/or reducing or reallocating utility expenses, such as salaries.¹⁵ Yes, the Commission has financially penalized a utility by reducing its officers' compensation.¹⁶ In each instance, however, the magnitude of the financial penalty assessed by the Commission was based on the unique facts and circumstances that existed in that particular utility's rate case.

Again, the Commission did not "reduce" Cedar Acres' President's salary to "zero," but rather reallocated a recommended amount, which was within the Commission's authority to do. Moreover, in Cedar Acres' case, the President did not draw a salary prior to it filing for a rate increase, and the Commission's Order approving the rate increase did not allocate a salary. Therefore, there was no "reduction," although reducing officers' salaries is also within the Commission's authority.

7. Please reconcile the PSC ruling (re: Cedar Acres officer compensation) with the FLSA [sic] in regards to the directors and myself.

As explained during the May conference call, "The Fair Labor Standard Act of 1938"¹⁷ (FLSA) does not apply to Cedar Acres' officers for several reasons. Specifically, the FLSA does not apply to:

- Non-Employment relationships;¹⁸
- Executives and certain Administrative Employees;¹⁹ or
- Employers engaged in intrastate commerce, whose gross annual sales total less than \$500,000.²⁰

First, the FLSA applies to employer-employee relationships, and Cedar Acres is not employed by the Commission. Cedar Acres is a public utility, subject to the regulatory jurisdiction of the Commission with regard to its rates. Officers' salaries approved by the Commission are built into a utility's rates, just like other approved utility expenses.

¹⁴ §350.111 and Chapter 357, Florida Statutes.

¹⁵ *Supra* 10.

¹⁶ *Supra* 9.

¹⁷ 29 U.S.C. §201, *et seq.*

¹⁸ 29 U.S.C. §203(d) and (e)(1)

¹⁹ 29 U.S.C. §213(a)(1)

²⁰ 29 U.S.C. §203(b) and (s)(1)(A)

Second, an employee employed in an “executive, administrative or professional capacity” is specifically exempted from the minimum wage and maximum hour provisions of the FLSA.²¹ You and any other officers/directors of Cedar Acres fall within the purview of this exemption.

Finally, Cedar Acres is an entity that provides a service, solely within the state of Florida, reporting approximately \$35,000 in gross revenues.²² Thus, Cedar Acres does not meet the FLSA’s definition of employers engaged in intrastate commerce, whose gross annual sales total more than \$500,000.²³

8. Where in the ruling are funds provided to pay back the J.S.R. loan?

As staff explained several times over the course of Cedar Acres’ rate case and during the May conference call, the Commission used the Operating Ratio Methodology to calculate Cedar Acres’ revenue requirement in approving Cedar Acres’ rate increase.²⁴ Using the operating ratio methodology to calculate the revenue requirement, the Commission based the Cedar Acres’ revenue requirement on its operating expenses, and allowed Cedar Acres the opportunity to generate the 10% income margin. In Cedar Acres case, applying the operating ratio methodology, rather than applying the rate of return methodology, to calculate the revenue requirement, resulted in a net operating income of \$9,420 versus a net operating income of \$5,606.²⁵

Theoretically, depreciation expense included in a utility’s revenue requirement is designed to recover loan principal expense, and a utility’s rate of return (or operating margin ration) is designed to recover loan interest expense. Therefore, as staff explained, expenses such as the J.S.R. loan, can be paid from Cedar Acres’ net operating income.

Finally, it is not the burden of the customers to bear costs associated with a utility’s poor managerial decisions, such as those which necessitated the intercompany loans to support Cedar Acres’ operations.

²¹ 29 U.S.C. §213(a)(1)

²² See, Cedar Acres, Inc.’s 2008-2014 Annual Reports

<http://www.floridapsc.com/UtilityRegulation/ViewAnnualReport?code=WU917%3bCedar+Acres+Inc>

²³ 29 U.S.C. §203(b) and (s)(1)(A)

²⁴ Order No. PSC-15-0535-PAA-WU, pgs. 11-13.

²⁵ *Id.*, p. 13.

9. Please review that even at 95% (very high) optimal operating level and collection level, with all required new meters. Could Cedar Acres make any profit? Much less the allowed 8%?

As stated above, the Commission based Cedar Acres' revenue requirement on its Operating & Maintenance (O&M) costs, plus a 10% (not 8%) margin, resulting in a net operating income of \$9,420. With regard to the "operating" and "collection" level that you reference, the Commission approved the collection of late payment charges along with disconnection charges and reconnection charges that Cedar Acres should be enforcing for customers who are delinquent in paying their bills, pursuant to Rule 25.30-320, Florida Administrative Code.²⁶ These charges are designed to encourage customers to pay their bills in a timely manner while at the same time, providing a utility with tools and associated revenues when its customers are persistently delinquent.

Sincerely,

/s/ Kelley F. Corbari

Kelley F. Corbari
Senior Attorney

KFC/dml

cc: Office of Commission Clerk (Docket 140217-WU)
Stephanie A. Morse – OPC

²⁶ Order No. PSC-15-0535-PAA-WU, pgs. 19-22.

Attachment

From: davidjsimons@aol.com
To: [Cissy Galloway](mailto:Cissy.Galloway); [Kelley Corbari](mailto:Kelley.Corbari); Davidjsimons@aol.com
Subject: Fwd: Customer Complaint1214002W
Date: Friday, July 08, 2016 11:02:23 AM

-----Original Message-----

From: davidjsimons <davidjsimons@aol.com>
To: kcorbari <kcorbari@psc.state.fl.us>; cgallowa <cgallowa@psc.state.fl.us>; Davidjsimons <Davidjsimons@aol.com>
Sent: Thu, Jul 7, 2016 3:45 pm
Subject: Fwd: Customer Complaint1214002W

Kelley,

Thanks for your e-mail. However, Mr Kroll has already sent his next one. He believes that Cedar Acres should hire some residents. While I am NOT getting paid and the only other administrative employee had their pay cut. Courtesy of the P.S.C.

I still have not received the answers to all of my prior questions. Please consider this my THIRD DATA REQUEST for the remaining questions. I expect to need the answers for the Commission meeting in August.

David J. Simons
Cedar Acres, Inc.

-----Original Message-----

From: jklfl <jklfl@aol.com>
To: davidjsimons <davidjsimons@aol.com>
Cc: carolee.mcreynolds <carolee.mcreynolds@gmail.com>; carolee.mcreynolds <carolee.mcreynolds@gmail.com>; clerk <clerk@psc.state.fl.us>; cmihoff <cmihoff@aol.com>; cmihoff <cmihoff@aol.com>; JDRNCCM0 <JDRNCCM0@gmail.com>; jason.seyfert <jason.seyfert@dep.state.fl.us>; jb524 <jb524@live.com>; jhallens <jhallens@psc.state.fl.us>; sajakg <sajakg@aol.com>; graciesmom42307 <graciesmom42307@yahoo.com>; lauradiscala <lauradiscala@yahoo.com>; manuel.cardona <manuel.cardona@dep.state.fl.us>; merchant.tricia <merchant.tricia@leg.state.fl.us>; norconcolburn <norconcolburn@aol.com>; woods.monica <woods.monica@leg.state.fl.us>
Sent: Thu, Jul 7, 2016 1:35 pm
Subject: Re: Customer Complaint1214002W

Thanks for the DEP info regarding the " buy the book " approach as it pertains to the boil water notice program.

When you refer to the primary & secondary pumps...does that refer to the primary & secondary wells at two different sites ?

On 6-6-16 once the primary pump did not work, why didn't the secondary pump take over as described ?

As the electricity was lost, why didn't the generator take over as described ?

From: [Kelley Corbari](#)
To: "simonsjsr@aol.com"
Subject: FW: 140217-WU Cedar Acres - Information Requested
Date: Tuesday, May 24, 2016 3:36:58 PM
Attachments: [Water Tariff - Cedar Acres \(effective 01-01-2016\).pdf](#)
[Rule 25-30.320 Refusal-Disconnection of Service.pdf](#)
[image002.png](#)

From: Kelley Corbari
Sent: Tuesday, May 24, 2016 3:34 PM
To: 'davidjsimons@aol.com' (davidjsimons@aol.com)
Cc: Keino Young
Subject: 140217-WU Cedar Acres - Information Requested

David and Stayce,

This is to follow up on the conference call with Staff on Tuesday, May 17th and provide you with the information you requested. I apologize for the delay in getting this information to you.

- General Information and Filing Forms:
<http://www.floridapsc.com/WaterWasteWater>

This site is a good resource for Water & Wastewater Utilities. Also, you will find the form and instructions for filing for an “Index and Pass Through” application. Cedar Acres really consider the annual Index and Pass Through every year. As I said during our conversation, there is no filing fee and could assist the utility recover certain costs without having to go through an entire rate case.

- E-Filing Instructions:
<http://www.floridapsc.com/ClerkOffice/EFilingRequirements>
- Utility Reports & Publications:
<http://www.floridapsc.com/Publications/Reports>

This is another really good resource. You can find rate statistics,

utility annual reports, audit reports, etc. If you want to compare the Cedar Acres to other water utilities, you can look at the annual reports of other Class C water utilities. Annual Reports:
<http://www.floridapsc.com/UtilityRegulation/AnnualReport>

- Commission Rules:
<https://www.flrules.org/gateway/ChapterHome.asp?Chapter=25-30>

This is a link to Commission rules on Water & Wastewater. For your convenience, I have attached a copy of the rule on Discontinuation of Service.

- Current Utility Tariff: *(See Attached)*

Note: The Utility is required to have a copy of its tariff for inspection.

- Late Payment Fees and Disconnection Notice: *(See Attached: Rule 25- 30.320 and Utility Tariff)*

- Late Fees:

The Utility's tariff allows for a \$5.00 fee for late payment. If the Utility begins charging the late fee, it should include some kind of statement on customer bills to put customers on notice.

Ex: \$5.00 late payment fee will be assessed for payments received after the due date.

- Disconnection Notice:

I checked with our staff and we do not have an example form of a Disconnection Notice. The Utility will have to draft something.

As long as the notice follows the requirements contained in Rule 25-30.320, it should be sufficient.

A few things to remember before disconnection of service for nonpayment: The Utility must send the delinquent customer written notice at least 5 “working” days prior to disconnection of service. The notice must include the reason for disconnection (ie: nonpayment and the account balance) and date in which service scheduled to be disconnected if payment is not received. Also, notice must include a statement that “persons dissatisfied with the utility’s decision to refuse or discontinue service may register their complaint with the utility’s Customer Relations Personnel and to the Florida Public Service Commission at 1(800) 342-3552”

If you have any other questions, please do not hesitate to contact me or staff.

Sincerely,
Kelley

Kelley F. Corbari,

Senior Attorney – Regulatory Analysis Section

Office of the General Counsel

FLORIDA PUBLIC SERVICE COMMISSION

2540 Shumard Oak Boulevard

Tallahassee, FL 32399-0850

Email: KCorbari@psc.state.fl.us

Direct Phone: (850) 413-6234

Direct Fax: (850) 413-6235



PLEASE NOTE: Florida has a very broad public records law. Most written communications to

or from state officials regarding state business are considered to be public records and will be made available to the public and the media upon request. Therefore, your e-mail message may be subject to public disclosure.

From: davidjsimons@aol.com [<mailto:davidjsimons@aol.com>]
Sent: Tuesday, April 26, 2016 5:05 PM
To: Cissy Galloway; davidjsimons@aol.com
Subject: Re: Cedar Acres - Docket No. 140217-WU

Second Data Request

Cissy,

I have not heard from anyone regarding any of my questions. Please advise when I should anticipate some responses.

I have already left a message for Kelley Corban regarding my FSLA question.

Additionally, I have not received any notice that Cedar Acres is on the May agenda. I have also checked the P.S.C. website and not seen Cedar Acres. It is a bit late for travel plans for an early May meeting.

Yours truly,

David J. Simons

-----Original Message-----

From: Cissy Galloway <CGallowa@PSC.STATE.FL.US>
To: 'davidjsimons@aol.com' <davidjsimons@aol.com>
Cc: Kelley Corbari <KCorbari@psc.state.fl.us>; Bart Fletcher <BFletche@PSC.STATE.FL.US>; Lee Smith <lsmith@psc.state.fl.us>; Andrew Maurey <AMaurey@PSC.STATE.FL.US>; Cheryl Bulecza-Banks <CBulecza@PSC.STATE.FL.US>; Amber Norris <amnorris@psc.state.fl.us>
Sent: Thu, Apr 7, 2016 3:04 pm
Subject: RE: Cedar Acres - Docket No. 140217-WU

Mr. Simons,

Kelley Corbari is the attorney who has been assigned to the Cedar Acres docket. Kelley's phone number is 850-413-6234. To answer the additional questions that you included in your email below will take some time along with research. Staff will try to gather that information for you as best we can and respond in a timely manner.

Thank you for the information regarding the escrow account,

Cissy Galloway

Cecilia C. Galloway

Public Utility Analyst
Florida Public Service Commission
2540 Shumard Oak Boulevard

Tallahassee, FL 32399-0850
Tel: (850) 413-6922 Fax: (850) 413-6923
Email: CGallowa@psc.state.fl.us

From: davidjsimons@aol.com [<mailto:davidjsimons@aol.com>]
Sent: Thursday, April 07, 2016 2:51 PM
To: Cissy Galloway; Davidjsimons@aol.com
Subject: Fwd: Cedar Acres - Docket No. 140217-WU

-----Original Message-----

From: davidjsimons <davidjsimons@aol.com>
To: Davidjsimons <Davidjsimons@aol.com>; tom.gustafson <tom.gustafson@frwa.net>
Sent: Wed, Apr 6, 2016 2:56 pm
Subject: Re: Cedar Acres - Docket No. 140217-WU

Cissy,

I have set up the escrow account, as per the ruling at B. B. & T.

Please advise me who is the PSC legal counsel? I understand Leslie Ames has moved on.

Please ask the new counsel to reconcile the PSC ruling re: Cedar Acres with the FSLA in regards to the directors and myself.

Additionally, would you answer the following questions for a utility of Cedar Acres size?

- 1) What is the average staff level of the Utility?
- 2) What is the average staff and officer expense, including salary, bonus, pension, etc.?
- 3) What is the average manager salary, including pension, etc.?
- 4) What is the average utility president's compensation?
- 5) What is the average director's compensation?
- 6) Has the PSC ever reduced officer compensation to 0 and still required them to work?
- 7) Where in the ruling are funds provided to pay back the J.S.R. loan?

Lastly, please review that even at 95% (very high) optimal operating level and collection level, with all required new meters, Could Cedar Acres make any profit? Much less the allowed. 8%?

Yours truly,

David J. Simons

-----Original Message-----

From: Cissy Galloway <CGallowa@PSC.STATE.FL.US>
To: 'davidjsimons@aol.com' <davidjsimons@aol.com>

Cc: Bart Fletcher <BFletche@PSC.STATE.FL.US>; Cheryl Bulecza-Banks
<CBulecza@PSC.STATE.FL.US>; Jerry Hallenstein <JHallens@PSC.STATE.FL.US>; Kelley Corbari
<KCorbari@psc.state.fl.us>

Sent: Tue, Feb 9, 2016 3:12 pm

Subject: FW: Cedar Acres - Docket No. 140217-WU

Good Afternoon Mr. Simons,

You should be setting up an escrow account soon with your bank, as directed by Order No. PSC-15-0535-PAA-WU, issued November 19, 2015. Attached is an example of an Escrow Agreement. Please let our office know if you have any questions.

Sincerely,

Cissy Galloway

Cecilia C. Galloway

Public Utility Analyst

Florida Public Service Commission

2540 Shumard Oak Boulevard

Tallahassee, FL 32399-0850

Tel: (850) 413-6922 Fax: (850) 413-6923

Email: CGallowa@psc.state.fl.us