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Sent: Monday, November 05, 2012 2:16 PM
To: Filings@psc.state.fl.us
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Subject: E-filing (Dkt. No. 110200-WU)
Attachments: 110200. Second Motion to Compel.FINAL..pdf

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 110200-WU

In re: Application for increase in water rates in Franklin County by Water Management Services, Inc.

c. Document being filed on behalf of Office of Public Counsel

d. There are a total of 7 pages.

e. The document attached for electronic filing is 110200.Second Motion to Compel.pdf

Thank you for your attention and cooperation to this request.

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DOCUMENT NUMBER-DATE

07468 NOV-5 2012

FPSC-COMMISSION CLERK

11/5/2012

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for increase in water rates in)
Franklin County by Water Management)
Services, Inc.)

Docket No: 110200-SU

Filed: November 5, 2012

SECOND MOTION TO COMPEL DISCOVERY RESPONSES

The Citizens of the State of Florida, through the Office of Public Counsel, file this Motion to Compel Discovery Responses pursuant to Rule 28-106.206, Florida Administrative Code. In furtherance thereof states:

1. On November 7, 2011, Water Management Services, Inc. ("WMSI" or "Utility") filed its Application for an increase in water and wastewater rates and the Application was processed using the Proposed Agency Action ("PAA") pursuant to Section 367.081(8), Florida Statutes ("F.S.").

2. The intervention of the Office of Public Counsel ("Citizens" or "OPC") on behalf of the WMSI customers was acknowledged by Order No. PSC-12-0034-PCO-WS, issued January 23, 2012.

3. On August 22, 2012, the Florida Public Service Commission ("Commission") issued PAA Order No. PSC-12-0435-PAA-WU ("PAA Order") and on September 11, 2012, the Commission issue an Amendatory Order No. PSC-12-0435A-PAA-WU.

4. On September 12, 2012, OPC filed a Petition protesting portions of the PAA Order and requested an administrative hearing on certain issues of disputed material fact. Those issues of disputed material fact relate to (a) the prudence of Cash Advances to WMSI's President and Associated Companies - Account 123 and whether it adversely impacted the Utility's access to funds for utility expenses; (b) Previously Authorized Rate Case Expense by Order No. PSC-11-0011-SC-WU in the last case and whether the Utility's non-payment and/or slow payment is contrary to the statutory intent of Sections 367.081(7) and 367.0816, F.S.; (c) Timing and amount of Service Availability Charges.

DOCUMENT NUMBER DATE

07468 NOV-5 12

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established by the PAA Order, and (d) remaining amount of Unamortized Gain on Sales calculated by Order No. PSC-11-0011-SC-WU that apparently was not addressed in the PAA Order.

5. On September 19, 2012, WMSI filed a Cross-petition for formal hearing protesting certain issues in the PAA Order.

6. On October 3, 2012, Order No. PSC-12-0526-PCO-WU establishing procedure (“OEP”) was issued, setting forth controlling dates, discovery procedures, and other hearing procedures.

7. On October 12, 2012, Citizens propounded its Second Set of Interrogatories (Nos. 17-24) and Second Request for Production of Documents (Nos. 37-42). On October 22, 2012, WMSI objected to answering Interrogatories Nos. 17, 20, 21, 23 subparts a) through d), and No. 24; and responding to Request for Production Nos. 37 subparts a), c), d), and e), and Nos. 38, 39, 40, and 41.¹

8. OPC asserts that the responses to each of the Interrogatories and Request for Production of Documents (as identified below) are relevant to issues protested by OPC or the Utility.

ARGUMENTS IN FAVOR OF COMPELLING DISCOVERY

9. This motion to compel will summarize each Interrogatory and Request for Production to which the Utility objected, set forth the Utility’s objections, and state with reasons the response or documents must be compelled:

GENERAL REMARKS

OPC adopts its general remarks regarding metadata as set forth in OPC’s First Motion to Compel filed on October 31, 2012.

¹ On November 1, 2012, OPC filed a notice of withdrawal for Interrogatory No. 20, No. 21, and No 24, as well as withdrawal of Request for Production of Documents No. 37 c), d), and e), and No. 38.

SEPCIFIC ARGUMENTS

COMPELLING INTERROGATORY NOS. 17 AND 23

Interrogatory No. 17.² **OPC is seeking relevant information about transportation expenses, an issue which the Utility protested.**

Utility Objection: No 2011 amounts were used for adjustments, so this question seeks a response that is neither relevant to the issues in dispute in this action nor reasonably calculated to lead to the discovery of admissible evidence.

Reason to compel response: The Utility protested transportation expense, opening the door to discovery related to the Utility's protested issue. At the time OPC served its second set of discovery, the Utility had not filed its testimony. If there were no 2011 amounts used for adjustments, then the Utility should so state by responding to OPC's interrogatory and attest to the veracity of it by affidavit.

Interrogatory No. 23.³ **OPC is seeking information about a fact witness which OPC is scheduled to depose on November 6, 2012, and his relationship to the Utility.**

Utility Objection: This question seeks a response that is neither relevant to the issues in dispute in this action nor reasonably calculated to lead to the discovery of admissible evidence. Mr. Mitchell's services are not among the issues protested by either party.

² Interrogatory No 17. Adjustments. OPC Request for Production of Documents No. 37 requests all calculations, basis, work papers, and support documentation for each of the adjustments reflected on Schedule B-3, pages 2 and 3, for each of the protested expense accounts. (These accounts include: Salaries and Wages, Accounting Services Expense, Transportation Expense, Miscellaneous Expenses.) Please provide explanations for each of the 2011 amounts that were used and how these were determined.

³ Interrogatory No 23. Account 123. With regards to Mr. Bob Mitchell who previously served as the controller to WMSI, Brown Management Group, and/or other entities owned or controlled by Mr. Gene Brown, please state the following:

- a) Describe the duties of Mr. Mitchell and what services he provides.
- b) Describe when Mr. Mitchell started working for or providing those services.
- c) Describe whether Mr. Mitchell currently provides those services.
- d) If Mr. Mitchell no longer provides those services, please explain when and why he no longer provides those services.

Reason to compel response: In the last rate case, Mr. Brown testified that Mr. Mitchell was the controller. As controller, Mr. Mitchell presumably has insight into the financial operations of Mr. Brown's various enterprises including the Utility and Brown Management Group, and is familiar with the Utility's decision to transfer funds back and forth through Account 123. OPC is seeking this background information in preparation for the deposition; however, if this information is obtained by deposition, OPC will withdraw its request to compel this response.

COMPELLING REQUEST FOR PRODUCTION NOS. 37 A) AND NOS. 39, 40, AND 41

Request for Production No. 37 a)⁴ **OPC is seeking relevant documents related to transportation expenses, an issue which the Utility protested.**

Objection. The Utility did not use any 2011 amounts as adjustments, thus, this request seeks documents that are neither relevant to the issues in dispute in this action nor reasonably calculated to lead to the discovery of admissible evidence.

Reason to compel response: The Utility protested transportation expense, opening the door to discovery related to the Utility's protested issue. At the time OPC served its second set of discovery, the Utility had not filed its testimony. If there were no 2011 amounts used for adjustments, then the Utility should state there are no documents responsive to this request.

⁴ Request for Production No. 37. Adjustments. Please provide all calculations, basis, work papers, and support documentation for each of the adjustments reflected on Schedule B-3, pages 2 and 3, for each of the protested expense accounts. (These accounts include: Salaries and Wages, Accounting Services Expense, Transportation Expense, Miscellaneous Expenses.) Please provide all electronic versions of any of the calculations, basis, and/or work papers. Please provide the following documents that support these adjustments.

a. Invoices supporting 2011 amounts used as a basis for the adjustment

**Request for Production
Nos. 39,⁵ 40, and 41**

**OPC is seeking relevant documents related to the issue of prior
authorized rate case expense, an issue which OPC protested.**

Objection. The PAA rate case expense is not an issue protested by either party, thus, this request seeks documents that are neither relevant to the issues in dispute in this action nor reasonably calculated to lead to the discovery of admissible evidence. The Utility will produce documents from the date of OPC's protest of the PAA order.

Reason to compel response: Neither OPC or the Utility contested the amount of PAA rate case expense approved by the PAA order. By this discovery, OPC is not seeking to contest the amount of PAA rate case expense approved by the Commission. However, OPC has protested the issue of previously authorized rate case expense because the Utility has failed to make timely payments to its attorneys and consultants in the last rate case. OPC is seeking to determine whether the Utility is making payments required under engagement letters from its law firm, engineer, and accountant for services rendered during the PAA portion of the rate case. If the Utility is behind on making payments required under the engagement letters for the current PAA rate case, then that buttresses OPC's issue protesting previously authorized rate case expense.

* * * * *

10. This concludes OPC's arguments in favor of compelling discovery. Without the interrogatory responses or actual documents, OPC will be severely prejudiced in pursuing the resolution of the issues protested by OPC on behalf of WMSI's Customers.

RELIEF REQUESTED

11. OPC respectfully requests that WMSI be compelled to respond to the Second Set of Interrogatories and Second Request for Production of Documents as described herein. Further, OPC

⁵ Request for Production No. 39. Rate Case Expense. Please provide copies of all engagement letters, payment arrangements, and payments made to date with the various law firms the Utility engaged for the current rate case from the date the test-year letter was filed through October 31, 2012. Request for Production No. 40 relates to accounting firms, and Request for Production No. 41 relates to engineering consultants.

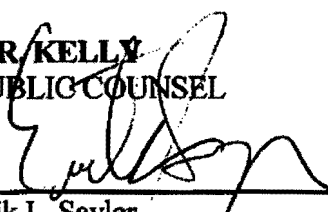
asks that the Utility be required to provide all responses to OPC (either scanned to disk or hardcopy) instead of making the documents available for inspection and copying at the offices of the Utility's law firm. Producing documents in such manner at the Utility's law firm only adds unnecessary delay and hardship to OPC in preparing its case.

12. Further, given the extremely limited time period remaining in which OPC has to prepare and prefile testimony on November 26, 2012 in support of its protested issues, should OPC's motion to compel be granted, in full or in part, OPC requests leave to prefile supplemental direct testimony based upon the discovery compelled by this Commission at a date to be established by any Order on this motion to compel. OPC seeks a minimum of 20 to 30 days in which to file any such supplemental direct testimony based upon the compelled discovery.

13. Further, in accordance with Rule 28-106.204(3), Florida Administrative Code, OPC consulted with Counsel for WMSI prior to the filing of this motion to compel and WMSI opposes the relief sought herein.

WHEREFORE, the Office of Public Counsel, on behalf of the customers of WMSI, respectfully requests this Second Motion to Compel Discovery Responses be granted.

J.R. KELLY
PUBLIC COUNSEL



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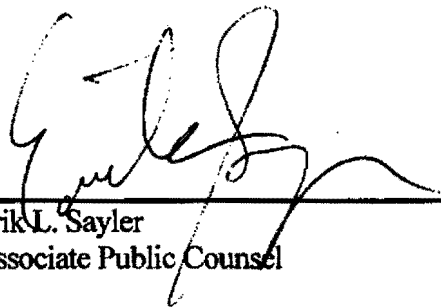
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Office of Public Counsel **SECOND MOTION TO COMPEL DISCOVERY RESPONSES** has been furnished by electronic mail and U.S. Mail to the following parties on this 5th day of November, 2012, to the following:

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