

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-WU
ORDER NO. PSC-12-0620-PCO-WU
ISSUED: November 19, 2012

ORDER DENYING WATER MANAGEMENT SERVICES, INC.'S
MOTION TO DISMISS

On November 7, 2011, Water Management Services, Inc. (WMSI or Utility) filed its application for increased water rates for its water system located on St. George Island in Franklin County. On January 23, 2012, the Commission issued Order No. PSC-12-0034-PCO-WS, acknowledging the Office of Public Counsel's (OPC) intervention in this docket. By Order No. PSC-12-0435-PAA-WU (PAA Order), issued August 22, 2012, the Commission approved rates that were designed to generate a total water revenue requirement of \$1,811,648.

On September 12, 2012, OPC timely filed a protest of portions of the PAA Order. On September 19, 2012, WMSI timely filed a cross-petition to protest the PAA Order pursuant to Rule 25-22.029(3), Florida Administrative Code (F.A.C.). On October 30, 2012, WMSI filed a Motion to Dismiss Office of Public Counsel's Petition Protesting Portions of Proposed Agency Action and a request for oral argument. OPC filed its response to the Motion to Dismiss and a response in opposition to the request for oral argument on November 5, 2012.

The function of a motion to dismiss is to raise as a question of law the sufficiency of the facts alleged in a complaint to state a cause of action. Varnes v. Dawkins, 624 So. 2d 349 (Fla. 1st DCA 1993). The standard to be applied is whether, with all factual allegations in the petition taken as true and construed in the light most favorable to the petitioner, the petition states a cause of action upon which relief may be granted. See id. at 350. It is long established that, in determining the sufficiency of a complaint, the trial court may not look beyond the four corners of the complaint, consider any affirmative defenses raised by the defendant, nor consider any evidence likely to be produced by either side. Henderson v. Johnson, 97 So. 3d 946 (Fla. 1st DCA 2012).

WMSI argues in its Motion to Dismiss that OPC has no standing to protest the PAA Order because it does not represent any customers of the Utility. Additionally, the Motion to Dismiss consists of a recitation of facts concerning OPC's contacts with certain customers of the Utility, allegations regarding OPC's communications with banking personnel, and allegations concerning negotiations for the sale of the Utility and for obtaining a loan. None of the factual allegations cited by WMSI in its Motion to Dismiss are in OPC's protest or are contained in the record of these proceedings.

In its response, OPC cited its authority under Section 350.0661(3), Florida Statutes (F.S.), and the Court's discussion regarding OPC's role in Citizens of Florida v. Mayo, 333 So. 2d 1, (Fla. 1976). OPC argued that it has a statutory duty "to provide legal representation for the

DOCUMENT NUMBER-DATE

07734 NOV 19 2012

FPSC-COMMISSION CLERK

people of the state in proceedings before the commission.” Section 350.0661, F.S. OPC further argued that it is authorized to appear “in any proceeding in which he or she has participated as a party, to seek review of any determination, finding, or order of the commission or the counties, or of any hearing examiner designated by the commission or the counties, in the name of the state or its citizens.” Section 350.0661(3), F.S.

Ruling

Pursuant to Section 350.0611(3), F.S., OPC, in the name of the state or its citizens, has the statutory authority to seek review of “any determination, finding or order of the Commission” in any proceeding in which OPC has participated as a party. Section 120.52(13)(b), F.S., defines party as any other person who, as a provision of statute, is entitled to participate in whole or in part in the proceeding and who makes an appearance as a party. Therefore, OPC, by virtue of its statutory authority, is a party in these proceedings. WMSI’s Motion to Dismiss fails to show that OPC lacks standing in this action.

In addition, the recitation of alleged facts in WMSI’s Motion to Dismiss concerning the bank communications goes beyond the four corners of OPC’s protest, and thus does not constitute grounds for dismissal.


While WMSI requested oral argument on its Motion to Dismiss, oral argument is deemed to not be necessary, pursuant to the authority granted to the Prehearing Officer in Rule 25-22.0022(3), F.A.C.

For the above stated reasons, WMSI’s Motion to Dismiss is hereby denied.

Based on the foregoing, it is

ORDERED by Commissioner Julie I. Brown, as Prehearing Officer, that the Motion to Dismiss filed by Water Management Systems, Inc. is hereby denied, as set forth herein.

By ORDER of Commissioner Julie I. Brown, as Prehearing Officer, this 19th day of
November, 2012.



JULIE I. BROWN
Commissioner and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

MFB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.