

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 110200-WU

In the Matter of:

APPLICATION FOR INCREASE IN
WATER RATES IN FRANKLIN COUNTY
BY WATER MANAGEMENT SERVICES, INC.

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COMMISSION
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PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONER
PARTICIPATING: COMMISSIONER JULIE I. BROWN
PREHEARING OFFICER

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

TIME: Commenced at 10:00 a.m.
Concluded at 10:47 a.m.

DATE: Wednesday, January 9, 2013

REPORTED BY: LINDA BOLES, CRR, RPR
Official FPSC Reporter
(850) 413-6734

1 APPEARANCES:

2 MARTIN S. FRIEDMAN, ESQUIRE, Sundstrom,
3 Friedman & Fumero, LLP, 766 North Sun Drive, Suite
4 4030, Lake Mary, Florida 32746, appearing on behalf
5 of Water Management Services, Inc.

6 J.R. KELLY, PUBLIC COUNSEL, and ERIK L.
7 SAYLER, ESQUIRE, Office of Public Counsel, c/o The
8 Florida Legislature, 111 West Madison Street, Room 812,
9 Tallahassee, Florida 32399-1400, appearing on behalf of
10 the Citizens of the State of Florida.

11 MARTHA BARRERA and MICHAEL LAWSON, ESQUIRES,
12 FPSC General Counsel's Office, 2540 Shumard Oak
13 Boulevard, Tallahassee, Florida 32399-0850, appearing on
14 behalf of the Florida Public Service Commission Staff.

15 MARY ANNE HELTON, DEPUTY GENERAL COUNSEL,
16 Florida Public Service Commission, 2540 Shumard Oak
17 Boulevard, Tallahassee, Florida 32399-0850, Advisor to
18 the Florida Public Service Commission.

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P R O C E E D I N G S

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2 **COMMISSIONER BROWN:** Good morning, everybody.
3 I hope you all are doing well this beautiful Tallahassee
4 day. This will commence the Prehearing Conference in
5 Docket Number 110200, application for increase in water
6 rates in Franklin County by Water Management Services,
7 Inc.

8 Staff, can you please read the notice at this
9 time?

10 **MS. BARRERA:** Commissioner, pursuant to
11 notice, this time and place has been scheduled for the
12 purpose of conducting a Prehearing Conference in Docket
13 Number 110200-WU. The purpose of the Prehearing
14 Conference is set forth more fully in the notice.

15 **COMMISSIONER BROWN:** Thank you. And I'll take
16 appearances at this time, starting with my left,
17 Mr. Friedman.

18 **MR. FRIEDMAN:** Yes. Martin Friedman with the
19 law firm of Sundstrom, Friedman & Fumero. We represent
20 Water Management Services, Inc. Also with me is
21 Mr. Gene Brown, who's the principal.

22 **COMMISSIONER BROWN:** Thank you. Office of
23 Public Counsel?

24 **MR. SAYLER:** Erik Sayler on behalf of the
25 Office of Public Counsel. With me today is Mr. J. R.

1 Kelly.

2 **COMMISSIONER BROWN:** Thank you. And staff.

3 **MS. BARRERA:** Martha Barrera on behalf of the
4 staff.

5 **COMMISSIONER BROWN:** Thank you.

6 **MR. LAWSON:** Mike Lawson.

7 **MS. HELTON:** Mary Anne Helton, advisor to the
8 Commission.

9 **COMMISSIONER BROWN:** Thank you. Moving right
10 along, staff, are there any preliminary matters that
11 need to be addressed at this time?

12 **MS. BARRERA:** At this time staff knows of no
13 preliminary matters, although the Commissioner may wish
14 to confirm with the parties. If they reference pending
15 procedural confidentiality matters, those are addressed
16 later in the Prehearing Order.

17 **COMMISSIONER BROWN:** Thank you. And I'll
18 confirm with the parties, are there any preliminary
19 matters that need to be addressed at this time?

20 **MR. FRIEDMAN:** We have some -- a pending
21 motion for confidentiality. But other than that -- and
22 once -- you know, some issues when we get through to the
23 discussion of the issues and the presentation of
24 witnesses, I have some comments on that.

25 **COMMISSIONER BROWN:** Certainly.

1 **MR. SAYLER:** No preliminary matters that OPC
2 is aware of.

3 **COMMISSIONER BROWN:** Thank you.

4 Okay. At this time let's go through the draft
5 Prehearing Order. I'll identify the sections, and I
6 want the parties to let me know if there are any
7 corrections or changes that need to be made. I'd like
8 to go a little quickly through the issues that I think
9 the parties are comfortable with, but please speak up if
10 there are any changes or corrections.

11 Staff?

12 **MS. BARRERA:** Section I, case background, we
13 don't have any changes.

14 Oh, okay. I'm sorry.

15 **COMMISSIONER BROWN:** Section I, case
16 background.

17 Section II, conduct of proceedings.

18 **MS. BARRERA:** Sorry. No changes.

19 **COMMISSIONER BROWN:** Thank you. Section III,
20 jurisdiction.

21 **MS. BARRERA:** No changes.

22 **COMMISSIONER BROWN:** Section IV, procedure for
23 handling confidential information.

24 **MS. BARRERA:** No changes.

25 **MR. SAYLER:** No change, Commissioner Brown. I

1 just had a question about handling some confidential
2 information at the hearing. If we were to produce an
3 additional exhibit that's subject to a confidential
4 request, then we would certainly comply with all this.

5 Our question is related to the three
6 confidential exhibits attached to Mr. Schultz's
7 testimony. If we plan to ask cross-examination at the
8 hearing, shall we bring those with us? Because it was
9 our understanding that it was filed with the Clerk's
10 office and that there is a record copy. And if there is
11 no questions to be asked by that, do we still need to
12 bring those, or is that something staff was planning to
13 bring?

14 **COMMISSIONER BROWN:** Jennifer, Ms. Crawford.

15 **MR. CRAWFORD:** Excuse me. Jennifer Crawford
16 for legal staff. We were actually going to address this
17 later in Section V, I believe, of the order. But, yes,
18 the OEP is, is clear that when confidential information
19 is used in the hearing, parties must have copies for the
20 Commissioners, necessary staff, and the court reporter
21 in red folders clearly marked with the nature of the
22 content.

23 So any confidential exhibit, whether it's
24 prefiled or whether it's going to be used on
25 cross-examination, if it is confidential in nature, it

1 is the party or, if staff is presenting it, staff's
2 responsibility to make sure there are sufficient copies
3 highlighted, appropriately marked, appropriately kept in
4 red folders. And they will be responsible, whether it's
5 the parties or the staff proffering the exhibit, to
6 maintain and keep track of those exhibits at the
7 hearing.

8 **MR. SAYLER:** All right. Thank you for that
9 clarification.

10 **COMMISSIONER BROWN:** Thank you. Moving along,
11 Section V, prefiled testimony and exhibits, witnesses.

12 **MS. BARRERA:** Yes, Commissioner. Staff would
13 like to note that WMSI's prehearing statement states
14 WMSI reserves the right to present additional witnesses
15 to address issues which have not been previously raised
16 by the parties, the Commission staff, or the Commission.
17 Staff's response is that all issues should finalize as
18 of the Prehearing Conference per the OEP. And, further,
19 the OEP requires each party to prefile writing all
20 testimony and exhibits that it intends to sponsor.

21 The Commissioner may wish to clarify whether
22 WMSI intends to sponsor any additional witnesses. Staff
23 recommends that doing so would be inappropriate.

24 **COMMISSIONER BROWN:** Correct. Does, does WMSI
25 intend to sponsor any additional witnesses?

1 **MR. FRIEDMAN:** No, we do not.

2 **COMMISSIONER BROWN:** Thank you. Moving along.

3 **MR. FRIEDMAN:** But if this is the appropriate
4 place, I do want to express my objection to the hearing,
5 customer testimony, since quality of service is not an
6 issue in the case. And I don't know whether you want me
7 to address that now or at some other point.

8 **MR. CRAWFORD:** There's really not a specific
9 point in the Prehearing Order that lends itself to
10 making that objection. But if Mr. Friedman wants to
11 register a brief, succinct objection on that, that's
12 fine.

13 **COMMISSIONER BROWN:** At this time.

14 **MR. CRAWFORD:** You can either register it for
15 the purposes of the record, or if you would like staff
16 to respond, we're prepared to do so.

17 **COMMISSIONER BROWN:** Okay. I think it would
18 be appropriate at this time if you'd like to raise that
19 objection.

20 **MR. FRIEDMAN:** Yes. Thank you very much.

21 I understand that, that the, that customers
22 will be offered an opportunity to testify as, as, at
23 10:00 in the morning, again at 6:00 at night in this
24 case.

25 And as you recall, quality of service is not

1 an issue in this case. Everybody has stipulated that
2 the quality of service is satisfactory. And pursuant to
3 Chapter 120.659(2)(g), irrelevant and immaterial
4 evidence shall be excluded; not may, shall be excluded.
5 So it's our position that there's no relevant testimony
6 that can be provided by any of the customers. And if
7 they have technical testimony, they should have prefiled
8 it.

9 I do recognize that 120.57(1)(b), small b,
10 does provide that, when appropriate, the general public
11 may be given an opportunity to present testimony.
12 Again, I don't see any issue that would make it
13 appropriate for customers to testify. If they're just
14 going to come in and say we don't want our rates
15 increased, that's not relevant testimony. If they're
16 going to come in and say Public Counsel told us Gene
17 Brown stole a million two of our money, that's not
18 relevant testimony.

19 And so I'm going to object, as I will at the
20 hearing, to, to any customer testimony since there are
21 no issues on which those customers can testify that is
22 relevant or material. Thank you.

23 **COMMISSIONER BROWN:** Thank you. And, staff,
24 before I get to you, I'd like to hear from Office of
25 Public Counsel, if you would care to respond.

1 **MR. SAYLER:** Our office is in favor of
2 customers being able to provide public testimony to
3 these issues that are raised in this case. And the
4 Commission, as often they can do, they can give it the
5 weight that it's due. But we fully support the
6 participation of customers.

7 I have personally met with customers on the
8 island and know that a number of them are interested in
9 attending that meeting and providing testimony. What
10 they'll testify to, I don't know. I've encouraged them
11 to stick to the issues that have been protested and only
12 those issues. And if they want to give kudos to the
13 utility for the good quality of service, they can
14 certainly do that, so.

15 **COMMISSIONER BROWN:** Thank you. I don't know
16 if I necessarily need to hear from staff, but you can go
17 --

18 **MR. CRAWFORD:** We're happy to speak, if you'd
19 like. If you simply want to register the objection,
20 that's fine as well.

21 **COMMISSIONER BROWN:** I will -- proceed.

22 **MR. CRAWFORD:** Certainly. It is actually my
23 experience in water and wastewater matters a more
24 unusual circumstance not to hear customer testimony. It
25 does sometimes happen when the issue is extremely

1 limited, narrow, an accounting issue, something like
2 that. But it is by far and large much more common for
3 us to travel to the service area for water and
4 wastewater cases and to hear from customers, and I do
5 believe it is appropriate in this matter.

6 It is quite correct that while quality of
7 service was not protested, there are a number of issues
8 at -- live for hiring. And as the members who are going
9 to be responsible ultimately for paying the company's
10 rates, it seems illogical to me that customers shouldn't
11 be afforded the opportunity to present any evidence they
12 believe is useful or helpful to the Commission in making
13 its decision.

14 True, customers do sometimes offer up
15 information that may not be a specific protested issue.
16 But as OPC has mentioned, customer testimony is always
17 given the weight it's due, as is all evidence presented
18 in PSC hearings, whether it's at the customer testimony
19 portion, whether it's in the technical portion. And so
20 if irrelevant information is provided, then it does not
21 need to be strictly considered. But I do believe it is
22 absolutely appropriate to hear from customers.

23 Customers ultimately are going to be the ones
24 affected by the utility's request, and it is my
25 recommendation that there is no error or difficulty in

1 allowing customers to testify.

2 **COMMISSIONER BROWN:** Thank you, Ms. Crawford.
3 And I will note the objection, but I -- actually OPC
4 took the words right out of my mouth. We typically give
5 the weight of the testimony that it's due. Sometimes we
6 hear irrelevant testimony, but that's always -- we need
7 to give them an opportunity, and I would support
8 customer testimony at the hearing. We don't know what
9 they're going to say or testify to. But the objection
10 is noted.

11 Are we done -- are we finished with Section V?

12 **MS. BARRERA:** Yes, we are.

13 **COMMISSIONER BROWN:** Okay. Moving along.
14 Section VI, order of witnesses. Is there any interest
15 from the parties in taking WMSI witnesses Allen or
16 Guastella's direct and rebuttal together?

17 **MR. FRIEDMAN:** Yes. Yes. I do object to
18 that.

19 **COMMISSIONER BROWN:** Okay. I guess we will
20 not do that.

21 Can any witnesses be stipulated?

22 **MS. BARRERA:** At this time there appear to be
23 none. If witnesses can be stipulated, staff will note
24 that it will check with the other Commissioners to see
25 if they have questions for those witnesses. If the

1 other Commissioners don't have questions, then the
2 witnesses may be excused from the hearing and their
3 testimony and exhibits entered into the record at the
4 hearing as though read.

5 **MR. SAYLER:** Excuse me. Commissioner Brown,
6 we are still reviewing whether we have any questions for
7 Witness Guastella or Allen. We certainly will have for
8 Mr. Brown. And if that's the case, we might be willing
9 to stipulate to those witnesses. I, I can't speak on
10 behalf of staff, or maybe the utility still would like
11 to bring those witnesses to the hearing just so that
12 their summaries can be heard, which has been done in
13 other cases. But at this time we might be willing to
14 stipulate to one or both. We're just evaluating it and
15 we will let the parties know as soon as we've made a
16 decision.

17 **COMMISSIONER BROWN:** Okay.

18 **MR. CRAWFORD:** Commissioner Brown, if I may.

19 **COMMISSIONER BROWN:** Uh-huh.

20 **MR. CRAWFORD:** Does Public Counsel have an
21 estimate by which time it'll complete its analysis and
22 would be able to inform us whether they can stipulate to
23 those witnesses?

24 **MR. SAYLER:** Close of business tomorrow.

25 **MR. CRAWFORD:** That would be excellent. Thank

1 you.

2 **COMMISSIONER BROWN:** Great.

3 **MR. FRIEDMAN:** I mean, obviously we have --
4 if, if those witnesses are not expected to attend, we
5 have some logistics issues obviously since Mr. Guastella
6 is traveling from out of town. So the sooner we would
7 know that, the better.

8 **COMMISSIONER BROWN:** Okay. We will -- our
9 staff will be in touch with you by -- if Office of
10 Public Counsel gets in touch with you by the close of
11 business tomorrow, when can staff be prepared?

12 **MR. SAYLER:** We can move it to 3:00, if that
13 would be easier, because business hours usually end at
14 close of business.

15 **MR. CRAWFORD:** That would be helpful. And in
16 addition in anticipation that these witnesses may
17 stipulate, we can actually start the process today to
18 talk to the members of the panel and see whether they
19 would have any objection should those witnesses be
20 offered up for stipulation.

21 **COMMISSIONER BROWN:** Great. Thank you.

22 Okay. Moving along to Section VII, basic
23 positions. Any changes or corrections?

24 **MS. BARRERA:** VII, basic positions. No, we
25 don't have any changes.

1 **COMMISSIONER BROWN:** Okay.

2 **MR. SAYLER:** None for OPC.

3 **MR. FRIEDMAN:** I'm sorry.

4 **COMMISSIONER BROWN:** We're on the basic --
5 Section VII, basic positions. Any changes or
6 corrections?

7 **MR. FRIEDMAN:** We have none.

8 **COMMISSIONER BROWN:** Okay. Thank you.

9 At this juncture we're going to move to
10 Section VIII, which is issues and positions, and we'll
11 go through issues and positions and see if there are any
12 changes or corrections, which I know there is a couple
13 of issues that have objections by the parties. But I
14 will start off with staff.

15 **MS. BARRERA:** The OEP requires that a party
16 take a position at the Prehearing Conference unless good
17 cause is shown as to why that party cannot take a
18 position at this time.

19 Staff will note that discussion is expected on
20 Issues 9A and 10. Parties have reached -- and 15. The
21 parties have raised, have stipulated to Issue 15, which
22 we can announce at that time. And depending upon the
23 resolution of those issues, staff will request that any
24 revised positions will be provided by no later than
25 close of business today. Otherwise, the Prehearing

1 Order will reflect no position for the parties on that
2 issue.

3 **COMMISSIONER BROWN:** Okay. Thank you. I'm
4 going to go through Issues 1 through 8. Are there any
5 changes or corrections?

6 **MS. BARRERA:** There's no changes.

7 **COMMISSIONER BROWN:** OPC?

8 **MR. SAYLER:** None that we're aware of.

9 **COMMISSIONER BROWN:** Mr. Friedman.

10 **MR. CRAWFORD:** Staff could note that some
11 revised language has been provided and incorporated from
12 the parties. If parties are uncertain at this time
13 whether the draft correctly and fully incorporates those
14 changes, they can certainly get with me by day's end to
15 just, subject to check, make sure that's all correct.

16 **MR. FRIEDMAN:** Yes.

17 **COMMISSIONER BROWN:** Okay. Yes?

18 **MR. FRIEDMAN:** Yes.

19 **COMMISSIONER BROWN:** Yes, there are changes to
20 issues --

21 **MR. FRIEDMAN:** No, I do not believe there are
22 any changes to, to those 1 through 8.

23 **COMMISSIONER BROWN:** Okay. Thank you.

24 **MR. FRIEDMAN:** There certainly isn't on the
25 issue itself.

1 **COMMISSIONER BROWN:** Uh-huh. All right.

2 Moving to Issue 9, any changes or corrections?

3 **MS. BARRERA:** This issue is -- 9A is proposed
4 by OPC --

5 **COMMISSIONER BROWN:** I'm at 9.

6 **MS. BARRERA:** Yeah. There is -- we delineated
7 9 and 9A. 9, there's -- OPC has raised the issue and
8 they are proposing separate language. Staff prefers the
9 issue be worded as the language in Issue 9.

10 **COMMISSIONER BROWN:** Okay. At this time I'd
11 like a brief statement from Office of Public Counsel
12 about why it feels that 9A should be separated from
13 Issue 9.

14 **MR. SAYLER:** Okay. Thank you, Commissioner
15 Brown.

16 In our protest of -- excuse me. 9A is really
17 a money issue. The amortization of the gain on sale in
18 the last rate case was found by this Commission and
19 ordered to be amortized to the benefit of the ratepayers
20 for five years. It's our thought that that amortization
21 should have started, and it did start in rates after
22 January 3rd, 2011. And our position is that it should
23 have been carried forward for five years. And at this
24 time, with the revision in the PAA order, it did not
25 pick up or carry forward the remaining balance of that

1 amortization, which is about \$50,000 a year, which would
2 go to the benefit of the customers to reduce their
3 rates. And assuming we win this issue, would
4 substantially pay for a lot of the rate case expense
5 that is being incurred by the customers in the pursuit
6 of this protest.

7 In addition to that, I would like to note that
8 the First District Court of Appeal approved the
9 Commission's rationale for finding it, that it was
10 appropriate to find a gain on sale, and as such that is
11 the law of the case, and that's what we believe should
12 be carried forward. And we believe by phrasing it how
13 should, as the staff is recommending, how should a net
14 gain on sale of land and other assets be treated, our
15 argument would get lost in it.

16 I know staff, and I've said it when I was on
17 staff, that those issues could be subsumed or argued
18 under that. But my concern is that, you know, that's
19 not the issue we protested. In our protest that we
20 filed with this Commission, we specifically said
21 unamortized gains on sale. By Order Number
22 PSC-11-0010-SC-WU issued January 3rd, 2011, in the
23 utility's last rate case, the Commission found that the
24 utility had a net gain on sale of that \$242,040 on a
25 sale of specific assets.

1 The prior order stated that the gain should be
2 amortized to the benefit of the ratepayers and amortized
3 that net gain over five years. At this time the
4 customers -- at the time of our protest the customers
5 had only received 20 months of that benefit, and the PAA
6 order should have included some provision for the
7 customers to receive the remaining benefit.

8 The citizens protest the failure of the order
9 to include the remainder of the unamortized gain on sale
10 as determined by that order. And we would note that the
11 order doesn't contain any reference to the prior rate
12 case order as it relates to this gain on sale. It's
13 just very generic, very short couple of paragraphs. But
14 thank you very much. And that's, that's our reason why
15 we think Issue 9A as it's worded, and it's been affirmed
16 by the First District Court of Appeal, that's why we
17 think it should be in here.

18 Now if there's additional gains on sale that
19 are outside and beyond what we're focusing on, then I
20 think it would be appropriate to include 9 and 9A.

21 **COMMISSIONER BROWN:** Okay. Thank you.

22 Mr. Friedman, would you like to respond?

23 **MR. FRIEDMAN:** Absolutely. 9A is legally an
24 inaccurate articulation of the law. And counsel
25 misspoke when he said DCA approved the rationale of the

1 PSC's determination of this issue in the last rate case.
2 The last rate case went on appeal and it was a PCA
3 without opinion. Everybody knows that a PCA without
4 opinion doesn't say anything.

5 And I'll just point out one of the cases I
6 found, a case from the Supreme Court, 434 So.2d 310, a
7 1983 case, which was the Supreme Court reviewing a PCA,
8 and it says, an affirmance without opinion is an
9 approval only of the point decided or consult reached
10 and not the opinion or conclusions of law of the lower
11 court, or so as to establish any precedence for future
12 action. So the fact that it was a PCA basically means
13 that order doesn't have any -- you can't go and say, oh,
14 it was blessed by the PCA [sic], as counsel has recently
15 just said. It's not blessed by, by the DCA. The law is
16 clear on that point.

17 The second issue on the inaccuracy of that is
18 the fact that this Commission has the authority to
19 correct its past mistakes, as has been done many times.
20 This is a case, *Sunshine Utilities*, unfortunately I was
21 on the bad side of this opinion, it's 577 So.2d 633 --
22 663. *Sunshine Utilities*, where we had argued that the
23 PSC had made a decision in a prior case and they can't
24 change it. And I was resoundingly told I was wrong.
25 And, and it clearly says that this Commission has the

1 authority to correct past mistakes.

2 Y'all have, the Commission has done that in
3 numerous orders. In fact, in the last, in the limited
4 rate proceeding order in Water Management Services the
5 Commission looked at a prior action and said we made a
6 mistake and we're going to correct it. We're not going
7 to perpetuate a mistake.

8 The mistake that's made is that these lots
9 have never been in rate base, the customers have not
10 paid one penny of rates towards these lots, and there
11 should have never been a gain on sale granted to the
12 customers in the first place.

13 **COMMISSIONER BROWN:** Thank you.

14 **MR. FRIEDMAN:** And so this Commission has the
15 authority to correct that mistake. And articulating the
16 issue as Public Counsel has articulated it is legally
17 incorrect.

18 **COMMISSIONER BROWN:** Thank you. Staff.

19 **MR. SAYLER:** A brief response, if I may.

20 **COMMISSIONER BROWN:** Brief, please.

21 **MR. SAYLER:** Yes. As Mr. Friedman said,
22 stated, I agree that a PCA doesn't carry precedent, but
23 it does affirm the court -- this Commission's decision
24 below. It didn't disturb it. If the DCA had wanted to
25 clarify or expound, they would have, but they didn't.

1 They said that this Commission made the right decision
2 and they affirmed it. Does it carry precedence at the
3 appellate level? It certainly doesn't. However,
4 Commission decisions carry precedent with the
5 Commission. It's persuasive, things of that nature.
6 This was a final order, it wasn't a PAA, so it does
7 carry precedential value that this Commission did
8 approve that.

9 Now if the Commission made a mistake, as
10 Mr. Friedman articulated on behalf of his client, then
11 Issue 9A is much better suited for determining whether
12 or not the Commission made a mistake than Issue 9.

13 **COMMISSIONER BROWN:** Okay. Thank you.

14 **MS. BARRERA:** Staff disagrees with OPC's
15 position on this as stated by OPC just a couple of
16 minutes ago. If the Commission wants to review other
17 issues regarding, regarding the net gain on sale of
18 land, we would be precluded -- it would be precluded by
19 the very narrow wording of Issue 9A.

20 We believe that the staff's issue as worded,
21 yes, it can be -- it's a lot broader, it can allow for
22 all kinds of evidence to be introduced or arguments to
23 be made. What OPC is proposing in Issue 9A actually is
24 a position rather than an issue, and they're not
25 precluded from delineating through their testimony and

1 through their presentation and through their briefs this
2 specific position that they have. They're not precluded
3 from addressing it, specifically in light of the fact
4 that Issue 9 allows for it to be done.

5 **COMMISSIONER BROWN:** Thank you. I appreciate
6 Office of Public Counsel's arguments. I don't think
7 that your position, argument will get lost if we take up
8 the broader Issue 9. I'm more comfortable in Issue 9.
9 I do think it's more of a position. And I think it
10 could be adequately addressed in Issue 9, so we're going
11 to go with Issue 9.

12 **MR. SAYLER:** Absolutely. And we will make our
13 arguments appropriately under Issue 9.

14 The only other concern we had had with Issue
15 9 as phrased was whether there was something else that
16 Commission staff had contemplated as being a gain on
17 sale of land or other assets that our office isn't aware
18 of or potentially the utility isn't aware of, because
19 neither of us want to be blindsided on, on this issue.
20 So that was our concern with it. But we will certainly
21 make arguments under Issue 9.

22 **COMMISSIONER BROWN:** Thank you. Appreciate
23 it.

24 Moving along, Issue 10.

25 **MR. FRIEDMAN:** Has the staff not taken a

1 position on Issue 9?

2 **MR. CRAWFORD:** That's correct.

3 **MS. BARRERA:** Right. At this time based on --
4 staff wants to wait until all the evidence and such is
5 in at the hearing.

6 **MR. FRIEDMAN:** Did y'all not take a position
7 in the prehearing, in your prehearing statement on that
8 issue?

9 **MS. BARRERA:** We took a preliminary position
10 at that time. But upon further reflection, we would
11 like to wait until it's all fleshed out at the hearing.

12 **COMMISSIONER BROWN:** Thank you. Can you speak
13 closer into it, Martha? Thank you.

14 **MS. BARRERA:** I'm sorry.

15 **COMMISSIONER BROWN:** I know. Your voice.

16 **MS. BARRERA:** My voice.

17 **COMMISSIONER BROWN:** I feel so bad. I hope
18 you're feeling better.

19 **MR. FRIEDMAN:** She doesn't have a lot more
20 time in her. She shouldn't be talking at all.

21 **COMMISSIONER BROWN:** Your poor voice.

22 **MR. FRIEDMAN:** It's getting weaker and weaker
23 as we go along.

24 **MS. BARRERA:** Sorry.

25 **COMMISSIONER BROWN:** Can we move along to

1 Issue 10 now?

2 **MS. BARRERA:** Issue 10, WMSI has proposed the
3 rewording. Staff prefers the language on Issue 10 as
4 it's currently stated.

5 Basically staff believes that the protest
6 entailed, as written and as formulated by OPC, entailed
7 all the advances to -- that were made in the, by the
8 utility.

9 What WMSI is proposing deletes the advances to
10 the president, limits it to associated companies, limits
11 the language, you know, the Commission's ability to
12 determine whether or not there was an adverse impact.
13 So we feel that -- we're recommending that the issue be
14 left as worded.

15 **COMMISSIONER BROWN:** I'm going to give WMSI an
16 opportunity and the Office of Public Counsel to address
17 this issue, and then I'm going to turn back to you on
18 this after hearing from them.

19 **MS. BARRERA:** Okay.

20 **MR. FRIEDMAN:** Yeah. And, in fact, I want to
21 modify my position to delete the reference to an impact
22 on the utility.

23 The Account 123 is an account for investments
24 in affiliated entities or companies, I forget the word,
25 but that's the account is investments. And that's the

1 account that, that Public Counsel protested and that we
2 are arguing about. We're arguing about an account that
3 deals with investments in subsidiaries or invested in
4 related parties. That's the issue. That's the account
5 name and that's what we're arguing about. So to change
6 the wording, to change the name of the account I think
7 is legally insufficient.

8 And number two is that the staff wants to put
9 in there what's the impact on the utility? You know,
10 many times this Commission has rejected micromanaging
11 this and other utilities. And so by saying we're going
12 to look at how this investment in affiliated companies
13 or advances affect the utility, what you're doing is
14 you're putting yourself back into running the utility
15 company. You're micromanaging the utility by, by saying
16 how does it affect the utility.

17 And I would suggest to you that even if you
18 keep the, the staff's suggested Issue 10, that reference
19 to adverse impact on the utility needs to be deleted.
20 What we're looking at here is have the customers
21 suffered because of this investment in an affiliated
22 company? Simple question. It's blown up into the issue
23 that it is and it was in the last case and maybe
24 forever.

25 But, you know, the staff looked at the issue,

1 the Commission looked at the issue in the last rate case
2 and said, look, we're not going to micromanage who this
3 company invests in; there's no law that says that this
4 utility cannot invest in affiliated companies; that's
5 why the Account 123 was created in NARUC; so we're not
6 going to micromanage it.

7 You did that in the order and you did it again
8 on rehearing when the Public Counsel didn't like the
9 fact that you didn't micromanage them. So this
10 Commission has very, very succinctly spoken with regard
11 to Account 123 by saying we're not going to micromanage
12 that utility.

13 Now if you want to look at whether any of that
14 has any adverse impact on the utility rates, then I
15 guess, you know, that's fair game. But those are two
16 separate things. That account is -- you know, if you
17 want to see whether any of this has impacted the
18 utility's rates, have at it, because you're not going to
19 find any.

20 Thank you.

21 **COMMISSIONER BROWN:** Thank you.

22 Mr. Sayler.

23 **MR. SAYLER:** The Office of Public Counsel
24 agrees with staff that Issue 10 should be worded as, how
25 it has been worded because, you know, Account 123 is

1 really a metaphor for all the cash advances going
2 forward between and among the various entities, the
3 president and his entities that occurred -- in the last
4 rate case it was just isolated in Account 123.

5 In this rate case the staff audit shows that
6 those transfers have continued with the still net
7 disbursements to the utility president and his various
8 entities. And that, in our opinion, has, has an adverse
9 effect upon this utility and that's the reason why. And
10 it also gets to the issue of whether there can be any
11 finding for managerial imprudence. And if after a
12 review of all the evidence put forward by us and the
13 utility and any by staff as it relates to managerial
14 imprudence and whether there's been any adverse impact
15 on the utility, then you can certainly say we have
16 evaluated the evidence, there has been no impact.

17 But in order to tee that up and to frame it
18 and for this Commission to address it it needs to be
19 part of the issue. And as it relates to the ratepayers,
20 you know, our testimony is clear; there have been
21 adverse impacts to the ratepayers. And our testimony is
22 clear there's been adverse impacts to, also to the
23 utility, and it is what action the Commission should
24 take.

25 In the last rate case the Commission -- well,

1 I will end there because I actually participated on
2 behalf of the Commission legal staff in that last case
3 and helped draft that issue on micromanagement without
4 the benefit of all the prior orders that this Commission
5 had had as it relates to this utility. And that's my
6 mistake, mea culpa.

7 But, in short, we agree with the staff that
8 Issue 10 should be worded as it is currently worded.

9 **COMMISSIONER BROWN:** Thank you.

10 Staff, I'm going to go to technical staff on
11 this issue, but first I just want to ask how is this
12 particular issue protested? As it was laid out?

13 **MR. SAYLER:** I do have a copy of our protest,
14 if that would be a benefit.

15 **COMMISSIONER BROWN:** That would be helpful,
16 unless staff has a copy.

17 **MR. CRAWFORD:** Yes. I'm sorry. I'm looking
18 for the exact language. Here it is.

19 **MS. BARRERA:** The protest that OPC filed,
20 that's what you want to --

21 **COMMISSIONER BROWN:** Uh-huh.

22 **MS. BARRERA:** Yeah. It states that the
23 Commission did not make a finding or determination of
24 managerial imprudence or managerial negligence. It also
25 alleges that the Commission failed to take proactive

1 steps to repatriate the funds in Account 123, that the
2 Commission failed to ensure that the utility does not
3 continue to increase investments in Account 123, or
4 address adequately the harm to customers resulting from
5 the utility's cash management practices.

6 So in our opinion --

7 **MR. CRAWFORD:** And if I could add --

8 **MS. BARRERA:** Okay.

9 **MR. CRAWFORD:** If I could add, looking at
10 OPC's actual protest, that section on page 2 is
11 captioned Cash Advances to WMSI's President and
12 Associated Company. It indicates that the PAA order
13 recognized a balance which was not a prudent use of
14 utility money collected from the ratepayer and has
15 adversely impacted the utility's access to funds for
16 utility expenses. So I do believe that this issue as it
17 is currently stated does adequately capture the intended
18 spirit of the protest.

19 **COMMISSIONER BROWN:** Uh-huh. And Mr. Maurey.
20 Hi.

21 **MR. MAUREY:** Yes, ma'am.

22 **COMMISSIONER BROWN:** Can you respond to some
23 of the comments made by, concerns raised by Mr.
24 Friedman, specifically with regard to the wording of
25 investments of the account versus advances and --

1 **MR. MAUREY:** Yes, ma'am. The title of the
2 account is Investments in Associated Companies.
3 However, it also includes accounts payable, accounts
4 receivable from related parties. So it's a broader
5 account than just what the title might indicate.

6 Also, the decision that was rendered following
7 the 2010 rate case was based on the facts in that case.
8 As we know, circumstances can change. This issue is
9 going to be based on the facts that are adduced at this
10 hearing.

11 **COMMISSIONER BROWN:** So the word investments
12 versus advances would not be --

13 **MR. MAUREY:** I don't believe that is a
14 significant difference. In fact, we've heard this
15 account called both interchangeably over time. Now in
16 the testimony there's a definition which I unfortunately
17 do not have in front of me, but the NARUC definition of
18 the account is in the record and it will be discussed, I
19 believe, on testimony.

20 **COMMISSIONER BROWN:** Okay. And turning back
21 to -- thank you, Mr. Maurey.

22 Turning back to legal, with regard to WMSI's
23 proposal to drop specifically WMSI's president from the
24 title of the issue, that issue, I know you read OPC's
25 specific protest, but was that, did it specifically

1 include WMSI's president?

2 **MR. FRIEDMAN:** That was what --

3 **COMMISSIONER BROWN:** Mr. Friedman, one second.

4 **MR. FRIEDMAN:** Okay.

5 **MR. CRAWFORD:** Are you referring to how it was
6 captioned in the order?

7 **COMMISSIONER BROWN:** Yes.

8 **MR. CRAWFORD:** Okay. The order does note at
9 the very bottom of page 26, we note that during this
10 period when scheduled payments were not made cash was
11 being advanced to the president and associated
12 companies, and it goes on and so forth. About midway on
13 page 27, the above actions of the utility's president
14 appear to result in additional costs over the term of
15 the DEP loan of an approximate amount. We don't believe
16 customers should be required to pay all these additional
17 costs. This was in the section about reducing the
18 president's salary. Given the actions of the utility's
19 president, we find the allowance for the utility's
20 president's salary shall be reduced by 15% and so on.
21 And the section ends with discussing the escrow account
22 --

23 **COMMISSIONER BROWN:** Okay.

24 **MR. CRAWFORD:** -- and that mechanism.

25 **COMMISSIONER BROWN:** I think that this

1 issue -- and, Mr. Friedman, if you want to add anything.

2 **MR. FRIEDMAN:** I was just going to point out
3 my, my, my issue was not with including the word
4 "president" in there. It was with including the "impact
5 on the utility." That's the argument about
6 micromanaging. So I wasn't talking about changing the
7 advances to WMSI's president. It's the next line where
8 it says "impact on the utility." That's the
9 micromanagement issue.

10 **COMMISSIONER BROWN:** Uh-huh. Uh-huh. Okay.

11 **MR. SAYLER:** Commissioner Brown.

12 **COMMISSIONER BROWN:** Mr. Sayler.

13 **MR. SAYLER:** Every utility in the State of
14 Florida has a duty to operate itself in the public
15 interest, and the Commission has the duty to ensure that
16 utilities operate in the public interest. And if a
17 utility is being operated in a way that affects its
18 ratepayers, the Commission has the duty to step in.

19 If it's -- if the Commission sees that a
20 utility is being run in a certain way to adversely
21 affect and potentially financially affect the ability of
22 the utility to provide quality of service or even
23 maintain, you know, any service, then I believe that the
24 Commission has the authority to do so. And the
25 jurisdictional statute says that all of Section 367

1 should be interpreted liberally to affect that cause.

2 So, you know, in order to determine managerial
3 prudence or imprudence, you know, there's got to be a
4 cause for it. And so that's why the phrase "adverse
5 impact on the utility" is in there. Because how do you
6 get to whether he's been managerially imprudent or not
7 without having that?

8 **COMMISSIONER BROWN:** Thank you. Any last
9 parting words, staff?

10 **MS. BARRERA:** Well, just clarifying, excuse
11 me, a statement, the rewording that was proposed by WMSI
12 regarding Issue 10 does have the wording "any adverse
13 impact on the utility or its ratepayers." So that seems
14 to be a change as to the proposed wording by WMSI.

15 **COMMISSIONER BROWN:** Right.

16 **MR. FRIEDMAN:** And I noted that at the
17 beginning of my argument.

18 **COMMISSIONER BROWN:** Right.

19 **MS. BARRERA:** Okay.

20 **COMMISSIONER BROWN:** Thank you. Well, my big
21 concern is making sure that the issue that was protested
22 is encapsulated in this issue. And I think Issue 10 as
23 is laid out is appropriate. I think it adequately
24 addresses the Office of Public Counsel's protest, so
25 we're going to leave it as is.

1 Moving along. I think we are good with 10A.
2 Please correct me if I'm wrong, if there's any changes
3 or corrections, 10A through Issue 14.

4 **MS. BARRERA:** Yes. There are no changes.

5 **COMMISSIONER BROWN:** No changes? No changes?

6 **MR. FRIEDMAN:** No changes.

7 **MR. SAYLER:** No changes.

8 **COMMISSIONER BROWN:** Okay. Let's move along
9 to Issue 15, which I understand has a stipulation.

10 **MR. LAWSON:** Yes, ma'am. As you know, the
11 question is, in Issue 15 is how much money should the
12 utility place in the escrow account going forward, which
13 is a concern for all the parties. Fortunately we were
14 able to meet just before this prehearing and we've all
15 agreed that all parties and staff will stipulate that at
16 the time of the true-up proceeding the escrow agreement
17 will be reviewed, and we believe that addresses the
18 issue. And with that, staff would like to withdraw
19 Issue 15.

20 **COMMISSIONER BROWN:** Very good. Thank you.

21 **MS. BARRERA:** Additionally, the utility
22 does -- has ensured that any, any money that's in the
23 escrow account, if it does not, because of their \$15,000
24 withdrawal, if it does not, if it's insufficient to pay
25 the DEP loan, that the utility will take care of that

1 and pay, continue to pay the DEP loan.

2 **COMMISSIONER BROWN:** That's great news. Thank
3 you.

4 **MR. SAYLER:** Commissioner Brown, just a
5 procedural question for staff.

6 We're okay with Issue 15 being as written
7 along with the stipulation. But just procedurally, if
8 you withdraw Issue 15, how do you have a naked
9 stipulation to a nonissue?

10 **COMMISSIONER BROWN:** That's a very good point.
11 No stipulation.

12 **MR. CRAWFORD:** That doesn't trouble me at all
13 procedurally. The stipulation is in lieu of Issue 15.
14 I think everybody agrees that the stipulation is the
15 preferred vehicle. I am perfectly comfortable noting
16 Issue 15 has been withdrawn, and when we get to the
17 proposed stipulation section, Section X, simply noting
18 that that has been a proposed stipulation.

19 It would be great if we actually got to
20 categories, but at this time it's the only known
21 stipulation. So we will reflect it appropriately on the
22 prehearing order.

23 **COMMISSIONER BROWN:** Okay. That's, that's
24 good.

25 All right. Issues 16 through Issues 19, any

1 changes or corrections?

2 **MS. BARRERA:** There is no -- there are no
3 changes to these issues.

4 **COMMISSIONER BROWN:** Okay. Parties? All
5 right. We are going to move to Section IX, which is the
6 exhibit list.

7 **MS. BARRERA:** There are no changes as far as
8 staff, staff exhibits and witnesses. We will be getting
9 out the Comprehensive Exhibit List as soon as possible.

10 **COMMISSIONER BROWN:** Great. Section X,
11 proposed stipulations as we've just discussed. So
12 moving to Section -- any other that we are aware of?

13 **MR. CRAWFORD:** None at this time.

14 **COMMISSIONER BROWN:** Okay. Section XI,
15 pending motions. I understand we have one.

16 **MS. BARRERA:** There's one pending motion,
17 which is WMSI's motion for order prohibiting
18 interference with financing, which was filed
19 January 7th. I believe that staff recommends that this
20 issue be dealt with by separate order rather than at the
21 prehearing.

22 **COMMISSIONER BROWN:** And I agree with that. I
23 don't think that the Office of Public Counsel has had an
24 opportunity to file a written response yet. So that's a
25 good suggestion that we will follow.

1 Section XII, pending confidentiality matters.

2 **MS. BARRERA:** There are two confidentiality
3 matters in which confidentiality has been requested and
4 at the same time has been opposed by OPC, and staff
5 recommends that this will be dealt with by separate
6 order.

7 **COMMISSIONER BROWN:** Okay.

8 **MR. SAYLER:** As a housekeeping matter, because
9 we -- if, if, if these things that we've asked to be
10 nonconfidential are going to remain confidential, we
11 just need to know as far as, you know, publication,
12 printing. So the sooner any decision would help us to
13 make sure we don't copy a whole bunch of confidential
14 files that we then just, you know, scrap and vice versa,
15 so.

16 **MR. CRAWFORD:** If, if I may.

17 **COMMISSIONER BROWN:** Yes, please.

18 **MR. CRAWFORD:** Even if it were to be denied,
19 it would still need to be maintained as confidential for
20 the next 30 days pending appeal of that denial.

21 **MR. SAYLER:** Okay.

22 **MR. CRAWFORD:** And I think that takes us well
23 past the hearing, so.

24 **MR. SAYLER:** Thank you. Thank you for that
25 clarification.

1 **COMMISSIONER BROWN:** Thank you, Ms. Crawford.
2 I didn't know that.

3 Okay. Moving along, Section XIII,
4 post-hearing procedures. Post-hearing briefs shall be
5 limited to 40 pages, unless there are any objections. I
6 think that's appropriate in this case.

7 Section XIV.

8 **MR. SAYLER:** On post-hearing procedures, as
9 far as the number of words for positions, I think the
10 vast majority of the positions can be handled in 50
11 words or less, but there are a few of the issues such as
12 the, for lack of a better word, Account 123, Issue 10,
13 that might benefit from an expansion of the number of
14 words in that position.

15 **COMMISSIONER BROWN:** I don't really care about
16 the words. I just care about the pages. Keep it under
17 40.

18 **MR. SAYLER:** Okay. Certainly for 40 pages.
19 But just as far as the position, summary of the position
20 says "no more than 50 words" set off with asterisks, and
21 we're just asking for leave to increase it.

22 **MR. CRAWFORD:** I always operate from the
23 belief that brevity is the soul of wit. But if, if more
24 is needed, I don't anticipate staff would have any
25 objection. Hopefully the utility --

1 **COMMISSIONER BROWN:** Mr. Friedman, do you have

2 --

3 **MR. FRIEDMAN:** If he wants to use his argument
4 portion to, to bluster about their position, that's fine
5 with me.

6 **COMMISSIONER BROWN:** Okay. It's fine and
7 appropriate.

8 **MR. SAYLER:** Thank you.

9 **COMMISSIONER BROWN:** Section XIV, rulings.
10 Are the parties willing to waive opening statements?
11 I'm just guessing that's going to be a no.

12 **MR. SAYLER:** No. In fact, historically I
13 think it's either five or seven minutes, but OPC would
14 request potentially ten minutes for opening arguments
15 in, in hopes that the opening arguments would cover all
16 the material within the, the vast record that's being
17 developed for this case so as to alleviate the need for
18 extensive cross-examination of some witnesses.

19 **COMMISSIONER BROWN:** Mr. Friedman.

20 **MR. FRIEDMAN:** I'm not sure I understood that,
21 but I'll try hard to get to ten minutes. I'm usually --

22 **COMMISSIONER BROWN:** I haven't agreed to ten
23 minutes. I think five minutes in this particular case
24 is more than appropriate given the limited number of
25 issues.

1 **MR. FRIEDMAN:** Well, I can probably talk for
2 five minutes then.

3 **COMMISSIONER BROWN:** Okay. Thank you.

4 Other matters, are there any other matters to
5 be addressed in this prehearing?

6 **MS. BARRERA:** Staff is aware -- oh, I'm sorry.

7 **MR. LAWSON:** If I could just remind everyone
8 when we're at this hearing at the, in St. George Island,
9 we will not have copy facilities. So all parties need
10 to bring -- if you intend to introduce any cross
11 exhibits or any exhibits that aren't already covered,
12 and of course we've discussed the confidentiality
13 documents, please bring more than sufficient copies
14 because we cannot copy them. And if there's not
15 sufficient to hand out, that could have some problems.

16 **COMMISSIONER BROWN:** Thank you, Mr. Lawson.

17 **MR. SAYLER:** Would 15 copies be sufficient?

18 **MR. LAWSON:** I believe so.

19 **MR. CRAWFORD:** I think that should -- yes.

20 **COMMISSIONER BROWN:** Okay. Any other matters?

21 **MS. BARRERA:** None. Staff is aware of none.

22 **COMMISSIONER BROWN:** Okay.

23 **MR. FRIEDMAN:** The utility is aware of none
24 either.

25 **COMMISSIONER BROWN:** Okay.

1 **MR. SAYLER:** Office of Public Counsel is aware
2 of none.

3 **COMMISSIONER BROWN:** Thank you. Looking
4 forward to seeing you guys next week in Franklin County,
5 beautiful Franklin County.

6 **MR. FRIEDMAN:** Bring your bathing suits.

7 **COMMISSIONER BROWN:** I don't think we'll have
8 time.

9 This meeting is adjourned at this time. Thank
10 you.

11 (Prehearing Conference adjourned at 10:47
12 a.m.)

1 STATE OF FLORIDA)
2 : CERTIFICATE OF REPORTER
3 COUNTY OF LEON)

4 I, LINDA BOLES, RPR, CRR, Official Commission
5 Reporter, do hereby certify that the foregoing
6 proceeding was heard at the time and place herein
7 stated.

8 IT IS FURTHER CERTIFIED that I
9 stenographically reported the said proceedings; that the
10 same has been transcribed under my direct supervision;
11 and that this transcript constitutes a true
12 transcription of my notes of said proceedings.

13 I FURTHER CERTIFY that I am not a relative,
14 employee, attorney or counsel of any of the parties, nor
15 am I a relative or employee of any of the parties'
16 attorneys or counsel connected with the action, nor am I
17 financially interested in the action.

18 2013.

19 DATED THIS 11th day of January,

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25


LINDA BOLES, RPR, CRR
FPSC Official Commission Reporter
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