

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-12-0371-PCO-WU  
ISSUED: July 18, 2012

ORDER GRANTING IN PART STAFF'S MOTION TO COMPEL

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. WMSI requested that its application be processed using the Commission's Proposed Agency Action (PAA) process. The Office of Public Counsel (OPC) was granted intervention by Order No. PSC-12-0034-PCO-WS, issued January 23, 2012.

OPC served two sets of interrogatories and two sets of Requests for Production of Documents on WMSI. When WMSI objected to responding to these discovery requests, asserting it was not authorized, OPC filed a Motion to Establish Discovery Procedures and Motion to Compel Discovery Responses. WMSI timely responded to this motion and requested oral argument. After hearing oral argument on June 5, 2012, both parts of OPC's Motion were denied by Order No. PSC-12-0316-PCO-WU, issued June 19, 2012, which found, in part, that the discovery requested by OPC was not appropriate in the current PAA process.

From December 12, 2011 through May 17, 2012, staff served six data requests on WMSI, all of which were responded to by the Utility. On May 18, 2012, Commission staff (Staff) propounded its First Set of Interrogatories (Nos. 1-7) and First Request for Production of Documents (Nos. 1-16) on WMSI. On June 18, 2012, WMSI filed its Answer and Objections to Staff's First Set of Interrogatories (Interrogatories 1-7) and Objections to Staff's First Request for Production (Objections). To date, WMSI has only answered Interrogatory number 1 of Staff's First Set of Interrogatories.

On June 20, 2012, Staff filed its Motion to Compel WMSI to produce all documents withheld by the Utility in response to Staff's First Request for Production and Staff's First Set of Interrogatories to which the Utility objected or did not respond. On June 28, 2012, WMSI filed its Response to Staff's Motion to Compel (Response) and Request for Oral Argument. Oral argument was held on July 11, 2012. During oral argument, Staff agreed to have the formal discovery requests offered as informal data requests, so the question of Staff propounding formal discovery at this juncture is moot. For the reasons discussed below, Staff's Motion to Compel is granted in part and denied in part.

Given the Commission's authority under Chapter 367 of the Florida Statutes (F.S.) and its long standing practice, it is clear that Staff is in a very different posture than OPC was in its Motion to Compel. Section 367.121(1)(i), F.S., provides that in the exercise of its jurisdiction, the Commission shall have power to require the filing of reports and other data by a public utility or its affiliated companies, including its parent company, regarding transactions or allocations of

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common costs, among the utility and such affiliated companies. The Commission may also require such reports or other data necessary to ensure that a utility's ratepayers do not subsidize non-utility activities. Nearly identical language appears in Section 367.156(1), F.S., with regard to public utility records and confidentiality. Further, Section 350.123, F.S., grants the Commission authority to compel the production of books, papers, documents, and other evidence necessary for the purpose of any investigation or proceeding.

The Commission is authorized to utilize its staff to test the validity, credibility, and competence of the evidence presented in support of an increase in a rate proceeding. Without its staff, it would be impossible for the Commission to investigate and determine the actual costs of the utility property which is considered used and useful in the public service. South Florida Natural Gas Company v. Public Service Commission, 534 So. 2d 695 (Fla. 1988).

In WMSI's previous rate case, the Commission found that based on the record in that proceeding, it could not be determined whether the level of investment in WMSI's associated companies was appropriate.<sup>1</sup> The Commission ordered Staff to conduct a cash flow audit of the Utility and determine whether an adjustment for imprudence was appropriate if the Utility's activities were found to impair WMSI's ability to meet its financial and operating responsibilities. Staff indicated that the data requests at issue in its Motion to Compel are responsive to the Commission's specific direction in Order No. PSC-11-0010-SC-WU to further investigate these matters.

Additionally, the Florida Supreme Court has held that it is always the utility's burden of proof in a rate proceeding to justify its costs and expenses. Florida Power Corporation v. Cresse, 413 So. 2d 1187 (Fla. 1982)(The Court found it was up to the utility to show that excess costs incurred were reasonable and were not the fault of management).

In light of the pleadings and arguments presented by Staff and the Utility, it is hereby ordered that WMSI shall respond to Staff's data requests, in part. After further reviewing the data requests and considering the arguments presented, the requests appear broader in scope than necessary at this juncture and have been narrowed down and attached hereto in type-and-strike format as Attachment 1. Since time is of the essence and given that WMSI has been on notice regarding the requested information since May 18, 2012, it is hereby ordered that the responses to the requests that have not been stricken in Attachment 1 shall be filed with the Commission no later than close of business on July 18, 2012.

It is therefore

ORDERED by Commissioner Julie I. Brown, as Prehearing Officer, that Staff's Motion to Compel Discovery is hereby granted in part and denied in part, as set forth herein. It is further

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<sup>1</sup> 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. (p. 56).

ORDER NO. PSC-12-0371-PCO-WU  
DOCKET NO. 110200-WU  
PAGE 3

ORDERED that Water Management Services, Inc. shall respond to the requests not stricken as reflected in Attachment 1 herein, by no later than close of business on July 18, 2012.

By ORDER of Commissioner Julie I. Brown, as Prehearing Officer, this 18th day of July, 2012.



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

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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.

No.    Data Request

2.    Cash Flow Audit. Please refer to page 4 of Mr. Brown's testimony where he states his accountants performed a "cash flow audit" of all WMSI's operations from the beginning of 2000 through end of 2010.
  - a.    Please identify who (or which accounting firm) performed the cash flow audit and whether the auditor was a Certified Public Accountant (CPA).
  - b.    Please identify whether there is a signed engagement letter between WMSI and the person/firm which performed the cash flow audit and describes the terms and scope of the cash flow audit.
  - c.    Please explain whether the cash flow audit referenced by Mr. Brown and attached to Exhibit A to Mr. Brown's testimony was: 1) a compilation of the cash flow documents provided by WMSI; 2) a review of the cash flow documents provided by WMSI; or 3) an audit of WMSI operations and cash flow within the meaning of the term "audit" as used by a CPA.
  - d.    Please explain whether the auditor(s) who performed the cash flow audit provided a report describing the audit and whether it was qualified or not (i.e., had audit findings).
  - e.    ~~If no report was attached to WMSI's cash flow audit attached as Exhibit A to Mr. Brown's testimony, please explain or describe why no such report was attached, and~~
  - f.    Please describe whether WMSI has possession of the audit work papers which supports WMSI's cash flow audit.
  
3.    Capital Resources. Please refer to page 5 of testimony provided by Mr. Brown where he states that he has liquidated personal resources and incurred substantial loans, personally endorsed by him, to keep the Utility in operation and provide water service to St. George Island. Please provide an itemized listing of all personal resources Mr. Brown has liquidated in order to keep the Utility in operation and provide water service to St. George Island. ~~For each of the personal resources liquidated, please provide:~~
  - a.    ~~The original cost of the resources to Mr. Brown;~~
  - b.    ~~The original date of acquisition of the resource;~~
  - e.    ~~The amount of debt owed on the resource at the time of liquidation;~~

- d. ~~The amount received in the liquidation (please break the amount out between cash receipts, dissolution of debt, other form of payment, etc.);~~
  - e. ~~The amount of gain (loss) realized by Mr. Brown at the time of liquidation;~~
  - f. ~~The date of liquidation; and~~
  - g. ~~Identification of who or what entity the resource was sold to in the liquidation.~~
4. Capital Resources. Please refer to page 5 of testimony provided by Mr. Brown where he states that he has liquidated personal resources and incurred substantial loans, personally endorsed by him, to keep the Utility in operation and provide water service to St. George Island. ~~Please provide an itemized listing of all personal resources Mr. Brown has liquidated in order to keep the Utility in operation and provide water service to St. George Island.~~ For each of these loans, please provide:
- a. The amount of the loan proceeds;
  - b. What amount of proceeds were turned over to WMSI;
  - e. ~~What was done with any proceeds that were not turned over to WMSI;~~
  - d. What entity the loan was from;
  - e. Terms of the loan (i.e. interest rate, term of loan, whether balloon payments are required, etc.);
  - f. Date the loan was entered into;
  - g. What assets are designated in the loan as collateral, if any;
  - h. Current status of the loan and current outstanding balance; and
  - i. Whether or not the loan has been refinanced.
5. Account 123. Please refer to page 7 of testimony provided by Mr. Brown where he asserts that “[t]he value of the 100% ownership of “Brown Management Group, Inc. is in excess of the balance in Account 123. This was documented as part of the PSC audit of Account 123.”

- a. ~~Please identify where in the PSC's cash flow audit, issued July 29, 2011, the Commission audit states that the "value of the 100% ownership of Brown Management Group, Inc. is in excess of the balance in Account 123."~~
  - b. On what date was the value of the 100% ownership of Brown Management Group, Inc. transferred to WMSI?
  - c. ~~Please provide a detailed listing of all assets owned by Brown Management Group, Inc. at the time it was transferred to WMSI. As part of this list identify when the asset was originally acquired by Brown Management Group, Inc., the original cost of the asset, the net book value of the asset at the time of transfer, and the fair market value of the asset at the time of transfer.~~
  - d. ~~Please provide a detailed listing of all debt owed by Brown Management Group, Inc. from the time of the transfer to WMSI to date.~~
  - e. Please provide a detailed listing of all debt owed by Brown Management Group, Inc. at the time it was transferred to WMSI, as well as the terms of the debt and the outstanding balance of the debt.
  - f. Please provide a detailed listing of all debt dissolved, all new debt entered into, and all debt that has been refinanced by Brown Management Group, Inc. from the time of the transfer to WMSI to date.
6. Account 123. Please refer to page 7 of testimony provided by Mr. Brown where he asserts that "[a] large part of cash for the utility came from the sale of assets owned by Brown Management Group, Inc. during the period addressed in Mr. Brown's statement. For each sale, please provide the following information:
- a. The original cost of the asset;
  - b. ~~The original date of acquisition of the asset;~~
  - c. The amount of debt owed on the asset at the time of liquidation;
  - d. The amount received in the sale of the asset (please break the amount out between cash receipts, dissolution of debt, other form of payment, etc.);
  - e. The amount of gain (loss) realized at the time of sale;
  - f. The date of sale; and

- g. Identification of who or what entity the asset was sold to or transferred.
7. Account 123. Regarding the value of the 100% ownership of Brown Management Group, Inc. transferred to WMSI for the value of the balance of Account 123, please explain or describe:
- a. Please identify the documents associated with the transfer of 100% ownership of Brown Management Group, Inc. to WMSI.
  - b. Please identify who approved the transfer of 100% ownership of Brown Management Group, Inc. to WMSI.
  - c. ~~Whether St. George Island Utility Co., Ltd. was consulted prior to the transfer, and if so, please describe how and when that consultation took place.~~
  - d. ~~Whether the various holders of security interests in St. George Island Utility Co. Ltd. (i.e., owners, shareholders, partners, limited partners, etc.) were consulted prior to the transfer, and if so, please describe how and when that consultation took place.~~
  - e. ~~Whether T.E. Bronson was consulted prior to the transfer, and if so, please describe how and when that consultation took place, and~~
  - f. Whether any independent audit, appraisal, and/or valuation of the assets of Brown Management Group, Inc. transferred to WMSI took place before or after the transfer, and if so, describe how and when that audit, appraisal, and/or valuation took place and by whom was it performed, and whether a report was attached to the audit, appraisal, and/or valuation.

No. Documents Requested

- 1. For each of these loans or cash advances [incurred by Gene Brown to keep Utility in operation], please provide all documentation detailing the loan or cash advance between WMSI and Gene Brown or any entity affiliated with Gene Brown.
- 2. Regarding valuation of Brown Management Group, Inc., and Account 123. Please provide a copy of the following:
  - a. all journal entries made on both WMSI's and Brown Management Group, Inc.'s books at the time the ownership of Brown Management Group, Inc. was transferred to WMSI;



- b. any business appraisals and/or valuations conducted by or for WMSI regarding the value of Brown Management Group, Inc. at the time of transfer;
  - c. any independent business appraisals and/or valuations conducted by or for WMSI regarding the value of Brown Management Group, Inc. at the time of transfer;
  - d. copies of any documents including the minutes of meetings where the transfer of Brown Management Group, Inc. to WMSI was approved;
  - e. copies of any documents including the minutes of meeting with St. George Utility Co., Ltd. where the transfer of Brown Management Group, Inc. to WMSI was approved;
  - ~~f. copies of any documents including the minutes of meeting with T.E. Bronson where the transfer of Brown Management Group, Inc. to WMSI was approved;~~
  - g. copies of any documents submitted to St. George Island Utility Co., Ltd. or T.E. Bronson explaining or describing the reason or purpose of transfer of Brown Management Group, Inc. to WMSI; and
  - ~~h. a copy of the report attached to WMSI's cash flow audit attached as Exhibit A to Mr. Brown's testimony.~~
3. ~~Account 123. Please provide a copy of Brown Management Group, Inc's detailed General Ledgers for each of the years ended December 31, 2008, 2009, 2010, and 2011 and for 2012 year to date.~~
4. Account 123. Please provide a complete copy of Brown Management Group, Inc.'s Annual Reports and financial statements for the five most recent fiscal years.
5. ~~Account 123. Please provide a complete copy of all existing vehicle leases for Brown Management Group, Inc.~~
6. ~~Account 123. Please provide a copy of the W-2s for each of Brown Management Group, Inc's employees for 2009, 2010 and 2011.~~
7. ~~Account 123. Please provide a complete copy of all federal income tax returns filed by Brown Management Group, Inc. for the 2007, 2008, 2009, 2010, and 2011 tax years. If any amendments were made to those returns, the amended returns should also be provided. If the 2011 federal tax return is placed on extension, please provide a copy of the request for extension, a copy of the~~

payment made to the IRS for 2011 taxes, and a draft copy of the 2011 tax return (if one is available).

8. ~~Account 123. Please provide a complete copy of all state income tax returns filed by Brown Management Group, Inc. for the 2007, 2008, 2009, 2010, and 2011 tax years. If any amendments were made to those returns, the amended returns should also be provided. If the 2011 state tax return is placed on extension, please provide a copy of the request for extension, a copy of the payment made to the state for 2011 taxes, and a draft copy of the 2011 tax return (if one is available).~~
9. ~~Account 123. Please provide a complete copy of all local income tax returns filed by Brown Management Group, Inc. for the 2007, 2008, 2009, 2010, and 2011 tax years, if any. If any amendments were made to those returns, the amended returns should also be provided.~~
10. ~~Account 123. Please provide a copy of all bank statements for each of Brown Management Group, Inc.'s bank accounts for the period January 1, 2007 through the most recent date available.~~
11. ~~Account 123. Please provide a copy of any bank reconciliations done by or for Brown Management Group, Inc. for the period January 1, 2008 through the most recent date available.~~
12. ~~Account 123. Please provide a complete copy of all federal personal income tax returns filed by Gene Brown for the 2007, 2008, 2009, 2010, and 2011 tax years. If any amendments were made to those returns, the amended returns should also be provided.~~
13. ~~Account 123. Please provide a complete copy of all personal state income tax returns filed by Gene Brown for the 2007, 2008, 2009, 2010, and 2011 tax years. If any amendments were made to those returns, the amended returns should also be provided.~~
14. ~~Account 123. Please provide a complete copy of all local personal income tax returns filed by Gene Brown for the 2007, 2008, 2009, 2010, and 2011 tax years, if any. If any amendments were made to those returns, the amended returns should also be provided.~~
15. ~~Account 123. Please provide a copy of all bank statements for each of Gene Brown's personal bank accounts for the period January 1, 2007 through the most recent date available.~~
16. ~~Account 123. Please provide a copy of any bank reconciliations done by or for Gene Brown for the period January 1, 2008 through the most recent date available.~~