

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-12-0624-PCO-WU  
ISSUED: November 20, 2012

ORDER GRANTING IN PART AND DENYING IN PART  
THE OFFICE OF PUBLIC COUNSEL'S FIRST AND SECOND MOTIONS TO COMPEL:  
FIRST ORDER REVISING ORDER ESTABLISHING PROCEDURE

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.).

First Motion to Compel

On October 5, 2012, OPC propounded its First Set of Interrogatories (Nos. 1-16) and First Request for Production of Documents (Nos. 1-36). On October 15, 2012, WMSI objected to answering Interrogatories Nos. 4, 5, 6, 7, 8, 9, and 12 and responding to Request for Production Nos. 7, 8, 11, 12, 19, 20, 22-26, 31, and 36. OPC filed a Motion to Compel to which WMSI responded. OPC subsequently withdrew Interrogatories Nos. 9 (subparts c, d, and e), and 12. OPC also withdrew document request Nos. 12 (subparts e, f, and g), 22, 24, 25 and 36. On October 25, 2012, WMSI responded to Interrogatory 9a), b), and f). Accordingly, OPC's First Motion to Compel addresses Interrogatory Nos. 4, 5, 6, 7, and 8 and Production of Document Nos. 7, 8, 11, 12a), b), c), d), h), 19, 20, 23, 26, and 31.

OPC's First Motion to Compel argues generally that the discovery seeks information on WMSI's Account 123, which it raised as an issue in its protest of the PAA. OPC argues that a response to the discovery is needed for the Commission to decide whether cash advances to Gene Brown and associated companies impaired the utility's ability to meet its financial and operating responsibilities. OPC argues that the information sought is needed to determine if the value of Brown Management Group (BMG) is in excess of the balance in account 123. OPC argues that the objections concerning the withdrawn prefiled testimony constitutes an attempt by WMSI to avoid answering discovery concerning accuracy of statements made by Gene Brown, WMSI's President. OPC argues that Mr. Brown's statements were not made solely in the withdrawn testimony, but also at hearings before the Commission and in correspondence to Commission staff. Further OPC argues that the information sought regarding the cash flow

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audit, the loans to the Utility, is needed to allow OPC's consultant to trace the amounts of cash that flowed to and from the Utility. OPC argues that it seeks Mr. Brown's personal financial information to the extent they relate to the Utility and BMG. Finally, OPC argues that the documents sought regarding rate case expense are needed to determine if there is a billing dispute and that it only seeks billing information thus the discovery sought does not violate the attorney-client privilege.

On November 5, 2012, WMSI filed a response to the motion. WMSI's primary objection to each discovery request was that the discovery sought was not relevant to issues in dispute and would not lead to admissible evidence; that the testimony of Gene Brown had been withdrawn, and was not relied upon by WMSI in its rate request; and that the discovery was sought solely for the purpose of harassment. In addition to these objections, WMSI further objected to the document request on the grounds that the request was overly broad, onerous, and made solely for the purpose of harassment.

WMSI argues that Account 123 is not relevant and states that at the last rate case the Commission concluded that there was not evidence presented that documented Mr. Brown or BMG having misappropriated funds. WMSI argues that Account 123 and the issue of personal debt to keep the Utility's operations going have no impact on rates and thus the information sought is irrelevant. WMSI also argues that OPC's discovery was propounded in an attempt to micromanage the utility. WMSI argues that the quality of service the Utility provides to its customers is not a problem so the information sought by OPC on the grounds that it is needed to assess the operation and management of the Utility is irrelevant. On discovery regarding the withdrawn testimony, WMSI argues that it filed testimony solely relating to the issues in the protest and that since the withdrawn testimony and the cash flow audit are not relied upon by WMSI to support its requested rates, such discovery is irrelevant. Finally, WMSI argues in specific discovery requests that the information sought is overly broad in light of the limited issues that have been protested.

#### OPC's Second Motion to Compel

On November 5, 2012, OPC filed a second Motion to Compel. OPC states that it propounded its Second Set of Interrogatories (Nos. 17-24) and Second Request for Production of Documents (Nos. 37-42). OPC asserts that WMSI objected to Interrogatories 17, 20, 21, 23 subparts a) through d), and 24, and Production of Document Nos. 37 subparts a), c), d) and e), and 38, 39, 40, and 41. However, on November 1, 2012, OPC withdrew Interrogatory Nos. 20, 21, and 24 and Production of Document Nos. 37c), d), and e), and 38. Accordingly, OPC's Motion to Compel addresses Interrogatory Nos. 17, and 23 subparts a), c), and e), and Production of Document Request Nos. 37 a), 39, 40, and 41. OPC asserts that it is seeking relevant information about transportation services in interrogatory 17. OPC states that transportation services are a protested issue in this docket. In Interrogatory 23, OPC states that it is seeking information about a fact witness which OPC is scheduled to depose on November 6, 2012. As to the documents requested pursuant to Nos. 37a), OPC states that the information is related to transportation expenses, a protested issue in the current docket. As to Request for Production Nos. 39, 40, and 41, OPC asserts that these requests relate to documents for the prior

rate case expense. OPC asserts that while the amount of the prior rate case expense was not protested, the Utility has not made timely payments to its attorneys and consultants in the last rate case. OPC contends that it seeks to determine whether the Utility is making payments required under the engagement letters from its law firm, engineer, and accountant for services rendered during the PAA portion of the rate case. OPC contends that 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.

On November 13, 2012, WMSI filed its Response to OPC's Second Motion to Compel reiterating many of its objections to the first set of discovery. In addition to those objections, WMSI argues that as to Interrogatory 17, the requested information is outside of the test year and is therefore irrelevant. As to Interrogatory 23, the information regarding fact witness Mitchell, the deposition has already occurred. As to Document Request 37a), WMSI states that it has provided OPC with the 2011 mileage records which served as the basis for its test year transportation reimbursement, which according to WMSI is the only information that is relevant. WMSI states that its prefiled testimony should resolve any concern that OPC may have as to what 2011 information WMSI intends to rely upon. WMSI argues that OPC is seeking documents requesting law firms, accountants and engineers the Utility engaged for the current rate case. WMSI contends that OPC's argument in its Motion to Compel is inconsistent with its request for information.

Analysis and Ruling on OPC's First and Second Motions to Compel

Having reviewed OPC's Motions to Compel, WMSI's responses thereto, and OPC's discovery requests in light of OPC's and WMSI's protest, I hereby grant OPC's motion in part and deny it in part. Rule 1.280, Florida Rules of Civil Procedure allows a broad range of discovery, limited merely by relevance or privilege. Account 123 is a protested issue in this proceeding and therefore is a proper subject matter of discovery. Transportation Expense is a protested issue in this proceeding and therefore is a proper subject matter of discovery. The PAA rate case expense was not protested and is not relevant for discovery. Accordingly, the Motions to Compel are granted in part and denied in part as follows:

First Set of Interrogatories	Motion granted or denied
4	Denied as to #4(e). Granted as to remaining
5	Denied
6	Denied as to 6(c) and the request to provide "an itemized listing of all loans Mr. Brown has personally endorsed in order to keep the Utility in operation and provide water service to St. George Island." Granted as to remaining
7	Denied as to 7 (a), (c) and (d). Granted as to remaining
8	Denied as to the request in 8 to include the original date of acquisition of the asset. Granted as to remaining

First Request for Production	Motion granted or denied
7	Granted only to the extent of the test year, January 1, 2010 through December 31, 2010
8	Granted only to the extent of the test year, January 1, 2010 through December 31, 2010
11	Denied
12	Denied as to 12(h). 12(e-g) were withdrawn by OPC. Granted as to remaining
19	Granted but limited to the date of transfer
20	Granted but limited to the date of transfer
23	Denied
26	Granted but limited as to the date of transfer
31	Granted

Second Set of Interrogatories	Motion granted or denied
17	Granted
23 (a, c, and e)	Denied

Second Request for Production	Motion granted or denied
37 (a)	Granted
39	Denied
40	Denied
41	Denied

WMSI shall have until November 26, 2012, to provide discovery responses to OPC.

OPC’s Motion for Extension of Time to File Testimony

In its Motions to Compel, OPC also requests leave to prefile supplemental direct testimony based upon discovery responses it may receive after the Commission’s ruling on OPC’s Motions to Compel. OPC requested an additional 20 to 30 days. The controlling dates for filing of testimony were established in this docket by the Order Establishing Procedure, Order No. PSC-12-0526-PCO-WU, issued October 3, 2012. OPC’s request shall be treated as a motion for extension of time to file testimony as set forth in the Order Establishing Procedure.

Analysis and Ruling on OPC’s Motion for Extension of Time to File Testimony

These proceedings are governed by Section 367.081, F.S. which prescribes specific timelines in which the Commission must act. Taking into consideration those timelines, and the Commission’s schedule, OPC’s motion is for extension of time to file direct testimony is granted in part and the dates established by Order No. PSC-12-0526-PCO-WU are revised as follows:

	<u>Current Due Date</u>	<u>Extended Due Date</u>
Intervenor testimony and exhibits	November 26, 2012	December 6, 2012
Staff testimony and exhibits	December 3, 2012	December 6, 2012
Rebuttal testimony and exhibits	December 17, 2012	December 18, 2012

All other controlling dates established for this docket shall remain unchanged, unless further modified by the Prehearing Officer.

ORDERED that the Office of Public Counsel's Motions to Compel are granted in part and denied in part as more specifically set forth herein. Water Management Services, Inc. shall respond to those discovery requests no later than November 26, 2012. It is further

ORDERED that Order No. PSC-12-0526-PCO-WU shall be revised as set forth herein. It is further

ORDERED that all other provisions of Order No. PSC-12-0526-PCO-WU, remain in effect, and they, and the provisions of this Order, shall govern this proceeding unless modified by the Commission.

By ORDER of Commissioner Julie I. Brown, as Prehearing Officer, this 20th day of  
November, 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.

MFB/LCB

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.