

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-13-0019-PHO-WU  
ISSUED: January 11, 2013

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on January 9, 2013, in Tallahassee, Florida, before Commissioner Julie I. Brown, as Prehearing Officer.

APPEARANCES:

MARTIN S. FRIEDMAN, ESQUIRE, Sundstrom, Friedman & Fumero, LLP,  
766 N. Sun Drive, Suite 4030, Lake Mary, FL 32746  
On behalf of Water Management Services, Inc.

ERIK L. SAYLER, ESQUIRE, Associate Public Counsel, Office of Public  
Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812,  
Tallahassee, Florida 32399-1400  
On behalf of the Citizens of the State of Florida.

MARTHA F. BARRERA and MICHAEL LAWSON, ESQUIRES, Florida Public  
Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-  
0850  
On behalf of the Florida Public Service Commission (Staff).

MARY ANNE HELTON, Deputy General Counsel, Florida Public Service  
Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
Advisor to the Florida Public Service Commission.

**PREHEARING ORDER**

I. CASE BACKGROUND

On November 7, 2011, Water Management Services, Inc. (WMSI or Utility) filed its application for increase in water rates in Franklin County. The Utility requested that its application be processed using the proposed agency action (PAA) procedures set forth in Section 367.081(8), Florida Statutes (F.S.). Pursuant to that section, our staff conducted its investigation and held a customer meeting in the Utility's service area. On January 20, 2012, the Office of Public Counsel (OPC) filed a Notice of Intervention in this docket, and an order acknowledging intervention was issued on January 23, 2012.<sup>1</sup>

<sup>1</sup> See Order No. PSC-12-0034-PCO-WU.

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FPSC-COMMISSION CLERK

Subsequently, on August 22, 2012, this Commission issued Order No. PSC-12-0435-PAA-WU (PAA Order). On September 12, 2012, the OPC timely filed its protest of the PAA Order. On September 19, 2012, WMSI timely filed its cross-petition. Based on these petitions, a formal hearing has been scheduled for January 16-17, 2013. The Commission will address those issues listed in this Prehearing Order.

## II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

## III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 367, Florida Statutes (F.S.). This hearing will be governed by said Chapter and Chapters 25-22, 25-30, and 28-106, F.A.C., as well as any other applicable provisions of law.

## IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 367.156, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 367.156(2) and (4), F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 367.156, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 367.156(3), F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

#### V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties and Staff has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness's testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.



VI. ORDER OF WITNESSES

Each witness whose name is preceded by a plus sign (+) will present direct and rebuttal testimony together.

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Jeanne Allen	WMSI	1, 3, 4, 5, 6, 7, 8, 9, 10(a), 14
John Guastella	WMSI	1, 10, 10(a)
Helmuth Schultz III	OPC	1, 3, 5, 6, 9, 9(a), 10, 10(a)
Denise N. Vandiver	OPC	6, 7, 14
Debra M. Dobiac	STAFF	FPSC Staff Audit of WMSI
<u>Rebuttal</u>		
Jeanne Allen	WMSI	1, 3, 4, 5, 6, 7, 8, 9, 10(a), 14
John Guastella	WMSI	1, 10, 10(a)
Gene Brown	WMSI	1, 3, 4, 5, 6, 7, 8, 9, 10, 10a, 14

VII. BASIC POSITIONS

**WMSI:** WMSI is entitled to annual revenues in accordance with PAA Order as modified by its issues set forth in its Cross-Petition. PAA Order reductions to the following expenses are unsupported, and the Company is entitled to additional rate case expense resulting from OPC's Protest:

- (a) The weighted cost of capital.
- (b) Transportation expenses.
- (c) The President's salary.
- (d) Working capital allowance.
- (e) Miscellaneous Expenses.
- (f) Accounting services expenses.
- (g) Service availability charges.

**OPC:** By Proposed Agency Action Order No. PSC-12-0435-PAA-WU, issued August 22, 2012 (PAA Order), the Commission approved an annual increase of \$506,061. Most of the annual increase was due to the need for the Utility to replace a ground

water storage tank and other pro forma plant capital expenditures. The increase along with revenues to repay the Department of Environmental Protection (DEP) were placed in an escrow account to ensure that those moneys were properly spent. Citizens chose not to protest these customer oriented protections, but instead protested other aspects of the PAA Order for the reasons set forth in its positions below and the testimony of its two expert witnesses.

First and foremost, the PAA Order failed to adequately address issues relating to the \$1.2 million that the Utility advanced to the Utility owner and his associated companies. Specifically, the PAA Order failed to address the adverse impact of advancing this money and the management decisions which were and are the source of the Utility's current financial distress. Additionally, the PAA Order failed to institute any protective measures designed to prevent further financial harm to the Utility or its customers, restore these advances for the Utility use (i.e. ensure that the Utility is repaid), or prevent future advances.

More than \$1.2 million was removed from the Utility for non-utility purposes at a time when the Utility has debt which exceeds its rate base and has had difficulty paying its bills, so much so that the Utility eventually defaulted on its loan from the DEP. This default harmed the Utility. Managerial decisions regarding the loan harmed the customers by adding more than \$1.1 million in interest to the DEP loan. Citizens believe that the advances made to associated companies were made for the benefit and convenience of WMSI's president, in his personal capacity, and do not benefit the Utility or its customers. Moreover, it appears to Citizens that WMSI receives no interest for these so-called "investments" in the affiliated companies. The frequency and amount of advances raise the question whether this Utility is being prudently managed, and if not, should the Commission enter a finding of managerial imprudence. The owner has attempted to divert attention from this poor use or mismanagement of Utility funds by transferring his ownership of a holding company which was a net investor in the Utility to the Utility itself. This transfer of stock from one entity owned by the owner to another entity controlled by the owner does not erase the harmful effect of the advances. Additionally, the Utility has been unable to document that the Utility's 100% ownership interest in Brown Management Group, Inc. can truly be valued at \$1.2 million. The owner cannot demonstrate that this stock transfer fully repays what was advanced by the Utility to the owner and his associated companies. As demonstrated by the testimony of OPC witness Schultz, the adverse impact of these advances has demonstrably harmed both the Utility itself and its customers. Citizens are asking that the Commission take proactive measures to protect the Utility and its customers from continued managerial imprudence in order to ensure both the near term and long term viability of this water system.

Citizens raised three other issues in its protest. Citizens' testimony demonstrates the Commission's apparent failure to carry forward the remaining amortization of

a \$242,040 gain on sale that was recognized and approved for amortization in the last rate case. Carrying this amortization forward would result in approximately a \$51,000 rate decrease for customers. Citizens further believes it is against public policy to allow the continued recovery of the rate case expense included in rates for the prior rate case after the Utility has demonstrated its willingness to stop payment for legal fees, a substantial component of the past rate case expense, in order to attempt to negotiate a lower legal bill. Removing all or some of the prior rate case expense in rates would result in a meaningful rate decrease for customers. Citizens also contest aspects of the increase in service availability charges and the failure to require that those charges be trued-up and held in escrow. These charges should reflect what is actually placed in service and should be held in escrow to be available for future capital improvements.

Last, Citizens are very concerned that the Utility is unreasonably driving up the rate case expense by being unreasonably litigious and raising eight additional issues in its cross protest, most of which ask the Commission to revisit its proposed agency action decision. Citizens do not believe the Utility carried its burden of proof to secure an adjustment for any of its protested issues.

Citizens' positions on all the issues are set forth in more specificity below and are subject to modification based upon the evidence adduced at the January 16-17, 2013 evidentiary hearing.

**STAFF:** Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions stated herein.

## VIII. ISSUES AND POSITIONS

### RATE BASE

**ISSUE 1:** What is the appropriate working capital allowance?

**WMSI:** WMSI is entitled to a working capital allowance of \$139,388 based upon 1/8 of operating and maintenance expenses. (Allen, Guastella, Brown)

**OPC:** Because the Utility is a Class A utility, the appropriate working capital allowance should remain what was approved and established by Proposed Agency Action Order No. PSC-12-0435-PAA-WU, issued August 22, 2012 (PAA Order). This issue was protested by the Utility and the Utility failed to carry its burden of proof to change what was approved by the PAA Order. Rate case expense for protesting and losing this issue is addressed under Issue 7. (Schultz)

**STAFF:** No position; this issue is subject to the resolution of other issues.



**ISSUE 2:** What is the appropriate rate base for the test year ended December 31, 2010?

**WMSI:** This is a fall-out calculation issue subject to the resolution of other protested issues.

**OPC:** Fall-out from other issues.

**STAFF:** No position; this issue is subject to the resolution of other issues.

COST OF CAPITAL

**ISSUE 3:** What is the appropriate weighted average cost of capital including the proper components, amounts, and cost rates associated with the capital structure for the test year ended December 31, 2010?

**WMSI:** The appropriate weighted cost of capital is 5.96%. (Allen, Brown)

**OPC:** The appropriate weighted average cost of capital should remain what was approved and established by PAA Order No. PSC-12-0435-PAA-WU. This issue was protested by the Utility and the Utility failed to carry its burden of proof to change what was approved by the PAA Order. Rate case expense for protesting and losing this issue is addressed under Issue 7. (Schultz)

**STAFF:** No position pending evidence adduced at the hearing.

NET OPERATING INCOME

**ISSUE 4:** Should any adjustments be made to contractual services – accounting expense?

**WMSI:** Yes. Accounting expenses should be increased by \$1,548 over the PAA Order amount to reflect a five-year average. (Allen, Brown).

**OPC:** Yes. Contractual Services – Accounting expense requested in the Utility's Minimum Filing Requirements (MFRs) should be reduced to \$3,667 as established by PAA Order No. PSC-12-0435-PAA-WU. This issue was protested by the Utility and the Utility failed to carry its burden of proof regarding any change to the expense approved by the PAA Order. Rate case expense for protesting and losing this issue is addressed under Issue 7. (Schultz)

**STAFF:** No position pending evidence adduced at the hearing.

**ISSUE 5:** Should any adjustments be made to transportation expense?

**WMSI:** Yes. Transportation expense should be increased by \$8,916 over the PAA Order amount to reflect business usage of Mr. Brown's and Ms. Chase's vehicles. (Allen, Brown)

**OPC:** Yes. Transportation expense requested in the MFRs should be reduced to \$31,721 as established by PAA Order No. PSC-12-0435-PAA-WU. This issue was protested by the Utility and the Utility failed to carry its burden of proof regarding any change to the transportation expense approved by the PAA Order. Rate case expense for protesting and losing this issue is addressed under Issue 7. (Schultz)

**STAFF:** No position pending evidence adduced at the hearing.

**ISSUE 6:** Should an adjustment be made to rate case expense previously authorized by Order No. PSC-11-0010-SC-WU, currently being amortized in customer rates, and if so, in what amount?

**WMSI:** No. This Commission has determined the reasonableness of the rate case expense and it is being paid by WMSI. (Allen, Brown).

**OPC:** Yes. This issue presents a case of first impression. To OPC's knowledge, no other regulated utility has done what this Utility has done regarding previously approved rate case expense. This Utility previously stopped payment to its prior law firm for legal services incurred in the last rate case. This Utility indicated in writing to the law firm that it disputed its final bill contrary to statements which the Utility made to the Commission that it did not dispute the amount owed. There is no written agreement or guarantee in writing (subsequent to the original representation agreement) that the Utility will continue making payments to its prior law firm in the amount approved by Order No. PSC-11-0010-SC-WU after this contested proceeding concludes. The stopping of payment and attempts to negotiate and lower its legal bill all constitute a change in circumstances that calls on the Commission to revisit the amount of rate case expense it previously approved. Further, as demonstrated by evidence presented for Issue 10, the Utility has a history of advancing utility money that should be used for utility purposes (such as paying rate case expense) for non-utility purposes. For these reasons, the Commission should remove from rates all or a substantial portion of the legal fees previously approved by the Commission which to date remain unpaid. Further the Commission should consider removing other previously approved rate case expense for other consultants which at the time of the contested hearing still remains outstanding. (Vandiver)

**STAFF:** No position pending evidence adduced at the hearing.



**ISSUE 7:** What is the appropriate amount of additional rate case expense associated with the protest of Order No. PSC-12-0435-PAA-WU?

**WMSI:** Based upon actual and estimated rate case expense, WMSI should recover \$105,364 in rate case expense amortized over 4 years. Rate case expense more appropriately should be paid by OPC from its budget. It is absurd for OPC to complain about issues raised by WMSI, when WMSI, and ultimately its customers, would have any additional rate case expense but for OPC's baseless protest. If OPC does not prevail on its issues then it should have to pay WMSI the rate case expense from its budget. Otherwise OPC never has an incentive to only file legitimate protests. If OPC thinks that WMSI should be penalized for raising issues it may ultimately lose, then OPC should be equally penalized for issues on which it does not prevail. It is equally absurd for OPC to argue that all issues consume the same amount of time. As was the case in WMSI's late rate case, the senseless Account 123 issues have subsumed this proceeding. (Allen, Brown).

**OPC:** The Commission should review and remove the unreasonable rate case expense incurred for the Utility's motion to dismiss, the unreasonable rate case expense incurred for objections to OPC's lawful discovery requests, the unreasonable rate case expense incurred for responses opposing OPC's motions to compel lawful discovery responses, and remove rate case expense for other unsupported and/or otherwise unreasonable rate case expense. After the unreasonable or unsupported rate case expense, the Commission should allow only 1/12 of the remaining rate case expense for each of the issues OPC protested and for each of the successfully protested Utility issues. If the Utility fails to gain an adjustment for any of its protested issues or otherwise disturb the amount approved by PAA Order No. PSC-12-0435-PAA-WU, the Commission should disallow rate case expense for each of those losing issues consistent with the Commission precedent established by Order No. PSC-94-0738-FOF-WU, issued June 15, 1994, in Docket No. 900386-WU, In re: Application for a rate increase in Marion County by Sunshine Utilities of Central Florida, Inc. As a matter of good regulatory policy, the Commission should not encourage a utility to protest a PAA order or cross protest, to up-the-ante with increased rate case expense, simply because another party protested the PAA. The Commission has discretion to determine whether it was reasonable for the Utility to cross protest the issues it protested and lost. Further, for any additional rate case expense approved, the Commission has the discretion to require quarterly reports from the Utility which show payment is being made during the four-year amortization period. (Vandiver)

**STAFF:** No position pending evidence adduced at the hearing.

**ISSUE 8:** Should any adjustments be made to miscellaneous expense?

**WMSI:** Yes. Miscellaneous expenses should be increased by \$8,754 over the PAA Order amount. (Allen, Brown)

**OPC:** Yes. Miscellaneous expense requested in the MFRs should be reduced to \$72,698 as established by PAA Order No. PSC-12-0435-PAA-WU. This issue was protested by the Utility. The Utility failed to carry its burden of proof regarding any change to the miscellaneous expense approved by the PAA Order. Rate case expense for protesting and losing this issue is addressed under Issue 7.

**STAFF:** No position pending evidence adduced at the hearing.

**ISSUE 9:** How should the net gain on sale of land and other assets be treated?

**WMSI:** No further gain on sale adjustments to those made in the PAA Order are justified. The decision by the Commission in the last rate case was clearly erroneous and should never have given the customers the benefit on the gain on sale of the Tallahassee lots that were never in rate base. Further, the lots in Tallahassee were sold in 2007, and any gain has been fully amortized. (Allen, Brown)

**OPC:** The Commission should reinstate and continue the amortization of the \$242,000 net gain on sale land and other assets as determined by Order No. PSC-11-0010-SC-WU to be amortized to the benefit of the ratepayers. WMSI took an appeal of the Commission's decision, including the Commission's determination of the gain on sale in Case No. 1D11-1656. On May 15, 2012, the First District Court of Appeal affirmed the Commission's Order *Per Curium*, as such the gain on sale should have been recognized and carried forward in this docket. The PAA Order omitted carrying forward the Commission determined, and First District Court of Appeal affirmed, gain on sale without any explanation or basis for the omission. Since the amortization of the gain on sale approved in the last rate case did not start amortizing until after January 3, 2011 when that order was issued, there remains a little more than three years of amortization on that \$242,000 gain of sale to be amortized to the benefit of the ratepayers. Reinstatement of the gain on sale amortization would materially reduce customer rates. As shown in HWS-36, OPC calculates the remaining amount of this gain on sale to be amortized to be \$153,292. If amortized over a three-year period, it would result in approximately a \$51,000 per year reduction in customer rates. (Schultz)

**STAFF:** No position pending evidence adduced at the hearing.



**ISSUE 10:** Have the Utility's advances to WMSI's President and associated companies had any adverse impact on the Utility or its ratepayers, and if so, what action, if any, should the Commission take?

**WMSI:** The Utility's investment in associated companies has had no impact on rates charged to ratepayers, or any adverse impact on the Utility. The Commission should continue to reject OPC's continued efforts to have this Commission micro-manage the Utility. OPC's attempts to have this Commission take over the running of WMSI should be rejected as it was by this Commission twice in the last rate case. (Brown, Guastella)

**OPC:** Yes. The Utility's advances to the WMSI President and his associated companies have adversely impacted the Utility and its ratepayers as demonstrated by the testimony and exhibits of OPC witness Schultz. The advancing of utility money for those non-utility purposes has caused harm to the Utility, in that the Utility was compelled to renegotiate its DEP loan several times to miss required payments. Because of the advances to the President and his associated companies, the Utility ultimately defaulted on its DEP loan because it lacked the money to make its May 2012 loan payment. The advancing of utility money has caused the Utility to be more than 90 days past due on a number of accounts payable, including but not limited to, fees owed to its prior law firm. This failure to pay its bills could harm its credit and/or its ability to secure the services of these or other vendors in the future. The advancing of utility money has caused harm to the customers, in that the renegotiation and subsequent amendments to the DEP loan added more than \$1.1 million in interest to the DEP loan, which the customers will ultimately have to pay. If the advancing of utility money for non-utility purposes is not halted, it could harm the day-to-day operation of this utility and ultimately the customers if the Utility through management decisions is unable to provide water service to the island. Based on the evidence that will be presented at hearing, the Commission should enter a finding that the actions of the Utility and its President have harmed not only the Utility's ability to meet its financial and operating responsibilities, but also the customers as well. The Commission should also enter a finding of managerial imprudence or managerial negligence. It should institute a policy of required escrow accounts and strict oversight of the management of this utility in order to provide assurances to current and future creditors that they will be repaid. To prevent further harm, the Commission should order the Utility to stop advancing any additional money to the WMSI President and associated companies. The Commission should also establish a method for the WMSI President and associated companies to repay the money previously advanced to them. In addition, the Commission should order that the assets of Brown Management Group be re-titled in the name of WMSI and remain re-titled in the name of WMSI unless the Utility receives permission from the Commission to sell those assets. In addition, the Commission should order that Brown Management Group assets that do not relate to utility operations, and do not otherwise provide regular income to WMSI, to be



liquidated (but only if a reasonable price can be obtained in this current economy) and the proceeds from those sales used to repay the advances first to WMSI's President and, if any remains, to associated companies. (Schultz)

**STAFF:** No position pending evidence adduced at the hearing.

**ISSUE 10(a):** Should any adjustment be made to the WMSI President's salary?

**WMSI:** Yes. The salary and benefits for the President should be increased by \$19,046 over the PAA Order amount. (Allen, Brown, Guastella)

**OPC:** Because of the \$1.2 million of Utility money advanced to the WMSI President and associated companies, WMSI had to renegotiate its DEP loan several times even though the Commission had approved rates sufficient to allow the Utility to repay the DEP loan. These imprudent renegotiations of the DEP loan directly added more than \$1.1 million in additional interest which the customers will eventually have to pay. Because the advancing of utility money for non-utility purposes was imprudent, and because adding the additional interest was not a prudent business decision, the Commission should further reduce the President's salary in order to prevent the customers from having to pay for any of the imprudently added interest. If necessary, the Commission could look to reducing other O&M areas to help offset the imprudently added interest. (Schultz)

**STAFF:** No position pending evidence adduced at the hearing.

#### REVENUE REQUIREMENT

**ISSUE 11:** What is the appropriate revenue requirement?

**WMSI:** This is a fall-out calculation issue subject to the resolution of other protested issues.

**OPC:** Fall-out from other issues.

**STAFF:** No position; this issue is subject to the resolution of other issues.

**ISSUE 12:** Is a repression adjustment appropriate in this case, and, if so, what is the appropriate adjustment to make for this Utility?

**WMSI:** Yes. This was not a protested issue and a repression adjustment should be made consistent with the PAA Order. The amount is a fall-out calculation issue subject to the resolution of other protested issues.

**OPC:** Fall-out from other issues.

**STAFF:** No position; this issue is subject to the resolution of other issues.

**ISSUE 13:** What are the appropriate water rates for the Utility?

**WMSI:** This is a fall-out calculation issue subject to the resolution of other protested issues.

**OPC:** Fall-out from other issues.

**STAFF:** No position; this issue is subject to the resolution of other issues.

**ISSUE 14:** Should the Utility be authorized to revise certain service availability charges, and, if so, what are the appropriate charges?

**WMSI:** Yes, The Utility should be authorized to impose a service availability charge in the amount of \$10,004. (Allen, Brown)

**OPC:** The increased service availability charges requested by the MFRs should not be approved, and any rate case expense associated with the Utility's protest of this issue should be disallowed as discussed in Issue 7. The increased charges established by the PAA Order are based on future pro forma plant yet to be true-up and adhere to the Commission's methodology for calculating these charges. If the Commission maintains the PAA Order approved service availability charges, the Commission should order that the service availability charges be subject to a true-up after the pro forma plant is completed. In addition, the service availability charge should be escrowed along with the pro forma increase in rates in order to assure that service availability charges will be available for future capital improvements. (Vandiver)

**STAFF:** No position pending evidence adduced at the hearing.

OTHER

**ISSUE 15:** WITHDRAWN

**ISSUE 16:** In determining whether any portion of the interim increase granted should be refunded, how should the refund be calculated, and what is the amount of the refund, if any?

**WMSI:** This is a fall-out calculation issue subject to the resolution of other protested issues.

**OPC:** If OPC succeeds on all the issues it protested, a refund of the interim increase might be required. If required, the amount should be calculated according to standard Commission practice for calculating refunds.

**STAFF:** No position; this issue is subject to the resolution of other issues.

**ISSUE 17:** In determining whether any portion of the implemented PAA rates should be refunded, how should the refund be calculated, and what is the amount of the refund, if any?

**WMSI:** This is a fall-out calculation issue subject to the resolution of other protested issues.

**OPC:** If OPC succeeds on all the issues it protested, a refund of a portion the implemented PAA rates might be required. If required, the amount should be calculated according to standard Commission practice for calculating refunds.

**STAFF:** No position; this issue is subject to the resolution of other issues.

**ISSUE 18:** What is the appropriate amount by which rates should be reduced four years after the established effective date to reflect the removal of the amortized rate case expense as required by Section 367.0816, F.S.?

**WMSI:** This is a fall-out calculation issue subject to the resolution of other protested issues.

**OPC:** Fall-out of rates approved by the Commission in Issue 7.

**STAFF:** No position; this issue is subject to the resolution of other issues.

**ISSUE 19:** Should this docket be closed?

**WMSI:** Yes.

**OPC:** No. It should be held open.

**STAFF:** No position pending evidence adduced at the hearing.



IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
			<u>Direct</u>
Jeanne Allen	WMSI	JA-1	Summary of Professional Experience
		JA-2	Affected MFR Schedules
		JA-3	Service Availability Charges
		JA-4	Working Capital Allowance
		JA-5	Contractual Service-5 Year Avg.
		JA-6	Transportation Expense
		JA-7	Miscellaneous Expense Documentation
		JA-8	Rate Case Expense
John Guastella	WMSI	JG-1	Qualification and Experience
Helmuth Schultz III	OPC	HWS-1	Qualifications of Helmuth W. Schultz, III
		HWS-2	NARUC USOA for Class A Water Utilities
		HWS-3	Response to Staff Audit Request No. 9
		HWS-4	Staff Reclassification Summarized
		HWS-5	Deposition Transcript: Gene Brown
		HWS-6	Staff Audit Workpapers – Account 123
		HWS-7	Response to Staff Audit Request No. 27 – BMG Financial Statements

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Helmuth Schultz III (continued)	OPC	HWS-8	CONFIDENTIAL—BMG Financials 2007-2011 – OPC POD 14
		HWS-9	August 1, 2012 Gene Brown letter
		HWS-10	Transcript of August 2, 2012 Agenda Conference, Excerpts
		HWS-11	Commission Staff Audit Report Cash Flow
		HWS-12	Staff Audit Workpapers Response to OPC POD 5
		HWS-13	Audit Workpapers Identified for SMC Investment Properties
		HWS-14	Deposition Transcript: Bob Mitchell
		HWS-15	Amendment 6 to DEP Loan Agreement
		HWS-16	Auditing Standards Section 341: Going Concerns
		HWS-17	2010 WMSI Annual Report
		HWS-18	CONFIDENTIAL – WMSI Financial Statements- Response to OPC POD 4
		HWS-19	Commission Staff July 20, 2012 PAA recommendation: Issue 15
		HWS-20	BMG General Ledgers – Response to OPC POD 13
		HWS-21	CONFIDENTIAL - \$40,000 Reclassification – WMSI General Ledger
		HWS-22	Nature of WMSI Financial Sources and Uses Document

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>		
Helmuth Schultz III (continued)	OPC	HWS-23	Staff Audit Report: Rate Case, dated March 12, 2012		
		HWS-24	Requests for RAF Payment Plans		
		HWS-25	Objections to Appraisals of BMG & Compelled Response OPC POD 12		
		HWS-26	DEP Loan & Amendments 1 through 6		
		HWS-27	Cash Flow Analysis of Damage Settlement		
		HWS-28	DEP Inquiry and WMSI Response		
		HWS-29	Gulf State Bank Reserve – 2006 General Ledger		
		HWS-30	WMSI and DEP Correspondence		
		HWS-31	WMSI Audited Financial Statements		
		HWS-32	Accounts Payable Aging Report		
		HWS-33	DEP Loan Amortization Schedules		
		HWS-34	Secretary of State – BMG Name Changes 1994 to Present		
		HWS-35	Excerpt from Principles of Public Utility Rates		
		HWS-36	Remaining Gain on Sale Balance		
		Denise N. Vandiver, CPA		DNV-1	Denise N. Vandiver Resume
				DNV-2	Prior Rate Case Expense: Payments Made



<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>		
Denise N. Vandiver, CPA (continued)	OPC	DNV-3	Schedule of Bills and Payments: Radey Firm		
		DNV-4	History of Payments to Radey Firm		
		DNV-5	March 2012 Letters To and From Radey Firm		
		DNV-6	Representation Letter with Radey Firm		
		DNV-7	Questions On Any Bill Dispute		
		DNV-8	Agreement to Pay Radey Firm		
		DNV-9	Justification for Two Witnesses		
		Debra M. Dobiac	STAFF	DMD-1	FPSC Staff Audit of WMSI
				DMD-2	Rate Case Audit Report
<u>Rebuttal</u>					
Gene Brown	WMSI	GB-1	Summary of Revenues from Ratepayers		
		GB-2	Aug. 1, 2012 Letter to Commissioners		
		GB-3	Financial Sources and Uses		
		GB-4	GB/Affiliates Resources & Loans to WMSI		
		GB-5	Rate Case Receipts/Paid/Incurred		
		GB-6	Personal Guarantee Documents		
		GB-7	Pledges of Personal Non-Utility Assets		
		GB-8	OPC E-Mails on Efforts to Kill Financing		

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Gene Brown (continued)	WMSI	GB-9	OPC Smear Campaign E-mail
		GB-10	Amendment 1 to DEP Loan Agreement
		GB-11	Memo to PSC Audit Staff re: BMG valuation
		GB-12	SMG Repayment Documentation

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

**Stipulation:** *At the time of the true-up proceeding, the escrow agreement, including the escrow amount, will be reviewed.*

XI. PENDING MOTIONS

WMSI's Motion for Order Prohibiting Interference with Financing, filed on January 7, 2013. (Document No. 00120-13)

XII. PENDING CONFIDENTIALITY MATTERS

WMSI's Request for Temporary Protective Order, filed October 25, 2012. (Document No. 07289-12)

WMSI's Request for Temporary Protective Order, filed December 19, 2012. (Document No. 08246-12)

XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

XIV. RULINGS

Opening statements, if any, shall not exceed 5 minutes per party.

It is therefore,

ORDERED by Commissioner JULIE I. BROWN, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Julie I. Brown, as Prehearing Officer, this 11th day of January, 2013.



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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.



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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.