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October 29, 2010

BY HAND DELIVERY

Florida Public Service Commission
Ann Cole, Commission Clerk
Office of Commission Clerk
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 100104-WU – In Re: Application for increase in water rates in Franklin County by Water Management Services, Inc. – Pre-hearing Statement

Dear Ms. Cole:

Enclosed for filing in the above-referenced docket on behalf of Water Management Services, Inc. ("WMSI") are the original and one (1) copy of the post-hearing brief.

Please acknowledge receipt of this document by stamping the extra copy of this letter "filed" and returning the copy to me.

Thank you for assistance with this filing.

Sincerely,

Lisa C. Scoles

Lisa C. Scoles, Esq.

Enclosures

cc: Joseph McGlothlin, Office of Public Counsel (w/ enclosure)
Ralph Jaeger/Erik Sayler, Office of the General Counsel (w/ enclosure)
Erik Sayler, Office of the General Counsel (w/ enclosure)
Gene Brown, WMSI (w/ enclosure)

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in water rates in Franklin County by Water Management Services, Inc.	)))	Docket No. 100104-WU Filed: October 29, 2010

POST-HEARING BRIEF

OF

WATER MANAGEMENT SERVICES, INC.

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COUNSEL FOR WATER MANAGEMENT SERVICES, INC.

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TABLE OF AUTHORITIES

PRELIMINARY STATEMENT

Water Management Services, Inc. will be referred to as "WMSI" or the "Utility." The Florida Public Service Commission will be referred to as the "FPSC" or the "Commission." The Office of Public Counsel will be referred to as "OPC." The Florida Department of Environmental Protection will be referred to as "FDEP." The Florida Department of Transportation will be referred to as "FDOT." The Northwest Florida Water Management District will be referred to as "NWFWMD." St. George Island will be referred to as "SGI" or the "Island." The National Association of Regulatory Utility Commissioners will be referred to as "NARUC." Certified Public Accountant will be referred to as "CPA." The Utility's minimum filing requirements filed in this case will be referred to as "MFRs." Brown Management Group will be referred to as "BMG." Contributions in aid of construction will be referred to as "CIAC."

Citations to the Customer Service Hearings Transcript will be designated as "CST." followed by the page number. Final hearing Transcript will be designated as "T." followed by the page number. Citations to exhibits will be designated by "Ex." followed by the exhibit number, and staff assigned page number, if applicable. The exhibit numbers refer to those assigned in Staff's Comprehensive Exhibit List for Entry into Hearing Record.

WMSI reaffirms its agreement to stipulations to Issues 5, 7, 14, 24, 47, and to partial stipulations to Issues 11 and 12 as set forth in the Prehearing Order, Order No. PSC-10-0601-PHO-WU, Docket 100104-WU (September 30, 2010), and the stipulation to Issue 25, which was reached at the Final Hearing. Accordingly, WMSI's Post-hearing Brief does not address those issues that were stipulated and accepted at the Final Hearing.

BASIC POSITION AND CASE BACKGROUND

WMSI operates a water utility on SGI in Franklin County, Florida. The Utility's last full rate case was in 1994. In 2000, WMSI filed a petition for a limited proceeding for an increase in water rates, which was necessitated by FDOT's demolition of the existing bridge from the mainland to SGI, to which WMSI's water main was attached. Fire flow improvements were also considered in that proceeding. FPSC's Final Order established the final revenue requirement, which helped cover only a portion of the costs of building the new water main, and a three-tiered inverted block rate structure for WMSI's rates.

In recent years, WMSI has experienced decreased consumption and declining revenues, which are due, in large part, to the increase of shallow wells on SGI, in combination with the inverted rate structure. The Utility has also continued to provide limited fire protection on the Island, without any compensation whatsoever. Therefore, using the historic year 2009 as the test year, WMSI has determined a need for increased annual water revenues of $628,351.[1] WMSI also requests an increase in the service availability charge and miscellaneous service charges. The decision to seek additional revenues was not an easy one, but it was a decision that was required for WMSI to continue to provide high quality water service.

Capital improvements to WMSI's aging infrastructure, much of which was constructed over 30 years ago, are needed. WMSI is requesting that the FPSC recognize the need for the recommended improvement projects, in order for the Utility to secure financing, and issue an order to set Phase I rates based on WMSI's cost of service without the improvements, leave the docket open to set Phase II rates based on bids and documented estimates for completing the improvement projects, and set Phase III rates based upon a true-up of actual costs.

[1] This figure represents the number in WMSI's petition, as modified to reflect the stipulations agreed to by the parties. The figure with the stipulations as agreed to by the parties and without the capital improvement projects is $432,031.

ISSUES AND ARGUMENT
QUALITY OF SERVICE

ISSUE 1: Is the quality of service provided by the Utility satisfactory?

Yes, the quality of service provided by the Utility is satisfactory.

The record is undisputed that the quality of service provided by WMSI to its customers is satisfactory as defined by the FPSC. Staff witness McKeown testified that WMSI is in compliance with the applicable requirements of the Safe Drinking Water Act. (T. 403). WMSI witness Brown indicated that the last two inspections by FDEP found no significant deficiencies. (T. 80). WMSI also won an award from the Florida Rural Water Association for having the second best water in Florida. (T. 529). The record also indicates that the customer service provided by the Utility is satisfactory. The record demonstrates that WMSI strives to provide prompt and efficient customer service, including responding 24 hours/day, seven days/week, and 365 days a year. (T. 92). WMSI witness Brown testified that he did not recall the last time WMSI had a service-related complaint, and that the only two complaints received in the last few years related to customer deposits, which were resolved in favor of the Utility. (T. 80; Ex. 34, p. 680). Finally, numerous customers spoke favorably at the customer service hearings about the Utility's service. (CST. 32, 34, 48, 65, 81 and 83).

USED & USEFUL

ISSUE 2: What is the used and useful percentage of the Utility's water distribution system?

The used and useful percentage of the Utility's water distribution system is 100% as identified in WMSI's MFRs (Ex. 3) and in the rebuttal testimony of Frank Seidman (T. 424-27) and Gene Brown (T. 558), and consistent with Order No. PSC-94-1383-FOF-WU.

The record indicates that the Utility's water distribution system is 100% used and useful and that the lot-to-lot method is not the proper methodology to use in this instance. As explained by WMSI witness Seidman, the application of the lot-to-lot count methodology, without taking

into the account the unique characteristics of SGI and WMSI, would be inappropriate and understate the used and usefulness of the distribution system. (T. 424-27). The lot-to-lot method was previously rejected in the Utility's prior rate case, in which the Commission approved the parties' stipulation to consider the Utility's transmission and distribution plant 100% used and useful, except for the distribution mains (less than eight inches in diameter) in the Plantation. Order No. PSC-94-1383-FOF-WU, Docket No. 940109-WU (Nov. 14, 1994); (T. 424, 444). It was evident in that case that the lot-to-lot method would understate the used and usefulness of the distribution plant on the island, given the unique physical characteristics of SGI, including that it is long and narrow and people tend to favor the beach front rather than the interior, yet the Utility has to have a system that runs the length of the island with distribution mains extending toward the beaches. (T. 425). In addition, some customers had shallow wells and chose not to take the Utility's service. (T. 425). Use of the lot-to-lot method would penalize the Utility for not having an exclusive territory, which is a factor outside the Utility's control. (T. 425, 445). These same conditions exist today and, in fact have been exacerbated by the NWFWMD's rule amendments permitting shallow wells on SGI. (T. 445; Ex. 63). Finally, the lot-to-lot method would deny the Utility the ability to fully recover its investment in fire protection (T. 445, 558), which the Commission already found to be 100% used and useful. Order No. PSC-05-1156-PAA-WU, Docket No. 00694-WU (Nov. 21, 2005).

In the prior case, the lot-to-lot method was rejected except in the Plantation only. Order No. PSC-94-1383-FOF-WU; (T. 424). However, witness Seidman testified that this method is no longer appropriate even in the Plantation, given that conditions in the Plantation have changed; namely, in the past, the use of shallow wells was restricted in the Plantation, whereas now those restrictions have been removed entirely under the new NWFWMD policy. (T. 426).

Given that owners are encouraged to drill shallow wells to reduce or eliminate their usage of the Utility's water, the lot-to-lot method should no longer be used for the Plantation. (T. 426). Instead, the entire transmission and distribution system should be considered 100% used and useful. (T. 426).

OPC witness Woodcock devoted just 12 lines of his pre-filed testimony to asserting that the lot-to-lot method should be utilized, and that by using the formula of the number of customers divided by total lots, the used and useful percentage for the distribution system should be 54.9%. (T. 156, 170). Although admitting that he was aware that the lot-to-lot methodology had not been used in the Utility's prior case, he stated that this fact did not affect his calculation. (T. 170). He stated that he believed that he was to examine the used and usefulness of the distribution system "with a fresh set of eyes" and so he made his determination without considering the previous findings or the factors considered in the prior case. (T. 173). While also admitting that he was aware of the unique characteristics of SGI considered in the prior rate case, he stated that those facts did not impact his formulaic conclusion. (T. 171-72). Witness Woodcock did not testify that the system or service area had changed significantly since the previous used and useful determination. He also did not testify that an error had been made in the prior calculation; indeed, he disagreed with the characterization that the Commission "got it wrong" in the previous case. (T. 173). Witness Woodcock admitted that his calculation did not take into account individuals with shallow wells who choose not to take the Utility's service (T. 171-72), although he acknowledged such customers should be factored in. (T. 175). He suggested removing entirely from the calculation a customer's lot that is served only by a shallow well. (T. 219, 221). Witness Woodcock admitted that the Utility is obligated to continue to provide service to lots even after a customer terminates service, in case the customer

decides to take service at a later point, and to provide fire protection. (T. 220). Witness Woodcock could not suggest how to improve the used and usefulness of the Utility's system, other than suggesting that the Utility could have initially limited its service area so that it would not have as many lines or as many lots. (T. 174).

Pursuant to section 367.081(2), Florida Statutes, in every rate proceeding, the Commission must consider "all property used and useful in the public service." The methodology for doing so has not been prescribed by the Florida Legislature. Instead, the Commission has "considerable discretion and latitude in the rate-fixing process." *Gulf Power Co. v. Bevis*, 296 So. 2d 482, 487 (Fla. 1976). While the FPSC is not bound to follow used and useful findings from previous orders, *Citizens v. Fla. Public Service Comm'n*, 435 So. 2d 784, 786 (Fla. 1983), those previous determinations are to be considered and are usually followed, unless the basis for the initial determination has substantially changed. For example, in a case involving a rate request by Utilities, Inc. of Florida, the Commission stated:

> **When a rate case is filed, prior Commission orders involving the same systems or system from prior cases should be reviewed and considered as part of the analysis in the current rate case proceeding.** This review provides background data concerning what issues were of concern in the prior case, and how those issues were addressed. This Commission makes a prospective used and useful finding in every rate case, and sometimes concludes, after weighing the evidence, that the plant and/or system is 100% used and useful as had been found in a prior case. If no modifications have been made to change the plant capacity, to alter the distribution collection system, to enlarge or diminish the certificated area, to affect the customer base, to correct an error in a prior calculation of used and useful percentages, or to change the Commission's previous used and useful methodology, **it is likely that the used and useful conclusion will be the same in a current proceeding before this Commission as it was in a prior proceeding.**

Order No. PSC-03-1440-FOF-WS, Docket No. 020071-WS (Dec. 22, 2003) (emphasis added). *See* Order No. PSC-93-1288-FOF-SU, Docket No. 920808-SU (Sept. 7, 1993) (finding that because the FPSC had previously found the Utility's wastewater collection to be 100% used and

useful, and "[t]hese circumstances remain the same in this case," the system was 100% used and useful). Indeed, in WMSI's limited proceeding docket, OPC suggested that the Commission conduct a new used and useful analysis on the distribution system, but the FPSC found that its previous orders and the staff's review of the Utility's expenditures (finding no exceptions) established the prudence of the installation of the lines and that therefore no used and useful adjustment should be made. Order No. PSC-05-1156-PAA-WU.

Further, contrary to witness Woodcock's testimony in this case, Commission precedent indicates that lots that are adjacent to a line but are not taking service should not be removed entirely from the calculation, as suggested by witness Woodcock. *See* Order No. PSC-09-0385-FOF-WS, Docket No. 080121-WS (May 29, 2009) at 46 (". . . Witness Woodcock's analysis did not include lots identified as having inactive connections . . . However, if a lot has an inactive connection, then the lot should be included in the U&U [used and useful] calculation because capacity has been reserved for that lot.").

Finally, Commission precedent indicates that fire flow protection should be considered in making a determination as to used and useful. Order No. PSC-03-1440-FOF-WS; Order No. PSC-96-1320-FOF-WS, Docket No. 950495-WS (Oct. 30, 1996). Since the 1994 rate case, WMSI has furnished limited fire protection for SGI. In connection with that protection, WMSI has installed over 40,000 lineal feet of transmission and distribution lines that include distribution lines through the Plantation, which are included as part of "non used and useful" plant in the lot-to-lot method and which are used for fire protection for **all** of the Plantation lots, whether or not they are customers of the Utility. It is unreasonable and unfair to disallow the Utility any recovery on these distribution mains which are used by customers and non-customers for fire protection.

RATE BASE

ISSUE 3: Should any adjustments be made to rate base regarding affiliate assets?

No. No adjustment is necessary or appropriate.

The record shows that no adjustments should be made to rate base regarding affiliate assets. OPC witness Ramas suggests certain adjustments to plant and accumulated depreciation for two backhoe trailers sold to BMG. (T. 291-300). However, as detailed by WMSI witness Brown's rebuttal testimony, no adjustments are necessary or appropriate because, although some mistakes were made in properly identifying the trailers, the sale of the two backhoe trailers was prudent, given that the first trailer was too small to accommodate the Utility's backhoe and the second was not frequently used, and were at a fair market price. (T. 551-53). *See GTE Florida, Inc. v. Deason*, 642 So.2d 545, 548 (Fla. 1994) (establishing that the standard in evaluating affiliate transactions is "whether those transactions exceed the going market rate or are otherwise inherently unfair."). The sale of the second trailer to BMG was fair and resulted in a $6,000 gain to WMSI. (T. 551-52; Ex. 51). The Utility has agreed that it should not have booked any depreciation expense on the second trailer after it was traded for a storage shed inasmuch as the shed was never used by WMSI. (T. 552). WMSI management requested that its CPA correct the journal entries and ensure that the $6,000 gain was included on WMSI's tax return for 2009. (T. 552; Ex. 51). The only significant point inherently made by witness Ramas' lengthy discussion of these trailers is that WMSI needs more CPA level accounting help to identify and track assets and to calculate depreciation on those assets. (T. 507).

ISSUE 4: Should any adjustments be made to rate base for vehicles?

No. No adjustment is necessary or appropriate.

The evidence in the record shows that no adjustments should be made to rate base for vehicles. (T. 553-55). OPC witness Ramas suggests adjustments to entirely remove any allowance for the vehicles used by President Gene Brown (T. 302, 361-62) and Vice-President Sandra Chase. (T. 305).

Witness Ramas' adjustments to allow no transportation allowance whatsoever for the President and Vice-President of WMSI is inappropriate. *See* Order No. PSC-99-1883-PAA-SU, Docket No. 980242-SU (Sept. 21, 1999), p. 18 (while not approving the full transportation expense for the vehicle of the President of a wastewater company, agreeing with the utility's position that "there should be some provision for an automobile expense."). This is especially true given that Mr. Brown has testified and provided information through discovery responses that he uses the vehicle 50% of the time for Utility business. (T. 553-54; Ex. 34, p. 669-70). There is nothing in the record disputing this except conjecture by witness Ramas that witness Brown's testimony is not supported. (T. 301-02). However, in addition to being supported by his testimony and discovery responses, Mr. Brown's statement is supported by the Utility's 2009 tax return, which details the miles, and which indicate that Mr. Brown drove 11,034 miles in 2009 on Utility-related business. (T. 553, Ex. 51). Further, it is undisputed that Mr. Brown uses this vehicle to travel to and from SGI four times per month. (T. 360, 553-54; Ex. 34, p. 669-70). Based on this evidence, it is reasonable to allow 50% of the expenses associated with the vehicle driven by Mr. Brown to be included in rate base and it is unreasonable to allow absolutely no transportation allowance for the Utility's President.[2]

[2] Further, in response to questions posed by Commissioner Skop (T. 638-40), and as amplification to information provided in testimony and discovery responses (T. 638-40; Ex. 36, p. 797, 1588, 1653-54, 1673, 1699, 1707, 2182-84), WMSI clarifies that when WMSI bought the 2008 Tahoe currently driven by the Utility's President, the Utility traded in a GMC truck owned

Similarly, it is unreasonable to allow no transportation allowance for the Utility's Vice-President. There is evidence in the record that Ms. Chase uses the vehicle that she drives 50% for Utility-related business. (T. 554; Ex. 34, p. 670). Again, there is nothing in the record disputing this except conjecture by witness Ramas that this figure is not supported. (T. 302). Again, in addition to being supported by Mr. Brown's testimony and discovery responses, this fact is supported by the Utility's 2009 tax return, which details the miles driven for Utility-related business. (T. 553, Ex. 51). It is also undisputed that Ms. Chase travels to SGI once a month. (T. 554; Ex. 34, p. 670). Witness Ramas' real issue with Ms. Chase's vehicle appears to be that the title for the vehicle is in Ms. Chase's name, rather than in the name of WMSI. (T. 303-05). WMSI's practice, because of cash flows and credit issues, has been to have Ms. Chase purchase a vehicle on behalf of the Utility using her personal credit, with WMSI making the payments and using the depreciation on the vehicle. (T. 555-56; Ex. 23). WMSI acknowledges that Ms. Chase purchased a vehicle on behalf of WMSI using her credit. This was with the understanding that the vehicle is owned and depreciated by WMSI. On February 18, 2009, Ms. Chase gave WMSI a Bill of Sale which conveyed title to the vehicle. (T. 555; Ex. 21). This policy and procedure has been used in the past and has never been challenged. Based on this evidence, it is reasonable to allow 50% of the expenses associated with the vehicle driven by Ms. Chase to be included in rate base and it is unreasonable to allow no transportation allowance for the Utility's Vice-President.

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by BMG and received a $10,000 credit against the purchase price of the Tahoe. Simultaneously, the Utility transferred an older truck owned by the Utility to BMG in exchange for BMG's GMC truck that was traded in. This transaction saved WMSI money and allowed the Utility to purchase the Tahoe without any cash outlay. Further, purchasing the Tahoe reduced the monthly payment on the vehicle driven by the President by $74.95 per month, for a savings of $899.40 per year. In addition, Account 123 (discussed further in Issue 50a) was decreased by $1,889.54.

ISSUE 6: Should any further adjustments be made to test year plant-in-service balances?

No. No further adjustments are necessary or appropriate other than as identified in the stipulations of Issues 5 and 7.

Staff witness Dobiac recommended reversing WMSI's handling of the proceeds from the settlement of the lawsuit pertaining to the bridge main's failed coating. (T. 417; Ex. 41). Rather than reducing rate base, as WMSI has done, she recommended increasing rate base and setting up a fund to be used to offset the future cost of the bridge maintenance contract. (T. 417; Ex. 41). However, testimony in the record indicates that the maintenance of the main is not related to construction of the main and the main would have to be maintained regardless of whether a special coating was used. (T. 436). Therefore, there is no nexus between the proceedings of the settlement and the maintenance contract for the main and, thus, the treatment suggested by the staff audit is not appropriate. (T. 436-37). Further, the way WMSI handled the settlement proceeds is the same way the parties agreed to handle the $100,000 reduction stipulated to in Issue 5.

ISSUE 8: What improvements, if any, has WMSI made to its water distribution system regarding fire flow that were addressed by the Commission in Orders Nos. PSC-04-0791-AS-WU, issued August 12, 2004, and PSC-05-1156-PAA-WU, issued November 21, 2005, in Docket No. 000694-WU? Do these improvements satisfy the requirements of the orders?

WMSI installed in excess of 40,000 lineal feet of 6" and 8" mains for fire flow improvement, together with all necessary appurtenances as an addition to its transmission and distribution system, as indicated in the service area map provided to OPC and staff and as described in Exhibit 70. These improvements satisfy the requirements of Order No. PSC-04-0791-AS-WU, as indicated in Order No. PSC-05-1156-PAA-WU.

The record demonstrates that the Utility has made the fire flow improvements directed by the Commission. In 2003, the Commission approved the Utility's request to include the cost of improved fire flow protection in the limited proceeding, given that fire flow was an issue of great importance to the Utility's customers, as communicated at the customer meeting. Order No.

PSC-03-1005-PAA-WU, Docket No. 000694-WU (Sept. 8, 2003). The Commission also authorized WMSI to expend funds to improve the water distribution system by looping the mains that serve the length of the service territory. Order No. PSC-03-1005-PAA-WU; (T. 143). The Utility began making these improvements using its own personnel and equipment. Order No. PSC-03-1005-PAA-WU; (T. 143). In 2004, in approving a settlement agreement between WMSI and OPC related to the elevated water storage tank, the Commission explicitly recognized that WMSI had already expended funds and manpower to improve fire flow. Order No. PSC-04-0791-AS-WU, Docket No. 000694-WU (Aug. 12, 2004); (T. 143). Further, the FPSC directed WMSI to spend the approximately $400,000 that it would have spent replacing the elevated storage tank to completing the looping of the water main. Order No. PSC-04-0791-AS-WU; (T. 143). WMSI was also directed, upon completion of the improvements, to provide two complete copies of the as-built drawings of the Utility's water distribution system to OPC, with one copy to be retained at OPC's office and one to be retained at the Fire Station on St. George Island. Order No. PSC-04-0791-AS-WU; (T. 144). In 2005, the FPSC specifically stated that staff auditors reviewed the expenditures made by WMSI and found no exceptions. Order No. PSC-05-1156-PAA-WU.

WMSI made the improvements as directed, spending $479,309.33 in 2003, over $79,000 more than the Commission had directed, and putting in over 40,000 lineal feet of lines. (T. 104; Ex. 70; Ex. 35, p. 744-46). Specifically, in 2003, WMSI made the following improvements (Account 105.15):

Date	Description	Amount
06/30/03	Boh Bros. Construction	64,634.20
08/31/03	Boh Bros. Construction	80,026.69
09/29/03	Boh Bros. Construction	57,781.51
10/31/03	Boh Bros. Construction	104,930.13
11/26/03	Boh Bros. Construction	69,953.40
12/30/03	Boh Bros. Construction	101,983.40
	Total for 2003	**479,309.33**

(T. 105-07; Ex. 70). There were also supplemental improvements in 2004, including the $165,000 specifically cited in testimony. (T. 105-06). The Utility believes that a review of the relevant invoices would reveal additional expenditures well beyond the $165,000 figure. (T. 105). The improvements made resulted in increased water pressure and the lowering of insurance rates on SGI. (T. 104, 107). OPC has not offered any testimony that the improvements did not increase pressure, were deficient, or that the Utility failed to spend at least $400,000 on such improvements. Indeed, at the first customer service hearing, the SGI fire chief acknowledged fire protection improvements made by WMSI. (CST. 32-33). It is undisputed that the Utility provided the required drawings of the distribution system to OPC when the improvements were completed. (T. 106, 144; Ex. 70). At that time, neither OPC nor the Utility's customers raised any concerns related to the improvements. (T. 104). During this proceeding, although WMSI had fully complied with the Commission's orders to provide documentation to OPC at the time the improvements were completed, the Utility again provided OPC with extensive information related to the fire flow improvements made, including invoices

and a map showing in detail the improvements made. (T. 103, 105; Ex. 70).

ISSUE 9: Should the Utility's pro forma plant additions be approved for recovery? If so, in what manner should they be approved for recovery?

Yes. The Commission should find that the additions will replace aging assets, improve quality of service and improve the system's safety and reliability, and that, when completed, the projects will be 100% used and useful. The Commission should set Phase I rates based on the Utility's cost of service without the projects, leaving the docket open to set Phase II rates, based on documented estimates for completion, and set Phase III rates based upon a true-up of actual costs.

Pro forma plant additions should be approved for recovery because the testimony of the Utility witnesses and OPC witness Woodcock indisputably show that they are needed and would be beneficial to the Utility system and its customers. (T. 81-82, 427-28, 462-63, 465-67, 475; Ex. 44-45; T. 161-63, 166, 177-85, 187). The only slight disagreement regarding the capital improvements in the record relates to whether the ground storage tank should be built on the existing site or another location (T. 161-63, 166, 180-84, 465-67; Ex. 45), with witness Woodcock's concern being the additional costs associated with building at another location (T. 180-84).

In responding to the original PBS&J engineering report regarding the capital improvements (Ex. 44), witness Woodcock agreed with the need for the capital improvements (T. 161), but recommended that WMSI "reevaluate" the ground storage tank project, since it appeared that it would cost $191,492 more to build the tank on another site than on the existing site. (T. 163). As a result, Mike Scibelli, a professional engineer with PBS&J, reevaluated the costs and risks associated with the ground storage tank project and, based on his reevaluation, issued an addendum to the original PBS&J report. (T. 465-67, 550; Ex. 45). The addendum provided "a more accurate comparison between the two alternatives [for building a ground storage tank] and developed revised opinions of costs . . . ." (Ex. 45, p. 2). WMSI witness

Scibelli's reevaluation shows that the actual cost differential between building the ground storage tank on a new site (versus the existing site) would be only $64,000. (T. 466, 550; Ex. 45). He further testified that this amount would be more than offset by the risks in building a ground storage tank on the existing site, including the risks of an island-wide outage and of discovering, during demolition of the existing tank, that the existing foundation is inadequate to support a new tank. (T. 466; Ex. 45). If the foundation were found to be inadequate for the new tank, the costs associated with building on the same site would be much greater than building on a new site. Mr. Scibelli's reevaluation (Ex. 45) was not refuted by OPC.

In addition, when building on a new site, the space of the original ground storage tank will be converted for a much needed storage/workshop. The storage/workshop will have a value to WMSI of more than the $64,000 cost differential. (T. 550)

Taxes and other costs would essentially be a wash, since property taxes, insurance and maintenance would be required whether new land was purchased for the new ground storage tank or for the needed storage/workshop facility. (T. 497).

The Utility, while including the pro form additions in the MFRs for the Commission's information (Ex. 3), has made it clear that it does not intend to have the Commission set rates based upon pro forma estimates. (T. 428, 549). At this time, the Commission should make the following findings: (i) that the improvements will replace aging assets, improve the quality of service and the health safety and reliability of the system for the Utility's customers and employees, (ii) that the improvements are approved for recovery, and (iii) that, upon completion, the improvement will be 100% used and useful. (T. 427-28, 430-31; Ex. 38, p. 2745-47). The Utility and OPC recognize that potential lenders need the assurance of the Commission on these findings to move forward with financing. (T. 430-31, 549-50; T. 186-87, 349). As demonstrated

by engineering reports prepared for other utilities by witness Woodcock and discussed during cross-examination, engineering estimates are commonly used for this purpose. (T. 189-210, Ex. 81-82). Such estimates are sufficient in this case at this time, understanding that detailed bids will be obtained by the Utility and that, ultimately, a true-up with actual costs will be done. (Ex. 38, p. 2745-47). Specifically, WMSI requests that the Commission set Phase I rates based on the Utility's cost of service without the improvements, and leave the docket open. At a later time, when the Utility is able to provide documented estimates for completion, the Commission would establish Phase II rates. Finally, the Commission would set Phase III rates based upon a true-up of actual costs.

The Commission has the authority and discretion to fashion such a method. The FPSC has considerable discretion and latitude in the ratemaking process, as has been well documented in decisions of the Florida Supreme Court. *See Citizens v. Public Serv. Comm'n*, 425 So. 2d 534, 540 (Fla. 1982) ("This court has consistently recognized the broad legislative grant of authority which these statutes [sections 366.06(2) and 366.05(1), Florida Statutes] confer and the considerable license the Commission enjoys as a result of this delegation."); *Bevis*, 296 So. 2d at 487 ("As pointed out by the Commission, it has considerable discretion and latitude in the rate fixing process."); *Storey v. Mayo*, 217 So. 2d 304, 307 (Fla. 1968) ("The regulatory powers of the Commission . . . are exclusive and, therefore, necessarily broad and comprehensive."); *City of Miami v. Fla. Public Serv. Comm'n*, 208 So. 2d 249, 253 (Fla. 1968) ("It is quite apparent that these statutes [sections 364.14 and 366.06, Florida Statutes] response considerable discretion in the Commission in the ratemaking process."). Further, the Commission has the authority to approve prospective rate increases and routinely does so. The Commission's authority to approve prospective rate increases has been expressly recognized by the Florida Supreme Court.

Floridians United for Safe Energy, Inc. v Public Serv. Comm'n, 475 So. 2d 241 (Fla. 1985); Order No. PSC-05-0945-S-EI, Docket No. 050078 (Sept. 28, 2005); Order No. PSC-05-0902-S-EI, Docket Nos. 050045-EI, 050188-E1 (Sept. 14, 2005). As part of that broad ratemaking authority, the Commission can choose or construct a reasonable alternative. *See Gulf Power Co. v. Fla. Public Serv. Comm'n*, 453 So. 2d 799, 805 (Fla. 1984) (affirming the Commission's ability "to make some other reasonable determination" even if the alternative approved by the FPSC was not proposed by either party or FPSC staff). While the Commission clearly has the authority to craft its own alternative, regardless of whether it has been advocated by one of the parties, here, the Utility has explicitly proposed a multi-phase approach. Recently, the Commission authorized a step increase for Tampa Electric Company ("TECO") even though the step increase was not requested by TECO until it was proposed as an alternative during the hearing by one of TECO's witnesses and was mentioned in TECO's post-hearing brief. Order No. PSC-09-0571-FOF-EI, Docket No. 080317-E1 (Aug. 21, 2009). The Commission's broad ratemaking authority, which was reaffirmed by the TECO case, was explicitly exercised for WMSI in its limited proceeding in 2000. In that case, the Commission approved a phased increase process to provide cost recovery for costs that were subject to engineering estimates. In its order, the Commission found:

> Further, while the costs and timing associated with Phase One are reasonably estimable at this time, there is considerably more uncertainty regarding the Phase Two time-frame. WMSI is expected to obtain bids for the major construction. When this process is completed, it will be possible to estimate the actual cost with a higher degree of precision than that of an engineering estimate performed two years in advance.

Order No. PSC-00-2227-PPA-WU, Docket Nos. 940109-WU, 00694-WU (Nov. 21, 2000). Here, the multi-step process and true-up proposed by WMSI, which is similar to the process utilized in WMSI's limited proceeding, is also an implicit form of relief within the

Commission's ratemaking authority. This proposed form of relief would be appropriate even if not requested by the Utility, but, WMSI has explicitly requested such relief.

Indeed, OPC witness Woodcock supports Utility's proposed approach of phased-in rates, competitive bids and then a true-up. In his direct testimony, witness Woodcock states: "I am of the opinion that if competitive bids are accepted as documentation for pro form additions to rate base, then a subsequent true up should be conducted to reconcile the actual project costs to rate base." (T. 158). Further, in response to a question on cross-examination as to what WMSI could do to obtain financing in order to implement the capital improvements, witness Woodcock answered: "I, I will say that as far as a regulated entity that Water Management Services coming to the Public Service Commission in this manner for a rate increase seems to be the appropriate mechanism to go down that road." (T. 224).

ISSUE 10: Should any adjustments be made to test year accumulated depreciation?

No adjustments should be made except Account 331.4 should be reduced by $6,977 to reflect forgiveness of cost for the state park mains project, as reflected in issues already stipulated.

ISSUE 11: Should any adjustments be made to test year Advances for Construction?

No adjustments should be made beyond those already stipulated.

The staff audit did not find that a $65,000 adjustment to reflect funds received from a Homeowner's Association should be made, but that additional research and consideration should be given to this transaction. (T. 418; Ex. 41). The unrefuted evidence in the record establishes that payment was made to Mr. Brown and affiliates (not to WMSI) by the homeowners as a settlement of a lawsuit that did not involve the Utility. (T. 559; Ex. 41; Ex. 31, p. 213-14). The settlement proceeds were then advanced by Mr. Brown to WMSI as an equity transaction. (T. 559-60; Ex. 41; Ex. 31, p. 213-14). Mr. Brown has testified that he never had an expectation that

he would be repaid by WMSI, nor was this advance from Mr. Brown to be repaid to the homeowners. (T. 560; Ex. 41; Ex. 31, p. 213-14). The transaction was not CIAC and does not meet the NARUC definition of a customer advance. (T. 559; Ex. 31, p. 213-14). Accordingly, no adjustment is necessary or appropriate at this time.

ISSUE 12: What is the appropriate working capital allowance?

The appropriate working capital allowance, after stipulated adjustments, is $51,140.

ISSUE 13: What is the appropriate rate base for the December 31, 2009, test year?

The appropriate base rate is contained in Exhibit 3, the MFRs. Further, WMSI agrees to the adjustments as outlined in the rebuttal testimony of Gene D. Brown and Frank Seidman, including the stipulated adjustments.

COST OF CAPITAL

ISSUE 15: What is the appropriate amount and cost rate for long-term debt for the test year?

The appropriate amount and cost rate for long-term debt for the test year is $9,919,844 at 4.99%, including the proposed capital improvements and refinancing. These numbers may change when actual financing is completed. The appropriate amount, excluding the proposed capital improvements and refinancing, is $7,768,865 at 3.79%.

ISSUE 16: What is the appropriate return on equity (ROE) for the test year?

The appropriate ROE for the test year is 11.30%.

The record shows that the appropriate ROE for the test year is 11.30%, which is in accordance with Order No. PSC-10-0401-PAA-WS, Docket No. 100006-WS (June 18, 2010).

ISSUE 17: What is the appropriate weighted average cost of capital including the proper components, amounts and cost rates associated with the capital structure for the December 31, 2009, test year?

The appropriate weighted average cost of capital is 5.01%, including the proposed capital improvements and refinancing. These numbers may change when actual financing is completed. The appropriate weighted average cost of capital is 3.85%, excluding the proposed capital improvements and refinancing.

NET OPERATING INCOME

ISSUE 18: Should any adjustments be made to the requested level of salaries and wages expense?

No. No adjustment is necessary or appropriate. After WMSI's normalization adjustment, the overall salaries were lower during the test year of 2009 than in 2008.

OPC witness Ramas claims that the salaries for Ms. Chase, Vice President, and Ms. Molsbee, Certified Operator, should be reduced to an increase of 3% because these women received "significant" increases in the test year. (T. 280-82). The record evidence, however, indicates that the increases were warranted, given their long tenure with the Utility, their breadth of responsibilities and a comparison of their salaries to that of Mr. Garrett, Certified Operator. (T. 538-42; Ex. 38, p. 2989). The testimony provided by Mr. Brown justifying the increases for Ms. Chase and Ms. Molsbee was not disputed by any witnesses. Indeed, at the customer service hearings, customers raved about Ms. Molsbee, by name. (CST. 32, 34, 37, 65). One customer explicitly stated: "I think Nita and all the employees at the water company, they deserve their salaries, they deserve their benefits that they get, but don't look there." (CST. 37). Further, such expenses should not be adjusted downward, without recognition that other salary expenses in the test year were lower than in prior years. *See* Order No. PSC-09-0385-FOF-WS (finding in the context of a request for a rate increase by a water and wastewater company that OPC witness Dismukes could not just make adjustments for test year expenses deemed abnormally high, but should also make adjustments when test years expenses were abnormally low and rejecting the "heads I win, tails you lose" approach); Order No. PSC-93-1288-FOF-SW (finding that "Ms. Dismukes' adjustment should be rejected on the basis that you can't choose just one expense account to normalize and ignore the rest."). For example, in the test year, although Ms. Chase and Ms. Molsbee received salary increases, other personnel changes to streamline the work force and save money were also made and Mr. Brown took a pay cut that more than offset the

increases. (T. 431-32; Ex. 42).

In his rebuttal testimony, Mr. Brown stated that Mr. Mitchell works approximately two hours per week for the various affiliated entities, and that whatever time Mr. Brown and Ms. Chase spend on affiliates is above and beyond the 40+[3] hours per week worked for WMSI. (T. 531-32; Ex. 34, p. 674-75). This statement is not disputed, except by OPC witness Ramas' unfounded assertion that she does not believe that the two-hour figure or the statement that the work is done outside of WMSI work hours to be "realistic" or "reasonable." (T. 261-62). Witness Ramas then arbitrarily decides that five of every 40 hours is more realistic and reasonable, although she does not provide any support for that assumption, other than her own guess. (T. 262-63). Indeed, witness Ramas applies this percentage to Ms. Chase, even though Ms. Chase is not mentioned by witness Ramas, in the following statement: "Given the extensive amounts of transfers between the various cash accounts of these entities, it is not realistic to assume that only two hours per week are dedicated by the Company's controller [Mr. Mitchell] and Mr. Brown associated with the BMG or other non-regulated related operations." (T. 262-63). Indeed, witness Ramas' testimony does not indicate what she believes Ms. Chase is doing related to these transactions to warrant the reduction. Mr. Brown specifically states that Ms. Chase "does not spend any significant time" on affiliate transactions. (T. 531). Based on her unsupported conclusion, witness Ramas reduces the salaries and benefits costs associated with Mr. Brown, Ms. Chase and Bob Mitchell by 12.5% to reflect her allocation to affiliated operations. (T. 263). Witness Ramas' guess is disputed by witness Brown's testimony, which indicates that a total of seven checks are written each month related to the affiliate operations (T. 531), such that two hours would more than cover the activity. The adjustments proposed by

[3] Testimony shows that it is not a 40 hour, five day work week, so there is no factual basis for an allocation based on 40 hours per week. The unrefuted testimony is that the employees work more than 40 hours per week. (T. 532; Ex. 34, P. 674-75).

witness Ramas are simply not substantiated by the record in this case.

Case law demonstrates that a ratemaking body like the Commission has the power to determine the reasonableness of a utility's executive compensation, but that determination must be based on competent, substantial evidence. *See Metro. Dade County Water & Sewer Bd. v. Comm'ty Util. Corp.*, 200 So. 2d 831, 833 (Fla. 3d DCA 1967) ("The Court does not question the right of a regulatory commission to determine the reasonableness of executive salaries as an item of expense for rate-fixing purposes; but any determination in this regard must be based upon competent substantial evidence."); *Fla. Bridge Co. v. Bevis*, 363 So. 2d 799 (Fla. 1978) (reversing as arbitrary and a substantial departure from the essential requirements of law the FPSC's reduction of the compensation allowance for the president who was only in the office 142 out of the 250 working days during the test year, when there was no evidence that the president rendered services to any other company while he was out of the office or that he could only perform his duties at the office); *accord Westwood Lake, Inc. v. Metro. Dade County Water & Sewer Bd.*, 203 So. 2d 363, 365-66 (Fla. 3d DCA 1967) (finding no competent substantial evidence in the record to support the order reducing total salary allowance for utility executives from $18,000 to $12,000 when the only evidence was a staff witness who testified that in his opinion, executive compensation for ratemaking purposes should not exceed $12,000 and this was insufficient to sustain the Board's ruling). In this case, there is no competent, substantial evidence supporting any of witness Ramas' salary adjustments and therefore they should be rejected.

ISSUE 19: Should any adjustments be made to employee pension and benefits?

No. No adjustment is necessary or appropriate.

OPC witness Ramas recommends disallowing the entire requested increase in deferred

compensation, based presumably on the fact that it is new in the test year (T. 283), represents an unwarranted increase in compensation for Mr. Brown and Ms. Chase (T. 284-85), is not currently funded (T. 284, 286), and should not be passed on to customers (T. 285). However, the record evidence indicates that, although it was not implemented until 2009, the plan was not new but had been in the planning stages for some time; indeed, meetings to discuss the plan were held in 2008. (T. 544). The plan was specifically discussed with Hank Garrett to persuade him to leave his job at Eastpoint and return to work for WMSI. (T. 543). In addition, the plan is not designed to boost the salaries of Mr. Brown and Ms. Chase; instead, it applies to all of WMSI management personnel and Mr. Garrett and Ms. Molsbee will likely qualify in time. (T. 543). The terms of eligibility require that the employee must (1) be highly compensated; (2) be part of the management group; (3) be at least 55 years of age; and (4) have worked for the company for a total of 25 years or more. (T. 543; Ex. 17). The purpose of the plan is to retain quality employees beyond when they might otherwise retire. (T. 544). The plan is based on the life expectancy of an employee at age 65. (T. 544). Although the plan is not currently funded, the Utility is not opposed to a requirement that the plan be funded on a year-to-year basis. (T. 545-46). Finally, it is not improper to fund an employee pension plan that helps attract and retain high quality employees. (T. 544-45). Witness Ramas, while conceding that she was not an expert at developing and establishing pensions (T. 352-53), admitted that employee benefits like an employee deferred compensation plan is one factor that could help retain and attract quality employees. (T. 353). She also agreed that a "reasonable" employee benefit plan should be included in rates. (T. 353-54).

Witness Ramas also claims that the employee benefits of Mr. Brown, Ms. Chase and Bob Mitchell should be reduced by 12.5% to reflect her allocation to affiliated operations. (T. 261-

62). As with the salary and wage adjustments addressed under Issue 18 above, witness Ramas' adjustments are unsubstantiated and inappropriate.

ISSUE 20: Should any adjustments be made to materials and supplies expense?

No. No adjustment is necessary or appropriate.

ISSUE 21: Should any adjustments be made to the requested level of Engineering Services Expense?

No. No adjustment is necessary or appropriate.

The record evidence indicates that WMSI is in need of engineering services, for a host of capital and non-capital projects, in order to deal with government compliance and permitting requirements and to continue providing a high level of service, and that it seeks to obtain these services through a retainer agreement with PBS&J. (T. 89, 467-68, 476, 480, 534, Ex. 53; Ex. 36, p. 2230-40). In responding to a question on re-direct, OPC witness Woodcock implicitly acknowledged that WMSI has a need for both capital and non-capital projects, stating that PBS&J's technical memoranda covers "a broad spectrum of operational and capital planning issues." (T. 238). Witness Woodcock further opines that "the Utility should periodically undertake to evaluate their system." (T. 238). However, without any allowance for recurring, non-capital engineering services, WMSI will not have the ability to undertake the periodic system review recommended by witness Woodcock. In addition, although she tried, OPC witness Ramas could not dispute that the Utility has some need for non-capital engineering services. (T. 332-36). While testimony in the record states that utilities sometimes have engineering staff to assist with normal operations (T. 468-69), it is undisputed that WMSI does not have an engineer on staff. (T. 335, 497). Without an allowance for engineering services, the needed engineering projects identified by WMSI in Exhibit 53 – many of which would result in cost savings (T. 496-97) or, in the case of cross-contamination, are a matter of public health (T.

484-85, 492-95) – will either not be accomplished or will be attempted by WMSI personnel without engineering expertise. (T. 498, 608). This is not in the best interest of WMSI and will not help the Utility maintain the high level of service WMSI customers have come to expect.

Further, there is ample evidence in the record indicating that the $48,000 annual retainer amount for PBS&J is prudent and reasonable. OPC witness Woodcock agreed that PBS&J is a reputable firm (T. 169) and there is nothing in the record indicating that $4,000/month for 32 hours (or four days) of consultation per month (T. 469-70), or $125/hour for professional engineering services, is unreasonable. There is also evidence in the record that total costs will likely be less by utilizing an engineering firm that is under retainer with the Utility to conduct reviews and updating of systems or work on additional capital projects, since that firm will already be familiar with the Utility and any relevant projects. (T. 495-96). Finally, the record indicates that the proposed $48,000/year is not excessive as it would not be sufficient to cover all of the services desired by the Utility, but that prioritizing of projects would be needed. (T. 470, 479-80).

Despite the fact that the record indicates engineering services are needed, would result in cost savings and are reasonable, OPC witness Ramas would disallow all of the requested $48,000 annual retainer amount for engineering services and would allow only the amortization of the PBS&J system evaluation (of $5,500 for five years). (T. 331-35). In essence, then, she would disallow any expense for recurring, non-capital engineering services. (T. 335). This total disallowance for engineering services is not reasonable or appropriate based on the record.

Finally, OPC witness Ramas tries to justify her total disallowance for engineering expenses on the fact that there were not non-capital engineering expenses for 2005 through 2008. (T. 263). However, there is clear, undisputed evidence in the record that WMSI had received

engineering services at no cost from a former engineering consultant, Les Thomas, for the period 2000 through 2009 (T. 487, 585; Ex. 27, p. 59-60; Ex. 34, p. 692-93), such that engineering expenses in the years reviewed by witness Ramas were not representative of the level of services required and received by the Utility to maintain operations.

ISSUE 22: Should any adjustments be made to the requested level of accounting services expense?

No. No adjustment is necessary or appropriate.

Similarly, the record reveals that WMSI is in need of the requested level of accounting services expense to assure compliance with all of the various requirements, and seeks to obtain these services through a retainer agreement with Barbara S. Withers, CPA. (T. 91, 503-04, 533; Ex. 36, p. 2212-20). OPC witness Ramas did not dispute that the Utility has some need for accounting services, allowing some expenses. (T. 266-67).

There is ample evidence in the record indicating that the $18,000 annual retainer amount for Barbara S. Withers is reasonable. (T. 91, 504). There is nothing in the record indicating that $1,500/month for 10 hours (or approximately 1 1/2 days) of consultation per month (T. 91, 504), or $150/hour for services from a CPA with 35 years of providing accounting services for a water utility (T. 500A), is unreasonable. This is especially true given that, under the agreement, if 10 hours are not used in a given month, then they are credited to other months, so that WMSI does not pay for hours not worked. (T. 504). Indeed, undisputed testimony in the record indicates that most similarly qualified CPAs would charge $250/hour. (T. 504).

Although the record indicates accounting services are needed and reasonable, OPC witness Ramas attempts to justify reducing the $18,000/year expense by $14,333, for a total annual allowance of $3,667, because she has calculated that figure to be an average of the previous five years. (T. 266). However, there is clear, undisputed evidence in the record that

WMSI had been receiving accounting services at no cost from witness Withers (T. 505), such that accounting expenses in the years reviewed by witness Ramas were not representative of the level of services required and received by the Utility to maintain operations. Further, additional accounting services, beyond those that the Utility has been paying for and/or receiving at no charge, are needed in order to keep accounts and records in compliance with FPSC and other requirements. (T. 503-06, 507-08).

Finally, witness Ramas' adjustment for accounting services seems incongruous with her assumption (discussed in Issue 18 above) that it would take three people 12.5% of their time, or five hours a week (for a total of 15 hours per week or 60 hours per month) to make the journal entries and write the seven checks per month related to affiliates.

ISSUE 23: Should any adjustments be made to the requested level of DEP refinancing costs?

No. No adjustment is necessary or appropriate. This expense was incurred to increase the loan amortization period to more closely match the depreciable life of assets, improving cash flow to the betterment of the customers.

OPC witness Ramas recommends that $2,500 be removed from test year expenses for DEP refinancing consulting costs because the costs are non-recurring and customers should not pay for them. (T. 270). However, witness Brown's testimony indicates that the refinancing of the DEP loan, which would not have happened without the consultants, substantially benefitted WMSI's customers by keeping the low interest loan in good standing and extending the amortization from 20 to 30 years to better match the FPSC depreciation schedule on the plant constructed with the loan proceeds. (T. 535). There is no evidence disputing that these benefits to customers resulted. Perhaps to counter this, witness Ramas attempts to justify the disallowance by trying to tie it to her erroneous conclusion that BMG and Mr. Brown took more money out of WMSI than they put in. (T. 271-72). Testimony in the record from Mr. Brown and

Ms. Withers and Exhibits 50 and 47 indicate that Ms. Ramas' conclusion is simply false and that, in fact, from January 2009 through August 2010, Mr. Brown and BMG have put $156,842 more into WMSI than was taken out. (T. 522-25, 535; 507-07; Ex. 50; Ex. 47). Further, the cash in-flows and out-flows of the Utility are unrelated to the DEP refinancing and whether the $2,500 should be properly allowed.

ISSUE 26: Should any adjustments be made to rental of building/real property?

No. No adjustment is necessary or appropriate.

OPC witness Ramas, consistent with her recommendations related to salaries and benefits, states that 12.5% of the rent expense associated with the Tallahassee office should be allocated to affiliated entities, resulting in a $2,250 reduction to test year rent expense. (T. 263). As with the employee salary, wages and benefits in Issues 18 and 19 above, there is simply no evidence in the record supporting witness Ramas' adjustment and it should be rejected.

ISSUE 27: Should any adjustment be made to transportation expense?

No. No adjustment is necessary or appropriate.

The staff audit recommends an adjustment to remove $9,104 due to insufficient supporting documentation. (T. 419; Ex. 41). Specifically, although WMSI provided the auditor with hundreds of documents, including invoices in the form of receipts, cancelled checks, and/or credit card invoices to substantiate its gasoline purchases for Utility vehicles, the staff auditor recommends that the purchases be disallowed because the audit staff could not differentiate whether the vehicle fueled was a company vehicle or a personal vehicle. (Ex. 69). In her deposition, the auditor stated that she would want to see the driver initial and date the receipt and list what vehicle the gasoline was purchased for, so that she could be sure the purchase was for a WMSI vehicle. (Ex. 69). However, as explained by the Utility in discovery responses, when an

employee uses his/her personal vehicle and seeks mileage reimbursement from the Utility, WMSI does not pay for the gas or other fuel to power that vehicle. (Ex. 27, p. 64-65). Further, gas or fuel charged at local gas stations and paid by WMSI by check are used only to purchase gas for Utility-owned or -leased vehicles. (Ex. 27, p. 64). The record also contains a sworn interrogatory response that: "No WMSI employee has ever put any gas charged to the company in any personal vehicle." (Ex. 31, p. 215). The Utility has also offered to provide sworn affidavits from WMSI employees to that effect. (Ex. 31, p. 215-16). Finally, the record contains undisputed evidence that WMSI employees must go to all four of the Utility's wells every day and must drive to over 1,800 service locations, which are spread out over an island that is nearly 20 miles long, at least 12 times a year (for a total of at least 21,600 visits) to read meters and address other service issues. (Ex. 31, p. 215). This results in thousands of miles being driven per year, which are necessary in order to provide WMSI's customers with quality service. (Ex. 31, p. 215). Accepting the staff auditor's conclusion would allow no recovery for the gasoline used for these required trips to serve the Utility's customers. Therefore, all gasoline purchased and paid for by WMSI was for Utility vehicles and thus should be allowed.

OPC witness Ramas also recommends that transportation and additional costs associated with Mr. Brown's and Ms. Chase's vehicles should be removed. As addressed under Issue 4 above, expenses associated with these vehicles are appropriate as outlined by the Utility and should be allowed.

ISSUE 28: Should the requested key man life insurance expense be approved?

Yes.

There seems to be some confusion regarding the key man life insurance policy. In OPC's opening remarks in the first customer hearing, Mr. Kelly stated that the beneficiary of the key

man life insurance policy is Mr. Brown's spouse. (CST. 16). That is simply untrue, as ample evidence in the record demonstrates, including the testimony of OPC witness Ramas. (T. 286-87; Ex. 38, p. 2953-2978). The record is clear that the beneficiary of the policy is the trustee, Sandra M. Chase, Trustee of the WMSI Employer Benefit Trust, or her successor. (Ex. 38, p. 2971). Ms. Chase is not Mr. Brown's spouse and is in no way related to him. (T. 583). The WMSI Trust was established to administer the WMSI 401(k) plan. (Ex. 38, p. 2976).

The staff audit and OPC witness Ramas state that they would not include the key man life insurance expense. (Ex. 41; T. 286-76). Witness Ramas recommends that the key man life insurance expense not be allowed because it would benefit Utility employees' 401(k) plan rather than the ongoing utility operations. (T. 286-87). However, if the 401(k) plan is a legitimate Utility expense, which witness Ramas admitted on cross-examination (T. 353-54) and which her concern for its funding implies (T. 288), then using the key man life insurance to fund the 401(k) plan is a legitimate utility expense and the associated expenses should be allowed. Finally, having key man life insurance to protect the employees' 401(k) will help encourage the Utility's employees to stay with the Utility, which is essential to continue to offer quality water and outstanding customer service to the Utility's ratepayers.

ISSUE 29: What is the appropriate amount of rate case expense?

***The appropriate amount of rate case expense is contained in Exhibit 3, the MFRs, as modified by Exhibit 71, and the stipulations agreed to by the parties. In addition, should the Commission adopt a phased increase as the Utility has requested, this docket should remain open and additional rate case expense associated with the phase increases are appropriate. ***

OPC witness Ramas recommends several adjustments to rate case expense, including $12,688 in legal and consulting rate case costs from firms that did preliminary work but are not involved in the current proceeding (T. 275), and any rate case expenditures related to the

Utility's lack of support for its pro forma plant additions. (T. 279).

Mr. Brown's testimony shows that the preliminary expenses should be allowed. The preliminary legal expenses were to provide WMSI with valuable legal advice and strategy regarding the FPSC and rate structure. (T. 536). Similarly, the accounting firm provided assistance and advice to the Utility in calculating rate base according to prior orders of the FPSC. (T. 536). The information provided by the law and accounting firms was helpful in the Utility formulating and moving forward with the rate case, and Mr. Brown has testified that it helped reduce the ultimate charges of those currently retained. (T. 536-37). Accordingly, these expenses should be allowed.

Finally, in regards to any additional expenses related to obtaining additional supporting documentation for the pro forma adjustments, OPC witness Ramas' position is disingenuous. First, OPC witnesses Ramas and Woodcock criticize the Utility for not taking the next step to obtain competitive bids or other supporting documentation. (T. 292, 156-59, 185). Then, both witnesses acknowledge that additional costs are indisputably associated with the Utility obtaining competitive bids or other supporting documentation. (T. 347, 186). Finally, then, witness Ramas refuses to admit that the costs associated with additional documentation would have been properly included in rate case expense, had they been incurred by the Utility six months ago, or that they should be properly included the future, when the expenditures have been made. (T. 345). However, she can't have it both ways. If additional documentation is needed and additional costs will be incurred to get that documentation, then those costs should be allowed, whenever they are incurred.

ISSUE 30: Should any adjustments be made to employee training costs?

No. No adjustment is necessary or appropriate.

Although, as OPC witness Ramas points out, the employee training costs recorded by

WMSI during the test year were higher than the level of employee training costs incurred in the prior two years (T. 288), there is no evidence in the record that these expenses – totaling less than $2,700 – were unreasonable or unnecessary. Training costs frequently vary from year to year, depending upon the availability of employees to attend various training sessions or conventions. (T. 546-47). Indeed, testimony shows Mr. Garrett and/or Ms. Molsbee, WMSI's operators, will be attending some training every year and, in fact, are required to have at least 45 hours of training per year to keep their FDEP licenses. (T. 547). To date in 2010, WMSI has already spent $2,606 just for Mr. Garrett to fulfill his requirements. (T. 547). Thus, the training costs should be allowed.

ISSUE 31: Should any further adjustments be made to miscellaneous expenses?

No. No adjustment is necessary or appropriate.

ISSUE 32: Should any further adjustments be made to the Utility's pro forma expenses?

No. No further adjustment is necessary or appropriate.

ISSUE 33: Should any adjustments be made to depreciation expense?

Depreciation expense should only be reduced by the amount included in the stipulation on Issue 5.

ISSUE 34: Should the company's request to recover the costs associated with the withdrawn wastewater certificate application be approved?

Yes, the costs associated with the wastewater certificate should be approved.

The record evidence shows that the costs associated with the wastewater certificate application should be approved. OPC witness Ramas recommends that such costs be removed because WMSI's application to provide wastewater service to SGI "has **nothing** to do with its provision of water service to its water customers" (T. 289-90) (emphasis added). Evidence in the record soundly disputes this unsupported conclusion. Wastewater service and water service are

most definitely related (T. 433) and a wastewater system would have had many benefits to water customers. (T. 472). Without a central wastewater service on SGI, customers are forced to handle sewage using septic tanks, which are difficult and expensive to maintain and to keep in compliance with environmental requirements. (T. 433). If commercial water customers are put out of business because of sewage problems, WMSI is left with a smaller revenue base and higher water rates to remaining customers will be required to recover the same revenue requirement. (T. 433, 472). In addition, witness Ramas herself acknowledges that there would be certain efficiencies with one company providing both water and wastewater service. (T. 355-56). She also agrees that providing a wastewater system could benefit a utility's water customers by retaining water customers that might otherwise leave the system and by maintaining and expanding the base upon which fixed costs are recovered. (T. 356). WMSI's efforts to pursue a wastewater certificate were prompted by a request from the Franklin County Commissioners (T. 548, 614-15), were made to preserve its customer base, and such a system would have resulted in benefits to all WMSI's customers. (T. 433). It is undisputed that the reason a wastewater system was not ultimately implemented was through no fault of the Utility, but because the Franklin County Commissioners, a majority of whom had told WMSI that they were in favor of central sewer, at least in the commercial area of SGI, changed direction regarding such a system on SGI. (T. 548-49, 615-16).

Witness Ramas' statement that the costs should be disallowed so that customers do not pay for "Mr. Brown's decision to attempt to expand WMSI's services to include the provision of wastewater services" (T. 290) has absolutely no basis. Indeed, her veracity in making the statement is questionable, in light of her own testimony on cross-examination that she was aware that WMSI's wastewater efforts had been prompted by Franklin County asking WMSI to make a

presentation regarding a wastewater system on SGI (T. 360) and she knew that the Utility said it had commercial customers asking for a wastewater system. (T. 359). The record is clear that the Utility looked into a wastewater system in order to serve the needs of WMSI's existing water customers in its existing service area, including some commercial customers who were being threatened with temporary or permanent closure of their business. (T. 547). Indeed, at least one business on SGI was closed by Circuit Court order due to sewage problems. (T. 538; CST. 29). Pursuing a wastewater certificate at that time, with the information the Utility had then and having no reason to doubt that Franklin County was moving in that direction, was a reasonable and prudent decision by the Utility and should be recoverable in rates. (T. 549). Denying recovery will have a chilling effect on similarly situated utilities and send a message that utilities should not pursue services which benefit customers.

This record evidence, as described above, also refutes the staff auditor's recommendation that the wastewater expenses should not be included in working capital because the costs were related to a wastewater certificate that was withdrawn and the "current rate case applies to water only." (T. 418-19).

In summary, the testimony is **unrefuted** that:

1. There was a large number of water company commercial customers who demanded wastewater service because their businesses were being severely restricted and some were closed by circuit court order for lack of wastewater treatment. (T. 538, 548). Closing of the businesses of commercial customers would have shifted more cost to WMSI's other water customers. (T. 433, 472).
2. The Franklin County Commission specifically requested WMSI to present a wastewater plan. (T. 548, 614-15).

3. Four of the five Franklin County Commissioners assured WMSI that they were in favor of a central wastewater system in the commercial area of SGI. (T. 548-49, 615-16).
4. Had the wastewater system been implemented by WMSI, it would have resulted in decreased water costs for WMSI's existing water customers because of the economy of scale, as described by WMSI witnesses Scibelli and Brown. (T. 472-73, 477, 520, 548-49),
5. Under these circumstances, WMSI would have been criticized if it had not responded to its customer demands and the Franklin County Commissioners. (T. 549).

If the Commission agrees that the costs should be allowed, but would prefer a longer period of amortization in order to reduce the impact on customer rates, the Utility would have no objection. (T. 433).

ISSUE 35: How should the gain on sale of land and other assets be treated?

Gains and losses on the sale of land or other utility assets should be handled in accordance with the NARUC uniform system of accounts. For WMSI, net operating losses over the past several years exceed net gains in sales, as shown by Exhibit 84. No adjustment is necessary or appropriate unless the Commission approves the amortization of the difference between net losses and gains on sales.

As indicated in Exhibit 84, through 2002, the Utility experienced neither gains nor losses on sales transactions. The total gains were incurred during the years 2003-2009. During that same period, according to the annual reports filed with the FPSC at schedules F-4 and F-5, the Utility's cumulative Net Operating Income was $285,041 less than required, based on the actual expenses and actual cost of debt for those years. When the 2009 annual report (Ex. 85) is adjusted to reflect the normalization of expenses actually being incurred now, as presented in the MFRs in this proceeding (Ex. 3), the cumulative Net Operating Income is $420,284 less than

required, based on those actual expenses and actual cost of debt for those years. That is, the cumulative losses being experienced by the utility over this period are $36,527 more than the gains on sales for the same period. This does not take into consideration that revenues in 2010, to date, are less than those in 2009 for the same period. Further, it is inappropriate to pick and choose gains without also considering losses during those same periods. *Cf.* Order No. PSC-09-0385-FOF-WS; Order No. PSC-93-1288-FOF-SW.

ISSUE 36: What is the test year pre-repression water operating income or loss before any revenue increase?

There is an operating loss of $247,662.

ISSUE 37: What is the appropriate pre-repression revenue requirement for the December 31, 2009 test year?

The appropriate pre-repression revenue requirement is $1,943,296.

RATES AND CHARGES

ISSUE 38: What are the appropriate test year billing determinants before repression?

The appropriate test year billing determinants before repression are contained in the MFRs, page 67.

If the Commission approves phased-in rates for the Utility's pro forma plant adjustments, it may be appropriate, given the recent volatility of the Utility's billing determinants, to update the billing determinants so the phased-in rates could be based on the most recent billing data. (T. 60).

ISSUE 39: What are the appropriate rate structures for this utility?

The appropriate rate structures are as follows: (i) for residential service, the rate structure should be the base facility charge plus a two-tiered inclining block gallonage charge and (ii) for non-residential service, the rate structure should be the base facility charge plus a flat gallonage charge. For both types of service, the base facility charge should recover 75% of the authorized revenue requirement.

WMSI proposes changing the existing rate structure for residential service from a base

facility charge plus a three-tiered increasing block gallonage charge to a base facility charge plus a two-tiered increasing block gallonage charge. (T. 26-27; Ex. 3, Schedule E-2 of Volume I). The current rate structure, along with the NWFWMD's policy to allow and encourage shallow wells, has impacted WMSI significantly, resulting in the drop of sales of water by almost 45 million gallons annually between 2007 and 2009. (T. 441). This, in turn, has had a negative economic consequence on the Utility. (T. 441). The rate design proposed by WMSI will reduce the Utility's loss per 1,000 gallons of reduced sales from the current rate (of around $4.50 per 1,000 gallons) to a smaller loss (of approximately $2.50 per 1,000 gallons). (T. 442).

The Utility proposes to increase the base facility charge from 50% to 75% for multiple reasons, including the unique challenges of providing water service to SGI, such as the significant monthly and seasonal variations and the NWFWMD's policy to allow and encourage shallow wells on the island. (T. 27, 84). In addition, evidence in the record demonstrates the Utility's base facility charge of 50% does not cover its fixed costs, especially during the off-season. (T. 128). Further, the record shows that the Utility's requested 75% base facility charge will help ensure that it is able to cover its costs during the off-season and will be more equitable to all of the Utility's customers. (T. 85, 128-29). With a higher base facility charge, customers who choose to install shallow wells will come closer to paying their fair share of the cost of fire protection and of "stand by" service that the Utility must provide, in case the customer's well goes dry or becomes contaminated. (T. 85). It will also give customers an awareness of both the costs and benefits of the current conservation policy. (T. 442).

OPC did not provide any testimony disputing the Utility's proposed rate structure. The only other evidence in the record regarding rate structure is staff witness Chelette's testimony that NWFWMD believes that an inclining block rate structure is appropriate for WMSI. (T.

411). As WMSI has proposed a two-tiered inclining block rate structure, witness Chelette's testimony is consistent with WMSI's position.

ISSUE 40: Is a repression adjustment appropriate in this case, and, if so, what is the appropriate adjustment to make for this utility?

Yes. The appropriate adjustment is shown in Exhibit 3, the MFRs, page 68.

As witness Seidman's testimony indicates, downward adjustments in customers and gallons shown in the MFRs reflect the downward turn in the economy, the NWFWMD shallow wells policy and the Utility's loss of gallon sales due to inverted rates. (T. 57; Ex. 3, Schedule E-2, Volume I).

ISSUE 41: What are the appropriate rates for this utility?

The appropriate rates for this utility are those presented in Exhibit 3, the MFRs, page 66, with adjustments for the impact of any specific adjustments agreed to by the Utility.

ISSUE 42: Should the Utility be authorized to revise its miscellaneous service charges, and, if so, what are the appropriate charges?

Yes. The appropriate charges are shown in Exhibit 3, the MFRs, page 70.

WMSI's current service charges were established 30 years ago and they simply do not cover current costs. (T. 87). In order to cover costs and to discourage potential abuses (T. 28) – like calling WMSI personnel in the middle of the night (instead of the management company or a plumber) because of an issue on the customer's side of the meter – increased, more realistic charges are appropriate. (T. 87).

An exhibit used in cross-examination of OPC witness Woodcock supports that WMSI's proposed connection charges are reasonable. While WMSI is proposing initial connection charges of $21 during business hours and $42 after hours (Ex. 3, Volume I, Schedule E-4, p. 1), witness Woodcock recommended to Orange City charges of roughly double WMSI's figures – $45 during business hours and $85 after hours. (Ex. 82, p. 5-001878).

Further, there is extensive testimony in the record regarding the fact that shallow wells located too close to a septic drain field pose a potential health concern and, therefore, that there needs to be continual inspections of customer service locations by the Utility to address this concern, including to determine if a customer has a hazard that requires a back-flow device. (T. 403-04, 411, 463-64, 492-95, 566-67). There is also evidence in the record, including testimony from staff witness McKeown, a water inspector for FDEP, that these needed inspections increase the Utility's workload and are an added cost to WMSI. (T. 71, 79, 404, 567). In order to cover this additional cost, the Utility proposes that the Commission consider the reasonableness of expenses for an additional WMSI field technician to inspect customer service locations to determine if customers have installed a shallow well or have any other hazard that requires a backflow device (T. 567) and the possibility of a separate charge to cover those additional costs. However, rather than attempting to incorporate such expenses at this time, when they have not been included in the MFRs (T. 567), WMSI proposes that revenue requirements in Phase I be set without any adjustment for expenses associated with another field technician, but that an in-depth review, including appropriate expenses, be conducted and then the Commission consider the issue in Phase II of this proceeding. Actual costs could also be trued-up as part of Phase III, if needed.

ISSUE 43: Are the procedures and charges imposed by WMSI when an existing customer disconnects and/or a new customer reconnects in an existing service location appropriate? If not, how should the tariff provisions governing these activities be modified?

Yes, the procedures and charges imposed by WMSI when an existing customer disconnects and/or a new customer reconnects in an existing service location are appropriate.

Having been directed by Commission staff that it is the Utility's responsibility to determine whether a customer's property is a residential or general water service property at the

time a customer applies for service and whether one or more meters are appropriate, WMSI personnel take that responsibility seriously, gathering the necessary information and conducting inspections. (T.114-118; Ex. 78).

ISSUE 44: 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?

There should be no interim refunds.

ISSUE 45. 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.?

This is a fall out calculation based on adjustments to revenue requirements and the appropriate rate case expense.

ISSUE 46. What are the appropriate service availability charges for WMSI?

The appropriate service availability charges are set forth in Exhibit 3, Schedule SAC-1, page 1, and SAC-8. Should the Commission adopt WMSI's position that the pro form projects are necessary, then the proposed service availability charges based on the estimated costs of these projects should be approved at the appropriate time.

The Utility proposes to set the service availability charge at 75% of CIAC, which is the maximum suggested by the guidelines established in Rule 25-30.580, Florida Administrative Code (T. 41-44; Ex. 72). It is also reasonable, given the undisputed testimony in the record that the service availability charge for a nearby development in Franklin County was also set at 75%. (T. 46-49; Ex. 73). The utility referenced is St. James Island Utility Company, which is the only other FPSC-regulated utility in Franklin County. In Order No. PSC-04-0755-PAA-WS, Docket No. 040247-WS (Aug. 5, 2004), the service availability charges were set for St. James Island Utility Company at 71% for water and 75% for wastewater. In that order, the Commission explained that the proposed charges were approved since they were within the rule's guidelines:

> Rule 25-30.580(1)(a), Florida Administrative Code, provides that the maximum amount of CIAC, net of amortization, should not exceed 75% of the total original cost, net of accumulated depreciation, of the utility's facilities and plant when the

> facilities and plant are at their designed capacity. Rule 25-30.580(1)(b), Florida Administrative Code, provides that the minimum amount of CIAC should not be less than the percentage of such facilities and plant that is represented by the water transmission and distribution and wastewater collection systems.
>
> The utility's requested service availability policy and charges are designed in accordance with the guidelines set forth by Rule 25-30.580, Florida Administrative Code. . . .
>
> . . .
>
> . . . [W]e find that the utility's requested service availability policy and charges are reasonable. **Because they result in contribution levels which are consistent with Rule 25-30.580, Florida Administrative Code, they are approved.**

Order No. PSC-04-0755-PAA-WS, p. 11 (emphasis added). Further, this requested increase will hold down costs for existing customers because WMSI will not have to borrow as much money for improvements and repairs, with the debt cost to be passed along to existing customers.

OTHER ISSUES

ISSUE 48. Has the Utility failed to return customer deposits in compliance with the refund procedures stated in Rule 25-30.311(5), Florida Administrative Code, and if so, what amount of customer deposits shall the Utility be required to refund?

No, the Utility has not failed to return customer deposits in compliance with the refund procedures stated in Rule 25-30.311(5), F.A.C.

ISSUE 49: Did the Utility fail to maintain field employee travel records pursuant to Order No. PSC-94-1383-FOF-WU? If so, should the Utility be ordered to show cause why it failed to maintain field employee travel records pursuant to Order No. PSC-94-1383-FOF-WU, issued November 14, 1994?

No. The Utility has not failed to maintain field employee travel records pursuant to Order No. PSC-94-1383-FOF-WU and the Utility should not be ordered to show cause why it failed to maintain field employee travel records.

Early in the case, when the Utility was initially asked about travel records, there was some confusion as to what records the Utility had been directed to keep and what records were being maintained. (Ex. 38, p. 2732-41). However, a review of Order No. PSC-94-1383-FOF-WU and the evidence in the record make it clear that the Utility has properly maintained field

employee travel records. That order found that the Utility's requested transportation allowance for field employees was reasonable and further directed that "these employees shall maintain travel records prospectively so that we may adequately consider the level of such expense in future proceedings." Order No. PSC-94-1383-FOF-WU; (Ex. 38, p. 2732-33). In November 1994, when Order No. PSC-94-1383-FOF-WU was issued, WMSI did not own or lease any vehicles, such that all travel done by employees on behalf of the Utility was necessarily done using their personal vehicles and then reimbursed by the Utility. (Ex. 28, p. 193). Thus, the records required under Order PSC-94-1383-FOF-WU were travel records for field employees using their personal vehicles for Utility business. (Ex. 28, p. 193). Now, as has been discussed, WMSI owns or leases vehicles that are used by Utility employees for travel done on behalf of the Utility. (Ex. 28, p. 193). Travel records of field employees using Utility vehicles for Utility-related travel are not specifically maintained, although, in essence, the beginning odometer reading versus the current odometer reading for the Utility vehicles used by the Utility's field employees would constitute travel records, since all travel done in those vehicles is done by field employees on behalf of the Utility. (Ex. 28, p. 193). In addition, WMSI requires field employees to keep travel records for mileage driven by field employees using their personal vehicles for Utility-related travel. (Ex. 28, p. 193-94). Employees using their personal vehicles for Utility-related mileage report that mileage on a weekly basis and are reimbursed. (Ex. 28, p. 193-94). The mileage records are included in the employees' weekly time sheets. These records have been produced by WMSI as part of this proceeding. (Ex. 27, p. 62-65, 94-188; Ex. 28, p. 193-94; Ex. 32, p. 475-525).

Finally, to clarify, WMSI did not produce travel records in response to OPC's Request for Production #29 (Ex. 36, p. 2195) because that request asked for vehicle logs related to

"utility-related work" for "all vehicles owned or leased [by the Utility]." (Ex. 28, p. 193-94). Since travel records for field employees exist related to their use of their personal vehicle for Utility-related travel (as required by Order No. PSC-94-1383-FOF-WU), but not specifically for field employees' use of Utility vehicles for Utility-related travel (other than the odometer readings), there were no documents responsive to OPC's request.

ISSUE 50(a): Is the Utility's level of investment in associated companies appropriate? If not, what action should the Commission take?

The Utility does not have investments in associated companies. It has advances payable to and receivable from associated companies to service loans that were taken out by the associated companies on the Utility's behalf, in order to keep the Utility operating. The appropriate levels of these advances are beyond the jurisdiction of the Commission to determine, as they do not involve customer funds. No Commission action is necessary or appropriate.

OPC's argument regarding this issue, and indeed a good portion of its case, is based upon a misunderstanding of Account 123, which appears to stem from the title of that account. This misunderstanding has been a distraction, drawing attention away from the real issues of the case – that WMSI needs rate relief and capital improvements in order to continue to offer quality service to its customers.

OPC witness Ramas states that the balance in Account 123 has increased by $337,785 from January 1, 2008, through June 30, 2010, and totaled $1,262,402 as of June 30, 2010. (T. 256-57). Based on these figures and a misunderstanding of Account 123, OPC has alleged that WMSI made substantial equity investments in affiliated companies during a period in which the Utility was experiencing cash flow problems (T. 256-57) and has attempted to portray Mr. Brown, before WMSI's customers and the Commission, as incompetent at best and dishonest at worst. One example of OPC's attempts to discredit WMSI management and Mr. Brown is taken from Mr. Kelly's comments at the first customer service hearing:

> They also claim they're losing money. Well, over the past five years they have taken $1.2 million out of this company and, quote, invested it in other affiliates. Affiliates meaning companies that are either owned or controlled by Mr. Brown. This company, Water Management, is getting no return for that investment, nothing. That's your money going to help another company out, or I don't know what the money is being spent for, but it's not in Water Management. If that money was still in this company, guess what, they could pay for some of the improvement, they could pay for some of these expenses, and they may not even be losing money. Because they're not making an interest or anything else; no return whatsoever on that money. They talk about not being able to pay their bills. If you were just to get interest on the investment, they may not even be, have to be here today to ask for you to pay any kind of increase.

(CST. 17-18). Mr. Kelly made similar disparaging comments at the second customer meeting. (CST. 60-61). OPC witness Ramas echoed this theme during her testimony, cross-examination and redirect. (T. 58-60, 348, 390-91). Indeed, witness Ramas even devotes a portion of her testimony to dredging up past statements about Mr. Brown and expressing her concerns with Mr. Brown's management (T. 252-54), although she admittedly has no experience working for, much less managing, a regulated water utility. (T. 326-27). Further, the evidence is clear that Mr. Brown has done a fine job managing WMSI, such that at the customer service hearings, the customers were nothing but complimentary regarding the Utility's service and operations personnel. (CST. 32, 34, 48, 65, 81 and 83).

OPC's misplaced allegations about WMSI's so-called investments in affiliated companies could not be further from the truth, as record evidence clearly indicates. When WMSI was forced to build a new supply line, because FDOT tore down the old bridge with the Utility's original supply line, the Utility received a rate increase from the Commission that provided $5,387,188 via rate base. (T. 623). However, WMSI spent $7,009,000 associated with the new line, so that the FDOT-imposed project resulted in the Utility coming up over a million dollars short, for which the Utility accumulated debt. (T. 623, 630). During this period, demand and water sales continued to drop and the Utility continued to lose money. (T. 521, T. 525, Ex.

51). In addition, from 2006 through 2009, WMSI under-earned by hundreds of thousands of dollars. (T. 623-24). Still, the Utility had to continue to service its debt (including the million dollar deficit from the new line), although each year the rate base return failed to even come close to covering the debt service. (T. 625). To further complicate matters, WMSI did not and does not have the ability to obtain its own financing because its cash flow and assets are encumbered by lien held by a Franklin County bank, which itself became unable to fund the Utility's line of credit when the economic downturn began, and because of the balance sheet. (T. 523-24, 630-31, 641).

Under this scenario, in order to keep the Utility operating, Mr. Brown and BMG have been subsidizing the Utility by taking out loans in their names for the benefit of WMSI. (T. 624-26). Mr. Brown even took out a home equity loan on the residence that he shares with his wife (T. 526, 625) and withdrew money from his personal 401(k) plan to benefit the Utility. (T. 626). In response to questions at the hearing, witness Brown estimated that, on average, this subsidy amounts to approximately $200,000 per year, for the past six years, totaling in the neighborhood of $1.2 million. (T. 627, 629, 642).

To help Mr. Brown and BMG keep the loans that they have taken out on behalf of the Utility in good standing, WMSI advances funds to Mr. Brown and BMG. (T. 627, 642). These funds are then used to make payments on the personal loans Mr. Brown and BMG have taken out to benefit WMSI. (T. 525, 627, 643). These figures comprise the balance in Account 123. None of these advances have been used to benefit Mr. Brown, BMG, or any associated company – they have been used to make payments on the loans that have allowed the Utility to keep operating. (T. 627)

Ideally, these advances would be recorded in an account with a title that accurately

reflects what they are and what they are used for; however, this is not possible due to the Utility's use of the NARUC system of accounts, which is required by the Commission. Rule 25-30.115, Florida Administrative Code; (T. 617-18). NARUC's description of Account 123 – an account that "shall be maintained in a manner such as to show the investment in securities of and advancements to each associated company" – indicates that Account 123 is the proper account for these transactions. (T. 643-44). Unfortunately, NARUC has given Account 123 the incomplete and potentially misleading title of "Investment in Associated Companies." (T. 258, 617). The advances are recorded in Account 123, in compliance with NARUC and Commission rules, making them mistakenly appear (based on the title of the account) to be investments (T. 617-18), when instead they are the advances discussed above. The funds in Account 123 do not represent equity investments in associated companies that could have been pledged for a loan. (T. 643).

To avoid confusion, the Utility might prefer to put the advances in Account 146, titled "Notes Receivable from Associated Companies," but it cannot do so and still comply with Commission rules and the NARUC system of accounts, because NARUC's guidelines state that loans or advances without a specified due date or that are not going to be paid within 12 months shall be transferred to Account 123. (T. 617, 644). Since the loans taken out by Mr. Brown and BMG on behalf of the Utility fall within these criteria, the advances must be included in Account 123. (T. 617-18, 644). Thus, the Utility has no choice but to record the advances in Account 123, which has allowed the funds to be misinterpreted and for OPC to make unflattering and groundless allegations against Mr. Brown.

Further, as the transactions with affiliated companies in question are non-utility, they are outside the Commission's authority to regulate. As a creature of statute, the Commission's

authority is limited to that conferred by statute. *Fla. Bridge Co.*, 363 So. 2d 799; *Dep't of Transp. v. Mayo*, 354 So. 2d 359 (Fla. 1977); *City of Cape Coral v. GAC Util., Inc. of Fla.*, 281 So. 2d 493 (Fla. 1973). Any reasonable doubt as to the existence of a particular power must be resolved against that power. *Fla. Bridge Co.*, 363 So. 2d 799; *Mayo*, 354 So. 2d 359.; *City of Cape Coral*, 281 So. 2d 493. Regarding the non-regulated affiliates of a water company, the Commission's authority is limited to requiring the filing "of reports and other data by a public utility or its affiliated companies . . . regarding transactions, or allocations of common costs, among the utility and such affiliated companies" and to requiring "such reports or other data necessary to ensure that a utility's ratepayers do not subsidize nonutility activities." section 367.121(1)(i), Florida Statutes. *See GTE Fla. Inc.,* 642 So. 2d at 547 (finding that the Commission abused its discretion in making adjustments related to transactions between GTE and an affiliate and finding that the "mere fact that a utility is doing business with an affiliate" does not make the transactions inappropriate). Finally, as non-utility transactions, they do not impact the rates paid by WMSI's customers.

Thus, because of OPC's misunderstanding of the true scope of the NARUC account, Mr. Brown has been criticized for raiding the cash-strapped Utility for investments in affiliated companies, when, in reality, he has been incurring debt personally and through affiliated companies to benefit the Utility, in order to keep WMSI operating during an extremely challenging period. OPC's unfounded allegations against Mr. Brown are not supported by the record. Indeed, the amounts booked in Account 123 are not only appropriate, they have been absolutely necessary to keep the Utility operational while it has suffered through successive years of decreasing revenues and rising costs. Instead of vilifying Mr. Brown and the Utility, OPC should be thankful for the steps taken to keep WMSI operational, all the while providing

quality service to customers.

In addition, the record is clear that the Utility has been experiencing losses and that there has not been enough money to even cover the expenses of the Utility (T. 23, 30, 83, 88, 92, 96; Ex. 3, 36), much less to invest in affiliates or in anything else. A utility cannot invest money that it does not have. Further, given that the revenue from the ratepayers has not covered expenses, it would have been impossible for the ratepayers to have subsidized investments in affiliates, even if such investments existed. As the Commission's authority extends only to requiring reports and data "to ensure that a utility's ratepayers do not subsidize nonutility activities," section 367.121(1)(i), Florida Statutes, there is nothing here to warrant Commission action. Therefore, no action by the Commission toward the Utility or Mr. Brown related to Issue 50a should be taken.

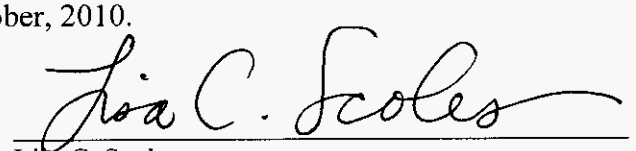
ISSUE 50(b): Are there any non-utility expenses that the Utility is requesting be recovered through customer rates? If so, what adjustments should be made?

No. There are no non-utility expenses that are being requested be recovered through customer rates. Therefore, no adjustments should be made.

ISSUE 51: Should this docket be closed?

No. The docket should remain open for to set Phase II rates based on bids and documented estimates for completing the improvement projects and expenses associated with efforts to monitor cross-connections, and to set Phase III rates based upon a true-up of actual costs.

Respectfully submitted this 29th day of October, 2010.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to the following by hand-delivery (*) or U.S. Mail to the following parties on this 29th day of October, 2010:

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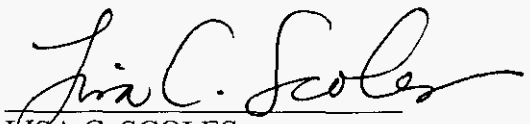

LISA C. SCOLES