

**Diamond Williams**

100104-WU

**From:** ROBERTS.BRENDA [ROBERTS.BRENDA@leg.state.fl.us]  
**Sent:** Friday, January 14, 2011 3:20 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Erik Saylor; Gene Brown; Lisa C. Scoles; Ralph Jaeger  
**Subject:** E-filing (Dkt. No. 100104-WS)  
**Attachments:** 100104.motion for reconsideration.sversion.doc

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 100104-WS

In re: Application for increase in water rates in Franklin County by Water Management Services, Inc.

c. Document is being filed on behalf of Office of Public Counsel.

d. There are a total of 8 pages.

e. The document attached for electronic filing is OPC's Motion for Reconsideration and/or Clarification.

(See attached file: 100104.motion for reconsideration.sversion.doc)

Thank you for your attention and cooperation to this request.

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DOCUMENT NUMBER DATE

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FPSC-COMMISSION CLERK

1/14/2011

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: application for an increase in  
rates in Franklin County by Water  
Management Services, Inc.

Docket No. 100104-WU  
Filed: January 14, 2011

**OPC'S MOTION FOR RECONSIDERATION AND/OR CLARIFICATION**

Pursuant to Rule Nos. 25-22.060 and 28-106.204, F.A.C., the Citizens of the State of Florida, through the Office of Public Counsel ("OPC"), submit their Motion for Reconsideration and/or Clarification of Order No. PSC-11-0010-SC-WU ("Order 11-0010" or "the Order"), and state:

1. In filing this motion, OPC is aware that on reconsideration the Commission will limit its review to matters of fact or law that it overlooked or failed to consider. *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So.2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So.2d 889 (Fla. 1962). The instant motion for reconsideration satisfies these criteria.

2. Overall, the analysis in Order No. 11-0010 is thorough and well reasoned. OPC agrees with nearly all of the Commission's findings and dispositions. In this motion OPC respectfully takes issue with, and asks the Commission to reconsider and/or clarify, a single subject: the Commission's treatment of the \$1.2 million (net) that WMSI currently has advanced to "associated companies" and WMSI's president. OPC asks the Commission to reconsider its statement that the record is not adequate to enable the Commission to ascertain whether the \$1.2 million level of advances to associated companies is appropriate, and find that the level is both inappropriate and imprudent. The Commission should reconsider its treatment of advances because it failed to consider the utility's legal burden of proof and the import of evidence of record. OPC also asks the Commission to clarify the portion of the Order that states that the measures proposed by OPC, especially imputing a return on the advances for purposes of calculating future revenue requirements in the event the amounts remain at such inappropriate levels, would constitute

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“micromanagement,” so as to avoid the unwarranted implication that the Commission is limited in its options to the specific measures enumerated in the Order. The Commission should clarify Order No. 11-0010 to acknowledge clearly that the type of imputation advocated by OPC is a ratemaking tool that the Commission can and frequently does employ to guard customers of regulated utilities from the excesses or mistakes of utility management. Finally, in the event the Commission denies reconsideration, OPC requests the Commission to clarify the nature and scope of the cash flow audit of WMSI that it directed its Staff to initiate.

3. The Commission failed to place the burden of proof on WMSI. In a ratemaking proceeding during which the Commission gauges the prudence of a utility’s behavior, the burden of proof is on the utility to demonstrate that it has acted prudently, and the costs it wishes to recover from its customers are reasonable. The Commission has recognized that this burden is heightened when analyzing transactions with related companies<sup>1</sup>:

By their very nature, related-party transactions require closer scrutiny. Although a transaction between related parties is not per se unreasonable, it is the utility’s burden to prove that its costs are reasonable. This burden is even greater when the transaction is between related parties.

Order No. PSC-06-0170A-PAA-WS, issued in Docket No. 050281-WS (*In re Plantation Bay Utility Company*) on March 9, 2006, at page 15 of 49,<sup>2</sup> citing *Florida Power Corp. v. Cresse*, 413 So.2d 1187, 1191 (Fla. 1982) and *GTE Florida, Inc. v. Deason*, 642 So.2d 545, 548 (Fla. 1994). In Order No. 11-0010 the Commission correctly observed that, while WMSI’s president sought to justify the \$1.2 million of advances on the grounds that he and associated companies have taken out loans and used the proceeds to pay some of the utility’s expenses, WMSI presented absolutely no documentary

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<sup>1</sup> WMSI’s president owns or controls the “associated companies” to whom WMSI has advanced the \$1.2 million.

<sup>2</sup> The Commission determined that the utility had failed to prove that the price it paid a related company for land was based on market value, and so entered a value of zero for the property for rate base valuation purposes.

evidence to prove that assertion. Order 11-0010, at pages 53-54. Having observed WMSI's complete failure to prove its claim, the Commission failed to apply the legal standard of the utility's burden of proof.

4. The Commission overlooked and/or failed to consider evidence of record demonstrating that customers have been injured by WMSI's imprudent advances to associated companies. Because OPC submitted evidence on the issue, the Commission need not rest its determination only on WMSI's failure to meet its burden of proof; moreover, the Commission's conclusion that the record is "inadequate" conflicts with factual findings located elsewhere in the Order. Specifically, at page 53 the Commission observed that, by allowing associated companies to withdraw \$1.2 million from the utility during the period 2004-2009, WMSI's management placed itself in a position in which it could not even meet the basic debt payment obligations of its very favorable loan from the Florida Department of Environmental Protection. As a consequence of its self-imposed, cash-strapped condition, WMSI was forced to reschedule and extend loan payments, which had the effect of increasing costs borne by customers over time.

5. Other evidence of record, which the Commission overlooked or failed to consider in Order No. 11-0010, further demonstrates WMSI's imprudence. OPC witness Donna Ramas pointed out that WMSI's debt obligations exceed the value of its plant. She also established how this condition came about; WMSI has on occasion reduced the value of plant on its books without at the same time paying down debt associated with the adjusted plant. For instance, after settling litigation with a contractor over the quality of coatings applied to bridge crossing structures, WMSI received a settlement of \$760,000 (TR 370-371; Exhibit 37). WMSI appropriately reduced the value of plant associated with the litigation and settlement. This had the effect of reducing WMSI's rate base. However, WMSI did not use all of the settlement proceeds to pay down the debt associated with the

plant. Instead, during the three-month period following the receipt of the \$760,000, the balance in Investment in Associated Companies increased by \$254,125 for items such as \$50,000 advanced to BMG, \$85,000 advanced to SMC Investment Properties and \$50,000 advanced to Gene D. Brown (Exhibit 37). Had WMSI used some or all of the \$1.2 million of advances to associated companies (which amount is equal to roughly 1/3 the value of its entire rate base), on which it receives no interest and no return, to instead reduce its debt, the utility's interest expense would be lower, WMSI would be in a better position to pay its debt obligations timely, and WMSI's lower debt burden would be reflected in the rates that customers pay. In short, evidence that the Commission overlooked reinforces that on which it based findings of injury to customers. On reconsideration, the Commission should take this evidence into account and conclude that the \$1.2 million balance of outstanding advances to associated companies is inappropriate, imprudent, and harmful to customers.

6. The Commission should clarify that it can and will employ the tool of imputation advocated by OPC when needed to protect customers. In its brief, OPC argued that the Commission should impute a return on the \$1.2 million in WMSI's next case if, after being placed on notice of the Commission's determination regarding the imprudence of the advances, WMSI fails to restore the cash to the utility. At page 56 of Order No. 11-0010, the Commission described OPC's proposed measures as "well intended" but expressed its intent to avoid "micromanaging" the utility.<sup>3</sup> The Commission should clarify the Order to avoid any implication that it regards "imputation" as

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<sup>3</sup> In Order No. 11-0010, the Commission indicated it lacks authority to prohibit WMSI from investing further in associated companies. OPC regards its recommendation that the Commission direct WMSI to recall the advances to be more in the nature of notice of the Commission's intent to impute a return on advances in the event advances remain inordinately high. However, with respect to the extent of the Commission's authority over a utility's cash management practices, OPC notes that in WMSI's 1994 rate case, in response to evidence of troubling business practices the Commission required WMSI to place service availability payments it received in an escrow account to ensure the money would be available for future capital additions (in other words, to ensure the utility didn't spend the money elsewhere). The Commission required WMSI to submit a written request for each release of these funds; obtain written approval of each disbursement from the Commission; provide an affidavit stating the names of all parties owed, the amount owed to each, and a line waiver from each; submit evidence of the proper payment of all prior disbursements; and prepare a monthly report detailing monthly collections. See Order no. PSC-94-1383-FOF-WU, at page 66.

“micromanagement.” The tool of imputation, which involves supplying a reasonable, hypothetical value or metric to the revenue requirements calculation when the utility’s corresponding value is either unreasonable or missing altogether, is one of the most fundamental means of protecting customers from unreasonably high rates.

A few of many available examples will illustrate the point. First, by rule the Commission imputes a value for Contributions In Aid of Construction (CIAC) from a developer when the utility fails to record it. The imputed CIAC has the effect of reducing rate base and lowering the revenue requirements borne by customers’ rates. See rule 25-30.570, F.A.C. Similarly, the Commission has imputed additional revenues in the test year calculation to adjust for a utility’s failure to meter and bill sales to parties related to the utility (*Re Hidden Cove, Ltd.*, Order No. PSC-08-0262-PAA-WS, Docket No. 070414-WS, April 28, 2008) and to take into account opportunities for sales for reuse that the utility failed to include in its test year revenues (*Re Alafaya Utilities, Inc.*, Order No. PSC-04-0363-PAA-SU, Docket No. 020408-SU, April 5, 2004). The imputed revenues have the effect of lowering the utility’s calculated revenue deficiency, thereby protecting customers from unreasonably high rates.

7. In Order No. PSC-04-0128, PAA-GU, issued in Docket No. 030569-GU on February 9, 2004, the Commission noted that City Gas’ actual cost of short term debt was unreasonably high due to severe financial/credit difficulties being experienced by its corporate parent. To protect City Gas’ customers from being penalized (in the form of high interest costs and correspondingly high rates) for the difficulties created by the parent corporation, the Commission imputed a short term cost of debt of 3.9% in lieu of the 7% reported by the utility and used the imputed rate to calculate City Gas’ revenue requirements. While Docket No. 030569-GU involved a gas utility, the ratemaking principle applies to this case. To protect WMSI’s customers from the

imprudence of advancing cash to associated companies that the utility should have used to lower its cost of service, the Commission has in its arsenal of regulatory tools the ability to either impute income to the utility associated with the advances or, alternatively, to impute a lower overall indebtedness (and correspondingly lower interest cost) reflecting the prudent use of cash to pay down costly debt rather than sending it to associated companies “free of charge.” The Commission should clarify Order No. 11-0010 to affirm the availability of the imputation tool in circumstances such as those presented in this case.

8. The Commission should clarify the parameters of the cash flow audit that it directed its Staff to begin. For the above reasons, OPC submits that the record of this docket fully supports taking measures to protect customers from the impact of imprudent advances. If instead the Commission proceeds solely with the cash flow audit described in Order No. 11-0010, OPC asks the Commission to clarify that the scope of the audit will include the books and records of associated companies and WMSI’s president to the full extent necessary to establish definitively the extent of payments made by recipients of advances to defray utility expenses, and that the Commission will provide OPC and customers a point of entry in the event the audit does not support WMSI’s claim.

Comment [BR1]:

Comment [BR2R1]:

WHEREFORE, the Office of Public Counsel asks the Commission to reconsider  
and/or clarify Order No. PSC-11-0010-SC-WU.

J.R. Kelly, Public Counsel

s/ Joseph A. McGlothlin  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing **OPC'S MOTION FOR RECONSIDERATION AND/OR CLARIFICATION** has been furnished by electronic mail and U.S. Mail to the following parties on this 14th day of January, 2011 to the following:

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s/ Joseph A. McGlothlin  
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Comment [BR3]: