

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in water rates in Franklin County by Water Management Services, Inc.      DOCKET NO. 110200-WU  
DATED: JUNE 20, 2012

RECEIVED-FPSC  
12 JUN 20 AM 11:25  
COMMISSION  
CLERK

STAFF'S MOTION TO COMPEL DISCOVERY

The staff of the Florida Public Service Commission, by and through Martha F. Barrera, Senior Staff Counsel, requests that the Prehearing Officer order Water Management Services, Inc. (WMSI or Utility) to produce all documents withheld by WMSI in its response to Staff's First Request for Production, and to respond to all interrogatories propounded in Staff's First Set of Interrogatories to which the Utility objected or did not respond. In support of this Motion, staff states as follows:

Background

On November 7, 2011, WMSI filed its application for increased water rates for its water system located on St. George Island in Franklin County. By Order No. PSC-12-0034-PCO-WS, issued January 23, 2012, the Commission acknowledged that the Office of Public Counsel (OPC) had intervened in this docket.

WMSI has requested that its application be processed using the Commission's Proposed Agency Action (PAA) process. The PAA process provides five months for the Commission to vote on proposed agency action from the time of the Official Date of Filing, i.e., after all Minimum Filing Requirements (MFRs) are filed. OPC moved that this rate case be set directly for hearing, but that request was denied by Order No. PSC-12-0222-PCO-WU.

Also, OPC served two sets of interrogatories and two sets of Requests for Production of Documents on WMSI. When WMSI objected to responding to these discovery requests, asserting they were not authorized, OPC filed its Motion to Establish Discovery Procedures and Motion to Compel Discovery Responses. WMSI timely responded to this motion, and requested oral argument. After hearing oral argument on June 5, 2012, both parts of OPC's Motion were denied.<sup>1</sup>

From December 12, 2011 through May 17, 2012, staff served six data requests on the utility. The Utility has responded to all six data requests, with the last response filed on May 31, 2012.

On May 18, 2012, Commission staff propounded its First Set of Interrogatories (Nos. 1-7) and First Request for Production of Documents (Nos. 1-16) on WMSI. On June 14, 2012, WMSI filed a notice withdrawing the testimony and exhibit of Gene Brown. On June 18, 2012, WMSI filed its Answer And Objections to Staff's First Set of Interrogatories (Interrogatories 2-

<sup>1</sup> Order No. PSC-12-0316-PCO-WU, issued June 19, 2012.

DOCUMENT NUMBER 11-  
04040 JUN 20 2  
FPSC-COMMISSION CLERK

7) and Objections to Staff's First Request for Discovery. In its objections to staff's interrogatories 2-7 and requests for production, WMSI made 3 arguments.

In filing its interrogatories and requests for production, staff took what it thought was discovery sought by OPC to which it agreed that answers would assist staff in filing its recommendation on proposed agency action. In the Commission's denial of OPC's motion to compel discovery on June 19, 2012, staff notes that the ruling was not because the discovery was irrelevant, but because discovery by OPC was not authorized during the "free-form" proceedings prior to issuance of a proposed agency action order. However, pursuant to the data gathering powers of the Commission concerning a utility's rate increase proceeding under, among others, Sections 367.081, 367.156, and 367.121, Florida Statutes (F.S.), staff does not believe that this ruling applies to staff in its processing of a proposed agency action rate increase request.

#### Staff's Motion to Compel

WMSI argued that: (a) interrogatories 2-6 were directed at the testimony of Gene Brown which has been withdrawn; thus, the interrogatories are irrelevant, immaterial and not likely to lead to the discovery of admissible evidence, (b) interrogatories and requests for production concerning account 123 are irrelevant, immaterial and not likely to lead to the discovery of admissible evidence due to certain findings in prior Commission orders in WMSI's last rate case,<sup>2</sup> and (c) formal discovery is not authorized or contemplated in a PAA proceeding.

Staff disagrees with those assertions. Pursuant to Section 367.081(2)(a)1., F.S., the Commission, in a rate proceeding such as this, shall consider, among other factors, the value and quality of the service and the cost of providing the service. Further, Section 367.156(2), F.S., provides that information which affects a utility's rates or cost of service shall be considered relevant for purposes of discovery in any docket or proceeding where the utility's rates or cost of service is at issue and that the Commission determines whether information requested affects a utility's rates or cost of service. Staff has attempted to tailor its requests to elicit information on the management of the Utility and whether the management has caused the Utility to incur imprudent costs or costs that would not have been incurred but for the management practices of the Utility. Further, staff believes the information sought is necessary to determine if WMSI is being operated as a going concern. Staff believes that the information and documents sought will show whether the management of the Utility has reduced the quality or reliability of the service. Finally, staff believes that the information sought will assist staff in calculating the appropriate rate base and cost of capital. Given the reasons for the discovery requests propounded by staff, the withdrawal of the testimony of Gene Brown does not affect the relevancy of the information sought. Staff asserts that all discovery requests are designed to gain

---

<sup>2</sup> Order No. PSC-11-0010-SC-WU issued January 3, 2011, in Docket No. Docket 100104-WU, In re: Application for increase in water rates in Franklin County by Water Management Services, Inc., aff'd per curiam, Water Mgmt. Servs. v. FPSC, 2012 Fla. App. LEXIS 7549 (Fla. 1st DCA May 15, 2012) and Order No. PSC-11-0156-FOF-WU, issued March 7, 2011 in Docket 100104-WU.

information relevant to the subject matter of the pending action, pursuant to Sections 367.081(2)(a)1., and 367.156(2), F.S.

Further, the Utility cites selected sections found in page 55 of Order No. PSC-11-0010-SC-WU<sup>3</sup> (Order) as supporting its argument that interrogatories or document requests directed at account 123 are inappropriate and alleging that the selected sections in the Order resolves the issues regarding the relevancy of the account in the Utility's future rate proceedings. On the contrary, the Commission did not find the questions raised concerning account 123 resolved when it concluded:

Based on the record in this proceeding, it cannot be determined if the level of investment in associated companies is appropriate. However, the amounts in question are not included in rate base and are not considered in the determination of the appropriate rates. That said, based on the circumstances in this case, our staff shall initiate a cash flow audit of the Utility as soon as possible, and, if it is determined that the activity in the account has impaired the Utility's ability to meet its financial and operating responsibilities, our staff shall recommend an appropriate adjustment for imprudence. Order at p. 56.

Each interrogatory with the specific justification is listed below:

No.    Interrogatory

2.    Cash Flow Audit. Please refer to page 4 of Mr. Brown's testimony where he states his accountants performed a "cash flow audit" of all WMSI's operations from the beginning of 2000 through end of 2010.
  - a.    Please identify who (or which accounting firm) performed the cash flow audit and whether the auditor was a Certified Public Accountant (CPA).
  - b.    Please identify whether there is a signed engagement letter between WMSI and the person/firm which performed the cash flow audit and describes the terms and scope of the cash flow audit.
  - c.    Please explain whether the cash flow audit referenced by Mr. Brown and attached to Exhibit A to Mr. Brown's testimony was: 1) a compilation of the cash flow documents provided by WMSI; 2) a review of the cash flow documents provided by WMSI; or 3) an audit of WMSI operations and cash flow within the meaning of the term "audit" as used by a CPA.

---

<sup>3</sup> See Footnote 2, supra.

- d. Please explain whether the auditor(s) who performed the cash flow audit provided a report describing the audit and whether it was qualified or not (i.e., had audit findings).
- e. If no report was attached to WMSI's cash flow audit attached as Exhibit A to Mr. Brown's testimony, please explain or describe why no such report was attached, and
- f. Please describe whether WMSI has possession of the audit work papers which supports WMSI's cash flow audit.

Justification: The Utility appears to have done what it calls a "cash flow audit," and staff wants to verify exactly what that audit entailed and what determinations were made. This will also aid staff in evaluating the quality and reliability of the service, in determining if WMSI is being operated as a going concern and in correctly calculating rate base, appropriate expenses and costs, and duties of the President of WMSI and his management of the Utility. Whether Mr. Brown's testimony is withdrawn or not, the fact remains that an audit was conducted.

3. Capital Resources. Please refer to page 5 of testimony provided by Mr. Brown where he states that he has liquidated personal resources and incurred substantial loans, personally endorsed by him, to keep the Utility in operation and provide water service to St. George Island. Please provide an itemized listing of all personal resources Mr. Brown has liquidated in order to keep the Utility in operation and provide water service to St. George Island. For each of the personal resources liquidated, please provide:
  - a. The original cost of the resources to Mr. Brown;
  - b. The original date of acquisition of the resource;
  - c. The amount of debt owed on the resource at the time of liquidation;
  - d. The amount received in the liquidation (please break the amount out between cash receipts, dissolution of debt, other form of payment, etc.);
  - e. The amount of gain (loss) realized by Mr. Brown at the time of liquidation;
  - f. The date of liquidation; and
  - g. Identification of who or what entity the resource was sold to in the liquidation.

Justification: This will aid staff in determining if WMSI is being operated as a going concern and in correctly calculating rate base, appropriate expenses and costs, cost of capital, and duties of the President of WMSI and his management of the Utility.

4. Capital Resources. Please refer to page 5 of testimony provided by Mr. Brown where he states that he has liquidated personal resources and incurred substantial loans, personally endorsed by him, to keep the Utility in operation and provide water service to St. George Island. Please provide an itemized listing of all personal resources Mr. Brown has liquidated in order to keep the Utility in operation and provide water service to St. George Island. For each of these loans, please provide:
  - a. The amount of the loan proceeds;
  - b. What amount of proceeds were turned over to WMSI;
  - c. What was done with any proceeds that were not turned over to WMSI;
  - d. What entity the loan was from;
  - e. Terms of the loan (i.e. interest rate, term of loan, whether balloon payments are required, etc.);
  - f. Date the loan was entered into;
  - g. What assets are designated in the loan as collateral, if any;
  - h. Current status of the loan and current outstanding balance; and
  - i. Whether or not the loan has been refinanced.

Justification: This will aid staff in correctly calculating rate base, appropriate expenses and costs, cost of capital, in evaluating the duties of the President of WMSI and his management of the Utility, and in determining if WMSI is being operated as a going concern.

5. Account 123. Please refer to page 7 of testimony provided by Mr. Brown where he asserts that “[t]he value of the 100% ownership of “Brown Management Group, Inc. is in excess of the balance in Account 123. This was documented as part of the PSC audit of Account 123.”
  - a. Please identify where in the PSC’s cash flow audit, issued July 29, 2011, the Commission audit states that the “value of the 100% ownership of

Brown Management Group, Inc. is in excess of the balance in Account 123.”

- b. On what date was the value of the 100% ownership of Brown Management Group, Inc. transferred to WMSI?
- c. Please provide a detailed listing of all assets owned by Brown Management Group, Inc. at the time it was transferred to WMSI. As part of this list identify when the asset was originally acquired by Brown Management Group, Inc., the original cost of the asset, the net book value of the asset at the time of transfer, and the fair market value of the asset at the time of transfer.
- d. Please provide a detailed listing of all debt owed by Brown Management Group, Inc. from the time of the transfer to WMSI to date.
- e. Please provide a detailed listing of all debt owed by Brown Management Group, Inc. at the time it was transferred to WMSI, as well as the terms of the debt and the outstanding balance of the debt.
- f. Please provide a detailed listing of all debt dissolved, all new debt entered into, and all debt that has been refinanced by Brown Management Group, Inc. from the time of the transfer to WMSI to date.

Justification: This request is an attempt to determine what assets were transferred, the value of the assets and if there was any formal process involved in the transfer. This will aid staff in correctly calculating rate base, appropriate expenses and costs, cost of capital, in evaluating the duties of the President of WMSI and his management of the Utility, and in determining if WMSI is being operated as a going concern.

6. Account 123. Please refer to page 7 of testimony provided by Mr. Brown where he asserts that “[a] large part of cash for the utility came from the sale of assets owned by Brown Management Group, Inc. during the period addressed in Mr. Brown’s statement. For each sale, please provide the following information:
  - a. The original cost of the asset;
  - b. The original date of acquisition of the asset;
  - c. The amount of debt owed on the asset at the time of liquidation;
  - d. The amount received in the sale of the asset (please break the amount out between cash receipts, dissolution of debt, other form of payment, etc.);

- e. The amount of gain (loss) realized at the time of sale;
- f. The date of sale; and
- g. Identification of who or what entity the asset was sold to or transferred.

Justification: This request is an attempt to determine what assets of Brown Management Group, Inc. were transferred, the value of the assets and if there was any formal process involved in the transfer. This will aid staff in correctly calculating rate base, appropriate expenses and costs, cost of capital, and duties of the President of WMSI and his management of the Utility as well as in determining if WMSI is being operated as a going concern.

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

Justification: This request is an attempt to determine what assets of Brown Management Group, Inc. were transferred, the value of the assets and if there was

any formal process involved in the transfer. This will aid staff in determining if WMSI is being operated as a going concern, in correctly calculating rate base, appropriate expenses and costs, cost of capital, and in evaluating the duties of the President of WMSI and his management of the Utility.

Each document request is listed below. As stated above, each document request is designed to elicit information on the management of the Utility and whether the management has caused the Utility to incur imprudent costs or costs that would not have been incurred but for the management practices of the Utility, or has reduced the quality or reliability of the service. Also, staff believes that the information sought will assist staff in calculating the appropriate rate base and cost of capital and in determining if WMSI is being operated as a going concern.

No. Documents Requested

1. For each of these loans or cash advances [incurred by Gene Brown to keep Utility in operation], please provide all documentation detailing the loan or cash advance between WMSI and Gene Brown or any entity affiliated with Gene Brown.
2. Regarding valuation of Brown Management Group, Inc., and Account 123. Please provide a copy of the following:
  - a. all journal entries made on both WMSI's and Brown Management Group, Inc.'s books at the time the ownership of Brown Management Group, Inc. was transferred to WMSI;
  - b. any business appraisals and/or valuations conducted by or for WMSI regarding the value of Brown Management Group, Inc. at the time of transfer;
  - c. any independent business appraisals and/or valuations conducted by or for WMSI regarding the value of Brown Management Group, Inc. at the time of transfer;
  - d. copies of any documents including the minutes of meetings where the transfer of Brown Management Group, Inc. to WMSI was approved;
  - e. copies of any documents including the minutes of meeting with St. George Utility Co., Ltd. where the transfer of Brown Management Group, Inc. to WMSI was approved;
  - f. copies of any documents including the minutes of meeting with T.E. Bronson where the transfer of Brown Management Group, Inc. to WMSI was approved;



- g. copies of any documents submitted to St. George Island Utility Co., Ltd. or T.E. Bronson explaining or describing the reason or purpose of transfer of Brown Management Group, Inc. to WMSI; and
  - h. a copy of the report attached to WMSI's cash flow audit attached as Exhibit A to Mr. Brown's testimony.
3. Account 123. Please provide a copy of Brown Management Group, Inc.'s detailed General Ledgers for each of the years ended December 31, 2008, 2009, 2010, and 2011 and for 2012 year-to date.
  4. Account 123. Please provide a complete copy of Brown Management Group, Inc.'s Annual Reports and financial statements for the five most recent fiscal years.
  5. Account 123. Please provide a complete copy of all existing vehicle leases for Brown Management Group, Inc.
  6. Account 123. Please provide a copy of the W-2s for each of Brown Management Group, Inc.'s employees for 2009, 2010 and 2011.
  7. Account 123. Please provide a complete copy of all federal income tax returns filed by Brown Management Group, Inc. for the 2007, 2008, 2009, 2010, and 2011 tax years. If any amendments were made to those returns, the amended returns should also be provided. If the 2011 federal tax return is placed on extension, please provide a copy of the request for extension, a copy of the payment made to the IRS for 2011 taxes, and a draft copy of the 2011 tax return (if one is available).
  8. Account 123. Please provide a complete copy of all state income tax returns filed by Brown Management Group, Inc. for the 2007, 2008, 2009, 2010, and 2011 tax years. If any amendments were made to those returns, the amended returns should also be provided. If the 2011 state tax return is placed on extension, please provide a copy of the request for extension, a copy of the payment made to the state for 2011 taxes, and a draft copy of the 2011 tax return (if one is available).
  9. Account 123. Please provide a complete copy of all local income tax returns filed by Brown Management Group, Inc. for the 2007, 2008, 2009, 2010, and 2011 tax years, if any. If any amendments were made to those returns, the amended returns should also be provided.
  10. Account 123. Please provide a copy of all bank statements for each of Brown Management Group, Inc.'s bank accounts for the period January 1, 2007 through the most recent date available.

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

Staff requests that, if the Motion is granted, the Utility be given one week to respond to the discovery requests from the date of the Order granting the motion to compel as the Utility answered Staff's Interrogatory Number 1 and filed its objections to the remaining interrogatories and the requests for production on the 30<sup>th</sup> day from service, thus having had the full 30 days to respond to the discovery.

WHEREFORE, the staff of the Florida Public Service Commission requests the Prehearing Officer order Water Management Services, Inc. to respond to staff's interrogatories 2-7, and produce all documents in staff's First Request for Production of Documents within one week of the Order granting this Motion.

RESPECTFULLY SUBMITTED, this 20th day of June, 2012.



---

MARTHA F. BARRERA  
Senior Attorney, Office of the General Counsel

FLORIDA PUBLIC SERVICE COMMISSION  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850  
(850) 413-6199

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 110200-WU

DATED: JUNE 20, 2012

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of STAFF'S MOTION TO COMPEL has  
been filed with Office of Commission Clerk and a copy has been furnished to the following by  
U. S. mail and e-mail, this 20th day of June, 2012:

Mr. Martin S. Friedman  
Sundstrom, Friedman & Fumero, LLP  
766 North Sun Drive, Suite 4030  
Lake Mary, Florida 32746

J. R. Kelly / Erik L. Sayler  
Office of the Public Counsel  
c/o The Florida Legislature  
111 W. Madison Street, Room 812  
Tallahassee, FL 32399-1400



MARTHA F. BARRERA  
Senior Attorney, Office of the General Counsel

FLORIDA PUBLIC SERVICE COMMISSION  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850  
(850) 413-6199