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Sent: Wednesday, June 27, 2012 4:09 PM
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Cc: Reilly, Steve; Martha Barrera; Ralph Jaeger; Gene Brown; sandymchase@comcast.net; Martin Friedman
Subject: {BULK} Docket No.: 110200-WU; Application for Increase in Water Rates in Franklin County by Water Management Services, Inc.

Importance: Low

Attachments: Resp to Staff's Motion to Compel Discovery.pdf

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- b. Docket No.: 110200-WU; Application for Increase in Water Rates in Franklin County by Water Management Services, Inc.
- c. Water Management Services, Inc.
- d. 8 pages
- e. WMSI's Response to Staff's Motion to Compel Discovery

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DOCUMENT NUMBER DATE

04259 JUN 27 09

FPSC-COMMISSION CLERK

6/27/2012

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

WATER MANAGEMENT SERVICES, INC.'S RESPONSE
TO STAFF'S MOTION TO COMPEL DISCOVERY

Applicant, WATER MANAGEMENT SERVICES, INC. ("WMSI" or the "Utility"), by and through its undersigned attorneys, files this Response to Staff's Motion to Compel Discovery served on June 20, 2012 (Document No. 04040-12), based upon Staff's First Set of Interrogatories (Nos. 1-7) and Staff's First Request for Production of Documents (Nos. 1-16), which discovery specifically references that discovery was filed pursuant to Rule 28-106.206, Florida Administrative Code, and Rules 1.340 and 1.350, Florida Rules of Civil Procedure. Incidentally, Staff filed this discovery with the Clerk at 3:54 p.m., and did not e-mail it to WMSI's attorneys until 4:22 p.m., on a Friday afternoon. Subsequent correspondence with the Staff made it clear that a late Friday afternoon filing was intentional.

The incorrect premise upon which the Staff's Motion is based is that it is authorized to serve formal discovery prior to the issuance of a PAA Order. Staff's discovery was served pursuant to the same Rules that OPC served its discovery in this proceeding and which this Commission ruled was inappropriate. Staff makes the weak argument that it has some sort of implied authority to serve formal discovery and that it is above the Rules applicable to other parties. Staff candidly served its discovery

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pursuant to the formal discovery procedures of the Florida Administrative Code and the Florida Rules of Civil Procedure. In Order No. PSC-12-0222-PCO-WU, this Commission made it clear that the Florida Administrative Code provisions of Chapter 25 apply after the issuance of the PAA Order. That Order was reaffirmed in Order No. PSC-12-0316-PCO-WU, in which this Commission concluded that formal discovery procedures are inapplicable, as it related to OPC discovery. There is no exception in the Florida Administrative Code that allows agencies to serve formal discovery prior to agency action. As Staff has candidly admitted, it has already served six (6) data requests, all of which have been responded to by WMSI. It was only after some of the Staff drank the OPC Kool-Aid that Staff has raised additional questions largely related to Account 123. The proper manner in which this Commission obtains information prior to taking formal agency action is through data requests, not formal discovery. It has no greater rights than any other party.

Even if Staff was allowed to utilize formal discovery, the documents requested, and interrogatories objected to, are irrelevant to this proceeding. The portion of Order No. PSC-11-0010-SC-WU quoted by Staff is inapplicable to this proceeding. The quoted language by Staff relates to the cash flow audit that was conducted by the Staff after the last rate case. That audit was completed and Staff took no action. It was only when OPC raised the Account 123 issue in this rate case that Staff has now raised the issue at this late date.

Responses to each attempt by Staff to justify its discovery requests are as follow:

Interrogatories

Interrogatory No. 2 - This interrogatory relates to a cash flow audit that was conducted by WMSI and is not being relied upon by WMSI in this proceeding. Staff's strained justification is that it will somehow aid the Staff in its evaluation. Staff has conducted its own cash flow audit and chosen not to recommend any action based on it, as was implied as an option in the language quoted by the Staff on page 3 of its Motion. If the Staff's own cash flow audit is not relevant, how can a cash flow audit done by WMSI be relevant? It is utterly ridiculous and discloses a personal element to the ratemaking process to harass WMSI by seeking information about a cash flow audit that the Staff is going to ignore anyway.

Interrogatory No. 3 - This interrogatory refers to the withdrawn testimony of Gene Brown and is purely harassment. Staff recites its mantra that such information is needed to aid the Staff in its evaluation, but lacks any specificity as to what bearing it has on the current rate case. Instead of repeating that mantra, as it does for subsequent justification, there must be some detail in what Staff expects this information to affect in the ratemaking process. General categorizations provide no guidance in determining the relevance of any information Staff requests. Staff merely states that the information will help Staff without specifying how it will do so. This interrogatory requests personal information referenced in the withdrawn testimony of Mr. Brown. Since the information is not being relied upon by WMSI, it has no relevance and is nothing short of harassment. It adds no new justification for the information, and certainly no specificity

to such justification. The fact that Mr. Brown has liquidated personal resources and endorsed personal loans to keep WMSI in business should come as no surprise to Staff and has no relevance to the instant case. The naiveté of the Staff is disheartening. Owners of all types of businesses, including utilities, utilize personal resources to keep their businesses going. However, that is not a principle of ratemaking and is irrelevant to this proceeding.

Interrogatory No. 4 - This interrogatory, based upon withdrawn testimony of Mr. Brown, requests information about loans which he incurred personally to fund the operation of WMSI. Staff adds no detail to the relevance of this information to ratemaking principles.

Interrogatory No. 5 - This interrogatory, based upon withdrawn testimony of Mr. Brown, requests information regarding Brown Management Group (other than the initial question which is in the nature of cross-examination). The added attempted justification is that for some unexplained purpose Staff seeks to determine the assets transferred to Account 123. This is in spite of the Commission's admonition in Order No. PSC-11-0010-SC-WU, that the Commission should not micromanage the operations of utilities.

Interrogatory No. 6 - This interrogatory, based upon withdrawn testimony of Mr. Brown, requests financial information from Mr. Brown regarding assets which Brown Management Group sold to finance WMSI. Staff has yet to explain any relevance this information has to the ratemaking process.

Interrogatory No. 7 - This interrogatory asks questions regarding the transfer of Brown Management Group to WMSI, most of which are totally irrelevant to anything within the Commission's jurisdiction. Most are of an accusatory nature and not relevant to fact finding. Staff seeks to determine what assets of Brown Management Group, a non-PSC regulated business, were transferred, the value of the assets, and the formal transfer process. This Commission in Order No. PSC-11-0011-SC-WU has already addressed Account 123, and its irrelevance to ratemaking.

Production of Documents

Staff's justification for documents it requested is unsupported by logic or the ratemaking principles. If this information was of so much importance, why were no requests for it included in the six (6) Staff data requests which consisted of 58 questions with 90 subparts? There is only one explanation and it would make Jim Jones proud.

All of the documents requested relate to Account 123 and are irrelevant, immaterial and not likely to lead to the discovery of admissible evidence. In WMSI's last rate case, this was the central issue in OPC's attack on Mr. Brown and WMSI. After hearing testimony and considering arguments, this Commission concluded, "We note that there was no evidence presented that documented Mr. Brown or BMG having misappropriated funds from the Utility." Order No. PSC-11-0010-SC-WU, page 55. This Commission at p. 56 concluded that, "We do not believe that the customers are being charged higher rates due to Mr. Brown's actions." and "The amounts in question are not

included in rate base and are not considered in the determination of the appropriate rates.” If Account 123 is not considered in the determination of rates, how can it be relevant? And why did Staff ignore it in any data requests?

OPC’s attempts to micromanage WMSI were correctly rejected by this Commission in Order No. PSC-11-0010-SC-WU. OPC, not to take that rejection lightly, filed for reconsideration of that Order. In its Order on Reconsideration, Order No. PSC-11-0156-FOF-WU, in addressing OPC’s Motion, this Commission reminded OPC that since capital structure was reconciled to rate base, customers are not paying any additional interest. The Commission pointed out that if the \$1.2 million was converted to equity, it would earn almost three times the current debt cost. Since rates would increase if the \$1.2 million was converted to equity, one would wonder why OPC, and now some Staff members, continue to raise this issue. One might suggest that is because it has more to do with perception than reality.

This Commission in Order No. PSC-11-0010-SC-WU, page 56, correctly concluded that this Commission does not micromanage the business decisions of regulated companies and has no authority to preclude a utility from investing in associated companies. Importantly, the Commission noted that “despite the difficult financial condition of WMSI the customers continue to receive quality service and are satisfied with the responsiveness of Utility employees.”

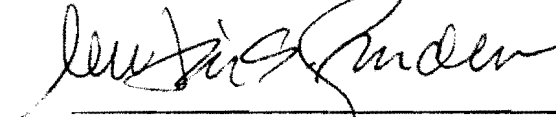
It is clear from the careful consideration given by this Commission of Account 123 in Order Nos. PSC-11-0010-SC-WU and PSC-11-0156-FOF-WU, that any documents

related to Account 123 are irrelevant, immaterial and not calculated to lead to the discovery of admissible evidence.

WHEREFORE, WATER MANAGEMENT SERVICES, INC., respectfully requests this Commission deny Staff's Motion to Compel Discovery.

Respectfully submitted on this 27th day of June, 2012 by:

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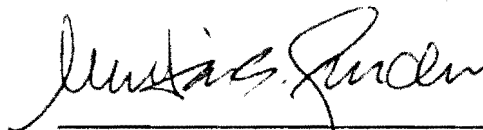
CERTIFICATE OF SERVICE
DOCKET NO. 110200-WU

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail and/or E-mail to the following parties this 27TH day of June, 2012:

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