

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of: DOCKET NO. 110200-WU

APPLICATION FOR INCREASE IN
WATER RATES IN FRANKLIN COUNTY
BY WATER MANAGEMENT SERVICES,
INC.

_____ /

PROCEEDINGS: ORAL ARGUMENT

COMMISSIONER
PARTICIPATING: COMMISSIONER JULIE I. BROWN

DATE: Wednesday, July 11, 2012

TIME: Commenced at 3:00 p.m.
Concluded at 3:52 p.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
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DOCUMENT NUMBER - DATE
04627 JUL 12 2012
FPSC-COMMISSION CLERK

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5 Services, Inc.

6 ERIK L. SAYLER, ESQUIRE, Office of Public
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9 appearing on behalf of the Citizens of the State of
10 Florida

11 GENE D. BROWN, Water Management Services,
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13 32303-4234, appearing on behalf of Water Management
14 Services, Inc.

15 JENNIFER CRAWFORD, ESQUIRE, FPSC General
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18 the Florida Public Service Commission Staff.

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22 the Florida Public Service Commission.

P R O C E E D I N G S

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2 **COMMISSIONER BROWN:** Good afternoon. I would
3 like to call this oral argument to order in Docket
4 Number 110200-WU, application for increase in water
5 rates in Franklin County by WMSI.

6 Staff, can you please read the notice.

7 **MS. CRAWFORD:** Certainly. Commissioner,
8 pursuant to notice this time and place has been set
9 aside for the purpose of conducting an oral argument on
10 staff's motion to compel in the aforementioned docket.
11 The purpose of the oral argument is set forth more fully
12 in the notice.

13 **COMMISSIONER BROWN:** Thank you. At this time
14 I would like to take appearances. From Water
15 Management, please.

16 **MR. FRIEDMAN:** Yes; thank you. My name is
17 Martin Friedman of the law firm of Sundstrom Friedman
18 and Fumero. We represent Water Management Services,
19 Inc. Also with me is Mr. Gene Brown, the owner.

20 **COMMISSIONER BROWN:** Thank you. Office of
21 Public Counsel.

22 **MR. SAYLER:** Erik Sayler on behalf of Office
23 of Public Counsel and the customers of Water Management
24 Services, Incorporated. We're not participating in the
25 oral argument portion, that's between the staff and the

1 utility, but we're here to speak in favor of it, should
2 there be any questions, and we do have a statute that we
3 believe is on point.

4 COMMISSIONER BROWN: Thank you. And, staff.

5 MR. FRIEDMAN: (Inaudible; microphone off.)

6 COMMISSIONER BROWN: You can move down a
7 little if you want.

8 MR. FRIEDMAN: (Inaudible; microphone off.)

9 COMMISSIONER BROWN: Staff.

10 MS. CRAWFORD: Jennifer Crawford on behalf of
11 staff.

12 MS. HELTON: And Mary Anne Helton, advisor to
13 the Commission.

14 COMMISSIONER BROWN: Thank you. Are there any
15 preliminary matters that should be addressed?

16 MS. CRAWFORD: Staff is aware of none.

17 COMMISSIONER BROWN: Okay. We are here today
18 to hear oral argument on staff's motion to compel
19 discovery and WMSI's response thereto. I wanted to
20 inform staff and WMSI of why I granted oral argument
21 pursuant to WMSI's request.

22 Similar to the previous matter that was
23 proposed by OPC that was at issue in this case, this
24 issue, I believe, is unique and legally comprehensive
25 and complex. I want to avail staff and WMSI of every

1 opportunity to elucidate their positions so that I'm
2 able to make the most informed, and accurate, and
3 legally permissive decision. So that is the reason why
4 I granted the oral argument today.

5 As noted by staff counsel, each side has been
6 granted five minutes. Because the motion is staff's
7 motion, staff shall go first.

8 Ms. Crawford, I'll let you know when to
9 proceed. You may begin.

10 **MS. CRAWFORD:** Thank you.

11 The utility contends in its response to
12 staff's motion to compel that the proper manner in which
13 the Commission obtains information prior to issuing
14 proposed agency action is through data requests, not
15 formal discovery, and that staff has no greater rights
16 than any other party. Staff can actually concede to the
17 first part as your order that you mentioned recognizes
18 this is an informal investigative process and normally
19 discovery parameters are not appropriate for that sort
20 of process.

21 However, staff strongly disagrees with the
22 notion that it is, in fact, a party to this proceeding
23 and that it has no greater rights. We believe that
24 staff is in a very different posture than Public Counsel
25 was in its motion to compel.

1 Public Counsel's authorizing statutes don't
2 give it any special powers or authority beyond other
3 intervenors in PSC proceedings. The statutes and case
4 law tell us that staff is different. And if you look at
5 Section 367.121 it says the Commission has the power to
6 require the filing of reports and other data by a public
7 utility, or its affiliated companies, or its parent
8 regarding allocation of costs and to ensure ratepayers
9 don't subsidize nonutility activities. And if you will
10 look at Section 367.156, it has a nearly identical
11 provision.

12 In South Florida Natural Gas vs. the PSC, the
13 Florida Supreme Court says the Commission is clearly
14 authorized to use its staff to test the validity,
15 credibility, and competence of the evidence that is put
16 forward to support a rate increase, and that without its
17 staff it would be impossible for the Commission to
18 conduct that necessary investigation.

19 That being said, staff is not interested in
20 making this a battle of form over substance, and I would
21 be pleased to remove that impediment now and request
22 instead of responding to this as formal discovery that
23 the utility respond to this in the form of data requests
24 which the utility itself says that is the proper manner.
25 However, having spoken with Mr. Friedman this morning,

1 he indicated the utility would still object to the
2 relevance and the timing of the requested information.

3 367.112 and .156 don't condition that the
4 information requested be in the context of a docketed
5 manner, or made in any particular time frame, or even
6 that it first be deemed relevant. 367.081 says that in
7 every rate proceeding the Commission shall consider the
8 value and quality of the service and the cost of
9 providing service.

10 Now, the utility places a great deal of weight
11 on the prior rate case order saying that the Commission
12 concluded that it does not micromanage the business
13 decisions of regulated companies and that despite the
14 difficult financial condition of WMSI, its customers
15 continue to receive quality service. However, the
16 utility is also leaving out a couple of other things the
17 order did say. The order says there is evidence that
18 the utility has advanced funds to associated companies
19 who are reporting net losses in the utility, and the
20 order says these issues raise questions which require
21 further investigation.

22 Based on the record, the Commission could not
23 determine whether the level of investment in the
24 associated companies was appropriate. It ordered staff
25 to conduct a cash flow audit, which it did, and it also

1 said that if the activity in Account 123 has impaired
2 the utility's ability to meet its financial and
3 operating responsibilities, staff should recommend an
4 appropriate adjustment for imprudence.

5 Okay. The utility will tell you that the
6 audit was completed and staff took no action, but the
7 audit was completed on July 29th, 2011. A month and a
8 half prior to the completion of the audit report, the
9 utility filed its test year letter for the instant case,
10 and staff's PAA recommendation in this case is the
11 obvious, timely, and appropriate logical vehicle in
12 which to make any recommendations necessary regarding
13 the audit.

14 The utility will tell that the timing of
15 staff's requests are mighty suspicious. That staff
16 drank OPC's kool-aid. Again, the question isn't when
17 staff sent out its requests, or why the staff sent out
18 its requests. The question is does the information
19 requested fall within the ambit of staff's regulatory
20 duty. It does. And, in fact, when you look at the
21 timing of OPC sending out its discovery, staff didn't
22 see a reason to duplicate efforts until just after OPC
23 filed its motion to compel when it was clear that OPC
24 and the utility were not going to be able to informally
25 resolve their dispute.

1 The utility would apparently have you believe
2 that once rates are approved there is no further
3 oversight because the Commission doesn't micromanage. I
4 contend that the Commission has already expressed a
5 direct and real interest in pursuing these issues, and
6 that, in fact, it has an ongoing regulatory
7 responsibility under 367.081 to ensure that the utility
8 management has not acted in a manner which may have
9 impaired its ability to prudently meet its financial --

10 **COMMISSIONER BROWN:** Ten seconds.

11 **MS. CRAWFORD:** Thank you. -- operating
12 responsibilities. Staff is requesting, therefore, that
13 you issue an order compelling the utility to respond to
14 its requests, as data requests is fine, no later than
15 close of business June 18th. Thank you. Or, I'm sorry,
16 July 18th.

17 **COMMISSIONER BROWN:** Thank you. Are you
18 ready, Mr. Friedman?

19 **MR. FRIEDMAN:** Well, I was going to wonder am
20 I correct, then, that the staff is withdrawing its
21 formal discovery?

22 **COMMISSIONER BROWN:** That is not what I
23 understand.

24 **MR. FRIEDMAN:** All right. Then I will address
25 that. Thank you.

1 **COMMISSIONER BROWN:** Are you ready?

2 **MR. FRIEDMAN:** Shoot.

3 **COMMISSIONER BROWN:** Go for it.

4 **MR. FRIEDMAN:** On the first issue of the
5 formal discovery, the staff has served its discovery
6 specifically supported saying the authority of it is
7 Rule 28-106.206. Rule 28-106.206 says after the
8 commencement of a proceeding parties may obtain
9 discovery. Now the staff is saying, nope, we're
10 different; we're not a party. Well, now I'm really
11 perplexed. If they're not a party, they've got no
12 rights under Rule 28 to do any discovery about anything.
13 So they just want to have it every way they want.

14 They want to be able to initiate formal
15 discovery and now we're talking about interrogatories
16 and requests for production. What's the next step,
17 depositions? I mean, if they've got the right to
18 utilize the Rules of Civil Procedure to initiate
19 discovery by interrogatory and requests to produce, they
20 can use all of the options of the Rules of Civil
21 Procedure, including depositions. That's not what is
22 intended.

23 There is no exception for the staff to be able
24 to issue any formal discovery under the Rules of Civil
25 Procedure, which is what they have tried to do. And

1 they don't have an exception. They are treated just
2 like anybody else. And, in fact, if they're not a party
3 they have got no right to invoke the Rules of Civil
4 Procedure and any discovery under those rules. And so
5 they can't have it both ways.

6 What they have done is they have realized,
7 oops, we made a mistake. Let's try to figure out a way
8 to change that. And now they're saying, okay, well,
9 we've got the right to do it; and if we don't, let's
10 treat it as a data request. And the data request is
11 even more egregious.

12 Now, as I pointed out, they sent out 94 or
13 something, 90 different data requests. None of those 90
14 data requests dealt with this account 123 issue. The
15 account 123 issue, as you know, was a big issue by the
16 Public Counsel in the last rate case. It has been known
17 by the staff since they filed the new rate case. It is
18 perplexing that they didn't ask any questions about
19 account 183 (sic) until the very end of the case. You
20 would have thought that if this were an issue that staff
21 thought was relevant that they would have asked those
22 questions earlier in one of those 90 data requests that
23 they sent out.

24 And account 123 isn't relevant to this. You
25 know, under the theory that Ms. Crawford sets forth of

1 we're entitled to all the information that we ever want
2 to do to analyze this utility. Well, that's not the
3 breadth of what the data requests are. While most of
4 the time utilities answer data requests, if they stray
5 to a point where they are irrelevant there is no reason
6 to provide that information and we would object to it as
7 we are today.

8 And I could go through each of those, I doubt
9 I will have time to do that in each of these, but the
10 staff did a cash flow audit. Nobody has done anything
11 about the cash flow audit. The company did its own to
12 double-check the staff's and now -- and we're not
13 relying on that cash flow audit for anything. We're not
14 relying on this cash flow audit, yet now the staff wants
15 our cash flow audit for some reason even though we're
16 not relying on it. They want that information for some
17 unexplained reason.

18 We don't have -- what the staff should do is
19 go through each of these data requests and tell you this
20 is why I need this information, not some generic
21 explanation that I need this information because we're
22 entitled to look at everything we can in order to
23 analyze whether a company is being operated prudently.

24 The other issue is they want a whole bunch of
25 stuff that was raised in Ms. Brown's prefiled testimony.

1 Mr. Brown's prefiled testimony has been withdrawn. It
2 should never have been filed in the first place. There
3 is nothing relevant about Mr. Brown's prefiled
4 testimony. Whether he made loans -- and this is what is
5 perplexing, and it's unfortunate that staff has never
6 owned a business, but, you know, owners of businesses do
7 that all the time. They borrow money out of their own
8 pocket to pay bills, then they get paid back. They
9 borrow money. You know, that's just the way small
10 businesses operate.

11 But Mr. Brown is not relying upon all of that
12 in this rate case. Yet what is the staff doing? They
13 want all of this information about loans that Mr. Brown
14 has said that he has made over the years, 20 years
15 maybe, to fund the utility. That is not relevant.
16 We're not relying on the fact that Mr. Brown did what
17 any normal businessman would do to keep his company
18 afloat, so what is the relevance of it?

19 The other issues about --

20 **COMMISSIONER BROWN:** Ten seconds.

21 **MR. FRIEDMAN:** -- Account 123, you know, it
22 was dealt with in the last rate case. It was very well
23 explained about the irrelevance of it in this, and I
24 don't think the Commission should micromanage anything
25 any more this time around than they decided they

1 shouldn't micromanage last time around.

2 **COMMISSIONER BROWN:** Thank you. I have a
3 couple of questions for both staff and WMSI, and maybe
4 one for OPC. I'll start with staff first since you
5 began first.

6 First question, is there any effectual
7 difference between a request for
8 production/interrogatory and a data request?

9 **MS. CRAWFORD:** There are a few distinctions, I
10 think, that you could argue. One is that, as your order
11 and Mr. Friedman in his argument and his response to the
12 motion to compel points out, formal discovery is usually
13 done in the context of a formal evidentiary proceeding.
14 The substantive difference is probably that it has
15 usually got a certificate, an oath assigned to it.
16 Essentially, they both seek to elicit information. In a
17 formal evidentiary proceeding, of course, you can
18 object, as the utility did, to grounds of relevance,
19 harassment, and so forth.

20 Staff data requests are done in informal
21 proceedings, such as we have here. They are authorized
22 by statute, as I discussed. It is our experience that
23 utilities provide the information. To the extent they
24 don't provide the information, they do so at their
25 jeopardy that they are not going to support their case.

1 That is discussed in the Cresse decision.

2 So, the authorization for requesting
3 information is perhaps a little different. I think
4 regardless of whether you're in a formal proceeding or
5 an informal proceeding, those authorizing statutes are
6 very broad and do authorize staff to request information
7 provided, of course, it complies with what the statute
8 says it is meant to do, elicit information so staff can
9 test whether there are improper cost allocations,
10 whether customers/ratepayers are subsidizing nonutility
11 activities.

12 **COMMISSIONER BROWN:** You know, one thing that
13 I was confused about was why they were not deemed why
14 they were not data requests and why they were requests
15 for production and interrogatories. So if you could
16 just address the issue of why staff went ahead and --

17 **MS. CRAWFORD:** Sure. Really, it is, again, a
18 little bit of form over substance. OPC had issued its
19 ROGs and PODs on March 14th. When it looked like that
20 was not going to be -- you know, often there is some
21 objection from the utility and the parties can kind of
22 work things out informally. When it was clear that was
23 not going to happen, OPC filed its motion to compel. I
24 think it was four days after that staff filed its ROGs
25 and PODs. And the thought was just if we are going to

1 elevate it and make it more formalized, then we are
2 going to follow the same track. There was no special
3 significance. Ultimately, staff is just trying to
4 elicit this information.

5 **COMMISSIONER BROWN:** Is there anything you
6 need to do to -- you said that you were going to change
7 it to a staff data request. You talked to Mr. Friedman
8 at the beginning.

9 **MS. CRAWFORD:** To the extent that that
10 facilitates us getting the information, it does away
11 with the argument that this is a PAA case, and
12 discovery, formal discovery is inappropriate, yes, we
13 would be happy to reformulate them and just call them
14 staff data requests. You don't have to follow the
15 formalities usually associated with formal discovery.

16 **COMMISSIONER BROWN:** Okay. Well, getting to
17 the crux of why WMSI is contesting disclosing this
18 information, I want to get down to the bottom of why --
19 first, why didn't staff ask for these questions relevant
20 to account 123 at the beginning of the discovery, why
21 they waited until the end, as Mr. Friedman suggested.
22 That's the first question.

23 The second question, why is the utility's cash
24 flow audit relevant to this rate case?

25 **MS. CRAWFORD:** Okay. I will do my best as the

1 pinch hitter.

2 COMMISSIONER BROWN: Okay.

3 MS. CRAWFORD: I don't know whether staff
4 wants to add anything, but staff builds its base for its
5 PAA recommendation. It has got certain questions it
6 will ask first. This was definitely something we knew
7 we needed to follow up on. I don't think there was any
8 special, you know, purpose to doing it later. It is
9 obviously something that was discussed and discussed at
10 some length at the last rate case and follow up was
11 called for.

12 I'm sorry, the second part of your question
13 was --

14 COMMISSIONER BROWN: Why is the utility's cash
15 flow audit relevant to this instant case?

16 MS. CRAWFORD: Well, I think it goes back to
17 if you look at the order it talks about these
18 disbursements from the utility and the losses that were
19 incurred by the utility. Let me pull the order --

20 COMMISSIONER BROWN: I have the order in front
21 of me.

22 MS. CRAWFORD: -- so I'm not speaking off the
23 top of my head.

24 COMMISSIONER BROWN: I also have the audit
25 from the prior docket, too.

1 **MS. CRAWFORD:** Sure. It basically admonishes
2 staff to go forth and investigate this. There is not
3 enough in this current docket for us to really make any
4 kind of determination, but it raises some questions. We
5 think these questions need to be fleshed out.

6 And so it tells staff go forth and do the
7 audit. And, again, the question has to do with whether
8 the level of investment in the associated companies is
9 appropriate, whether that investment has somehow
10 impaired the utility's ability to meet its financial and
11 operating responsibilities. That is directly out of the
12 order. And so that's what the cash audit was intended
13 to do is investigate that process and that account, and
14 it was updated for this docket, as well.

15 **COMMISSIONER BROWN:** Was there any new
16 information that was discovered from the staff audit
17 that would be relevant to this instant rate case?

18 **MS. CRAWFORD:** I would have to confirm with
19 staff, but I certainly believe so.

20 **MR. CICCHETTI:** Yes.

21 **COMMISSIONER BROWN:** And do you anticipate
22 finding any new information from the utility's audit?

23 **MS. CRAWFORD:** Well, we don't know, and that's
24 one of the reasons we call it an investigation. Could
25 there be something relevant in there? Yes. Is this the

1 same thing as formal discovery where you have got to
2 show it has got to, you know, reasonably lead to --
3 calculated to lead to the discovery of relevant
4 evidence? I don't think that is the same posture we're
5 in here.

6 COMMISSIONER BROWN: Okay. I'm going to turn
7 to the utility. I hear you ready to go.

8 MR. FRIEDMAN: Thank you. I promise I'll try
9 to be brief.

10 COMMISSIONER BROWN: I have a few questions
11 for you, as well.

12 MR. FRIEDMAN: Okay.

13 COMMISSIONER BROWN: Getting through -- formal
14 discovery versus staff data requests. Irrespective of
15 account 123, Mr. Friedman, you don't have a problem with
16 staff during this phase of the PAA process asking for
17 staff data requests since you have been -- the utility
18 has been complying with some of the data requests,
19 correct?

20 MR. FRIEDMAN: Yes, that is the correct
21 procedure to use, but they -- and Ms. Crawford says form
22 over substance, form over substance. But, you know, the
23 law is -- you know, the law gives -- and that's what I
24 like about the law, it gives specific procedures and
25 rules to guide you through the legal process. And I

1 like the structure that the legal profession brings
2 because of these procedures.

3 Heck, when I was young, I colored inside the
4 lines, not outside the lines. So I like the structure
5 that the Rules of Procedure and regulations give you in
6 dealing with legal issues. And so it is important that
7 you use the correct procedure. And saying, gee, we
8 could get this a different way by calling it a data
9 request doesn't make it effective as an interrogatory or
10 a request for production of documents. They shouldn't
11 be doing that, and as I have already pointed out, they
12 don't have the right to initiate discovery like that.

13 **COMMISSIONER BROWN:** So your issue really is
14 the formal discovery as well as the substance here is
15 the questions relevant to account 123?

16 **MR. FRIEDMAN:** Absolutely. In fact, we
17 answered one of the production of documents. We
18 answered one that dealt with an issue that we thought
19 would have been appropriate as a data request, and we
20 did respond to that one in a timely manner.

21 So, you know, we're not trying to be
22 recalcitrant. They're trying to provide information
23 that we think the staff needs. And staff still hasn't
24 explained why they need our cash flow audit. You know,
25 they explained why they needed a cash flow audit and why

1 it may help them, but it doesn't explain why they want
2 our cash flow audit. They haven't explained why they
3 need, you know, all of this information, personal
4 information of Mr. Brown, including tax returns for
5 years.

6 **COMMISSIONER BROWN:** Mr. Friedman, but it is
7 the utility's burden to prove its case.

8 **MR. FRIEDMAN:** Absolutely. No doubt about it.
9 And if we asserted that something was relevant about Mr.
10 Brown's personal financial statements, then, you know,
11 we would be the first person to provide them to you
12 under some confidentiality. But they want all of his
13 financial -- they want his tax returns, personal tax
14 returns. They want copies of all the loans that he has
15 taken out. They want, you know, information that goes
16 way beyond anything that we have relied on in supporting
17 our application. They're on a fishing expedition is
18 what it would be in a litigation sense.

19 **COMMISSIONER BROWN:** Drinking the kool-aid;
20 fishing expedition; I like the analogies.

21 **MR. FRIEDMAN:** I overuse that one I'm afraid.

22 **COMMISSIONER BROWN:** Let's talk about the
23 timing. You raise an issue that is relevant about the
24 timing of it, and you think that if this was so
25 important to staff they would have requested it at the

1 beginning. But would WMSI have objected if it was
2 requested in the beginning of the discovery phase?

3 MR. FRIEDMAN: Probably so, but, you know, at
4 least it would have shown that the staff -- there was
5 really some good -- I mean, you know, usually when data
6 requests are sent out -- and we are at six different
7 sets, I think. I wrote it down. Yes, six different
8 data requests.

9 Usually you get a data request and they start
10 narrowing. You answer the questions and they go, well,
11 this answer raises another question. Or, you didn't
12 fully answer it and they ask you another set of data
13 requests. And, you know, it kind of gets narrower as
14 you go down to more data requests. Well, this is one
15 kind of did that, and then all of sudden you get to this
16 and it's like it goes, ssh, ssh, ssh, and it expands
17 back out again.

18 You know, if it were an important issue, and
19 it's not an important issue, account 123 has got nothing
20 to do with whether the company is being operated good.
21 As you pointed out in the last rate case, they said in
22 spite of not having much cash flow, the company is still
23 hanging in there and the customers are getting good
24 quality service. So it's not relevant to anything.

25 And, you know, God, Mr. Brown's personal tax

1 returns? I would love to hear what their explanation of
2 why they think that is relevant because we're not
3 relying on his tax returns. We're not relying on the
4 fact that he has funded the company with loans like any
5 other small business would be doing.

6 COMMISSIONER BROWN: I appreciate your answer,
7 but I'm curious about the last rate case and whether
8 those discovery requests by staff or an intervening
9 party relevant to account 123, did they mimic the same
10 questions that staff asked in this instant case?

11 MR. FRIEDMAN: Unfortunately, I wasn't
12 involved in the last case.

13 COMMISSIONER BROWN: Do you want to confer
14 with your client?

15 MR. FRIEDMAN: So I don't know what was --

16 MR. BROWN: It wasn't relevant then.

17 MR. FRIEDMAN: I know, but did they ask the
18 same questions?

19 COMMISSIONER BROWN: And were they produced?

20 MR. BROWN: The 7-month audit period, the
21 staff auditor did ask the same questions that are being
22 asked in these interrogatories, many of the same ones,
23 and they gave us \$3,000 a year for accounting, and there
24 is no way for us to provide all this.

25 COMMISSIONER BROWN: And if I may, Mr. Saylor,

1 I don't know if you were involved in the last rate case
2 or if you have knowledge of whether WMSI produced
3 similar data requests or discovery relevant to account
4 123 in the last rate case?

5 **MR. SAYLER:** I was involved in the last rate
6 case on the Commission staff side, but I do know that I
7 believe OPC served quite a bit of discovery as it
8 relates to various financial documents of the utility
9 which led OPC to believe that maybe \$1.2 million of
10 utility money had been moved to Brown affiliated
11 companies. I don't know if that was based upon tax
12 returns. I think it was based upon the ledgers
13 specifically of account 123, and that's what the OPC
14 raised in the last rate case.

15 **COMMISSIONER BROWN:** Okay. Thank you.

16 **MR. SAYLER:** But I don't know about the
17 specific financial data. It was only in light of this
18 case and in light of various statements made by the
19 utility to the auditors and in the filings of this case
20 and the responses to audit reports where we believe that
21 the utility and Mr. Brown personally put these financial
22 records into play and subject to discovery.

23 **COMMISSIONER BROWN:** Okay.

24 **MR. FRIEDMAN:** I can tell you he didn't
25 produce his personal financial statements or personal

1 tax returns in the last rate case.

2 COMMISSIONER BROWN: Mr. Friedman, is there a
3 way to narrow -- does WMSI completely object to any of
4 the six requests?

5 MR. FRIEDMAN: Well, I think it needs -- I
6 mean, if it is narrowed maybe we can figure out a way to
7 get them information that's relevant. I'm still having
8 problems generically figuring out the relevance of it.
9 Like I said, it is clearly a fishing expedition.
10 They're out there, they want everything that, you know,
11 Mr. Brown mentioned in his prefiled testimony that we
12 withdrew and that we're not relying on. And so I don't
13 know, you know, what information -- why they need the
14 information they are claiming they need it for. I mean,
15 just generically, I know Ms. Crawford is kind of at a
16 disadvantage because she is kind of the third string in
17 this thing. Not to be taken -- not that way.

18 (Laughter.)

19 COMMISSIONER BROWN: She is really first
20 string. She's just the third --

21 MR. FRIEDMAN: No, I understand. She is the
22 first string.

23 COMMISSIONER BROWN: And has done a great job.

24 MR. FRIEDMAN: She is pinch hitting as she
25 rightly termed it. But you need to go through each of

1 these documents and see whether they are relevant. Just
2 generically, gee, we want to see everything we can from
3 the utility because there might be something out there
4 that might tell us something that might be interesting I
5 don't think is a good response.

6 I think you need to look at each of these and
7 need to have them explain -- they have used -- in their
8 answer they used a nice generic -- used a nice generic
9 statement in all of this. When they went through nicely
10 and told you one-by-one why they needed it, and I don't
11 see where that generic statement is, but they made the
12 same generic statement on every one of them, and we
13 understand that if we don't provide information that is
14 relevant that it's not going to hurt the staff, it's
15 going to hurt us.

16 **COMMISSIONER BROWN:** That's correct.

17 **MR. FRIEDMAN:** When they write the staff
18 recommendation they're going to write the staff
19 recommendation without the benefit of information that,
20 you know, we could have provided to them. And I
21 understand that, and that's why I don't think that we're
22 at risk in not providing any of this information,
23 because I don't think any of it has anything to do with
24 the revenue that Water Management Services is entitled
25 to.

1 **COMMISSIONER BROWN:** And, you know, we're in a
2 timing circumstances right now, too, because --

3 **MR. FRIEDMAN:** Well, as I understand it the
4 way the procedure works is that the revenue requirement
5 has already been established. It should have been
6 established five weeks before the agenda is my
7 understanding of the internal Commission or staff policy
8 so that Jennie Lingo has a week to do her thing, and
9 then you've got a couple of weeks in there to get the
10 rec done.

11 And so, I mean, I think the rec is done. I
12 mean, I guess you can always change it up until the day
13 of the agenda, and obviously that happens on occasion.
14 So, I mean, there is a timing issue, but if the staff
15 could really tell us what they need and why they need
16 it, you know, maybe we can work something out. But just
17 generically give us all your tax returns and give us
18 your cash flow audit? You know, they're not going to
19 take our cash flow audit and say, okay, it means
20 anything. And you haven't seen us rely on the cash flow
21 audit, so I'm perplexed at why that's relevant.

22 **COMMISSIONER BROWN:** Uh-huh. I have a
23 question actually for Ms. Helton.

24 Hi. If staff were able to narrow down their
25 requests, how would they do that in the time period that

1 we have right now with the recommendation? The PAA,
2 it's two or three weeks away on our agenda?

3 MS. HELTON: I knew I should have brought a
4 yellow calendar with me. Hold on.

5 MR. FRIEDMAN: The rec is due a week from
6 Friday.

7 COMMISSIONER BROWN: So if staff went ahead
8 and narrowed down their data requests and worked with
9 WMSI to come up with something palatable that everybody
10 is happy with, what would that time frame be?

11 MS. HELTON: Well, one, I would say that the
12 request has been out there for a while, so --

13 COMMISSIONER BROWN: How long has it been out
14 there?

15 MS. HELTON: Since May 18th, I think I just
16 read. So presumably the company has specific knowledge
17 of what it is that staff is looking for.

18 COMMISSIONER BROWN: Uh-huh.

19 MS. HELTON: We can always -- staff can always
20 make a request to file its recommendation a little bit
21 late to see whether the information received would
22 impact the recommendation that they file. Or, as was
23 stated, they can file a recommendation and retract
24 certain parts of it and make changes to that based on
25 the information that gets filed. Or they could ask

1 for -- you know, ask the company for an extension of
2 time to file the recommendation because this issue has
3 been lingering out there. The request has been out
4 there since May the 18th, and we are now in the middle
5 of July.

6 **COMMISSIONER BROWN:** Mr. Friedman, if staff
7 were able to within this short time period to get with
8 you and narrow down the data requests, would the company
9 be willing to work with staff on this account 123 as it
10 relates to the instant rate case?

11 **MR. FRIEDMAN:** I mean, on a
12 document-by-document basis, sure, we would. I mean, as
13 Sandy has pointed out, the audit, the staff audit
14 includes a lot of the personal loan documents that they
15 are requesting from Gene. Apparently the auditors
16 already have it all, and I don't know whether staff
17 didn't look at what the auditors have, or it was
18 irrelevant, but it appears that a lot of that stuff has
19 been provided already.

20 **COMMISSIONER BROWN:** Okay. That's good to
21 hear.

22 **MS. CRAWFORD:** Might I offer?

23 **COMMISSIONER BROWN:** Yes, please.

24 **MS. CRAWFORD:** In the interest of trying to
25 get this moved along as efficiently as possible,

1 depending on your availability and willingness to do so,
2 I would suggest that we take a half hour recess perhaps
3 to try and go through the documents with staff and the
4 utility to see if there is some room for compromise on
5 what staff believes is the most important relevant
6 information. And to the extent the utility can agree to
7 that, well, it's Christmas and puppies; everybody is
8 happy.

9 To the extent they can't, we won't have wasted
10 any time in having to come back yet again to try and get
11 this matter before you. And certainly as you have
12 correctly pointed out, time is of the essence.

13 COMMISSIONER BROWN: I think that is an
14 excellent idea, Ms. Crawford. Mr. Friedman, I hope that
15 in the next 30 minutes -- fifteen?

16 MS. CRAWFORD: We will do our best with what
17 we get.

18 COMMISSIONER BROWN: In the next -- how about
19 we make it 3:50? We are recessing until 3:50. You've
20 got 20 minutes.

21 MS. CRAWFORD: Thank you.

22 COMMISSIONER BROWN: Thank you.

23 (Recess.)

24 COMMISSIONER BROWN: Okay. This oral argument
25 is reconvened at 3:50.

1 Mr. Friedman -- or, actually, Ms. Crawford,
2 where are we with the discussions?

3 **MS. CRAWFORD:** I'm afraid after some spirited
4 discussion, we were unable to reach compromise and
5 further narrow issue.

6 **COMMISSIONER BROWN:** Okay. Well, I'm going to
7 take all of this under advisement and review the data
8 request that staff submitted to WMSI -- let me just
9 finish -- and I will provide you with my decision by
10 tomorrow, close of business tomorrow. You will have
11 some type of written communication of my decision by
12 tomorrow.

13 And, OPC, you have something to add?

14 **MR. SAYLER:** Yes, Commissioner Brown.

15 OPC just wanted to state that we do support
16 the motion to compel because Section 367.156(2)
17 expressly states without any ambiguity that discovery
18 may be or shall be conducted in any docket -- and the
19 PAA is a docketed matter -- or in any proceeding before
20 this Commission affecting rates or cost of service --
21 and a PAA rate case certainly affects cost of service
22 and rates -- so long as it is subject to a rule, the
23 Florida Rules of Civil Procedure, and the statute
24 specifically cites Rule 1.280 which states discovery
25 methods, parties may obtain discovery in one of the

1 following methods. I won't read those out, but they do
2 include discovery, and they do include interrogatories
3 and production of document requests.

4 And I just wanted to bring that forward,
5 because I think this has tremendous bearing upon the
6 decision that you make. And it's something that the
7 utility has quoted the Commission rules quite often, but
8 they have not tried to distinguish the statute, which is
9 on point an unambiguous.

10 **COMMISSIONER BROWN:** I appreciate you pointing
11 that out. Thank you.

12 Mr. Friedman.

13 **MR. FRIEDMAN:** The statute has never been
14 mentioned by anybody before the end of this argument
15 today. But it does say, and I haven't looked at it
16 carefully, because he just raised it, but, I mean,
17 you're a lawyer, you know to look at words and
18 understand each word. And when it uses the word
19 parties, you know, keep that in mind about what that
20 rule applies to and how it does apply.

21 And if you want, I will be glad to, you know,
22 at some point give you my two cents worth. But since
23 the staff never raised it or relied on it, and OPC
24 didn't raise it and rely on it in their argument, it's
25 not something I have had a chance to really analyze.

1 **COMMISSIONER BROWN:** I appreciate that. Do
2 you want to respond, because --

3 **MS. CRAWFORD:** Honestly, having just kind of
4 looked at the section, I'm not sure I feel equal to the
5 task of weighing in on -- frankly, I think the sections
6 and case law I have cited to are more than adequate to
7 support staff's request. I mean, the statute says what
8 it says. And if in your judgment it does help support
9 the staff's request, I would certainly suggest you feel
10 free to rely on it as you feel appropriate.

11 **COMMISSIONER BROWN:** Thank you.

12 Again, I'm going to review the data requests
13 one more time and make sure, and get back with you all
14 by tomorrow, close of business tomorrow.

15 Are there any other matters to be addressed?

16 **MR. FRIEDMAN:** No.

17 **COMMISSIONER BROWN:** Nothing?

18 **MS. CRAWFORD:** Staff I aware of none.

19 **COMMISSIONER BROWN:** Thank you for your time.
20 Transcripts of this proceeding are due
21 tomorrow, July 12th, 2012, and this oral argument is
22 adjourn.

23 Thank you.

24 **MS. CRAWFORD:** Thank you.

25 (The oral argument concluded at 3:52 p.m.)

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STATE OF FLORIDA)
 :
 : CERTIFICATE OF REPORTER
COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 12th day of July, 2012.

JANE FAUROT, RPR
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