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From: Roberts, Brenda [ROBERTS.BRENDA@leg.state.fl.us]
Sent: Thursday, November 01, 2012 4:41 PM
To: Filings@psc.state.fl.us
Cc: Saylor, Erik; Vandiver, Denise; Gene Brown; Lisa Bennett; Martha Barrera; Marty Friedman; Ralph Jaeger
Subject: E-filing (Dkt. No. 110200-WU)
Attachments: 110200.Response Opposing WMSI's Motion for Temporary Protective Order.sversion.docx

Electronic Filing

a. Person responsible for this electronic filing:

Erik L. Saylor, Associate Public Counsel
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b. Docket No. 110200-WU

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

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

d. There are a total of 6 pages.

e. The document attached for electronic filing is 110200.Response Opposing WMSI's Motion for Temporary Protective Order.sversion.docx.

Thank you for your attention and cooperation to this request.

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DOCUMENT NUMBER - DATE

07439 NOV-1 2012

FPSC-COMMISSION CLERK

11/1/2012

3. At this time, the Utility has not met its burden of proof in “showing” that the documents for which it seeks a Temporary Protective Order are proprietary confidential business information as defined by Section 367.156(3), F.S. Merely stating that documents are proprietary confidential business information is not enough to satisfy the “showing” requirement of Section 367.156(2), F.S. Further, some of the documents for which the Utility is now requesting a TPO have already been provided to the Commission without a request for confidential treatment or have been declassified at the request of the Utility. The Utility cannot now claim that these publically disclosed documents are now confidential pursuant to Section 367.156(2), F.S.

4. As for documents responsive to OPC Request for Production No. 2, the General Ledger of the Utility, these documents were already provided to the Commission as public documents thereby waiving the right to claim confidential treatment at this time.

5. As for documents responsive to OPC Request for Production No. 3, WMSI’s budget, and No. 4., WMSI’s Financial Statements, the Utility has not stated how these are protected under Section 367.156(3), F.S. or the enumerated exceptions.

6. As for documents responsive to OPC Request for Production No. 5, WMSI’s Federal Tax Return, and No. 6., WMSI’s State Tax Return, the Utility has not stated how these are protected under Section 367.156(3), F.S. or the enumerated exceptions.

7. As for documents responsive to OPC Request for Production No. 14, Brown Management Group’s Annual Reports and financial statements, the Utility has not stated how these documents, now that BMG is wholly owned by the Utility, are protected under Section 367.156(3), F.S. or the enumerated exceptions.

8. As for documents responsive to OPC Request for Production No. 16, Brown Management Group's employee W-2s, the Utility has not stated how these documents, now that BMG is wholly owned by the Utility, are protected under Section 367.156(3), F.S. or the enumerated exceptions. Moreover, Florida Power & Light Company v. Public Service Commission, 31 So. 3d 860 (Fla. 1st DCA 2010), is distinguishable in that (1) does not interpret the provisions of Section 367.156(3), F.S. as applying to water utility employees; (2) it interprets and applies the electric confidentiality statute in Chapter 366, F.S., thus, it applies only to employees of electric utilities; and (3) employees of BMG are not employees of any utility. BMG is an affiliate, now wholly owned by the Utility, thus, the FPL case cited does not apply.

9. As for documents responsive to OPC Request for Production No. 17, Brown Management Group's Federal Tax Return, and No. 18, Brown Management Group's State Tax Return, the Utility has not stated how these are protected under Section 367.156(3), F.S. or the enumerated exceptions.

10. As for documents responsive to OPC Request for Production No. 27, Brown Management Group's shareholder agreement and other documents, the Utility has not stated how these documents, now that BMG is wholly owned by the Utility, are protected under Section 367.156(3), F.S. or the enumerated exceptions.

11. As for documents responsive to OPC Request for Production No. 28, Brown Management Group's articles of incorporation, the Utility has not stated how these documents, now that BMG is wholly owned by the Utility, are protected under Section 367.156(3), F.S. or the enumerated exceptions.

12. As for documents responsive to OPC Request for Production No. 34, WMSI's Board minutes, the Utility has not stated how these are protected under Section 367.156(3), F.S. or the enumerated exceptions.

13. As for documents responsive to OPC Request for Production No. 35, WMSI's Board minutes, the Utility has not stated how these documents, now that BMG is wholly owned by the Utility, are protected under Section 367.156(3), F.S. or the enumerated exceptions.

14. The Utility has the burden of proof in requesting confidential treatment for these responsive documents. The Utility has not cited in any orders that expressly state that these documents should be afforded confidential treatment. Therefore, the Utility has failed to make a showing for why these documents should be afforded confidential treatment. For these reasons, until the Utility makes a showing why these documents should be protected, OPC opposes the Utility's request for a TPO for these documents.

15. OPC reserves the right to challenge the Utility's request for Temporary Protective Order for these documents once the Utility provides a showing how and why these documents should be afforded confidential treatment pursuant to Section 367.156, F.S.

16. While this matter is pending resolution by the Commission, OPC will treat as confidential all documents for which are subject to this pending Motion for Temporary Protective Order.

WHEREFORE, the Office of Public Counsel, on behalf of the customers of WMSI, respectfully requests that the Utility's motion for temporary protective order be stayed until the Utility makes the required showing under Section 367.156, F.S.

Respectfully submitted by:

J.R. KELLY
PUBLIC COUNSEL

s/ Erik L. Sayler
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Attorneys for the Citizens
of the State of Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing **RESPONSE OPPOSING WATER MANAGEMENT SERVICES, INC'S MOTION FOR TEMPORARY PROTECTIVE ORDER** has been furnished by electronic mail and U.S. Mail to the following parties on this 1st day of November, 2012, to the following:

Martha Barrera
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s/ Erik L. Sayler
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