

**Eric Fryson**

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**From:** Dana Rudolf [drudolf@sfflaw.com]  
**Sent:** Monday, November 12, 2012 3:22 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Martin Friedman; SAYLER.ERIK@leg.state.fl.us; Martha Barrera; Lisa Bennett  
**Subject:** Docket No. 110200-WU; Application for increase in water rates in Franklin County by Water Management Services, Inc.

**Attachments:** Resp to OPC's Second 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) 7 pages
- e) Response to Office of Public Counsel's Second Motion to Compel Discovery

DOCUMENT NUMBER DATE

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FPSC-COMMISSION CLERK

11/13/2012

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

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Docket No. 110200-WU

**WATER MANAGEMENT SERVICES, INC.'S RESPONSE TO OFFICE OF  
PUBLIC COUNSEL'S SECOND MOTION TO COMPEL DISCOVERY**

Applicant, WATER MANAGEMENT SERVICES, INC. ("WMSI" or the "Utility"), by and through its undersigned attorneys, files this Response to Office of Public Counsel's ("OPC") Second Motion to Compel Discovery filed on November 5, 2012 (Document No. 07468-12), based upon OPC's Second Set of Interrogatories (Nos. 17-24) and OPC's Second Request for Production of Documents (Nos. 37-42).

**INTRODUCTION**

Many of the Interrogatories relate to Account 123 and are irrelevant, immaterial and not calculated 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

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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?

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

OPC's sole argument now regarding Account 123 is whether the funds represented by that account "impaired the Utility's ability to meet its financial and operational responsibilities..." Since the Commission has determined that the quality of service being provided by WMSI is satisfactory, including operational matters, and such determination was not protested by OPC, operational issues are not relevant to this proceeding. As the Commission previously found in response to OPC's complaints about Account 123, "despite the difficult financial position of WMSI....customers continue to receive quality service and are satisfied with the responsiveness of Utility employees." PSC Order No. PSC-11-0010-SC-WU.

The Account 123 issue is actually a non-issue in the ratemaking context. OPC is merely using it as a way to attempt to incite customers into believing Mr. Brown took money belonging to them. This Commission rejected OPC's spurious arguments in WMSI's last rate case concluding that "customers have not been penalized by the Utility's actions" with regard to Account 123. PSC Order No. PSC-11-0156-FOF-WU. Account 123 has no impact on customer rates. Once the customers pay rates, the money is no longer theirs. This is no different than what the Commissioners' experience. The law sets the Commissioners' salaries and once the money is received by the Commissioner it is not up to the State of Florida to say how it can be spent. If a Commissioner spends his or her salary foolishly the State has no right to then say the Commissioner's salary should then be reduced. And this Commission has consistently held that it will not micromanage

business decisions of a utility. *id.*, and PSC Order No. PSC-04-0712-PAA-WS. As this Commission found in Order No. PSC-11-0156-FOF-WU :

“... the capital structure is reconciled to rate base, and any interest on the debt instruments to be included in the rates would be limited to that amount included in rate base. Therefore, the customers do not pay for any interest paid by the utility over and above the amount associated with used and useful rate base. Even if the full amount of \$1.2 million was used to pay down the Utility’s debt, the capital structure of WMSI would still consist almost entirely of debt. Finally, we note that if the Utility ever does obtain any equity investment, the current cost of equity is set at 10.85 percent, which is almost three-times the current debt cost and overall cost of capital.”

Thus, as the saying goes, “be careful what you ask for, you just may get it.” If WMSI liquidated BMG for \$1.2 million and paid down debt, customer rates would increase. Makes one wonder if OPC has the customers’ interest at heart or just wants to continue its own personal vendetta against Mr. Brown? It is unfortunate that it is the customers who are the ones who bear the expense of this vendetta and not OPC itself.

#### INTERROGATORIES

Interrogatory No. 17 - OPC appears to acknowledge that the requested information is irrelevant if WMSI is not relying upon such information, but nonetheless requests a response. WMSI provided OPC with copies of Mr. Brown and Ms. Chase’s mileage records for 2011 which served as the basis for its test year transportation reimbursement since such records were not required by the PSC during the test year. WMSI, as noted by OPC, has filed Pre-Filed testimony which should resolve any concern that OPC may have as to what 2011 information WMSI intends to rely upon.

Interrogatory No. 23 - OPC acknowledges that this information was sought in connection with its upcoming deposition of Mr. Mitchell (which has now taken place) and thus is irrelevant at this point. If OPC did not obtain the information it requested in at the deposition, then its avenue for relief is to move to compel with regard to the deposition testimony.

#### PRODUCTION OF DOCUMENTS

Document Request No. 37a – OPC appears to acknowledge that the requested documents are irrelevant if WMSI is not relying upon such information, but nonetheless requests a response. WMSI provided OPC with copies of Mr. Brown and Ms. Chase's mileage records for 2011 (responsive to 37b) which served as the basis for its test year transportation reimbursement since such records were not required by the PSC during the test year, which is the only relevant information. WMSI, as noted by OPC, has filed Pre-Filed testimony which should resolve any concern that OPC may have as to what 2011 information WMSI intends to rely upon.

Document Request No. 39, 40 & 41 – OPC appears now to argue that it was seeking documentation on payments made by WMSI to attorneys and consultants in WMSI's prior rate case, however there is no reasonable interpretation of the documents request to support that position. All three document requests address law firms, accountants and engineers "the Utility engaged for the current rate case."

WHEREFORE, WATER MANAGEMENT SERVICES, INC., respectfully requests this Commission:

- (1) Deny OPC's Motion to Compel Discovery,
- (2) Any documents ordered produced be produced in accordance with discovery procedures, as there is no legitimate basis for any exception, and
- (3) Deny OPC's request to file supplemental prefiled testimony, as any time issue is the result of OPC's own delay and OPC should not benefit from its own tardy action. WMSI filed objections to discovery on October 22<sup>nd</sup> and OPC waited over a week to file its Motion to Compel.

Respectfully submitted on this 12<sup>th</sup> day of November, 2012 by:

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MARTIN S. FRIEDMAN  
For the Firm


**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 12<sup>TH</sup> day of November, 2012:

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