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Subject: e-filing (Dkt. No. 100104-EI)
Attachments: WMSI Final Brief.sversion.doc

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b. Docket No. 100104-WS

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 51 pages.

e. The document attached for electronic filing is Citizens' Post-Hearing Statement of Positions and Post-Hearing Brief.
(See attached file: WMSI Final Brief.sversion.doc)

Thank you for your attention and cooperation to this request.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in water rates in Franklin County by Water Management Services, Inc.	DOCKET NO. 100104-WU FILED: October 29, 2010

CITIZENS' POST-HEARING STATEMENT OF POSITIONS AND POST-HEARING BRIEF

Pursuant to Order Nos. PSC-10-0449-PCO-WU, PSC-10-0549-PCO-WU, and PSC-10-0601-PHO-WU, the Citizens of the State of Florida, by and through the Office of Public Counsel ("OPC"), hereby submit their Post-Hearing Statement of Positions and Post-Hearing Brief. OPC has combined its Post-Hearing Statement of Positions and its Post-Hearing Brief into a single document. Each position statement will be set off with asterisks.

EXECUTIVE SUMMARY

During this case, three major themes emerged, each of which demonstrates that WMSI has failed to justify its requested increase in rates. The first theme is WMSI's effort, early in the case, to place $2.2 million of proposed future plant improvements into rate base and build the costs of those future additions into the rates that customers pay now, without first providing adequate support for the claimed costs of the proposed capital expenses. The second theme is WMSI's effort to pack the 2009 test period with extravagant, unreasonable, and unrepresentative levels of operations and maintenance costs to justify higher customer rates. The third theme is the ongoing pattern of frequent transactions between WMSI (which is controlled by its president) and associated companies (which are also owned or controlled by WMSI's president), which has over time resulted in a flow of cash out of the utility and into the president-controlled, non-utility entities. From a balance of zero at the beginning of 2004, the net flow out of the utility has reached $1.2 million (as of December 2009).

The Premature Pro Forma Capital Additions

The Commission's long-standing policy is to require proper documentation of the costs of plant additions, in the form of invoices or competitive bids, before allowing the additions to be reflected in the rates that customers pay. Yet, WMSI offered only planning level engineering estimates to support

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its inclusion of $2.2 million.

WMSI should have known better. In 1989 the Commission rejected, as premature and unsupported, a similar effort by WMSI to reflect proposed plant additions in rates prior to receiving construction bids. Indeed, the utility's last case before the Commission was a proceeding in which rates designed to recoup the costs of a capital improvement (the line across the new bridge to the Island) were not granted until the utility received bids – and rates were subsequently "trued up" based on actual costs. During the Staff's deposition of WMSI's president, WMSI was placed on notice—again-- that to proceed on the basis of early engineering estimates would be placing the cart before the horse. Responding to OPC's objections to the pro forma adjustments, in rebuttal testimony WMSI proposed to proceed on a phased approach in which it would obtain and present proper documentation of costs before seeking an increase in rates to pay for the improvements. OPC does not object to the revised course that WMSI outlined in its rebuttal testimony, but in either this docket or a future case the Commission should shield customers from the extra costs of WMSI's premature request.

Unreasonable and Unrepresentative O&M Expenses

The purpose of a test year is to construct a level of expense that is representative of future conditions. If test year expenses are overstated, rates designed to generate that level of revenue will be artificially and unreasonably high. In this case, WMSI included numerous claims that are unreasonable on their face. In this summary, OPC will include only examples; others will be demonstrated in the following sections of this brief.

Perhaps the most egregious example is the request that customers to pay $12,000 annually for an $800,000 "key man" life insurance policy that will not provide one penny to operate or finance the utility in the event of the "key man's" death. Instead, the policy mandates that the proceeds flow to the beneficiaries of the employees' 401K and executive deferred compensation account. It would be inappropriate in the extreme to require customers to pay the costs of what essentially is a personal life insurance policy.

Similarly unreasonable are the "deferred compensation" amounts of $40,000 for each of the President and Vice President. With respect to the Vice President, the $40,000 of deferred compensation would be in addition to an increase from $59,000 to $70,000 of annual, "non-deferred" compensation. The increase from $59,000 to $70,000 or 18.6% is itself unreasonable in a recessionary environment; the notion that customers should pay for an additional $40,000 of deferred compensation (which is also in addition to the company's 401K retirement plan) is absurd on its face. The Commission should disallow the $80,000 (which was recorded as an expense on WMSI's books, but not paid during 2009) and also any rate case expense directly attributable to this off-the-chart-unreasonable request. When the Commission adjusts these and other test year claims to reasonable levels, the revenue needs claimed by the utility will fall significantly.

Investments in Associated, Non-Utility Entities

Account No. 123 of the Uniform System of Accounts tracks movements of funds between WMSI, the regulated utility that is owned and controlled by its president, and "associated companies" that likewise are owned and controlled by WMSI's president. At the beginning of 2004 the balance of funds that WMSI had invested in associated companies was zero; by December 2009, the balance stood at $1.2 million. WMSI earns no return on this amount.

WMSI's president attempted to justify the net outflow of money from WMSI to associated companies. He asserted that the utility has been suffering annual "losses;" however, the "losses" to which the President alluded were a function of the accelerated depreciation expense, a non-cash item, that WMSI and other businesses are allowed to reflect on their federal tax returns. The Commission measures a regulated utility's profitability by applying its uniform system of accounts to the utility's operations. The annual results are shown in the utility's annual reports to the Commission. WMSI's annual reports to the Commission establish that the utility experienced positive net income in 2005, 2006, 2007, and 2008. (The annual report for 2009 also would have shown positive net income but for $80,000 of deferred compensation that the utility "expensed" on its books—but did not actually pay to

the retirement fund. OPC has called on the Commission to disallow the $80,000.)

The President also asserted that the Commission created financial difficulty and placed the utility in a downward spiral when it disallowed a portion of the $7 million that he spent on the new water main. However, in Docket No. 000694-WU, the utility's own information established its investment to be, not $7 million, but $6.1 million, virtually all of which the Commission allowed for ratemaking purposes.

WMSI's president also claimed that the withdrawals from WMSI were necessary to pay debt obligations that the president had secured to help finance the utility's operations. The explanation doesn't add up. If the utility requires, and is receiving, assistance from the President or the associated companies he controls, the balance of Account 123 would decrease over time, not increase, and there would be a net inflow of cash to WMSI from affiliated entities, not a net outflow. Said differently, simple logic dictates that if the utility cannot meet its own debt obligations, it certainly cannot afford to meet its own debt obligations plus those of its President. Nor did the President explain why he withdrew $85,000 from the utility—which needs to pay down its debt and/or apply cash to make needed improvements— and invested it in a joint venture with the Vice President of the company to purchase rental property. Besides, the sheer number of flows of cash between the utility and associated companies—290 during 2009 alone-- demonstrates that the President simply refuses to acknowledge any boundaries between the utility and his personal, unregulated business endeavors. The Commission should prohibit any additional transfers of cash to associated companies absent an application by WMSI, justification of the transfer, and subsequent documentation showing that the money was expended for the purpose deemed appropriate by the Commission. It should direct WMSI to call on the associated companies to return advances and investments from WMSI. It should place WMSI on notice that in future cases the Commission will impute a return on a positive balance in Account 123 that will offset any revenue deficiency claimed by the utility.

Once all appropriate adjustments to WMSI's request are made, the record will demonstrate that

WMSI has no revenue deficiency and is not entitled to an increase in rates.

STATEMENT OF BASIC POSITION

Commission orders and WMSI's annual reports disprove WMSI's effort to attribute financial difficulties to past rate base disallowances and its claim of ongoing losses. 290 cash flows in a single year and a current net investment of $1.2 million in associated companies demonstrate the need to partition WMSI's finances. WMSI offered only inadequate, preliminary planning estimates to support its early proposal to place $2.2 million of future plant improvements in rate base. With appropriate adjustments, WMSI has no revenue deficiency.

ISSUES AND POSITIONS

QUALITY OF SERVICE

ISSUE 1: Is the quality of service provided by the Utility satisfactory?

Environmental agencies and customers did not indicate problems with water quality or related parameters of service.

USED AND USEFUL

ISSUE 2: What is the used and useful percentage of the Utility's water distribution system?

* Using the lot-to-lot method recommended by OPC witness Woodcock, the WMSI's distribution system is 54.9% used and useful (1,817 divided by 3,311 lots). Non-used and useful plant in service and accumulated depreciation should be removed by $1,059,878 and $472,904, respectively, resulting in a net reduction to rate base of $586,975. Additionally, depreciation expense should be reduced by $16,912 to remove the non-used and useful portion.*

ARGUMENT: OPC witness Woodcock testified that he calculated the used and useful percent for the distribution system by using the lot-to-lot method. From WMSI's system maps, Mr. Woodcock found 3,311 lots adjacent to water lines, with 1,817 shown as customer connections. Because of the negative growth for the area, he did not include an allowance for growth and calculated a 54.9% used and useful factor. (TR 156)

On cross-examination by WMSI counsel, Mr. Woodcock stated that he was aware that the used and useful percentage in the last rate case was stipulated as 100% except for certain areas in the Plantation, but added that stipulation did not affect his calculation. Further, his understanding is that from rate case to rate case the methodology can be reopened and reexamined. In his review, Mr. Woodcock considered the physical characteristics of the island. He determined that the WMSI system

was no different from any other utility distribution system that provides fire flow, and conducted his calculations accordingly. Because adjusting his calculations to remove the 35 shallow wells that have been drilled on St. George Island would impact his used and useful by less than one percent, Mr. Woodcock opined that the wells were an insignificant factor in the analysis. (TR 169-175)

Utility witness Seidman testified about the methodology that the Commission used in the last rate case based on a stipulation. He stated that a strict lot count methodology, without consideration of other factors, would be inappropriate and would severely understate the used and usefulness of the transmission and distribution plant on the island. The utility had no choice but to have a core transmission system that runs the length of the island with distribution mains extending toward the beaches. The utility's lines pass by homes with shallow wells and it could not force these people to hook up to the central system and a lot count methodology would penalize the utility for not serving the lots of people with shallow wells. Mr. Seidman did admit that the lot count during the test year resulted in a 60.9% used and useful for the Plantation distribution system, with an overall 96.9% used and useful for the entire transmission and distribution system. He concluded that given the shallow well policy change, the lot count method is no longer appropriate, even in the Plantation, and that the entire transmission and distribution system should be considered 100% used and useful. (TR 424-427)

Mr. Seidman's analysis is flawed. First, he does not convincingly rebut Mr. Woodcock's testimony that this system does not differ from many other water systems. Many water systems in Florida are located on islands, and certainly St. George Island has long-term potential for home construction. Second, Mr. Seidman does not rebut Mr. Woodcock's analysis that the shallow wells will not have a material impact on the used and useful calculation. At the very minimum, as evident from his response to staff's cross examination, Mr. Seidman does not adequately explain why the shallow well impact would result in an overall 100% used and useful percentage. (TR 453-455) Accordingly, OPC asserts that witness Woodcock's used and useful analysis is appropriate and should be used.

RATE BASE

<u>ISSUE 3</u>: Should any adjustments be made to rate base regarding affiliate assets?

Yes. Plant and accumulated depreciation should be reduced by $16,022 and $10,682, respectively, for a backhoe trailer that was sold to BMG. Depreciation expense should also be reduced by $2,670.

ARGUMENT: OPC witness Ramas drew attention to several questionable transactions involving the acquisition and subsequent sale of two separate backhoe trailers, highlighting concerns of transactions with an affiliated entity, Brown Management Group (BMG). On August 18, 2010, Gene Brown signed a bill of sale retroactively documenting a transfer of a trailer to BMG effective on March 31, 2007. This trailer has not been owned by WMSI since March 31, 2007 and was removed from WMSI's books in a correcting journal entry on December 22, 2009. (TR 295-299; EXH 19 (DR-9)) Plant in service and accumulated depreciation should be reduced by $16,022 and $10,682, respectively. Additionally, depreciation expense should be reduced by $2,670 to remove the impacts of this trailer, which was transferred to an affiliated entity in 2007, from the test year. (EXH 11, (DR-1, p. 15))

This transaction highlights concerns regarding the nature of transactions between WMSI and BMG. In addressing the two backhoe trailers that were purchased by WMSI using utility funds in 2005, Mr. Brown indicates in his rebuttal testimony that he picked up a backhoe trailer for $7,000, only to discover that it was not large enough to handle the backhoe he had purchased. Subsequently he sold it for $5,000, which is $2,000 less than WMSI paid for it. He then indicated that WMSI bought a larger trailer that could handle the backhoe for approximately $16,000, but learned it was not even being used by WMSI's field technicians, who preferred driving the backhoe rather than hauling it by trailer. The $16,000 trailer was subsequently transferred to Brown Management Group for $6,000 less than the original acquisition price paid by WMSI, or $10,000. The trailer was ultimately traded by BMG for a storage shed that was placed on property owned and subsequently sold by BMG. (TR 551-552)

While in his rebuttal testimony Mr. Brown disagreed with the description of the transactions involving the backhoe trailers provided in Ms. Ramas' testimony, he does not dispute that the trailer and associated depreciation expense should be removed from the test year, and in fact, agrees that

"WMSI should not have booked any depreciation expense on the trailer after it was traded for the storage shed…" (TR 552)

<u>ISSUE 4</u>: Should any adjustments be made to rate base for vehicles?

* Yes. The Company has not supported the 50% allocation for vehicles assigned to Mr. Brown and Ms. Chase as reasonable for WMSI work purposes. Plant and accumulated depreciation should be reduced by $20,935 and 7,560, for the 2008 GMC Sierra, and $15,207 and $2,112 for the Tahoe, respectively. Test year depreciation expense should be reduced by $3,489 and $2,535 for the GMC truck and Tahoe, respectively.*

ARGUMENT: OPC witness Ramas testified that WMSI has recorded costs associated with six vehicles for use by its eight employees. The Company removed from rate base 50% of the cost associated with the 2008 GMC truck used by Gene Brown and the 2007 Chevrolet Tahoe used by Sandra Chase. Ms. Ramas recommended that all of these personal vehicle costs be disallowed. The use of these vehicles is an extra perquisite or benefit that is unnecessary; nor has the Company justified the work related mileage or the percentage of work related usage. The only support is anecdotal, based on estimates of mileage and numbers of trips. (TR 300-305)

While the full cost is recorded on its books, the company removed 50% of both of these vehicles as "non-used and useful." The appropriate description of this adjustment should have been "non-utility." To make matters worse, the utility sold Mr. Brown's vehicle to BMG and bought a higher cost used vehicle after the end of the test year. The only explanation Mr. Brown offered to justify these transactions was that they were management decisions. Ms. Ramas expressed her concern that BMG, purportedly a holding company of passive investments, would buy and retain vehicles from WMSI at the same time WMSI purchased a new vehicle to be assigned to Gene Brown. (TR 302-303) Certainly, the prudence of these management decisions regarding purchasing and transferring personal vehicles between the utility and a "passive" affiliate organization should be fully scrutinized.

Regarding Ms. Chase's vehicle, Mr. Ramas stated that not only has the company failed to provide any documentation to establish Ms. Chase's need for a Company-owned vehicle, this vehicle is not even owned by WMSI. It is titled to Sandra Chase and the lien is in her name, not the

Company's. [EXH 21-(DR-11)] Ms. Ramas described, in great detail, the convoluted transactions that the management made in purchasing/transferring this vehicle between Ms. Chase and the Company. (TR 303-305)

In rebuttal, Mr. Brown first argued that in his 35 years of managing WMSI, the company has always provided him with a vehicle. It has provided Ms. Chase with a vehicle for the last 15 years or so. Neither has ever been required to keep detailed travel records. (TR 553-554) In the utility's last rate case, the company requested a travel allowance of $2,600 for Ms. Chase, $1,300 for Ms. Hill, and $3,900 for Mr. Brown. The Commission found that the Company had not provided any support for the administrative staff and disallowed all of Mr. Brown's travel because he was employed by an affiliate, not the utility[1]. The Commission's denial of costs as unsupported should have signaled WMSI that better record keeping would be expected in future cases.

On cross examination by WMSI counsel, Ms. Ramas denied that Mr. Brown has provided any documentation to support his claimed average 4 trips to the island per month. (TR 361) Ms. Ramas also testified that keeping track of the business nature and the amount of miles for a trip is a common requirement for any company, not only regulated utilities. This is particularly true for companies that reimburse employees for miles or deduct vehicle costs on their tax returns for work-related mileage. (TR 365) Ms. Ramas added that keeping documentation for business travel is required by IRS regulations. (R 366) Had Mr. Brown maintained adequate travel logs, Ms. Ramas said, some reimbursement based on the actual work-related travel would be reasonable.

Mr. Brown's rebuttal that WMSI's tax return, which shows with mileage figures, constitutes support is without merit. Of additional concern is that the IRS also requires travel logs to support business versus personal use of vehicles, which is apparently non-existent for this company. It is well known that numbers shown on tax returns without backup support are readily thrown out by taxing authorities. The tax return itself is not evidence without documentary support. Further, Mr. Brown's

[1] See Order No. PSC-94-1383-FOF-WU, in Docket No. 940109-WU, page 42-44.

attempt to support his transportation mileage with "guesstimates" doesn't constitute support.

Based on the above, OPC believes that the record fully supports Ms. Ramas' recommendation that the full vehicle cost associated with Mr. Brown's and Ms. Chase's vehicles should be removed from test year expenses. As reflected in EXH 11 (DR-1, Schedule B, page 2 of 20 and Schedule C, page 2 of 2), the following adjustments should be made:

Descriptions	Plant	Accum. Depr.	Depr. Expense
Mr. Brown's 2008 GMC Sierra	$41,870	$15,120	$6,978
Ms. Chase's 2007 Chevy Tahoe	$30,413	$ 4,224	$5,069
Subtotal Per Books	$72,283	$19,344	$12,047
Utility Adjusted Balance	$36,142	$9,672	$6,024
OPC Recommended Reductions	($36,142)	($9,672)	($6,024)

ISSUE 5: *Stipulation.*

ISSUE 6: Should any adjustments be made to test year plant-in-service balances?

Yes. OPC adjustments to plant are reflected in other issues. Plant should be reduced by $2,138,094 to reflect a test year balance of $8,366,290.

ISSUE 7: *Stipulation.*

ISSUE 8: What improvements, if any, has WMSI made to its water distribution system regarding fire flow that were addressed by the Commission in Orders Nos. PSC-04-0791-AS-WU, issued August 12, 2004, and PSC-05-1156-PAA-WU, issued November 21, 2005, in Docket No. 000694-WU? Do these improvements satisfy the requirements of the orders?

Responding to customers' inquiries, OPC served discovery designed to identify the location and cost of fire flow improvements that WMSI constructed in response to the above orders. WMSI provided, on the eve of the hearing, a document showing the location of completed looping projects. However, WMSI did not account fully for the $400,000 that the Commission directed the utility to spend on additional looping projects in lieu of replacing its elevated storage tank.

ARGUMENT: In response to questions posed to OPC by some of WMSI's customers, OPC identified the fire flow improvements as an issue and served discovery requests related to the location and cost of the fire flow improvements to which Order No. PSC-04-0791 AS-WU refers. Following some exchanges regarding the unresponsive nature of WMSI's first answers, on the eve of the hearing WMSI provided OPC with a distribution map marked to show the location of completed looping

projects and several invoices from Boh Brothers, the contractor that was engaged to perform the work on the projects. However, all of the invoices represented work performed during the June-December 2003 time frame. (TR 102-103) In Order No. PSC-04-0791-AS-WU, the Commission approved a settlement agreement between OPC and WMSI that called for WMSI to expend $400,000 that previously had been earmarked for the removal of its elevated storage tank on projects to increase fire flow capabilities. Because the decision regarding the fate of the elevated storage tank and the disposition of the $400,000 did not occur until this order was issued in 2004, OPC concludes that this amount of money was to be spent on line improvements after the order was issued. Therefore, the invoices provided by WMSI do not fully address the issue. From the stand, Mr. Brown said that, after OPC informed WMSI of the non-responsive nature of the invoices, he and/or his staff reviewed the company's books and found an additional $169,000 that had been expended on the looping projects in 2004. (TR 105-106)

OPC acknowledges that in the course of this docket OPC and Staff imposed significant discovery burdens on WMSI's small staff. OPC also acknowledges that in 2006 WMSI provided a map showing the locations of completed projects to OPC's office. OPC is satisfied that WMSI, using a contractor and its own personnel, completed a substantial number of looping projects that had the effect of increasing system fire flow capabilities, as contemplated by the Commission. However, with respect to the $400,000 amount that the Commission addressed when it approved the settlement agreement between OPC and WMSI, the record is inadequate. It is possible that additional reviews would identify and document more than the $169,000 that Mr. Brown mentioned from the stand; it is also possible that WMSI performed the projects without spending the entire $400,000. Because the record is inadequate to answer the question posed by the issue, OPC submits that WMSI did not meet its burden of proof with respect to Issue No. 8.

ISSUE 9: Should the Utility's pro forma plant additions be approved for recovery? If so, in what manner should they be approved for recovery?

OPC: *Preliminary, planning level engineering estimates are inadequate to support the inclusion of $2.2 million of proposed future plant improvements in rate base in this proceeding. OPC does not object to the phased approach proposed in WMSI's rebuttal testimony, in which the pro forma adjustments would be excluded from the calculation of revenue requirements in this case, provided that customers are shielded from excessive rate case expense caused by WMSI's premature approach in this case.*

ARGUMENT WMSI included in its proposed rate base $2.2 million of pro forma adjustments representing proposed future improvements to plant. The proposed improvements include relocating a portion of the raw water transmission line, replacing the existing ground storage tank, rehabilitating electrical wiring within the treatment plant, and improving distribution lines. The proposed rates in the utility's Minimum Filing Requirements were designed to generate revenues to cover the proposed capital additions. (TR 54)

In WMSI's direct case, WMSI witness Mr. Brown alluded to an evaluation of WMSI's system that the engineering firm PBSJ performed in 2009 as the support for the proposed additions. OPC obtained the PBSJ study in discovery, and it subsequently was offered as an exhibit to WMSI's rebuttal testimony.

OPC engaged Andrew Woodcock of the firm Tetratech to inspect WMSI's system and review the pro forma, plant-related adjustments to rate base. Mr. Woodcock agreed that the proposed improvements are reasonable and would improve reliability and quality of service. (TR 161) However, Mr. Woodcock testified that PBSJ's evaluation constitutes only "planning level engineering estimates" of costs, and as such are inadequate to support including the improvements in rate base. (TR 155)

Mr. Woodcock explained that the preliminary engineering estimates contained in the PBSJ study were made without the benefit of detailed engineering drawings or complete specifications that are needed to yield costs accurate enough to build into the rates of a regulated company. He added that, because the function of the preliminary, planning level engineering estimates is to provide the client with the potential cost of a project for financing purposes, the estimates are conservative in nature, meaning that the estimates will likely be higher than costs of related competitive bids. (TR 159) Mr. Woodcock testified that, for a regulated utility, actual invoices for completed work should be

the basis for rate base values. In the absence of actual costs, he said, competitive bids for a well defined scope of project could be used if the allowed costs are subject to being trued to actual results after the projects have been completed. (TR 157-158)

WMSI sponsored the rebuttal testimony of Michael Scibelli, of the PBSJ firm that prepared the engineering evaluation on which WMSI relied to support the pro forma adjustments, and Frank Seidman, who prepared and sponsored the Minimum Filing Requirements containing the pro forma adjustments and the proposed rates. While he explicitly purported to respond to Mr. Woodcock's direct testimony, Mr. Scibelli addressed only Mr. Woodcock's observation that the projects would improve reliability and quality of service (Mr. Scibelli agreed with this assessment) and Mr. Woodcock's contention that an in-place alternative to the proposal to build a new ground storage tank on adjacent property should be considered further at the time the estimates are refined (Mr. Scibelli supported the proposal to acquire property and build the storage tank at a different location). (TR 465) Tellingly, PBSJ's Mr. Scibelli did not dispute Mr. Woodcock's characterization of the PBSJ document as planning level estimates, and did not dispute Mr. Woodcock's assertion that the PBSJ evaluation is inadequate to support the inclusion of the $2.2 million of pro forma adjustments in rate base.

Nor in his prefiled rebuttal testimony did Mr. Seidman take issue with Mr. Woodcock's position that the proposed improvements should not be included in rate base. Mr. Seidman noted that Mr. Woodcock did not dispute the need for the improvements, then proceeded to outline a procedural approach that WMSI and the Commission could follow in light of Mr. Woodcock's opposition to including the planned improvements in rate base in this case. The proposal consists of (1) a finding by the Commission that the improvements are reasonable and needed, (2) removal of the pro forma plant adjustments from the determination of revenue requirements in this case, (3) a future increase in rates based on competitive bids, and (4) a true-up to actual costs after the projects have been completed. (TR 430-431)

Prior to hearing, then, the utility's responsive testimony indicated no resistance to OPC's

position that the Commission should not include the proposed plant improvements in rate base in this docket. Indeed, in testimony WMSI's witness delineated an alternative to the utility's original proposal. That alternative explicitly contemplated calculating revenue requirements in this proceeding without the pro forma adjustments.

At hearing, however, WMSI seemingly could not bring itself to turn loose of its original proposal completely. Counsel for WMSI repeatedly asked OPC witnesses to explain how a utility in WMSI's situation could finance the construction of the proposed improvements without first increasing rates, even though her own witness had laid out a proposal to do just that in his prefiled rebuttal testimony. (TR 223) Counsel for WMSI tried to shore up the PBSJ evaluation on which WMSI relied when it originally included the plant projects in rate base by asking Mr. Woodcock to agree that PBSJ is regarded well by others in the business of engineering services. However, a preliminary, planning level exercise performed well by a qualified peer remains a preliminary, planning level estimate that is inadequate for ratemaking purposes. (TR 235-236) Counsel also asked Mr. Woodcock to agree that the PBSJ evaluation, which consisted of several separate technical memoranda, is the equivalent of a "standard" evaluation product, such as Mr. Woodcock's firm might prepare. Unfortunately for WMSI, the function of such a "standard" work product does not encompass supporting the inclusion of future plant additions in the rate base of a regulated utility. (TR 238)

Counsel for WMSI also attempted to draw parallels between studies that OPC's witness had performed for governmentally owned utilities and WMSI's situation. WMSI's efforts to liken its situation to practices of governmental entities (which contemplate the possibility of rate increases prior to the time capital projects are completed) are misplaced and unavailing. As governmentally owned utilities are not subject to the Commission's regulatory regime, concepts such as "used and useful plant," "rate base" and "rate of return"—which were developed to provide to regulatory agencies tools with which to oversee investor-owned entities— simply do not apply to them. (TR 222; 239) As "rate base" is inapplicable to governmentally owned utilities, so are criteria for including items in rate base

inapplicable. Further, governmentally-owned utilities treat the subject of depreciation expense differently than do regulated utilities: unlike regulated utilities, governmentally-owned utilities place revenues derived from depreciation expense directly into a capital account used to fund future capital investments. (TR 350) As OPC witness Donna Ramas testified, governmentally-owned utilities and regulated, investor-owned utilities are so different in terms of their governance and their ratemaking and financing activities that efforts to compare the manner in which they finance plant additions and address the adequacy of rates are like comparing "apples and oranges." (TR 350-352)

In addition to these questions by Counsel for WMSI, in his "summary of testimony" WMSI witness Seidman deviated from his prefiled rebuttal testimony to say, "If there is an agreement that these pro forma projects serve a useful purpose and benefit the customers, then it should be included in rate case (sic). And a question, I guess, is if not this time when. The utility has requested that they be included in this proceeding and will certainly cooperate with the Commission to facilitate that to everyone's benefit, including any type of phasing or whatever methodology would allow us to move forward with the projects in an economical manner." (TR 446)

The questions posed by WMSI to OPC's witnesses and Mr. Seidman's somewhat ambiguous summary of unambiguous prefiled rebuttal testimony on the subject of pro forma adjustments indicated to OPC that WMSI was trying to "have it both ways." Therefore, during cross-examination of Mr. Seidman OPC sought to clarify WMSI's position on the course the Commission should take in light of OPC's opposition to the pro forma adjustments. Clarification was achieved. In his answers to OPC's questions, Mr. Seidman stated unequivocally that the phased approach that he espoused in prefiled rebuttal testimony, in which the Commission would recognize the need for the improvements but remove the pro forma adjustments from rate base and customers' rates in this proceeding, *continues to represent his position and the position of WMSI's management.* (TR 451-452) In light of this final, clear exposition of WMSI's position, OPC submits the Commission should disregard WMSI's earlier, self-contradictory and unpersuasive efforts to revive its pro forma plant adjustments.

Given this record, the Commission should find the proposed projects to be reasonable, reject the pro forma plant-related adjustments to rate base, and direct WMSI to return after it has secured competitive bids for the fully defined projects. WMSI should not be surprised by this result. In Order No. 21122, issued in Docket No. 871177-WU on April 24, 1989, the Commission rejected an earlier effort by WMSI to use preliminary engineering estimates as support for pro forma plant additions to rate base. Mr. Brown was further informed of the Commission's policy by Staff during his deposition in this docket. (EXH 38, at pages 135-138) Indeed, in his rebuttal testimony in this case, WMSI witness Seidman observed that the phased procedure he now proposes was employed by the utility and the Commission to address the investment associated with the transmission line across the new bridge to St. George Island in Docket No. 940109-WU. (TR 430)

Mr. Seidman acknowledged that WMSI incurred costs to include the proposal to place the engineering estimates in rate base in this docket. (TR 452) As OPC witness Ramas testified, the Commission should ensure that customers are not required to absorb the extra rate case costs associated with WMSI's premature effort through the rates they pay. (TR 279)

To implement this position, plant, accumulated depreciation, and depreciation expense should be reduced by $2,022,072, $151,325, and $51,934, respectively. Amortization of prudently retired plant and property taxes should be decreased by $12,879 and $5,787. The total revenue requirement impact of removing the pro forma plant is a decrease of $149,033. Based on Mr. Woodcock's observations, the Commission should direct WMSI to reevaluate options to replace its on-site storage tank and demonstrate the most cost-effective alternative at the time it submits competitive bids and requests a rate increase to pay for the proposed improvements.

ISSUE 10: Should any adjustments be made to test year accumulated depreciation?

Yes. This is a fall out issue. As addressed in previous issues, accumulated depreciation should be reduced by $133,666 in total.

ISSUE 11: Should any adjustments be made to test year Advances for Construction?

*Yes. In addition to the stipulated adjustment, advances should be increased by the Commission

ordered adjustment of $65,000 to reflect funds received from a Homeowner's Association. The Company's argument that the Commission's order was wrong is untimely and inappropriate.*

ARGUMENT: Staff Witness Dobiac testified that Audit Finding 3 addressed two adjustments to advances for construction stemming from the company's last rate case. The first adjustment was a stipulated decrease to the account of $9,257. In the second adjustment, the Commission ordered that the account be increased (credited) by $65,000 to reflect funds received from a Homeowner's Association. Ms. Dobiac stated that the company did not record either adjustment. In response to an audit document request, the utility stated that the $65,000 adjustment to Account 252 ordered by the Commission was not a customer advance. Ms. Dobiac stated that the utility believed that the $65,000 was paid-in capital and booked it to Account211. Ms. Dobiac did not express an opinion on the $65,000 adjustment and recommended that the analyst staff conduct additional research. (TR 418)

Mr. Brown in his rebuttal describes the transaction involving the $65,000 payment by the homeowners paid to him and his affiliates as the settlement of a lawsuit that did not involve the utility. Mr. Brown repeated the answer provided in response to the audit request and provided no documentation in support of this opinion. (TR 559-560)

This issue was litigated in the last rate case, with four witnesses on opposing sides presenting testimony. In Order No. PSC-94-1383-FOF-WU, page 30, the Commission stated: "As the utility failed to demonstrate that the $65,000 was not received during the test year, we find it appropriate to treat the $65,000 as advances in the utility's rate base." While the true intent of the settlement was not clear, the Commission's decision was clear that the utility failed to meet its burden to prove that the adjustment was not appropriate. WMSI has simply ignored the Commission's ruling. The Commission should uphold its decision in the prior case and order that the adjustment again be made to increase advances for construction by $65,000.

<u>ISSUE 12</u>: What is the appropriate working capital allowance?

*Working capital should be $47,944. In addition to the stipulated reductions of $133,213 adjustments are appropriate to: remove the $35,603 average test year balance proposed deferred wastewater certificate costs; remove deferred rate case expense of $1,586 associated with the preliminary legal and consulting fees; remove the $6,008 non-utility prepaid insurance for the Key Man Life Insurance

policy; and increase WCA to remove the $40,000 operating reserves for the executive deferred compensation plan. *

ARGUMENT: In addition to the $133,213 stipulated reductions to working capital, OPC witness Ramas recommended four adjustments to reflect a working capital allowance (WCA) of $47,944. First, the WCA should be decreased to remove the $35,603 average test year balance for the deferred Wastewater Certificate Application costs. As discussed in Issue 34, this non-utility cost should be rejected and should have been written off. Second, as discussed in Issue 29, the WCA should be decreased to remove deferred rate case expense of $1,586. This is 50% of the $3,172 of proposed rate case expense associated with the preliminary evaluation of legal and accounting rate case consultants who were not hired to complete the case. Third, the WCA should be decreased to remove the $6,008 estimated prepaid insurance balance associated with the requested key man life insurance policy addressed in Issue 28. The prepaid amount is 50% of the requested test year expense of $12,016, which OPC believes should not be charged to the ratepayers and instead considered as non-utility costs. Last, the WCA should be increased to remove the $40,000 credit balance in operating reserves. This liability is the average amount the Company has recorded on its books for its proposed executive deferred compensation costs, which, as addressed in Issue 19, OPC recommends should be disallowed. (TR 308-310)

<u>ISSUE 13</u>: What is the appropriate rate base for the December 31, 2009, test year?

The appropriate rate base should be $3,068,963.

<u>COST OF CAPITAL</u>

<u>ISSUE 14</u>: *Stipulation.*

<u>ISSUE 15</u>: What is the appropriate amount and cost rate for long-term debt for the test year?

Long term debt should be $7,725,661 with a weighted cost of 3.78%. This reflects removal of the $15,711 Envision loan for a 2007 Chevrolet Tahoe owned by Ms. Chase, the $27,492 Capital City Bank loan for the 2009 GMC Sierra used by Gene Brown, and the projected $5 million loan at 6.5% from Citizens State Bank. An additional adjustment should be made to add back the $2,849,020 test year balance of the loan from Gulf State Bank at 4.25%. (Ramas)

ARGUMENT: OPC Witness Ramas testified that three adjustments should be made to the Company's

calculation of its long term debt cost. First, the loan with Envision Credit Union should be disallowed, as it is a car loan with an employee, not WMSI. As addressed in Issue 4, the Company has included the cost associated with a 2007 Chevrolet Tahoe owned by Sandra Chase in its requested rates, and Ms. Ramas has recommended that the total cost be removed be removed from plant along with the associated debt. The $15,711 balance for this loan at a 5.75% cost rate should be removed. (TR 312)

Second, consistent with her recommendation for plant, Ms. Ramas testified that the Capital City loan balance of $27,492 (6.61% cost rate) for the 2009 GMC Sierra used by Gene Brown during 2009 should be removed. This vehicle and the associated loan are for the benefit of the President of WMSI and should not be borne by ratepayers. (TR 313)

Lastly, Ms. Ramas stated that the Company proposed loan with Citizen's State Bank of $5 million (estimated 6.65% cost rate) should be replaced with the test year loan of $2,849,020 (4.25% cost rate) with Gulf State Bank. The Citizens loan was proposed to refinance the existing loan with a significantly higher cost loan. Ms. Ramas stated that the Company did not support the prudence of refinancing existing debt at a substantially higher rate; nor has it supported the proposed cost rate on the new debt in its filing. The only purported support for the new loan is a "conditional written commitment" from Citizens State Bank dated May 14, 2010. [EXH 24 (DR-14)] The conditions are vague, and the new debt would require that DEP agree to subordinate its lien on WMSI's supply main so that Citizens State Bank would have a first lien against all of WMSI's assets. Mr. Brown admitted that no communication has been made with DEP to see if this would be possible. Such subordination certainly could jeopardize the low interest loan that WMSI has with DEP. Both OPC witnesses Woodcock and Ramas have recommended that the plant additions associated with the capital improvements should be rejected by the Commission until the Company can provide a reasonable level of support. Ms. Ramas stated that consistent with that recommendation, the proposed new debt to finance those plant additions should also be excluded. (TR 313-316)

ISSUE 16: What is the appropriate return on equity (ROE) for the test year?

For purposes of establishing a return on equity for a future equity investment, the current leverage formula at a 40% equity ratio should be used. Pursuant to Order No. PSC-10-0401-PAA-WS, a prospective mid-point ROE of 10.85%, with a range of 9.85% to 11.85% is appropriate.

ARGUMENT: WMSI has no equity investment in the test year. The Commission should establish a return on equity using the current leverage formula at a 40% equity ratio for any future equity investment. This results in a prospective mid-point ROE of 10.85%, with a range of 9.85% to 11.85%, pursuant to Order No. PSC-10-0401-PAA-WS, in Docket No. 100006-WS.

ISSUE 17: What is the appropriate weighted average cost of capital including the proper components, amounts and cost rates associated with the capital structure for the December 31, 2009, test year?

The appropriate overall rate of return for WMSI is 3.85%.

ARGUMENT: OPC witness Ramas testified that an overall rate of return for WMSI should be 3.85%, which incorporates a long term debt rate of 3.78%. (TR 311)

NET OPERATING INCOME

ISSUE 18: Should any adjustments be made to the requested level of salaries and wages expense?

Yes. The excessive percentage wage increases in salary for two positions granted in the test year should be reduced. Ms. Chase's 2009 base salary increase of 18.6% ($11,000) and Ms. Molsbee's increase of 30% ($14,019) should be replaced by increases of 3%, resulting in a test year salary reduction of $21,870. Additionally, salaries for Gene Brown, Sandra Chase and Bob Mitchell should be reduced by 12.5% or $28,554 to reflect an allocation of their salaries to affiliated operations.

ARGUMENT: As pointed out by OPC Witness Ramas, the salary of WMSI's Vice President and Secretary, Sandra Chase, was increased by $11,000 or 18.6% in 2009.[2] During that same period, there was no change in her job function or responsibilities. (TR 280-281) While Mr. Brown lists various responsibilities she has with the WMSI (TR 541), there is no indication that her job function or responsibilities changed in any way during the period she received the 18.6% raise. During that same period, the base wages of the Company's operations and office manager, Brenda Molsbee, was increased by approximately 30% or $14,019. (TR 281) Mr. Brown testified in rebuttal that Ms.

[2] This is in addition to the effective $40,000 increase in salary granted for Ms. Chase in 2009 associated with the new deferred executive compensation plan, which will be addressed with Issue 19.

Molsbee obtained a DEP operator's license in 2008 and that he had promised a wage increase to her. (TR 539-540) However, there is no indication that her actual job functions have changed. Additionally, the only documentation provided as support for the amount of increase, as provided in Late-Filed Exhibit 21 to Mr. Brown's deposition, was a hand jotted note prepared by Ms. Molsbee identifying what Hank Garrett, a WMSI operator, was paid by a previous employer. (TR 281 and EXH 38 (Late Filed Exh. 21)) During a period of financial difficulty of WMSI in which it was not paying many of its bills and debt obligations, coupled with the economic climate in Florida and throughout the United States in 2009, wage increases of 18.6% and 30% are not reasonable or justified. Salary and wage expense should be reduced by $21,870 to allow for 3% wage increases for these two employees during the test year. (EXH 11 (DR-1, p. 8))

In addition to the $21,870 reduction to limit the 2009 wage increases for two employees to 3%, OPC witness Ramas recommended an additional $28,554 reduction to salary and wage expense to allocate 12.5% of the salaries of Gene Brown, Sandra Chase and Bob Mitchell, WMSI's controller, to affiliated operations. (EXH 11 (DR-1, p.3)). While WMSI indicated that Gene Brown, Sandra Chase and Bob Mitchell all work approximately two hours per week for BMG and other entities owned by Mr. Brown, it contends that these hours are in addition to the 40 plus hours they work weekly for WMSI. WMSI allocated $0 of the salaries and benefits earned by these individuals to affiliated entities. (EXH 34, OPC Interrogatory 12) Given the extensive volume of transfers between the various cash accounts of these entities and number of property transactions between BMG and WMSI, it is not realistic to assume that only two hours per week are dedicated by the Company's vice president, controller and Mr. Brown associated with BMG, or other non-regulated operations. During 2009, there were over 290 cash transfers into and out of WMSI involving either BMG or Gene Brown (TR 319, EXH 12 (DR-2)), and over 200 transfers in 2008 (TR 319, EXH 13 (DR-3)). It is also unreasonable to assume that Ms. Chase and Mr. Mitchell are providing services on behalf of BMG free of charge to Mr. Brown and BMG. (TR 261) A more realistic assumption would be that these three

individuals each dedicate approximately 12.5% of their time, or 5 of every 40 hours, focusing on affiliated or non-regulated matters. (TR 263)

In rebuttal, Mr. Brown asserts that it is unreasonable to allocate any of his or Ms. Chase's time to affiliated entities, indicating that he has "...to manage the utility company seven days per week, 24 hours per day, 365 days per year" and that he handles water company business from home at night and on weekends. He also asserts that he and Ms. Chase do not work "9 to 5"; that they have needed to handle WMSI business after "normal" business hours; and that both of them work more than 40 hours per week. (TR 531-532) This is not extraordinary, but rather is the norm for employees at the President and Vice President level of any organization, including water utilities. Mr. Brown's assertions do not justify his recommendation that $0 be allocated to BMG or other affiliated entities for the time he and Ms. Chase spend on behalf of those entities.

ISSUE 19: Should any adjustments be made to employee pension and benefits?

Yes. Benefits expense should be reduced $80,000 to remove the new executive deferred compensation plan expense. This new deferred compensation plan, which more than doubles employee benefit expense, is not funded and represents a significant increase in compensation for Mr. Brown and Ms. Chase of $40,000 each per year. Additionally, the employee benefits for Gene Brown, Sandra Chase and Bob Mitchell should be reduced by $3,665 to reflect a 12.5% allocation to affiliated operations.

ARGUMENT: Pension and Benefits expense recorded during the test year total $130,569, of which $80,000 or over 60% was for a new executive deferred compensation plan. The $80,000 consists of executive deferred compensation plan cost of $40,000 for Gene Brown and $40,000 for Sandra Chase. These amounts are in addition to their salaries and wages and 401(K) plan costs. (TR 282-283) Removing just the costs of this new plan would have caused the operating loss during the test year reported to the PSC to become a gain. (TR 53-54 and 100-101)

This new deferred compensation plan is an unqualified plan that is not funded by WMSI. According to the plan itself, "The purpose of the plan is to provide deferred compensation to a select group of management and highly compensated employees through an unfunded "top hat" arrangement exempt from fiduciary, funding, vesting, and plan termination insurance provisions of Title I and Title

IV of the Employee Retirement Security Act…" and the plan was adopted "…to provide employees with an opportunity to defer compensation they are unable to defer or receive under the Company's tax qualified cash or deferred compensation plan (WMSI 401(k) Plan), because of the limits on deferrals imposed by Sections 401(k) and 402(g) of the Internal Revenue Code…" Under the plan provision, Mr. Brown and Ms. Chase can "…elect to defer the receipt of Compensation by completing a deferral election form…" (TR 284-285; EXH 17 (DR-7)) Based on the actual plan documentation, Mr. Brown and Ms. Chase were essentially granted an additional $40,000 annual increase in their compensation that they are deferring. (TR 285) This is in addition to the $18,600 increase in Ms. Chase's wages in 2009. The plan is unfunded and no employees in the plan have preference over any general creditor of the Company for the amount accrued in the employee's accounts. (EXH 17 (DR-7))

In deriving the annual amount of expense for the new plan, Mr. Brown essentially determined a monthly payment amount ($1,500 to $2,000) that he thought was reasonable to pay him and Ms. Chase for the rest of their remaining estimated lives upon retirement. Having set this target, he determined the amount of deferred compensation that would need to be accrued over the remaining several years before each of their retirements. (EXH 38, Brown Depo Transcripts, p. 68-69) Thus, this new plan is accruing a significant cost associated with projected future retirement benefits over an extremely short period of time, which differs substantially from typical pension or retirement programs. In addressing the plan in Rebuttal, Mr. Brown asserted that "It does not seem fair or reasonable that WMSI cannot have fair and reasonable pensions comparable with state employees." (TR 543-544) Mr. Brown's comparison is invalid; his proposed deferred executive compensation plan clearly is nothing like the State of Florida's pension programs. It is highly unlikely that the State of Florida, or any state for that matter, contributes, within a compressed time frame of only several years, amounts actuarially sufficient to pay in the range of $1,500 to $2,000 per month for the rest of an employee's life. The plan presented by WMSI in this case essentially results in $40,000 of additional annual compensation that was not previously granted that is now being provided and deferred by the employees.

Mr. Brown also asserts that the plan is a "reasonable and necessary expense of operating a perpetual business which strives to keep dedicated employees." (TR 545) WMSI was able to operate through 2008 without such a plan in place and was able during that same period to retain several long term employees such as Mr. Brown and Ms. Chase, each of which have worked for the Company or its predecessors for over 25 years.

This significant costs for this new executive deferred compensation plan, that essentially results in $40,000 increases to Ms. Chase and Mr. Brown's salaries, should not be passed on to WMSI's customers and should be disallowed. (TR 286)

Additionally, consistent with the recommendation that 12.5% of the salary and wage costs for Gene Brown, Sandra Chase and Bob Mitchell be allocated to affiliated or non-regulated operations, 12.5% of those employees remaining benefit costs should also be removed, reducing expenses by $3,665. These include the allocation of 401(K) expense and health insurance costs. (EXH 11 (DR-1, p.3))

ISSUE 20: *No position. *

ISSUE 21: Should any adjustments be made to the requested level of Engineering Services expense?

*Yes. WMSI's proposed $48,000 annual engineering services expense should be reduced. This level has not been incurred historically. Further, most engineering costs and expenditures incurred by the Company on a regular basis would be capital in nature and capitalized. The 2009 test year non-recurring costs for the water system evaluation should be amortized over a 5-year period and the Company's proposed engineering expenses should be reduced by $42,500, allowing an annual expense of $5,500. *

ARGUMENT: In its most recent full base rate proceeding, the Commission incorporated in test year expenses the amount of $4,000 for annual engineering expense. (TR 336,392) During the four years prior to 2009, WMSI incurred zero engineering costs. (TR 268) In 2009, WMSI commissioned WMSI to perform an evaluation of its water system, with $27,500 of the costs of the study being incorporated in test year expenses. (TR 268) In prefiled direct testimony, WMSI proposed a level of $4,000 per month, or $48,000 annually. OPC witness Donna Ramas testified that the requested amount is

excessive, in part because many types of engineering expenses that a water utility will incur should be capitalized as part of construction rather than expensed. (TR 268-269) Ms. Ramas amortized the $27,500 test year non-recurring cost of the PBSJ evaluation over five years, and included $5,500 of engineering expense in her calculation of the utility's test year revenue requirements.

A day after OPC filed testimony opposing the $48,000 annual request, WMSI's President wrote a lengthy memorandum to PBSJ in which he listed many items for which he said he wanted PBSJ's services—so many, in fact, that PBSJ employee Michael Scibelli said they would cost more than the $48,000 requested by WMSI. (TR 479) However, during cross-examination Mr. Scibelli agreed that several of the items would be capital in nature, and others would not be performed annually. (TR 480-484)

OPC submits that historical levels and the non-recurring and/or capital nature of engineering expenses demonstrate that WMSI overstated its test year request. The Commission should adjust the annual engineering expense to $5,500.

ISSUE 22: Should any adjustments be made to the requested level of Accounting Services expense?

Yes. The company's requested $18,000 in accounting fees is excessive, not historically representative, not required and duplicative of services provided for by the in-house controller and office administrator. The new retainer-based contract is charged whether services are provided or not, and is not paid on a regular basis. WMSI's adjusted test year accounting expenses should be reduced by $14,333 to reflect a five-year average of $3,667 which is reasonable going forward.

ARGUMENT: OPC witness Ramas testified that the Company recorded expenses of $4,225 in 2009 for a CPA firm for preparing WMSI's tax return and an accounting manual, plus various accounting and bookkeeping services. In this case, the Company has requested that the annual accounting expense be increased to $18,000 per year, a test year increase of $13,775. (TR 264) According to Mr. Brown, the new accounting contract would assure that the Company has priority access to a high level CPA for 10 hours per month. For better cash flow, the Company set up the contract as a $1,500 monthly retainer, with any unused hours credited to the months during which more hours are required, and a

true-up at year end. (TR 91)

Ms. Ramas stated that based upon her review, in 2010 the Company expensed $1,500 per month on its books but has not regularly paid those balances. As of June 30, 2010, the company expensed $9,000 but paid only $1,500. (EXH 36-WMSI Response to OPC POD 3, 36) Additionally, the five-year average of accounting fees incurred was $3,667, with a high of $10,626 in 2005 for setting up a new fixed asset and depreciation program. The next highest level was in 2009 for an accounting manual for the Company, but no year approached the $18,000 annual cost requested. (TR 266-267)

Ms. Ramas opined that because the Company has an in house controller with extensive accounting duties and an office administrator assisting the controller, WMSI has not justified this significant increase in its accounting fees from an external certified public accounting firm. She recommended that accounting expenses be reduced by $14,333 to reflect the $3,667 five-year average, which took into account the two years with higher costs. (EXH 11, Schedule B-3) (TR 264-267)

In his rebuttal, Mr. Brown boasted of the excellent condition of WMSI's books and records (TR 528). Only several pages later he complained that it is impossible to comply with the PSC, NARUC and IRS requirements without an outside CPA. (TR 533) During the time frames when, according to Mr. Brown, WMSI's books were in fine shape, in-house employees were performing most of the work, with very little outside accounting assistance and related fees. Further, Mr. Brown's statement that an internal accounting mix-up regarding the transfers of assets would not have happened if the requested CPA services were approved does not ring true. As discussed in Issue 50a, these transaction problems arise because of management decisions, not because of accounting problems.

Utility witness Withers distinguished between the services that she provided to WMSI historically and the new services that would be provided under an accounting services contract. She testified that due to the complex nature of the accounting WMSI needs to have an experienced and skilled CPA, to improve the accounting records, insure timely and proper transactions, monitor and

adjust depreciation schedules, assist in developing and monitoring a budget and cash management. She stated that she has been providing services without charge or at a discounted rate over the past 10 years due to the extremely difficult cash position of WMSI. She added that CPAs with her background and experience charge $250 per hour. Ms. Withers also stated that most companies of the size and complexity of WMSI have several CPAs on staff; when the company hires a full time in-house CPA at no less than $75,000, her retainer could be reduced. (TR 502-506) However, on cross examination, Ms. Withers was unable to identify any company with the size and complexity of WMSI that has several CPAs on staff full-time. (TR 513)

While OPC agrees that a reasonable level of CPA services are needed, WMSI has not historically incurred the levels sought or supported its contention that these levels will recur annually. The complex nature of accounting for this utility does not arise from utility depreciation or accounting, as both of those issues are clearly delineated with rules and the NARUC Uniform System of Accounts. The true sources of complex accounting issues for WMSI are the nature and frequency of its affiliate transactions. As fully outlined in the record and addressed in Issue 50a, those transactions definitely increase the complexity and scope of accounting. OPC would argue that any increase in accounting fees beyond what Ms. Ramas has recommended should be borne by Mr. Brown and his affiliates, not the customers of WMSI.

ISSUE 23: Should any adjustments be made to the requested level of DEP refinancing costs?

*Yes, $2,500 should be removed from test year expenses for DEP refinancing consulting costs. These costs are non-recurring and the customers should not be harmed from increased expenses as a result of the Company being unable to adequately manage its cash flow. *

ARGUMENT: OPC witness Ramas testified that the $2,500 paid to Sigma Project Solution LLC for consulting costs for refinancing the existing DEP loan should be removed from test year expenses as non-recurring and should not be passed onto the Company's customers. The Company requested and received a deferral of its semi-annual loan payments to DEP due on November 15, 2009, and on May 15, 2010, with interest accruing and added to the outstanding balance of the total loan due. According

to the amendment to the loan, WMSI requested restructuring because of "worsening economic conditions." (OPC POD 8, Amendment No. 3) Ms. Ramas stated that the Company apparently did not have the cash necessary to pay the loan payments that were due. As discussed fully in Issue 50a, there continue to be significant levels of cash transfers between WMSI and its affiliates, utility purchases of non-utility assets, and increasing levels of investments by WMSI in its affiliates. These affiliate investments were increasing during the same period that the Company was unable to pay its debt obligations on the DEP loan. The cost incurred by the Company for assistance in refinancing this loan should be removed from the test year as non-recurring and customers should not be harmed through an increase in expenses as a result of the Company being unable to adequately manage its cash flow. Additionally, any deferred costs associated with refinancing costs should be removed from rate case expense. (TR 270-272; Exhibits 13(DR-3) and 14(DR-4))

ISSUE 24-25: *Stipulations.*

ISSUE 26: Should any adjustments be made to rental of building/real property?

*Consistent with OPC's recommendation that 12.5% of Mr. Brown, Ms. Chase and Mr. Mitchell's salaries being allocated to affiliated operations, 12.5% of the rent expense associated with the Tallahassee office should be allocated to affiliated entities. This results in a $2,250 reduction to test year rent expense. *

ARGUMENT: OPC Witness Ramas pointed out that Gene Brown, Sandra Chase and Bob Mitchell all work from WMSI's Tallahassee offices, which are owned by BMG. Consistent with the recommendation that 12.5% of these three individual's salaries be allocated to affiliated operations, 12.5% of the rent expense for associated with the Tallahassee offices should be disallowed, reducing test year expenses by $2,250. (TR 263)

In rebuttal, Mr. Brown asserted that he does not believe any rent should be allocated to affiliates, as there is no additional expense to WMSI. While he apparently agrees that he conducts personal business and affiliate business at the Tallahassee office (TR 532), he continues to recommend that the utility absorb 100% of the rent expense. This would be unfair to ratepayers, particularly as several customers have expressed their concern regarding the cost of supporting, through rates, both an

office on St. George Island and a separate administrative office in Tallahassee that is less than 70 miles away. (Public Service Hearing TR 48 and 85)

The rent issue highlights additional concerns with the nature of affiliated transactions. WMSI owned its own administrative office until 2005, at which point WMSI sold it and entered into an agreement to rent administrative offices from BMG to increase WMSI's cash flow. (EXH 54, OPC Interrogatory 54) This arrangement increases the cash flow from WMSI to BMG through regular monthly rental payments made to BMG that did not occur prior to WMSI selling its offices. (TR 264)

ISSUE 27: Should any adjustment be made to transportation expense?

* Yes. OPC agrees with the staff auditor that $9,104 in unsupported transportation expenses should be removed. Additionally, $1,265 in non-utility expenses for tires purchased for Mr. Brown's GMC Sierra sold after the test year should be removed. Further, the Commission should prescribe specific instructions and details that should be maintained in travel logs to document the business and personal use of utility owned vehicles and personal vehicles by employees who request reimbursement from the utility.*

ARGUMENT: Staff witness Dobiac recommended in the Staff Audit Report, Finding 6 (EXH 41), that transportation expenses be reduced by $9,104 because WMSI had insufficient supporting documentation. Upon questioning by WMSI counsel in her deposition, Ms. Dobiac stated that the auditors did receive some documentation from the company, but that the documentation was not sufficient for the audit staff to determine whether the company vehicle was fueled or whether a personal vehicle was fueled. (EXH 69, P35-36)

As reflected on Staff witness Dobiac's Deposition Exh 2, entitled Audit Workpapers for O&M Expense, Transportation, p 8, $1,265 was recorded in 2009 expenses for tires on a 2008 GMC Sierra purchased from Discount Tires. (EXH 69, Deposition Exh 2). In the 2009 general ledger, this transaction was described as GDB tires purchased at Discount Tires. (EXH 36, p. 762) This is the same vehicle that was sold by Mr. Brown's to BMG in March 2010 (TR 302; EXH 36 p. 918) As discussed in Issue 4, OPC witness Ramas recommended that this vehicle is a personal vehicle used by Gene Brown and should not be included on the utility's books. (TR 302) Consistent with this recommendation, the tires purchased for Mr. Brown's 208 GMC Sierra sold after the test year should

also be removed.

Additionally, OPC recommends that the Commission require WMSI to maintain vehicle logs for all company owned or leased vehicles, especially where personal use is allowed and for all employees that use their personal vehicle for business purposes and seek reimbursement from the company. When questioned by WMSI counsel, OPC witness Ramas recommended that mileage logs should be maintained for utility-owned or leased vehicles and personal vehicles being used for utility business. Ms. Ramas defined mileage logs as documentation that keeps track of the business nature and mileage of each trip. This is nothing unique; the documentation requirements are consistent with IRS regulations for both business and personal tax purposes and maintaining mileage logs is a prudent business practice. Further, Ms. Ramas testified that while the utility's policy is that utility vehicles can only be used for utility related travel, she believes that this policy was in effect only for vehicles on the island. If that policy is applied to Company-owned vehicles used by management in Tallahassee, WMSI's management is not in compliance with its own policy. (TR 364-368) While the Commission in the last rate case addressed only the need for vehicle logs for operational employees, it was clearly a problem for numerous employees in that case. OPC believes that it is crucial for WMSI to implement these vehicle logs for all vehicles owned or leased by WMSI and that reimbursement for business use of personal vehicles should be approved only after a vehicle log is provided for support. If the company needs further a further example of what requirements the logs should contain, it can review the publications of the IRS for guidance in setting up adequate documentation.

ISSUE 28: Should the requested key man life insurance expense be approved?

No. OPC agrees with the staff auditor that the $12,015 expense for key man life insurance should be excluded from expenses. The policy provides $800,000 in life insurance on Gene D. Brown, and the WMSI Employee Benefit Trust is the beneficiary, with Ms. Chase as trustee. The trust will be used to fund the 401(k) and deferred compensation plans to protect WMSI's employees, not to fund the ongoing utility operations upon Mr. Brown's death.

ARGUMENT: OPC witness Ramas testified that WMSI included $12,015 for a key man insurance policy on its President in the 2009 test year. The company claimed that the purpose of the policy was

to help the Company survive if it were to lose Mr. Brown. However, a review of the policy reveals that this is not the case. [See WMSI response to OPC Interrogatory 55 (EXH 34) and OPC POD 48 (EXH 36)] The policy face value is $800,000 and the beneficiary is the WMSI Employee Benefit Trust payable to Sandra M. Chase, Trustee, upon the insured's death. Section 5 of the trust document indicates that the primary purpose of this trust is — not to ensure the continued financing of the utility's operations — but to provide 401K plan employee benefits upon the death of Mr. Brown. (EXH 38 - WMSI response to Late-Filed Exhibit No. 18) Mr. Brown stated during his deposition that the trust will be used to fund the 401(k) plan and executive deferred compensation plan, and that the purpose is to protect employees. Staff witness Dobiac also testified in her deposition (EXH 69, Deposition p 10) and stated in the Audit Report, Finding 5 (EXH 41) that upon the death of Gene Brown, the proceeds of the insurance would benefit the employees of the utility and not the utility itself. Clearly this insurance will not be used to fund the ongoing utility operations, but rather to fund employee retirement deferred compensation plan. Ms. Ramas and Ms. Dobiac recommended that this cost be excluded from test year expenses and not passed onto the Company's customers. (TR 286-288)

ISSUE 29: What is the appropriate amount of rate case expense?

The following adjustments are appropriate: remove duplicative fees of $12,688 from firms that were not hired; no costs for Sigma Solutions should be included; remove prior rate case expense of $24,184; disallow $7,496 of unsupported accounting and engineering fees; and reduce $5,680 of estimated fees to complete for the shortened hearing.

ARGUMENT: OPC witness Ramas recommended that several of the rate case expenses requested by WMSI be removed. First, preliminary rate case costs of $3,340 for legal counsel and $9,348 for accounting preliminary rate case evaluations should be removed. WMSI switched legal counsel and accounting assistance that it retained for this case after an initial evaluation was conducted. In response to discovery, WMSI stated that the 'preliminary legal counsel' included an analysis of WMSI's positions and financing options, including advice on how to proceed with the case. WMSI also indicated that the Radey, Thomas law firm had no special expertise in locating utility funding sources, but had a bill payment schedule. Ms. Ramas testified that finding financing options is not a

rate case expense and WMSI's precarious financial situation is caused by its poor debt management and its affiliated transactions and relationships. (TR 275-276)

WMSI stated that the preliminary accounting rate case evaluation related to financing efforts and preparing the case for filing. WMSI also indicated it would be more cost effective to use M&R Consultants rather than the Carlstedt CPA firm because M&R Consultants had done the Company's annual reports and was familiar with WMSI. Ms. Ramas testified that this explanation did not justify the need for preliminary analysis done by the Carlstedt firm. She asserted that ratepayers should not pay for two different accounting and legal firms to assist in the preparation of a case, particularly when the Company decided to switch firms during the preparation stage, and thus recommended removal of the duplicative and non-rate case preliminary work performed. (TR 276-277) Ms. Ramas' position is confirmed by the invoices submitted for the final, updated rate case expense request. In January and February 2010, the Radey Thomas law firm billed WMSI for $11,038 for both Mr. Scoles and Mr. Deason. These were both legal and accounting consulting services. Mr. Seidman also charged the company preliminary charges $4,060 for planning and developing the MFRs in April 2010. These invoices clearly show that the services provided by Ms. Scoles, Mr. Deason and Mr. Seidman performed the same type of preliminary analysis of issues and preparation for filing the case and the MFRs represented by the charges from the earlier firms. (EXH 71)

Other adjustments that Ms. Ramas recommended relate to non-rate case financing costs of $2,500 and $2,056 from Sigma Project Solutions, LLC, (TR 278) and the removal of $24,184 in prior rate case amortization. The rate case amortization concluded in 2010 and Mr. Brown agreed with this adjustment. (TR 279-280,538)

OPC recommends several other adjustments to rate case expense. WMSI submitted rate case expenses for rebuttal witnesses Withers ($4,575) and Scibelli ($8,500). The support for these witnesses consisted of two typed pages with the hourly rate and number of hours worked, broken down only between total fees incurred as of 9/30/10 and total fees projected through the final agenda.

(EXH 71) In reviewing the record, OPC found that Ms. Withers provided an analysis of the number of hours worked for WMSI in 2010 prior to September 16th. (EXH 49 - BSW-4 p2) On this spreadsheet, Ms. Withers reflected 10 hours to review and prepare testimony. The rate case expense summary for Ms. Withers listed 22.5 hours as of September 30 leaving 12.5 hours or $1,875 of her fees unexplained and no detail or explanation for projected remaining fees. For Mr. Scibelli, the record does not provide any invoices or detailed descriptions to support the type of work performed for either the actual or the estimate to complete. The Commission's practice in analyzing rate case expense has been to require a detailed breakdown of the work performed so that the Commission can determine the reasonableness of the amounts requested. The short-form, bottom-line invoices submitted by Ms. Withers and Mr. Scibelli do not meet the Commission's standard. The evidence does reflect that each witness prepared testimony and attended a portion of the hearing, and Ms. Withers has described that she spent 10 hours preparing testimony. An additional 8 hours should also be allowed for travel and attending one day of the hearing. Accordingly, Ms. Withers should be allowed a total of 18 hours as rate case expense. Since even less detail has been provided for Mr. Scibelli, OPC believes that it is reasonable to allow a similar amount of 18 hours for his services for testimony preparation, travel and attendance at the hearing. Thus, $2,700 is reasonable for Ms. Withers (18 hours x $150) and $2,880 for Mr. Scibelli (18 x $160). This results in a decrease to rate case expense of $7,496, (12.5 hours x $150=$1,875) for Ms. Withers and (35.13 hours x $160=$5,621) for Mr. Scibelli.

OPC also recommends that the estimate to complete for Ms. Scoles, Mr. Deason and Mr. Seidman be decreased by 8 hours to reflect that the hearing ended on the second day. Although the schedules that reflect the estimates to complete provided no breakdown of hours by function per person, it is reasonable to assume that the estimate was based on 3 days of hearing, as this was the original time frame set by the Commission. The resulting reduction is $2,080 for Ms. Scoles, $2,400 for Mr. Deason, and $1,200 for Mr. Seidman, for a combined decrease of $5,680. (EXH 71)

ISSUE 30: Should any adjustments be made to employee training costs?

Yes. The amount of employee training costs recorded by the Company during the 2009 test year was significantly higher than the level of employee training costs incurred in prior years. The test year employee training costs should be normalized to reflect a three-year average of $1,070, which results in a $1,752 reduction to test year expenses. Further, WMSI's rebuttal of this issue failed to adequately support its 2010 level of expenses.

ARGUMENT: OPC witness Ramas stated that the employee training costs expensed in 2009 were significantly higher than that incurred in prior years. Her Schedule B-8 reflects training costs of $125 in 2007, $262 in 2008 and $2,822 in the 2009. In 2009, the utility incurred $2,698 for Mr. Brown to attend one seminar in California. Ms. Ramas recommended employee training costs of $1,070, reflecting the average level incurred for 2007 through 2009, a test year reduction of $1,752. This would recognize that training costs fluctuate from year to year and would normalize the training costs impacted by the travel costs to attend one seminar. (TR 288-289)

In his rebuttal, Mr. Brown stated that WMSI had incurred $2,606 on continuing education in the first eight months of 2010, and attached the August 31, 2010 general ledger account balances income statement attached as Exhibit 52 (GB-3). TR 546-547. As of June 30, 2010, in the area of employee training, WMSI had incurred only $473 for two operator training courses. (Exhibit 36 - WMSI's response to OPC POD 3, Bate stamp 968). Therefore, between June 30th and August 31st, WMSI incurred an additional $2,133. Mr. Brown implied in his rebuttal that this remaining $2,133 was incurred by Hank Garrett in August for a three-day training session in Jacksonville sponsored by the Florida Rural Water Association. Because WMSI has already spent $2,606 as of August, Mr. Brown stated that the 2010 level was very close to the $2,698 included in the test year for 2009. (TR 546-547). While WMSI did include its general ledger balances as an exhibit in the record that reflects the balance incurred as of August, it failed to provide invoices to support the reasonableness of the travel costs incurred. Regardless, training costs of $2,133 for one employee to attend a conference in Jacksonville appear excessive, especially where the travel would be by car. Without supporting documentation, WMSI has not met its burden to show that employee training costs of more than the $1,070 recommended by Ms. Ramas are reasonable.

ISSUE 31: Should any further adjustments be made to miscellaneous expenses?

*Yes. First, the staff audit workpapers reflected $299.14 in non-utility expense reductions. Second, $1,960 in condo fees should not charged to the ratepayers for the Tallahassee office that is owned by and is the responsibility of BMG. Third, consistent with OPC's adjustment to rate case expense, miscellaneous expenses should be reduced by $494.06 for travel costs associated with Mr. Brown's trip to meet with the rate case consultant not chosen to file this rate case. *

ARGUMENT: Three adjustments are appropriate to miscellaneous expenses. First, as discussed in her deposition, Staff witness Dobiac agreed that the audit report inadvertently did not contain a finding included in the miscellaneous expense audit workpapers indicating charges that should have been removed as non-utility amounts. Audit work paper 43-27.8 reflected a reduction of $299.14 that should be removed from test year expenses. [EXH 69: (TR 25, EXH 3&4)]. OPC believes that this reduction is appropriate and should be made.

Second, in 2009, WMSI recorded $1,960 in miscellaneous expenses for condo association dues for the Tallahassee office on John Knox Road. The lease that WMSI entered into with BMG does not require WMSI to pay for the condo association dues. Rather, page 3, paragraph 22, of the lease states that all costs and expenses of the premises, except utilities, will be paid by the landlord. Mr. Brown was the only signatory to this lease, which clearly excludes additional expenses such as the condo dues from those WMSI is responsible for paying. [EXH 69: (TR 25-29, EXH 3-5)]. Accordingly, the ratepayers should not be required to bear the costs of these fees.

Third, witness Dobiac agreed in her deposition that WMSI included $494.06 in miscellaneous expenses for costs associated with a trip to meet with Mr. Nixon and Mr. Marsh November 4-8, 2009. [EXH 69: (TR 30-31, EXH 3, p7)] On the December 7, 2009, Carlstedt, Jackson, Nixon & Wilson, CPA's (CJNW) invoice, Mr. Nixon met Mr. Brown at CJNW's offices on November, 4, 2009. (EXH 36, p. 1893-1894) Consistent with OPC witness Ramas' adjustment to remove the rate case costs associated with Mr. Nixon's firm, these travel costs should also be removed. See Issue 29. Staff witness Dobiac also agreed in concept that if the Commission disallows one type of item from a test year, that corresponding adjustments related to the disallowed item should be made. [EXH 69: (TR 8-

9)]. If the Commission disagrees with OPC's position in Issue 29 regarding the allowance of the preliminary consulting charges as rate case expense, at the very least, the travel costs included in miscellaneous expenses should be considered rate case expense and not normal recurring test year expenses.

ISSUE 32: *No position.*

ISSUE 33: Should any adjustments be made to depreciation expense?

Yes. Depreciation expense as discussed in previous issues should be reduced by $79,865. This is a fall out issue.

ISSUE 34: Should the company's request to recover the costs associated with the withdrawn wastewater certificate application be approved?

*No. These non-utility costs should be removed and not passed on to the Company's water customers. Mr. Brown's attempt to expand his operations to include wastewater service to St. George Island has nothing to do with WMSI's provision of water service. This risk should be borne by Mr. Brown, the investor, not the water utility. The $10,570 in requested amortization for this failed attempt should be removed as well as amount included in working capital. *

ARGUMENT: WMSI deferred $52,851 of costs associated with its Wastewater Certificate Application that was filed with the Commission in Docket No. 090189-SU. WMSI filed the application to install and provide wastewater service to St. George Island in April 2009, and subsequently withdrew it in December 2009. The Company proposes to recover the $52,851 from water customers by amortizing the costs over five years, resulting in an annual expense of $10,570. OPC witness Ramas testified that these costs should be removed and not passed on to the Company's water customers. The application to provide wastewater service has nothing to do with the utility's provision of water service. These are non-utility costs that should be written off to non-utility accounts. Ms. Ramas stated that the Company's water customers should not be forced to pay for the costs associated with Mr. Brown's decision to attempt to expand WMSI's services to include the provision of wastewater services. An additional $35,603 reduction to working capital should also be made to remove the projected unamortized balance of the deferrals from working capital. (TR 289-291)

Mr. Brown attempted to rebut OPC's position by stating that the water customers would see

benefits of costs savings from a combined water and wastewater utility, that wastewater would create a huge increase in commercial water sales which would offset costs to residential water customers, and that without wastewater service, water consumption would dramatically decrease. Mr. Brown asserted that the wastewater application was designed to prevent an increase in water rates, and it is fair and appropriate for those water customers to reimburse the costs. (TR 519, 547-549) WMSI's arguments fail. Mr. Brown was aware that WMSI was not the only applicant vying for the opportunity to provide wastewater treatment. Mr. Brown decided to accept the risk that his application might not be successful. It would be unreasonable to shift the cost of that risk to WMSI's water customers.

ISSUE 35: How should the gain on sale of land and other assets be treated?

*The gain on sale of utility buildings and land realized by WMSI over the period March 2005 through November 2007 should be flowed back to ratepayers over five years. Excluding the gain on sale of the apartments above the St. George Island office previously disallowed by the Commission, the net gain during that period is $327,580. This results in an annual amortization of gain on sale going to the benefit of WMSI's customers of $65,516 ($327,580/5 years). *

ARGUMENT: During the period March 1, 2005 through November 1, 2007, WMSI sold buildings and land at a net gain of $357,446. These include: (1) the sale of the Tallahassee office building on March 1, 2005 (addressed in Issue 26) for a gain of $21,198; (2) the sale of two apartments above the St. George Island offices, which were previously disallowed by the Commission, to BMG on July 1, 2006 for a gain of $29,866; (3) the sale of East Point Land on December 29, 2006[3] for a net gain of $92,503; and (4) the sale of two lots in Commonwealth Office Park on November 1, 2007 to BMG for a net gain of $213,879. (EXH 84) The investment associated with the two apartments, which consist of the second floor above the St. George Island Offices, were specifically disallowed for inclusion in rate base by the Commission at page 6 of its in Order No. PSC-05-1156-PAA-WU. Excluding the gain on the sale of these previously disallowed assets, the net gain realized by WMSI on sales of buildings and land was $327,580 ($357,446 - $29,866).

None of these assets that were sold consisted of a sale of a system or of the loss of a customer

[3] This is identified in the Attachment to OPC Interrogatory No. 8 as a sale of land around well #1 to Gulf State Bank (EXH 34).

base. No customers were lost to WMSI as a result of the sale of these buildings and land parcels.

Consistent with the Commission's prior treatment of gains on sales of utility assets, the net gains of $327,580 should be amortized over a period of five years to the benefit of ratepayers, resulting in an annual amortization of the gain of $65,516. In Order No. PSC-07-0205-PAA-WS involving Sanlando Utilities Corporation, dated March 6, 2007, the Commission addressed its previous treatment of gains on sales of utility assets, stating at page 10 of that Order that: "Across the rate base regulated water, wastewater, gas and electric industries, we have previously approved the amortization of a gain on sale of land to the benefit of the ratepayers." In making this statement, the Commission provided a footnote that referenced the following orders in which a gain on sale of properties was amortized back to ratepayers: (1) Order no. PSC-03-14440-FOF-WS, pp. 117-131 dated December 22, 2003 involving Utilities, Inc. of Florida; (2) Order no. 24225, dated March 12, 1991 involving Betmar Utilities, Inc.; (3) Order No. PSC-04-0947-PAA-SU, dated September 28, 2004, involving BFF Corp.; (4) Order no. PSC-02-1159-PAA-GU dated august 23, 2002 involving Florida public Utilities Company; and (5) Order No. PSC-98-0451-FOF-EI, dated March 30, 1998 involving Florida Public Utilities Company.

Additionally, in a 1984 case involving Florida Power & Light Company (FPL), in Order 13537 at pages 17-18, the Commission indicated that it has addressed the issue of the sale of utility property in FPL's prior rate case and several other rate cases, stating that "In those cases, we determined that gains or losses on the disposition of property devoted to, or formerly devoted to, public service should be recognized above-the-line and that those gains or losses, if prudent, should be amortized over a five year period." The Order continued stating: "We reaffirm our existing policy on this issue."

Clearly there is a longstanding practice of amortizing gains on sales of utility assets back to ratepayers. Exceptions have been made in instances in which whole systems have been sold or assets in which the customer base was also lost as a result of the transaction. Clearly that is not the case in this instance.

ISSUE 36: What is the test year pre-repression water operating income or loss before any revenue

increase?

The appropriate annual net operating income before any revenue increase or decrease is at least $123,068.

ISSUE 37: What is the appropriate pre-repression revenue requirement for the December 31, 2009 test year?

The revenue requirement is should be $1,296,510, which results in a revenue decrease of $5,157.

RATES AND CHARGES

ISSUE 38: No position.

ISSUE 39: What are the appropriate rate structures for this utility?

*The current rate structure, approved by the Commission in Docket 000694-WU, WMSI's last limited proceeding, is reasonable and appropriately promotes water conservation. The Company's requested change to allocate 75% of revenues to the base facility charge and 25% to the gallonage charge (instead of the current 50%/50% allocation) should be rejected. *

ISSUE 40: Is a repression adjustment appropriate in this case, and, if so, what is the appropriate adjustment to make for this utility?

*No repression adjustment is necessary in this case. *

ARGUMENT: Based on the evidence in the record, OPC has recommended additional reductions are appropriate to the revenue requirement, which results in a revenue decrease of $5,157. Because the recommended increase in test year revenues is minimal, there is no need to make a repression adjustment in this case.

ISSUE 41-42: *No position.*

ISSUE 43: Are the procedures and charges imposed by WMSI when an existing customer disconnects and/or a new customer reconnects in an existing service location appropriate? If not, how should the tariff provisions governing these activities be modified?

No. WMSI does not have the authority to require the inspection of the interior of any dwelling, especially refusing to reconnect service until such inspection is granted. Its tariff allows the utility to access its property that extends to the meter. Anything beyond the meter belongs to the customer. Further, the utility should be required to seek a tariff change to add definitions and policies for temporary service charges as required by Rule 25-30.315, FAC.

ARGUMENT: Mr. Brown testified that when an existing customer requests service utility personnel perform a bookkeeping audit and a site visit. Both the inside and outside of the property are inspected to see if there is a shallow well, a need for a cross-connection control device, and to establish the type of use (multifamily, single family or commercial). Further, Mr. Brown stated that WMSI will not install a meter to an existing dwelling (property where a prior connection has already been made) until access to the inside of the property is granted for such an inspection. (TR 109-110) Mr. Brown admitted that the utility's right to inspect the customer's installation ends at the point of delivery and that the inside of a home or business is beyond the point of delivery. (TR 112-113; EXH 75)

According to WMSI's tariff Section 5.0, the point of delivery is where the company's pipes or meters are connected with pipes of the customer. In Section 11.0, the company has the right to inspect the customer's installation prior to rendering water service. Section 13.0 states that the company shall have access at reasonable hours to the premises of the customer for the purpose of installing, maintaining and inspecting the Company's property. (EXH 76)

Mr. Brown admitted that the company uses an Addendum to the Application for Service that is not included in its tariff. He expressed his position that the Commission rules recognize the company's right to determine whether any property's type of service has changed after service was originally provided. (TR 115-117, EXH 77) He stated that he fashioned the Addendum to equip WMSI to address problems associated with residents converting single family units to multifamily structures. Wishing to collect additional CIAC for such units, WMSI complained to Commission staff; however, staff's written response advised that WMSI did not properly inspect the structures at time of the initial connections. (EXH 78) Mr. Brown added that the tariff should be amended because the addendum provides necessary information. He stated that customers have an incentive to withhold information so as to avoid paying the $15,000 connection fee that may be applicable to a multifamily unit. Mr. Brown stated that if the utility can't inspect inside a structure, it can't ascertain the actual configuration of the property. (TR 117) Staff's letter to WMSI advises the utility to charge the correct amount of fees to its

customers and to determine the type of service each customer needs at the time service is requested. (EXH 78) This advice from staff does not state that the utility has the right to inspect the interior of a dwelling.

Mr. Brown also testified that WMSI charges $100 for a temporary residential meter for a limited time use. The charge for a temporary meter or a charge for temporary service is not currently within WMSI's tariff, but Mr. Brown asserted that a PSC rule permits WMSI to provide a temporary meter and charge the actual costs.

WMSI does not have the authority to require a customer to permit it to inspect the interior of any dwelling, and it does not have the authority to refuse to reconnect service until such an inspection is permitted. Its tariff allows the utility to access its property that extends to the meter. Anything beyond the meter belongs to the customer. Further, the utility should be required to seek a tariff change to add definitions and policies for temporary service charges, as required by Rule 25-30.315, FAC.

ISSUE 44: In determining whether any portion of the interim increase granted should be refunded, how should the refund be calculated, and what is the amount of the refund, if any?

* The refund amount is based on the Commission's final decision in this case. Consistent with the interim statute, the interim refund should be calculated by taking out any pro forma plant and expense items (not already being removed) if the amounts have not been incurred during the interim collection period.*

ISSUE 45: *No position.*

ISSUE 46: What are the appropriate service availability charges for WMSI?

WMSI's service availability charges should total no more than $2,300, which would generate a 75% CIAC ratio excluding the pro forma plant additions. Backing out the other charges would result in a plant capacity charge of $1,525.

ARGUMENT: WMSI's current service availability charges total $1,620, consisting of $845 Plant Capacity, $525 Main Extension and $250 Meter Installation. The utility is proposing to increase its plant capacity charge to $4,058. Witness Seidman testified that the Company would like to increase the current CIAC- to- plant ratio of 33% to 75%. With the proposed plant additions included, the ratio

would be 24% unless the CIAC charge is increased. Mr. Seidman stated that increased CIAC will have a mitigating affect on monthly service rates to existing and future customers. (TR 28-29; EXH 4)

Mr. Seidman agreed that Rule 25-30.580, FAC (EXH 72), establishes guidelines for minimum and maximum levels for CIAC, not an absolute formula, and the Commission has the discretion to establish a charge within the range. The Commission has also considered the issue of competitive and market-based rates and has compared the requested CIAC charge to those charged in surrounding areas in setting service availability charges. (TR 45-48; EXH 73) Mr. Seidman acknowledged that a total CIAC charge of $2,300 would generate a 75% CIAC ratio excluding the pro forma plant. (TR 49) Backing out the other charges would result in a plant capacity charge of $1,525.

OPC believes that the Commission has broad authority and discretion with which to establish WMSI's service availability charges. First, OPC has recommended that the plant improvements are not appropriate to be included in rate base, as discussed in Issue 9. Second, in the current economic climate, increasing the connection costs by almost 400% to generate the maximum CIAC level is excessive. Setting CIAC charges too high could negatively impact any potential growth in the system. Mr. Seidman's calculated total CIAC charge of $2,300 appears reasonable. It would generate a 75% CIAC ratio excluding the pro forma plant, with a resulting plant capacity charge of $1,525. If the customer growth rate picks up in the future, the Commission can consider revised charges based on the facts and circumstances at that time.

OTHER ISSUES

ISSUE 47: *Stipulation*

ISSUE 48: *No position.*

ISSUE 49: Did the Utility fail to maintain field employee travel records pursuant to Order No. PSC-94-1383-FOF-WU? If so, should the Utility be ordered to show cause why it failed to maintain field employee travel records pursuant to Order No. PSC-94-1383-FOF-WU, issued November 14, 1994?

Yes. The Utility failed to maintain field employee travel records pursuant to the Commission's order. The Utility should be ordered to show cause why it should not be fined.

ARGUMENT: As outlined in Issues 4 and 27, WMSI clearly failed to maintain field employee travel records pursuant to the Commission's order in the last rate case. This continuing problem for well over 15 years hurts, not only the utility, but the customers as well. In addition to a fine, OPC recommends that the Commission require WMSI to maintain vehicle logs for all company owned or leased vehicles, especially where personal use is allowed and for all employees that use their personal vehicle for business purposes and seek reimbursement from the company. If the company needs a further example of the information the logs should contain, it can review the publications of the IRS for guidance in setting up adequate documentation.

ISSUE 50(a): Is the Utility's level of investment in associated companies appropriate? If not, what action should the Commission take?

*No, given the level of mixing of utility and non-utility funds and the cash and financial constraints, it is imprudent. The Commission should: (1) bar WMSI from further investments in associated companies; (2) require WMSI to demand return of its affiliate investments prior to the next rate case, to increase funding of operations and strengthening WMSI's financial position; and, (3) if repayment is not made by the next rate case, impute a return on the outstanding investment. *

ARGUMENT: The NARUC Uniform System of Accounts provides the following description of what is to be recorded in Account 123 – Investment in Associated Companies:

> "A. This account shall include the book cost of investments in securities issued or assumed by associated companies...and investment advances to such companies, including interest accrued thereon... Include also the offsetting entry to the recording of amortization of discount or premium on interest bearing investments."

Thus, this account includes investments in and advances to associated companies. The Investment in Associated Companies recorded on WMSI's books increased from $0 at January 1, 2004 to $1,262,402 at June 30, 2010, a period of 5 1/2 years. (TR 260) From January 1, 2008 through June 30, 2010, the amount of investment in associated companies increased by $337,785. (TR 257)

During this period of advances, which was cash and funds going from WMSI's accounts to BMG and Gene Brown, WMSI: (1) was assessed penalties for not paying its regulatory assessment

fees, federal income tax withholdings, and FICA and Medicare taxes on a timely basis (TR 253-254 and EXH 36 (Response to OPC POD 3, 2009 GL bates 684-685, 2010 GL bates 930-934)); (2) has been late in paying many of its bills, with several still outstanding and overdue (TR 254, 597-598); and (3) was unable to make two of its principal and interest payments on its outstanding loan with the Florida DEP and resorted to refinancing the loan terms (TR 254). The loan with the Florida DEP is highly favorable to the utility as it is at a very low interest rate, thus placing such loan in jeopardy is imprudent. (TR 320) Additionally, the funds from this loan would have been provided by taxpayers in the State of Florida. (TR 637) It is not prudent for WMSI to transfer funds and make advances to associated companies during a time of capital investment needs and during a period in which WMSI is facing cash constraints and unable to pay many of its outstanding obligations.

During the period the Investment in Associated Companies increased on WMSI's books, WMSI received $760,000 in funds from Coppins, Monroe, PA as part of a settlement of litigation pertaining to the addition of the new water main on the bridge going to St. George Island. (TR 370-371 and EXH 37 (Response to OPC POD 3, 2008 GL, bate 96) Instead of using those funds received as part of the settlement to pay down the debt balance owed on the bridge, Mr. Brown chose to use a portion of those funds to invest in affiliated entities. (TR 372, 394-395) The settlement funds were received by WMSI on June 10, 2008 and June 20, 2008. (EXH 37 (Response to OPC POD 3, 2008 GL, bate 96)) On July 22, 2008, the month after the funds were received, the investment in Associated Companies account increased by $85,000 for amounts paid to SMC Investment Properties with WMSI's cash balance decreasing by that same $85,000. (EXH 37 (Response to OPC POD 3, 2008 GL, bates 21 & 114)) SMC Investment Properties was incorporated by WMSI's Vice President, Sandra Chase, in 2006. (TR 257) According to Mr. Brown's rebuttal testimony, SMC Investment Properties is a sub-s corporation that held two or three passive real estate investments for Sandra Chase. Mr. Brown also indicated that during 2008 and part of 2009, SMC Investment Properties and BMG were co-owners of two rental properties, with BMG advancing part of the cash for these

properties. He agrees in his rebuttal that the $85,000 was advanced to SMC, stating that "The substance of the transaction was that these funds were charged against BMG's account and advanced to BMG, which then advanced the funds to its joint venture partner, SMC." (TR 529-530) Thus, WMSI funds have been used to finance BMG's investments, with the transfer of the funds to BMG being recorded as an increase in Account 123 – Investment in Associated Companies.

Based on pages 18-21 of WMSI's 2008 General Ledger, from the period June 1, 2008 through September 30, 2008, which is the three month period following WMSI's receipt of the $760,000 of settlement proceeds, the balance in Account 123 – Investment in Associated Companies increased by $254,125. The ledger shows increases during this period for items such as: $20,000 going to BMG on June 13, 2008, $30,000 going to BMG on June 23, 2008, $85,000 going to SMC Investment Properties on July 21, 2008, and $50,000 going to Gene D. Brown on September 8, 2008. (EXH 37 (Response to OPC POD 3, 2008 GL, bates 21-22))

A study of the amount debited to Account 123 also indicates that WMSI is apparently paying some obligations of BMG and affiliated entities as the amounts increase the Investment in Associated Companies account balance. Examples, with page citations to the 2009 General Ledger Provided in EXH 36 include a $4,350 payment to Real Estate Equities of Florida on April 2, 2009 (bate 421), $500 for US Bank Charges for SGIUC Annual Report on April 30, 2009 (bate 422), various payments described as "Vista health Plan- Insurance Premium (bates 422 and 424), $100 identified as "Rock by the Sea – Donation" on September 2, 2009 (bate 424), and $285 paid to Barbara Withers, CPA for 2007 Tax preparation for SGIUC. (bate 421)

Mr. Brown asserted that "almost all of the funds transferred from the company to either me personally or to BMG have been used to pay the debt service on loans that were used to pay debts of the utility." He stated that "essentially, advances to BMG have been used to pay the debt service on debts incurred by BMG and me personally to obtain funds to make up the cash flow deficit of the utility during the past 10 years or so." (TR 525) Clearly this is not entirely accurate, based on the

investments addressed above, such as cash transfers after the receipt of settlement proceeds and investment in real estate with SMC Investment Properties, and his assertion paints only half the picture. Mr. Brown asserts that the debt is the "...only way the company has survived while losing over $1,000,000 since this commission last set our rates..." (TR. 525) However, that figure is based on amounts reported on WMSI's income tax returns, not on the accounting required by the Florida Public Service Commission. (TR 96-97) There are many differences between tax accounting and regulatory accounting, including impacts of accelerated depreciation. (TR 96-97) In fact, the Company has shown positive income on its annual reports to the PSC since the last case, with the exception of 2009, which would have been positive income absent the new, non-funded, executive deferred compensation plan. (TR 98-101)

At the hearings, Mr. Brown asserted in several instances that one of the reasons he and BMG are purportedly subsidizing WMSI's operations is because WMSI is not recovering the full costs it incurred to replace the water main line to the Island. Mr. Brown asserted several times that WMSI "spent" over $7 million on the new supply main and that only part of it is being recovered. (TR 576, 623) This is inaccurate and misleading. This $7 million figure is inconsistent with information previously supplied by WMSI and inconsistent with prior Commission decisions. Page 10 of Order No. PSC-05-1156-PAA-WU in Docket No. 000694-WU indicates that the "per utility" total depreciable cost of the project was $6,136,385. Page 3 of that same order states: "The utility's request for final rates was based upon a formula which included factors for the total expenditures for the supply main and fire flow improvements." That same page indicates that the total cost of the project, which was provided by WMSI, was $6,156,536. The Order, at pages 3 through 5, also indicates that this includes not only the cost of the new supply main, but other improvements as well, such as fire flow improvements and other operations improvements. Of the $6,136,385 requested, the Commission allowed all but approximately $37,000 associated with adding the upstairs apartments on the St. George Island offices. Thus, WMSI is recovering through rates a return on and of the full amount it

invested in the new water supply main. Additionally, as pointed out elsewhere in this brief, WMSI received a $760,000 settlement associated with that project, thereby reducing the net investment below the approximate $6 million figure cited in the Commission's prior order. The $7 million cited by Mr. Brown several times during hearing is unsupported and inconsistent with past information that has been supplied to the Commission and audited by the Commission's staff. Clearly the assertion by Mr. Brown that he is not recovering the full costs WMSI incurred to replace the water main line has no credence.

Similarly, when asked by staff to explain the $858,000 balance in a "Disallowed Investment" account, Mr. Brown claimed that the balance relates to investment in WMSI's distribution system that was "documented" and " in the ground," but which the Commission disallowed in the utility's first rate cases. (TR 134-135) The orders in those cases tell a different story. In PSC Order Nos. 21122 and PSC-94-1383-FOF-WU, the Commission noted that it was unable to establish the value of WMSI's rate base from original source documents, because the utility had lost them. In the absence of the original source documents, the Commission had to gauge the value to assign to rate base from competing "original cost studies" sponsored by the parties. The Commission adjusted the results of the utility's study downward because of indications in the evidence of record that the utility's study was inflated. In short, when making the adjustments to rate base to which Mr. Brown referred, the Commission was engaged in an effort (made necessary by the utility's poor record keeping) to quantify the original cost, not to eliminate investments known to have constituted original cost.

Mr. Brown also asserts that the amount in the Investment in Associated Companies are advances to Brown Management to keep loans taken out by himself and BMG on behalf of WMSI in "...good standing order to continue to operate." (TR 627) He also indicates "...it is incorrect to say that we have used one dollar of ratepayer money for any advance to my associated companies." (TR 627) The settlement proceeds were related to the water main on the bridge, which is included in rate base and is being recovered from customers. While WMSI reduced the plant in service amount by the

amount of proceeds, it did not use the funds to pay down the debt associated with the water main investment beyond the normal payment that was due, but instead chose to have some of those funds go to Mr. Brown and BMG, as well as to make an investment with SMC Investment Properties, Inc.

Clearly WMSI's President, Mr. Brown, has not adequately separated or insulated WMSI's utility operations and finances from the operations and finances of BMG and himself personally. This is further evidenced by the number of cash transactions and constant flowing of cash between WMSI, BMG and Gene Brown, with over 290 cash transfers in 2009 and over 200 in 2008 (TR 319, EXH 12 (DR-2) and EXH 13 (DR-3)), the level of entries to the investment in affiliated entities (TR 319 and EXH 36 – response to OPC POC 3, 2008 and 2009 GL, Account 123), the transfer of property and assets between BMG and WMSI (TR 321), and with a note payable that was due to WMSI from BMG (TR 320-321).

While Mr. Brown asserts that loans taken out by him personally and BMG have been used to finance the utility, the fact of the matter is that during 2008, $261,496 more of cash went out from WMSI to either BMG or Gene Brown than went in. (EXH 13 (DR-3)) Based on a review of the cash transactions contained in Exhibit 13, this amount does not include the additional $85,000 that went to SMC Investment Properties during that period, resulting in total net going out of WMSI to BMG, Gene Brown and SMC Investment properties of $346,496 during that twelve month period. The net amount going out of WMSI would have been greater absent BMG paying WMSI $50,000 on a note receivable that was due to WMSI during 2008.[4] Likewise, during 2009, $131,038 more cash went out of WMSI to BMG and Gene Brown than came in. (EXH 12 (DR-2)) The net amount going out in this period would also have been greater absent BMG paying WMSI an additional $50,000 on the note receivable due to WMSI.[5] While these amounts would include payments to BMG and Mr. Brown for rent on the

[4] The $50,000 reduction in the Notes Receivable in 2008 is shown on EXH 14 (DR-4), the 4/23/08 payment on the Note Receivable – Associated Companies demonstrated on page 136 of the 2008 GL (EXH 36, OPC POD 3), and the 4/23/08 increase in Cash in Account 131.09 shown on EXH 13 (DR-3) at page 3 of 4.

[5] The $50,000 reduction in the Notes Receivable in 2009 is shown on EXH 14 (DR-4), the 6/22/09 payment on the Note Receivable – Associated Companies demonstrated on page 133 of the 2009 GL (EXH 36, OPC POD 3), and the 6/22/09 increase in Cash in Account 131.09 shown on EXH 12 (DR-2) at page 5 of 5.

Tallahassee offices and Mr. Brown's salary, there is still substantially more going to BMG and Mr. Brown during the two year period beyond those payments, particularly when the payment for amounts due to WMSI from BMG on a note are considered.

In rebuttal, Mr. Brown asserts that once his salary and rent due to BMG is backed out, he and BMG have "...put $154,280 more in the company than we have taken out during the first 8 months of this year." (TR 504-505) However, what he did not indicate is that during that same period, $100,000 of that amount would be for the remainder of the note receivable that was due to WMSI from BMG.[6]

The note receivable from BMG to WMSI originated with BMG's acquisition of the second story of the St. George Island office. Instead of paying cash to WMSI for the acquisition, Mr. Brown chose to instead set up a note by which BMG would owe the funds to WMSI. The note carried interest, payable to WMSI by BMG, of 7%. (TR 530-531)

Given the level of imprudence and mixing of utility and non-utility funds, operations and finances, the Commission should direct WMSI to require the associated companies to return the advances/investments to the utility. It should place WMSI on notice that in future proceedings the Commission will impute a return on the Investment in Affiliated Companies that will offset any claimed revenue deficiency. (To illustrate this concept: if the Commission were to impute a return of 7.0%, which is the interest rate that BMG paid WMSI on the note payable, this would result in imputed investment income of $88,368 ($1,262,402x7.0%) based on the June 30, 2010 balance of Investment in Associated Companies.) The Commission should also require an immediate halt to any additional Investments in Associated Companies and limit the amount of cash going from WMSI's accounts to BMG, Gene Brown and any other affiliated entities to the amount associated with rent expense due to BMG and Mr. Brown's salary. Absent a specific application and justification, no other utility funds should be allowed to be funneled up to BMG or Mr. Brown.

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[6] The $100,000 reduction in the Notes Receivable in 2010 is shown on EXH 14 (DR-4) and the 5/11/10, 5/13/10, 5/25/10 and 6/28/10 payment on the Note Receivable – Associated Companies demonstrated on page 67 of the 2010 GL (EXH 36, OPC POD 3).

ISSUE 50(b): Are there any non-utility expenses that the utility is requesting be recovered through customer rates? If so, what adjustments should be made?

Yes, this filing contains numerous instances of non-utility expenses that the utility is requesting to have recovered through customer rates. As identified in prior issues, these non-utility investments and expenses should be removed from rate base and operating expenses.

ARGUMENT: Yes, this filing contains numerous instances of non-utility expenses that the utility is requesting to have recovered through customer rates. As identified in Issues 3, 4, 15, 19, 36, 27, 28, 31,and 34, these non-utility investments and expenses should be removed from rate base and operating expenses.

ISSUE 51: Should this docket be closed?

This docket should be closed as required in the normal course of a file and suspend rate case after the final order is issued, the revised tariff pages have been approved, the notice has been issued and the appropriate refunds have been credited to customer accounts. The docket should not remain open for any additional phases of rate increases.

CONCLUSION

For the foregoing reasons, the Commission should deny WMSI's application to increase rates, and design rates that will reduce revenues by $5,157 annually.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing CITIZENS' POST-HEARING STATEMENT OF POSITIONS AND POST-HEARING BRIEF has been furnished by electronic mail and U.S. Mail to the following parties on this 29th day of October, 2010, to the following:

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