

**Dorothy Menasco**

**From:** Michele Parks [mparks@sfflaw.com]  
**Sent:** Thursday, March 08, 2012 4:48 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Ralph Jaeger; Saylor, Erik  
**Subject:** {BULK} Docket No.: 110200-WU; Application of Water Management Services, Inc., for increase in Water Rates in Franklin County

**Importance:** Low

**Attachments:** Response to OPCs Mot for Admin Hearing.pdf

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- b. Docket No.: 110200-WU; Application of Water Management Services, Inc., for increase in Water Rates in Franklin County
- c. Water Management Services, Inc.
- d. 4 page Response
- e. Response to OPC's Motion for Administrative Hearing

**MICHELE PARKS**

*Paralegal for Martin S. Friedman and Bridget M. Grimsley*

**PLEASE NOTE: Our changed firm name and email address.  
 Please update your contacts accordingly. Thank you.**

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DOCUMENT NUMBER-DATE

01380 MAR-8 2012

FPSC-COMMISSION CLERK

3/8/2012

BEFORE THE PUBLIC SERVICE COMMISSION

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

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Docket No. 110200-WU

WATER MANAGEMENT SERVICES, INC.'S RESPONSE TO OPC'S  
MOTION FOR ADMINISTRATIVE HEARING

Applicant, WATER MANAGEMENT SERVICES, INC. ("WMS") by and through its undersigned attorneys files this Response to the Motion for Administrative Hearing filed by Office of Public Counsel ("OPC") (DN 01199-12), and states as follows:

1. Pursuant to §367.081 (8), Florida Statutes, a utility may elect to have its petition for rate relief processed using the Proposed Agency Action ("PAA") procedure.

2. On November 7, 2011, WMS filed its petition for rate relief electing to utilize the PAA procedure (DN 08218-11).

3. OPC misconstrues the meaning of the term "may" in §367.081 (8), F.S. The use of the term "may" in the context of this statute is to make the election discretionary with the utility. In other words, a utility is not compelled to use the PAA process or the statute would have used the mandatory term "shall".

4. OPC, as an intervenor, does not have the statutory authority to dictate the Utility's decision on whether to utilize the PAA process. This Commission stated in Order No. PSC-96-1147-FOF-WS (September 12, 1996):

Section 367.081 (8), Florida Statutes, grants a utility the option of requesting a PAA proceeding in a rate case. However, the PAA process is not mandatory.

DOCUMENT NUMBER-DATE

01380 MAR-8 2011

FPSC-COMMISSION CLERK

Obviously, the opposite is also true that going straight to hearing is not mandatory.

In the aforementioned Order, the utility chose to go directly to hearing, and interestingly, it was OPC that sought to reduce the utility's rate case expense for not utilizing the PAA process, since OPC asserted that the PAA process results in lower rate case expense and thus lower rates to customers. In that case, OPC's case was articulated as follows:

OPC argues that if a PAA order had been entered, the customers could have decided to avoid the cost of hearing. As a result of FCWC avoiding the PAA process, OPC states that customers were deprived of an opportunity to avoid a hearing.

5. OPC's lack of faith in the PAA process is perplexing since one of its primary purposes is to reduce rate case expense and thus control customer rates. That process makes OPC and the utility give careful consideration as to whether to protest a PAA order. In many cases, OPC and/or the utility have chosen not to protest a PAA order with which they disagree because of the additional expense of such a protest. At the very least, a PAA order narrows the scope of a protest, if one is filed, resulting in lower rate case expense than if the case had begun as one set directly for hearing.

6. OPC also misconstrues its rights pursuant to §§ 120.569 and 120.57, Florida Statutes. These provisions apply to agency decisions which affect the substantial interest of parties. Under the PAA process, there is no agency decision from which a request for a formal hearing can be made until the PAA order is entered. That is made clear in §120.569 (1), F.S., which provides that "Parties shall be notified of any order,


including a final order.” This triggers the point of entry into the formal hearing process. This is tacitly acknowledged by OPC in its Motion when it admits that it cannot comply with the provision of Rule 28-106.201, F.A.C. This Commission has made it clear in Rule 25-22.029, F.A.C., that the rights afforded interested parties pursuant to Sections 120.569 and 120.57, F.S. arise after a PAA Order is entered. Thus, contrary to OPC’s assertion the customers do not have a right to ask for a full evidentiary hearing now.

7. Notwithstanding OPC’s diatribe against WMS, OPC has not established that it has any statutory authority to obtain the relief which it has requested.

WHEREFORE, WASTE MANAGEMENT SERVICES, INC., respectfully requests this Commission deny OPC’s Motion.

Respectfully submitted this 8<sup>th</sup> day of  
March, 2012, by:

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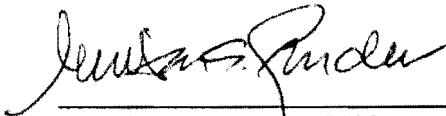
MARTIN S. FRIEDMAN  
For the Firm

CERTIFICATE OF SERVICE  
(Docket No. 110200-WU)

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail and/or E-mail this 8<sup>th</sup> day of March, 2012, to:

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