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Cc: Sayler, Erik; Ralph Jaeger
Subject: {BULK} Docket No.: 110200-WU; Application for Increase in Water Rates in Franklin County by Water Management Services, Inc.
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Attachments: Resp to Motion to OPC's Motion to Establish Procedures.pdf

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- b. Docket No.: 110200-WU; Application for Increase in Water Rates in Franklin County by Water Management Services, Inc.
- c. Water Management Services, Inc.
- d. 8 pages
- e. WMSI Response to OPC's Motion to Establish Discovery Procedures and Motion to Compel Discovery Responses

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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. 110200-WU

**WATER MANAGEMENT SERVICES, INC.'S RESPONSE TO MOTION
TO ESTABLISH DISCOVERY PROCEDURES AND MOTION TO
COMPEL DISCOVERY REONSES**

Applicant, WATER MANAGEMENT SERVICES, INC. ("WMSI" or the "Utility"), by and through its undersigned counsel, files this Response to Office of Public Counsel's ("OPC") Motion to Establish Discovery Procedures and Motion to Compel Discovery Responses and in support states:

1. The Proposed Agency Action ("PAA") process neither contemplates nor does it allow for discovery to be propounded by an Intervener, and that includes OPC. As OPC candidly admits, its discovery is being propounded pursuant to Rule 28-106.206, Florida Administrative Code. That Rule provides for the initiation of discovery "after commencement of a proceeding." The proceeding to which that Rule applies is one initiated pursuant to Rule 28-106.201, Florida Administrative Code. That does not occur until after a PAA Order is entered, and the parties are given a point of entry pursuant to Rule 28-106.111, Florida Administrative Code. In accordance with the PAA process, the PAA Order specifically provides that point of entry, but it does not occur prior to entry of the PAA Order. This case is a poster child for why such discovery is not allowed.

2. To allow formal discovery in the PAA process, such as proposed by OPC, will thwart the purpose of the PAA process, which is to provide an inexpensive and expedient proposed determination to an entitlement to a rate increase. With only five

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months to process a PAA application, it is not possible for the Utility to respond to the formal discovery which OPC seeks. For instance, in the instant case WMSI has filed a response to the Staff Audit and has or will have to respond to six (6) separate data requests from the Staff, consisting of a total of 58 questions, with 90 subparts. To further exacerbate the timing problems, Staff has served Interrogatories with 41 subparts, and requests for production of 28 separate documents. This is in addition to responding to OPC's discovery to which it was has not previously objected.

3. OPC is confused in seeking to have the Commission establish discovery procedures in the same manner as they were established in WMSI's last rate case, which was not a PAA case. The shear amount of OPC's discovery which has propounded and which it proposes to propound makes it crystal clear why discovery such as this is not provided for nor authorized in a PAA proceeding. OPC has already propounded 91 Interrogatories and subparts, in addition to 42 Requests to Produce. This is in addition to the 29 "Issues and Concerns" with 28 subparts which OPC has filed. Now, OPC seeks production of another 9 classes of documents and another 14 Interrogatories with subparts. Finally, there is insufficient time and resources for WMSI to respond to Staff's Data Requests and formal discovery, and the substantial discovery which OPC is propounding, keeping in mind that they still have a utility company to operate.

4. OPC is erroneously trying to shoehorn contested rate case discovery procedures into the PAA process, and it just doesn't fit. OPC seeks this Commission's authority to propound 300 discovery requests just as was done in a full rate case, and to

exacerbate the absurdity, OPC wants WMSI to file responses within 20 days, with clarification filed within 10 days. So much for the PAA process saving on rate case expense! There simply is not the manpower to run a utility company and respond to the substantial data and discovery from Staff, and then the even greater amount of discovery from OPC. OPC candidly wants to perform the same breadth of discovery in a PAA case as it does in a full rate case which wreaks havoc on the purpose of a PAA case to provide a speedy, efficient and inexpensive preliminary determination. The legal rate case expense will likely double as a result of OPC's actions.

5. OPC claims it needs to propound 300 discovery requests in order to address two issues. The first relates to the cash flow audit and OPC's twisted view of its implications, and the second relates to whether WMSI has paid all of its legal rate case expense incurred in the last rate case. Inherent in the rate case expense issue is the absurdity of OPC's implicit position. OPC points out that over one-half of the legal fees have not been paid. Since rate case expense is amortized over four years, why should OPC be complaining if WMSI pays the rate case expense over that same period of time? The timing of the payment of rate case expense should not be OPC's concern.

6. The amount of discovery which OPC has propounded and seeks to propound is unprecedented in a PAA case. The proper process is for OPC to delineate its concerns in a PAA proceeding is like it has done in this case and prior cases where it files a list of "Issues and Concerns," with the Staff and that allows Staff an opportunity to review them and pass them along on a data request to the extent Staff needs clarification

on an OPC issue. This has been done it the instant case as well as in the recent rate case for Sanlando Utilities Corp., in Docket No. 110257-WS.

7. To allow discovery, and certainly the unlimited discovery which OPC seeks to propound, in a PAA case is absurd. The Commission might as well do away with the PAA process.

Motion to Compel Discovery Responses

8. As more fully articulated above, OPC has no authority to propound any formal discovery on WMSI in this PAA proceeding. Again, on this issue OPC confuses the PAA process with that of a full rate case in asserting that "WMSI is using the absence of a routine Order Establishing Procedure to stymie OPC legitimate discovery needs." In other words, OPC is complaining about WMSI utilizing the discovery procedures pursuant to which it propounded its discovery. Apparently OPC wants to pick and choose which discovery procedures are applicable, and ignore those that afford rights to the WMSI.

9. OPC's assertion that it provided a letter to WMSI purportedly amending its original Interrogatories as being in the spirit of cooperation is an oxymoron. OPC has no cooperative spirit when it comes to WMSI. OPC in the last rate case and the instant rate case has gone after WMSI with a vengeance, to the extent that it has become personal with OPC, and that has clouded OPC's judgment in seeking discovery in this PAA proceeding. OPC will not be happy until they run WMSI out of business.

10. A careful review of the Interrogatories and Requests for Production of Documents clearly shows that the discovery to which WMSI has objected is either irrelevant, immaterial and/or not likely to lead to the discovery of admissible evidence and/or overly broad, onerous and made solely for the purpose of harassment.

11. As could have been predicted, OPC misstates the prefilled testimony by stating that "the utility owner has inextricably commingled the utility's finances with those of Brown Management Group, Inc., and his personal finances" and then cites as authority pages 3-8 of Mr. Brown's prefilled testimony. A cursory reading of that testimony shows the falsity of OPC's statement, and it also shows OPC's continuing efforts to assert the utility owner has taken money from the Utility. What that testimony shows is that the utility owner has had to use his own creditworthiness to secure loans on behalf of WMSI. That certainly should not be an epiphany. Most non-conglomerate utilities face the same problem. They simply cannot borrow money without personal guarantees of the owners.

12. Although a Report titled "Abandonments and Receiverships in the Florida Water and Wastewater Industry" (October 2001), primarily addressed small utilities, WMSI faces some of the same challenges. The Report stated:

The first and the most devastating [problems] are the closely related problems of inadequate cash flow and inability to attract capital, i.e., the inability to borrow money or otherwise finance any capital improvements or replacements.

This was true of WMSI, when it was required to replace the water main to St. George Island because of relocating of the bridge. Fortunately, the utility had the ability

to borrow money solely because of the creditworthiness and personal guarantees of the owner. Interestingly, the Report concluded:

Sufficient internal cash flow is needed for any business entity to remain financially sound. Water and wastewater utilities are no different; however, in many cases, traditional rate base setting is unable to provide these cash flows. Therefore, non-traditional rate setting methods are needed to address the critical cash flow needs of utilities that may be at risk of future abandonment.

While it is unlikely, to the disappointment of OPC, that WMSI will abandon its water system, it does not take a rocket scientist to realize that revenue is insufficient to fund multimillion dollar loans without personal guarantees.

13. OPC addresses its responses in Attachment C to the Motion which clearly shows the basis for not producing the requested documents. With regard to Requests 3, 5, and 6 for general ledgers and tax returns for 2008 and 2009, OPC simply states that they will provide a picture of the financial health of the utility which is at issue. What issue is that? This Commission sets rates based upon a test year and pro forma known and measurable changes. The financial health of the utility is based upon those well-settled principles and do not include prior years' financial information. If the utility lost money in those years, the Commission can do nothing to make up for the loss. Similarly, Requests 8 and 9 request financial information prior to the test year and are irrelevant and is further evidence of OPC's harassment of WMSI. Document Request 10 is even more irrelevant, and is clearly a fishing expedition by requesting information on every asset WMSI had sold to anyone since December 31, 1992. Now, OPC generously modifies that Request and limits it to assets with a value of greater than \$1,000. That

modification does not cure the fact that such information is irrelevant. Document Requests 15 through 30 all ostensibly address account 123 and seek a voluminous amount of documents, including personal tax returns of the utility owner for the years 2007 through 2011, and serve no legitimate purpose other than OPC's desire to harass the utility owner. Document Request 29 seeking copies of the utility owner's personal bank statements since January 1, 2007, is not only irrelevant, but is obviously meant to harass the utility owner.

14. WMSI is not unmindful that Staff has served document requests with many of the same documents being requested. However, the documents are no more relevant merely because the Staff has requested them.

WHEREFORE, WATER MANAGEMENT SERVICES, INC., respectfully requests this Commission deny OPC's Motion to Establish Discovery Procedures and Motion to Compel Discovery Responses.

Respectfully submitted on this 21st day of May, 2012 by:

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CERTIFICATE OF SERVICE
DOCKET NO. 110200-WU

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail and/or E-mail to the following parties this 21st day of May, 2012:

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