

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
ORDER NO. PSC-12-0316-PCO-WU
ISSUED: June 19, 2012

ORDER DENYING OPC'S MOTION TO ESTABLISH DISCOVERY PROCEDURES AND
MOTION TO COMPEL DISCOVERY RESPONSES

Water Management Services, Inc. (WMSI or Utility) is a Class A water utility providing water service to approximately 1,800 customers in Franklin County on St. George Island. For the year ended December 31, 2010, the Utility reported operating revenues of \$1,291,712, and a net operating loss of \$145,071. WMSI's last full rate case proceeding was filed in 2010, for which a formal evidentiary proceeding was held.¹ The Utility filed another application for a rate increase on November 7, 2011. Pursuant to the Utility's request under Section 367.081(8), Florida Statutes (F.S.), the schedule for this proceeding was established using the proposed agency action procedure.

The Office of Public Counsel (OPC or the Citizens) filed a notice of intervention on January 20, 2012, which was acknowledged.² On March 1, 2012, OPC filed a motion asking the Commission to set WMSI's motion for an administrative proceeding, which WMSI opposed. After hearing argument from the Utility and OPC, the Commission denied OPC's motion.³ The Commission stated "[t]he plain language of Section 367.081(8), F.S., appears to give the utility the option to choose the process, and we have historically deferred to the utility's selection since the enactment of that section." *Id.* at. p. 5.

On March 14, 2012, OPC served formal discovery on the Utility, propounding interrogatory and production of document requests. WMSI filed objections to the interrogatories, stating that OPC was entitled to a response limited to 30 questions total because that is the number permitted under the Florida Rules of Civil Procedure.⁴ According to the Utility it did not know which 30 to answer out of the 91 that were propounded, including subparts. OPC clarified which interrogatories to answer by letter dated May 4, 2012. In the letter, OPC also notified the Utility that it planned to seek an enlargement to the number of discovery questions that may be propounded. The Utility partially responded to OPC's production request. In addition to the discovery OPC propounded on March 14th, on May 4, 2012, OPC provided the Commission staff with 29 written concerns about the Utility's MFRs

¹ See Order No. PSC-11-0010-SC-WU issued January 3, 2011, in Docket No. Docket 100104-WU, In re: Application for increase in water rates in Franklin County by Water Management Services, Inc., aff'd per curiam, Water Mgmt. Servs. v. FPSC, 2012 Fla. App. LEXIS 7549 (Fla. 1st DCA May 15, 2012).

² Order No. PSC-12-0034-PCO-WU, issued January 23, 2012, in Docket No. 110200-WU, In re: Application for increase in water rates in Franklin County by Water Management Services, Inc.

³ Order No. PSC-12-0222-PCO-WU, issued April 27, 2012, in Docket No. 110200-WU, In re: Application for increase in water rates in Franklin County by Water Management Services, Inc.

⁴ Rule 1.340, Fla.R.Civ. P.

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and other information provided by the Utility. OPC also propounded a second set of interrogatories and production of documents on May 15, 2012. Subsequently, on May 18, 2012, staff propounded its First Set of Interrogatories consisting of seven numbered interrogatories, and First Request for Production of Documents consisting of 16 numbered requests to WMSI. These interrogatories and requests for production are the same as some of the interrogatories and requests for production propounded by OPC.

OPC filed its Motion to Establish Discovery Procedures and Motion to Compel Discovery Responses on May 14, 2012. OPC seeks an order from the Prehearing Officer to set discovery procedures and enlarge the number of interrogatories and production of documents that may be propounded under the Florida Rules of Civil Procedure. Also, it seeks an order compelling responses to the discovery already propounded. WMSI responded in opposition to the two requests contained in OPC's filing. Oral argument was held on June 5, 2012. For the reasons discussed below, OPC's motions are denied.

The Commission began using the Proposed Agency Action (PAA) process for water and wastewater utilities in the early 1980's. The primary drivers included streamlining the ratesetting process and reducing rate case expense. The Florida Legislature ultimately set a five-month clock for the Commission to enter its vote, and if a protest is filed requesting a hearing on the PAA decision, the Commission must render a decision within 8 months from the date of the filing of the protest.⁵ There is no "agency action" until the Commission enters its PAA order.⁶ Until the time the PAA order is issued, the Commission's staff is engaged in a free-form proceeding outside the scope of the Florida Administrative Procedures Act. As the Commission stated when it denied OPC's request to set WMSI's rate application for a hearing, "we agree with the Utility that Rule 25-22.029, F.A.C., contemplates that it is after the Agenda Conference and issuance of the PAA action that the provisions of Section 120.569 and 120.57, F.S., become applicable."⁷

As is the case for all proposed agency action proceedings, OPC will have the opportunity to address the Commission at the August 2, 2012, Commission Agenda Conference when the Commission will vote on WMSI's application. If OPC takes issue with the PAA order, OPC will have an opportunity to request a hearing pursuant to Rule 25-22.029, F.A.C. Others whose substantial interests are affected by the proposed agency action may also request a hearing. If a hearing is requested, an order establishing procedure will be entered and discovery parameters will be set, as is the case for all Commission proceedings set for hearing.

⁵ Section 367.081(8), F.S.

⁶ See Section 120.52, F.S., defining agency action; See also Manasota-88, Inc. and Booker Creek Preservation, Inc. v. Department of Environmental Regulation and Gardinier, Inc., 441 So. 2d 1109 (Fla. 1st DCA 1983); Capeletti Brothers, Inc. v. Department of Transportation, 362 So. 2d 346 (Fla. 1st DCA 1978); and Order No. PSC-12-0139-PCO-WS, issued March 26, 2012, in Docket No. 110264-WS, In re: Application for increased water and wastewater rates in Pasco County by Labrador Utilities, Inc.

⁷ (Footnote omitted) Order No. PSC-12-0222-PCO-WU, issued April 27, 2012, in Docket No. 110200-WU. In re: Application for increase in water rates in Franklin County by Water Management Services, Inc., p. 5.

In this case, there is no reason to set discovery parameters for a free-form agency proceeding where Commission staff asked the same or similar questions to the Utility that OPC requested, and the Utility has stated it plans to respond to those questions. In addition, OPC raised 29 concerns plus subparts about the application, which is under review by Commission staff. Moreover, OPC has already received answers to some of its discovery requests. OPC has requested that it be authorized to propound 300 interrogatories and 300 requests for production, which is the same number allowed by the Commission when WMSI's last rate application went to hearing. Allowing such a large number of interrogatories and requests for production, when a hearing has not been set, would significantly increase rate case expense and in no way streamline the rate setting process, contemplated by Section 367.081(8), F.S. At this juncture, the parties' opportunity to conduct discovery must be balanced against the interests of protecting the ratepayers from excessive rate case expense. In this case, the potential of increased rate case expense is of concern and would ultimately harm the customers. For the aforementioned reasons, OPC's Motion to Establish Discovery Procedures and Motion to Compel Discovery are hereby denied.

It is therefore,

ORDERED by Commissioner Julie I. Brown, as Prehearing Officer, that the Office of Public Counsel's Motion to Establish Discovery Procedures and Motion to Compel Discovery Responses are hereby denied. It is further

By ORDER of Commissioner Julie I. Brown, as Prehearing Officer, this 19th day of June, 2012.



JULIE I. BROWN
Commissioner and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.