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Attachments: Dkt. No. 110200-WU Citizens Brief - dated 2-11-13.pdf

Electronic Filing

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b. Docket No. 110200-WU

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 41 pages.

e. The document attached for electronic filing is Dkt. No. 110200-WU Citizens Brief - dated 2-11-13.pdf
(Entitled: Citizens' Post-Hearing Statement of Positions and Post-Hearing Brief

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: 110200-WU
Filed: February 11, 2013

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

Pursuant to Order No. PSC-12-0526-PCO-WU, Order Establishing Procedure in this docket, issued October 3, 2012, and First Order Revising Order Establishing Procedure, Order No. PSC-12-0624-PCO-WU issued November 20, 2012, the Citizens of the State of Florida, by and through the Office of Public Counsel, hereby submit their Post-Hearing Statement of Positions and Post-Hearing Brief.

PRELIMINARY STATEMENT

Water Management Services, Inc. will be referred to as "WMSI" or "Utility"; Brown Management Group as "BMG"; the Office of Public Counsel as "OPC" or "the Public Counsel"; the Department of Environmental Protection as "DEP"; and Florida Statutes as "F.S."

STATEMENT OF BASIC POSITION

OPC asserts that the record established by the administrative hearing overwhelmingly supports the Commission undertaking proactive measures to ensure that this Utility is managed and operated in the best interests of the Utility and its customers. OPC's post-hearing brief will begin with the major issues being litigated in this case – Issue 10 (prudence of advancing \$1.2 million of Utility money for non-utility purposes), Issue 6 (prior rate case expense), Issue 7 (current rate case expense), Issue 9 (remaining balance of previously approved gain on sale), and Issue 14 (service availability charges) – followed by the remaining issues.

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STATEMENT OF ISSUES AND POSITIONS

Issue 10: **Have the Utility's advances to WMSI's President and associated companies had any adverse impact on the Utility or its ratepayers, and if so, what action, if any, should the Commission take?**

Yes. The Utility's advances to the WMSI President and his associated companies have adversely impacted the Utility and its ratepayers as demonstrated by the testimony and exhibits of OPC witness Schultz. If the advancing of utility money for non-utility purposes is not halted, it could harm the day-to-day operations of this utility and ultimately the customers if the Utility through unwise management decisions is unable to provide water service to the island. The Commission should implement the actions recommended by witness Schultz to protect the customers.

ARGUMENT:

Introduction

To ensure that this Utility operates in the public interest, the Commission should find that the Utility's advances of more than \$1.2 million to the Utility's President and associated companies has had an adverse impact on the Utility and its customers. The Commission should also enter a finding of managerial imprudence. To rectify and mitigate the adverse impact, the Commission should implement the proactive measures recommended by OPC to protect the Utility and its customers from further imprudent managerial decisions and prevent advances from continuing in the future. This Utility previously required the Commission's careful regulatory oversight, and unfortunately, given the Utility's recent history of advancing utility money for non-utility purposes, the Utility needs the Commission's strict oversight once again.

For a thorough understanding of Issue 10, OPC recommends that the Commission give careful attention to the deposition of Mr. Mitchell, the Utility's Controller (EX 24), as well as the two depositions of Mr. Brown (EX 15, by OPC, and EX75, by Staff). In conjunction with the testimony of OPC witness Mr. Schultz and the rebuttal testimony of Utility witness Mr. Brown, these documents provide additional context to the facts OPC asserts are relevant for a thorough understanding of Issue 10.

Customer Service Hearing

The Commission held a well-attended customer service hearing. Customers testified that they fully supported OPC's protest of Issue 10 and other issues; none opposed OPC's positions.

(See e.g., Service Hearing TR). One customer submitted a petition containing nearly 100 signatures by customers on the island expressing their support of OPC's protest. (EX 89). The customers who testified articulated their concern over the impact of this particular issue on the Utility. (Service Hearing TR 24-25, 31, 40, 59). A County Commissioner testified about the need for greater Commission oversight of the management of the Utility. (SH TR 18-21). One customer succinctly summed up her concerns about the adverse impact of the \$1.2 million advanced to the president and his companies:

... if the 1.2 million stayed in WMSI, the funds would be there for the necessary infrastructure improvements that it's being requested for, and therefore they would not need to ask customers for more money, or at least not to the level that it is being asked. And so my questions are to the PSC Commission, what will the PSC do to ensure that even more money isn't taken again from WMSI and used for purposes outside of the utility?

(SH TR 59). On behalf of the customers, OPC urges the Commission to resolve this issue so that it never happens again.

Facts

In the last rate case, evidence was presented that the Utility was using Account 123 to record transfers of Utility money in and out of the utility for non-utility purposes, and this fact was discussed in the Order. See Final Order No. PSC-11-0010-SC-WU at 50-56. The sheer magnitude of the amount of money advanced from the Utility became a separate issue in that case. PAA Order at 25-26. Regarding whether the level or quantity of investments in associated companies (i.e., the amount of money advanced to the Utility president and his companies) was appropriate, the Commission stated:

Based on the record in this proceeding, it cannot be determined if the level of investment in associated companies is appropriate. However, the amounts in question are not included in rate base and are not considered in the determination of appropriate rates. That said, based on the circumstances in this case, our staff shall initiate a cash flow audit of the Utility as soon as possible, and, if it is determined that the activity in the account has impaired the Utility's ability to meet its financial and operating responsibilities, our staff shall recommend an appropriate adjustment for imprudence.

Final Order No. PSC-11-0010-SC-WU at 56 (emphasis added). It was not simply an issue of whether the money advanced might, could, or would affect customer rates, but whether the

“activity in the account has impaired the Utility’s ability to meet its financial and operating responsibilities.” *Id.* at 56.

The Commission’s audit staff initiated a Cash Flow Audit and tracked every transaction in and out of Account 123, confirming OPC’s assertions that approximately \$1.2 million of Utility money was advanced to the Utility president and his companies for non-utility purposes. (EX 56.) While the Final Order stated: “. . . it appears that WMSI has advanced approximately \$1.2 million more to associated companies. . .” (Final Order at 54) (emphasis added) and “There is some evidence that the Utility advanced approximately \$1.2 million. . .” (*Id.* at 55) (emphasis added), the Staff’s Cash Flow Audit Report Finding 3 concerning Account 123 unequivocally concluded:

The net receivable of \$1,175,075 from Gene Brown and associated companies, as of December 31, 2010, represents funds that have been moved out of the Utility for either Gene Brown’s personal use or one of the associated companies.¹

(EX 56, p. 13 of 19) That net receivable was later increased to \$1,215,075, an increase of \$40,000 from December 31, 2010 to December 31, 2011. (PAA Order at 26 citing the Utility’s 2011 annual report; TR 330). Testimony provided by OPC witness Schultz demonstrates that the advancing of more than \$1.2 million of Utility money to the president and his companies adversely affected the Utility and impaired the Utility’s ability to meet its financial and operating responsibilities. (TR 133-135, 147). According to the Cash Flow Audit Report and Rate Case Audit Update, the majority of the Utility money advanced was advanced to the president. (EX 56 p. 12 of 19; EX 57 p. 22 of 26).

In addition to the facts discussed above, there are additional facts for the Commission to consider regarding this issue of adverse impact, whether it constitutes managerial imprudence, and what action the Commission should take.

Utility versus Non-Utility Sources of Money

There appears to be some confusion on the part of the Utility about the sources of cash receipts used to operate the Utility. The Commission-ordered Cash Flow Audit clearly defined and delineated utility activity and non-utility activity, as well as sources of cash receipts and cash

¹ Exhibit 56 contains Document No. 05312-11, Auditor’s Report, WMSI Cash Flow Audit in Docket No. 100104-WU, Audit Control No. 11-007-1-2, dated July 29, 2011, p. 11.

disbursements. (EX 56, Finding 2). Utility witness Brown does not dispute the accuracy of the Staff's Audit Report as it relates to the actual dollar amount advanced to himself and his companies. (TR 364, 367). However, he testified the Audit Report is ". . . not an accurate analysis of the cash that I have put into WMSI as compared with the cash that I have taken out of WMSI." (TR 325). The Utility does not dispute the Audit Report's "definition" of utility activity and non-utility activity but does dispute the report's "characterization" of those activities: "it's just semantics. . .", "it just needs to be explained. . ." to ". . . understand what it is and what it is not." (TR 368, lines 15-24). Mr. Brown further disagreed with how the Audit Report separated numbers into utility activity and non-utility activity. (TR 325-327; 331). As an example of his disagreement, Mr. Brown testified that cash received from the sale of the two Commonwealth lots in 2007 (discussed in Issue 9) should not be considered utility activity. (TR 327).

He then testified about the Utility's Cash Flow Analysis for the period 2000 to 2010, which was attached as an exhibit to his testimony. (TR 329; EX 78). He testified that he had to provide over \$16 million in cash over that period which did not come from ratepayer funds. He repeatedly testified that sources of additional funds ". . . came from me, my affiliates, and third parties, including lenders who made loans to WMSI only because of my personal guarantees and pledge of other personal assets." (TR 329, lines 18-19).²

As a demonstrative exhibit used during Mr. Brown's testimony, the Utility provided a large color poster board with a bar graph from the Utility's Cash Flow Analysis 2000-2010, which showed, "Cost of Operations" (Blue Bar), "Funds from Ratepayers" (Green Bar), and "Deficit Furnished by GDB/Affiliates/3rd Parties" (Red Bar).³ Referencing this poster board on cross examination, Mr. Brown testified that the green bar on the chart represented revenues or funds from the ratepayer rates. (TR 369; EX 78, GB-2, page 14 of 35). According to Mr. Brown, revenues from ratepayers are a "utility activity" or source of funds coming from the ratepayer. (TR 369). The red bar represented other sources of funds that were not from ratepayers; those sources of funds were from Mr. Brown, BMG, and other 3rd parties. (TR 369; EX 78, GB-2,

² See also TR 331, lines 20-24 ("Most of the [extra cash] came from loans to WMSI that were possible only because of my personal guarantee and pledge of personal assets."); TR 344, lines 21-23. ("It came from me, my affiliates and third parties, including loans secured with my personal guarantee and the pledge of any personal assets.")

³ To OPC's knowledge, that poster board was not entered into the record as a separate exhibit; however, OPC believes the demonstrative exhibit was identical to (or substantially the same as) a Utility generated chart entitled "Utility's Cash Flow Analysis 2000-2010" from Mr. Brown's Aug. 1, 2012 Letter to Commissioners, admitted into the record in Exhibits Ex. 78, GB-2, page 14 of 35 and Ex. 19, HWS-9, page 1 of 37. A color version of this chart is in the Commission docket file in Document No. 05177-12.

page 14 of 35). He testified that the red bar included the DEP loan, the gain on sale from the two Commonwealth lots, and the pipeline settlement. (TR 370-371).

OPC agrees with the Staff Audit Report's definition of utility and non-utility activity, and agrees with how the Staff's Report described those sources and disbursements of utility and non-utility funds. It is clear from the Utility president's testimony that he has a different definition or characterization for what should be considered funds sourced from utility and non-utility activity. He clearly considers Utility loans (like the DEP loan) secured by the Utility with Utility assets to be a source of funds he personally provided. In his view, if, in order to secure a Utility loan, he or an affiliate had to pledge additional guarantees or use non-utility assets as collateral, then that is a non-utility/non-ratepayer source of funds, even though the loan is in the name of WMSI and WMSI is legally obligated to repay the loan. Similarly, he considers the sale of the two Commonwealth lots to be a non-utility activity even though the facts indicate the purchase and sale of those lots was indeed a utility activity. Finally, since it did not directly come from ratepayer revenues, Mr. Brown considers the proceeds from the bridge main pipeline settlement to be funds from a non-utility activity even though the pipeline is a Utility asset.

The Utility's own Cash Flow Analysis is nothing more than an attempt to distract the Commission from the accurate findings in the Staff's Cash Flow Audit. It is an attempt to shift attention away from the fact that the Utility advanced Utility funds to the Utility president and his company for non-utility purposes. The Utility president and his companies owe the Utility more than \$1.2 million, of which the president personally owes more than \$1.5 million. That money should be repaid. (TR 119). Further, the advancement of more than \$1.2 million of utility money for non-utility uses over a period of time when the Utility was struggling financially was imprudent and adversely affected the Utility and its customers. (TR 133-135, 147)

Inconsistencies in Mr. Brown's testimony

Mr. Brown's rebuttal testimony contained a number of inconsistencies and unsupported statements, which should be considered when weighing the credibility of his testimony. On page 20 of his rebuttal testimony, Mr. Brown testified that all the advances to and from the Utility were "netted out by, between, and among WMSI, my affiliates, and me." (TR 342-343) However, Mr. Brown testified there were no documents or minutes that supported that any of his companies agreed to these netting of accounts. (TR 372-375). On page 21 of his rebuttal, Mr.

Brown claimed that the “agreement between and among all the parties to the transaction, as confirmed by the tax returns and financial statements of those parties, should trump the opinion of one accountant who has only briefly looked at partial financial records.” (TR 343). However, when asked in discovery for documents that should “trump the opinion of one accountant,” Mr. Brown testified that there were no documents responsive to this request. He further testified there are no documents which highlight the netting out of these transactions or refer to any forgiveness of debt. (TR 375-377). When asked how the Commission could verify his testimony without these documents, he testified “I guess they can believe me or not.” (TR 377).

On page 21 (lines 21-23) of his rebuttal, Mr. Brown testified that a little over a year ago, BMG borrowed \$150,000 against two of its assets to help fund the WMSI cash deficit and gave a significant portion of the proceeds to the Utility. (TR 343, 415). The two assets were the condos above the Utility operations office on the island. (TR 413). In response to OPC discovery about this transaction, the Utility provided deposit slips totaling \$100,000 showing this amount deposited in the Utility’s bank account. (TR 416-417; EX 104) However, the corresponding journal entries in the Utility’s 2010 General Ledger, Account 146 “Notes Receivable-Associated Companies” indicate that these deposits were credited against money that the Utility had previously advanced to BMG, and which BMG was repaying. (TR 417-420; EX 105).⁴ In essence, BMG was repaying money that the Utility previously loaned to BMG.

Value of BMG not what it was purported to be

Mr. Brown also testified that the value of BMG was more than the balance recorded in Account 123. (TR 343). To settle or resolve what he and his companies owed to the Utility, he transferred his ownership in BMG to the Utility in order to settle all the intercompany accounts, including Account 123. (TR 343). This was essentially a paper transfer of ownership. While the Utility may now own the stock in BMG, Mr. Brown still controls the Utility. As of the January 1, 2011 transfer date, the fair market value (FMV) of BMG was not \$1.2 million, as Mr. Brown asserts. (TR 115, 343; EX 17, p. 8). More than half of the purported FMV of BMG consisted of Utility stock which was purportedly valued at \$600,000 on BMG’s balance sheet. (TR 115-116;

⁴ In addition, there are other statements about borrowing money on behalf of the Utility which appear simply unsupported by the record. The statement that he borrowed \$30,000 from his 401K for the Utility is unsupported by the evidence. (TR 330). Statements concerning the two Commonwealth lots discussed under Issue 9 are inconsistent with the Utility’s Annual Reports and General Ledger. (TR 327).

EX 17, p. 8). The value of the remainder of the assets shown on BMG's balance sheet, after the Utility stock was removed, totaled under \$600,000. (EX 17, p. 8). Even the FMV of the remaining BMG assets is suspect. Mr. Schultz testified it was not appropriate to use FMV for assets on the balance sheet because there is no reliable method to verify the asserted value. (TR 136-139). Further, according to Mr. Brown, the asset valuations on BMG's balance sheet are adjusted from time to time, and even prior periods are restated. (EX 15, p. 43).⁵ Thus, there is no credible and reliable way to determine whether the assets listed on BMG's balance sheet, then or now, are worth what they are purported to be. Contrary to assertions made otherwise, the transfer of BMG's stock (the value of which is uncertain and subject to change) to the Utility, does not satisfy the amount owed to the Utility by the president and his associated companies.

The advances continued while the Utility was struggling financially

Mr. Brown testified that the advances recorded in Account 123 were made to himself personally, to BMG, to Gene Brown, PA, and other business entities. (TR 366). During the period 2004 to 2010, when these advances were being recorded in Account 123, Mr. Brown testified the Utility was having difficulty paying its bills, including debt service on one loan in particular. (TR 377-378). He testified the Utility has financially struggled since 2000, and also between the last rate case and the issuance of the PAA Order in August 2012. (TR 378).

Starting with DEP Loan Amendment 1 through May 2012, the Utility renegotiated the DEP loan five times, negotiated to delay its payments, extended the term of the loan from 20 to 30 years, capitalized the interest, and added more than \$1.1 million of interest to the original principal of the loan. (TR 149; EXs. 36 & 43). Mr. Brown testified the Utility failed to make its May 2012 payment on the DEP loan, and that DEP declared the loan to be in default. (TR 378-379)

After the last rate case and throughout 2011, the Utility continued to advance utility money to Mr. Brown and his associated companies, including Gene Brown, PA which had been dissolved in 2008. (TR 381-384; EX 56, p 7 of 19; EX 57, Table 3, p 22 of 26). However, Mr. Brown testified that these advances are no longer recorded in Account 123. (TR 381-384; EX 57). These 2011 advances occurred while the Utility was not paying rate case expense to its

⁵ For example, the FMV of the cell tower leases on BMG's balance sheet change from year-to-year and balance sheet to balance sheet. (TR403-407; EX 18, BMG Financials to Staff; EX 18, Confidential BMG Financials to OPC)

former attorneys and consultants, and while the Utility was falling behind on its accounts payable.⁶ (TR 147, 234; EXs. 42 & 59).

Absent Commission action, the advances will continue

Since the PAA Order was issued in August 2012 and for the next several years, Mr. Brown testified he expects things to be very tight financially for the Utility. (TR 382). Notwithstanding the tight financial situation the Utility is facing and will face, Mr. Brown stated that he plans to continue advancing Utility money to and from the Utility, himself, and his associated companies. (TR 384-385; EX 75, Brown Deposition page 47). Regarding the past, present, and future advances, the question the Commission must address is whether it is managerially prudent for this Utility to be operated in this manner, and if not, what steps the Commission will take.

Past adverse impact of these advances

OPC witness Schultz testified that advancing a net \$1.2 million out of WMSI for non-utility purposes while it is struggling to survive and leveraged in debt could only have a detrimental and harmful effect on its operations. (TR 134). While WMSI was advancing this large amount of money, it had to negotiate to delay three years of DEP loan payments and had to request two regulatory assessment fee (RAF) payment plans. (TR 134). Thus, the advancing of more than \$1.2 million of Utility money from WMSI to its president and his non-utility companies has had an adverse impact on the Utility. Further, the renegotiation of the DEP loan has added more than \$1.1 million in additional interest to the DEP loan, adversely affecting customers. (TR 149; EX 43). The Commission will need to determine, based on the evidence in the record, whether the past advances to the president and other entities have adversely impacted WMSI and/or its customers, and whether there was managerial imprudence. (TR 135)

Present adverse impact

Because WMSI failed to make the May 2012 DEP loan payment and Mr. Brown's testimony that these advances will continue in the future, the question is whether WMSI will

⁶ As part of developing his opinion and his testimony, Witness Schultz also reviewed the Utility's Accounts Payable Aging Report which identified the numerous amounts owed to vendors that are over 90-days old. (EX 42)

have additional difficulty securing future financing. Because of the missed payment in May 2012, the DEP declared WMSI in default and notified Centennial Bank of the default. (EX 40, p. 228-229). Mr. Brown characterized the default as a “technical default.” (EX 75, Brown Deposition p. 73/ BSP 550).⁷ Fortunately for the Utility, the Commission ordered the DEP loan payments to be escrowed and the DEP has agreed to a Sixth Amendment to the DEP loan, so that the Utility is no longer in default, technical or otherwise. (EX 36). It does not matter whether the DEP default was technical or otherwise. The fact remains that the Utility defaulted and this will likely affect the Utility’s credit and its ability to secure financing for the pro forma plant approved by the PAA Order.⁸ (EX 75, Brown Deposition p. 75-76/ BSP 552-553).

Future adverse impact

The elephant in the room, so to speak, is the Utility’s ability to meet its future debt obligations. WMSI is attempting to secure a new loan from a lender to finance the pro forma plant, as well as pay off a \$2.6 million loan with Centennial Bank. Centennial Bank inherited the Utility’s debt totaling more than \$2.6 million, when it acquired two failed banks which had previously loaned money to the Utility. (EX 75, p. 70-71). The Centennial Bank loan, which closed in June 2012, requires a balloon payment of approximately \$2.6 million in July 2014. (Ex 63, BSP 160). Unless the Utility can pay off or extend the term of this bank loan, the Utility may find itself facing default again.

In order to ameliorate the present and future adverse impact of the Utility’s decisions to advance over \$1.2 million since 2004, the Commission should to institute tight restrictions and financial controls over WMSI for its own preservation. If the restrictions and controls are correctly crafted, balancing the interests of the customers and Utility, it will hopefully provide WMSI’s current and future creditors comfort that their loans will be timely repaid. In addition to tight financial controls, the re-titling of BMG assets in the name of the Utility, such as the title to the cell tower lease rights which are located on WMSI’s elevated water tower, will further help

⁷ BSP = Bates Stamp Page, and for ease of reading, does not include all the zeros before the number.

⁸ When asked whether the default would increase or decrease the credit risk of the Utility or affect the ability to secure a loan for the new ground water storage tank, Mr. Brown testified in his deposition with Commission staff: “I don’t think it will have any effect unless Public Counsel or staff or somebody keeps calling my bankers and pointing out defaults that nobody in the world would have known about.” (Ex. 75, Brown Deposition p. 75-76/ BSP 552-553). When asked whether a default would hypothetically increase or decrease a firm’s credit risk, Mr. Brown testified that a default “generally decreases your credit standing, if the credit bureaus and other people know about it. . . .” *Id.*

assure that income from assets attached to Utility assets remain in WMSI. (TR 401-403, 411-412). The record is replete with other salient facts on which the Commission may rely when making its decision regarding this issue.⁹

Commission's Legal Power, Duty, and Authority

At the heart of the issue of making advances for non-utility purposes is whether WMSI's finances were and are being prudently managed, and if not, what action should this Commission take to ensure that WMSI operates in the "public interest." The legal question the Commission must also address is what powers, duties, and authority the Commission has, implied or express, to ensure that a public utility is operated in the public interest.

Section 367.011(3), F.S., states: "The regulation of utilities is declared to be in the public interest, and this law is an exercise of the police power of the state for the protection of the public health, safety, and welfare. The provisions of this chapter shall be liberally construed for the accomplishment of this purpose."

Section 367.121, F.S., provides a list of express Commission powers; however, this list is not intended to limit powers otherwise implied by Chapter 367, F.S., for the effective regulation of public utilities in this State. If the Legislature had intended these to be the only powers of the Commission, the Legislature would have expressly stated this limitation in statute or implied that limitation by using the conjunctive "and" between subsection (1)(j) and (1)(k) of Section 367.121 to indicate as much. Moreover, the Legislature in 1998 amended Section 367.121, F.S., and deleted the word "and" from between subsection (1)(j) and (1)(k). See S. 73, Ch. 98-200, Laws of Florida. Under the rules of statutory construction, this indicates that the Legislature did not intend this list of express powers to be the only powers of the Commission. Further, the provisions of Chapter 367, F.S., are to be "liberally construed" to effectuate the Commission's jurisdiction. Section 367.011(3), F.S. Thus, a reasonable, liberal construction of Section 367.121, F.S., is that the Commission has implied powers beyond those expressly listed therein.

Under Section 367.121(1)(c) and (i), F.S., the Commission has the express statutory authority to require reports, including quarterly reports from the Utility as it relates to payments of rate case expense as well as whether it is continuing to advance utility money to and from and

⁹ Under this issue, the Commission should address the prudence of adding an additional \$318,274 of non-Utility debt to the Utility by the reacquisition of the two Commonwealth lots discussed in Issue 9.

between the Utility and its president and his affiliated companies. The Commission has express statutory authority to “. . . do all things necessary or convenient to the full and complete exercise of its jurisdiction and the enforcement of its orders and requirements.” Section 367.121(1)(g), F.S. That includes implementing proactive measures to protect the WMSI from further financial harm. Further, should WMSI refuse to comply with the Commission’s orders, the Commission has express authority to go to circuit court to ensure compliance with Commission orders where “. . . violations of commission orders or rules, in connection with the impairment of a utility’s operations or service, constitute irreparable harm for which there is no adequate remedy at law.” Section 367.121(1)(j), F.S. (emphasis added). OPC submits impairment of utility operations includes impairment of a utility’s financial operations caused by advances of utility money for imprudent, non-utility purposes.

Distinguishing the Final Order in the Last Rate Case

In the last rate case, the Commission declined to implement OPC’s recommendations and stated:

While the recommendations proposed by OPC regarding future treatment of Account 123 seem well-intended, we do not have express statutory authority to preclude a utility from making investments in associated companies. In addition, our practice has been not to micromanage the business decisions of regulated companies, but to instead focus on the end-product goal.

Order No. 11-0010-SC-WU at 56 (emphasis added). However, as discussed above, the Commission does have express statutory authority to implement some of OPC’s recommendations and the implied authority to implement others, including ordering the Utility to cease advancing Utility money for non-utility purposes. Further, the Commission cited only one order for the proposition that Commission “practice has been not to micromanage” utilities.¹⁰ Yet, the Final Order did not take into account the historical fact that the Commission repeatedly intervened in the business decisions and operation of this Utility in the 1990’s to ensure that WMSI was operating in the best interests of both WMSI and its customers (i.e., the public

¹⁰ See Order No. PSC-04-0712-PAA-WS, issued July 20, 2004, in Docket Nos. 020896-WS and 010503-WU, In re: Petition by customers of Aloha Utilities, Inc. for deletion of portion of territory in Seven Springs area in Pasco County, and In re: Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc.

interest). Exhibit 110 in the hearing record contains a selection of Commission orders that show the Commission's prior proactive involvement with WMSI.

The Final Order cited three cases for the proposition that the Commission's "authority is limited to that conferred by statute, and any reasonable doubt as to the existence of a particular power must be resolved against that power": Florida Bridge Company v. Bevis, 363 So. 2d 799 (Fla. 1978); Department of Transportation v. Mayo, 354 So. 2d 359 (Fla. 1979); and City of Cape Coral v. GAC Utilities, Inc., 281 So. 2d 493 (Fla. 1973). First, the facts of these three cases are distinguishable from the facts of the instant case. Second, according to these cases, the Commission has "powers, duties, and authority. . . that are conferred expressly or impliedly by statute. . . ." Florida Bridge Company v. Bevis at 802 (quoting City of Cape Coral v. GAC Utilities, Inc., 281 So.2d 493 (Fla.1973)) (emphasis added); see also Department of Transportation v. Mayo at 361 ("Being a statutory creature, its powers and duties are only those conferred expressly or impliedly by statute." (citing City of West Palm Beach v. Florida Public Service Commission, 224 So.2d 322 (Fla.1969); Southern Gulf Utilities Inc. v. Mason, 166 So.2d 138 (Fla.1964)) (emphasis added).

The legal principle established by these cases unequivocally states the Commission has both express and implied powers, duties, and jurisdiction flowing from statute. Section 367.011(3), expressly states: ". . . The provisions of this chapter shall be liberally construed for the accomplishment of this purpose." (emphasis added). "This purpose" being to regulate utilities in the public interest and to exercise ". . . the police power of the state for the protection of the public health, safety, and welfare." Section 367.011(3), F.S.

In the instant case, as a threshold issue, the Commission must determine whether the Legislature has granted it the express or implied power, duty, or jurisdiction to do whatever is necessary to ensure that this Utility is operated, and will continue to operate, in the public interest. Sprint-Florida, Inc. v. Jaber, 885 So. 2d 286, 290 (Fla. 2004) (citing Florida Bridge Co. v. Bevis, 363 So.2d 799, 802 (Fla.1978)) ("At the threshold, we must establish the grant of legislative authority to act since the Commission derives its power solely from the Legislature."); see also United Tel. Co. of Florida v. Pub. Serv. Com'n, 496 So. 2d 116, 118 (Fla. 1986). As evidenced by the orders contained in Hearing Exhibit 110 and other orders related to this Utility, the Commission has previously resolved the question whether it had the express or implied power to proactively regulate this Utility in the public interest.

Conclusion

OPC asserts that the Commission should exercise its express and implied powers to implement proactive measures to ensure that WMSI will be prudently financially managed in the best interest of the Utility and the customers. OPC witness Schultz presents a number of recommended actions for this Commission to consider implementing. (TR 148-153).

Recommended actions

Based on the evidence presented at hearing, the Commission should enter a finding that the actions of WMSI and its President have adversely affected not only the Utility's ability to meet its financial and operating responsibilities, but also the customers as well. The Commission should enter a finding of managerial imprudence, or in the alternative, managerial negligence. It should maintain the escrowing of funds for debt service and pro forma plant, require the escrowing of service availability charges, and implement strict managerial oversight of WMSI in order to provide assurances to current and future creditors that they will be timely repaid. To prevent further harm, the Commission should order WMSI to discontinue advancing any additional Utility monies for non-utility purposes (i.e., no advances to the president, his associated companies, his employees, associates, etc.) without express Commission approval. The Commission should further require regular reports and periodic audits of the books to ensure that this requirement is being met. The Commission should also establish a method whereby the Utility president and associated companies can start repaying the money previously advanced to them in order to restore the financial stability of this Utility, or, in the alternative, impute an interest component for the \$1.2 million advanced to the President and his companies. The Commission should order that the assets of Brown Management Group be re-titled in the name of the Utility and remain titled in the name of the Utility absent a Commission order. Income from those assets should remain in WMSI to be used for utility-purposes. The Commission should implement any additional requirements it deems necessary to ensure that WMSI operates in the best interest of the Utility and its customers.

Issue 6: Should an adjustment be made to rate case expense previously authorized by Order No. PSC-11-0010-SC-WU, currently being amortized in customer rates, and if so, in what amount?

Yes. The Commission should remove from customer rates the unpaid portion of rate case expense previously approved in the last rate case. For any amount allowed to remain in rates, the Commission should require that the previously approved rate case expense be paid and the Utility submit quarterly proof of payments.

ARUGUMENT:

This issue presents a case of first impression. To OPC's knowledge, no other regulated utility has done what WMSI has done regarding previously approved rate case expense. The evidence presented at the hearing established the following: WMSI entered into an agreement with Radey, Thomas, Yon, and Clark (Radey firm) for legal representation in the last rate case, after briefly engaging Rose, Sundstrom, & Bently, LLP. (EX 107, BSP 01, 07-10). The agreement with the Radey firm spelled out the payment terms and expectations to which the Utility agreed. (EX 107, BSP 18-19). Prior to the end of the last case, WMSI stopped making payments to the Radey firm as required under that agreement. (EX 107, BSP 25). In the prior rate case, the Commission declined to allow a rate increase for the pro forma plant requested because the Utility failed to provide adequate cost support.¹¹ Final Order at 14, 15. WMSI resumed making payments to the Radey firm only after OPC served discovery seeking proof of payment for prior rate case expense. (EX 107, BSP 25, 29-31). After OPC served its discovery, WMSI and the Radey firm exchanged letters regarding the Utility's legal bill. (EX 107, BSP 36, 37-38; TR 237). This Utility's response to the law firm indicated that it disputed its bill and sought to negotiate a reasonable settlement (i.e., a lower amount) because the law firm committed "costly mistakes." (EX107, BSP 37-38; TR 237). The Utility President testified there is only a verbal agreement to repay the Radey firm in full. (TR 428-429; EX 15, OPC Brown Depo p. 100-101). Although WMSI's ratepayers are paying for the Utility's prior rate case expense in their current rates, there is no subsequent written agreement or guarantee that WMSI will continue making payments to the Radey law firm after this contested proceeding concludes. (TR 237-238; EX 54; EX 15, OPC's Gene Brown Deposition p. 100-101).

¹¹ The lack of adequate cost support was brought to the Utility's attention during a deposition of Mr. Brown. Final Order at 14, 15. The adequate "Proof of Cost" requirement for pro forma plant was clearly articulated to the Utility in the engagement letter from previously engaged the Rose, Sundstrom, & Bently firm. (Ex. 107, BSP 08). In the current rate case, the Utility provided the Commission with adequate cost support for the requested pro forma plant.

Further, as demonstrated by evidence presented for Issue 10, WMSI has a history of advancing utility money that should be used for utility purposes for non-utility purposes. If the Commission does not implement some proactive measures to ensure that no further utility money is advanced for non-utility purposes, then there is no guarantee that the remaining amount of authorized rate case expense to be collected from ratepayers for the next two year will be used for the purpose for which it was intended in accordance with Sections 367.081(7) and 367.0816, F.S.

For these reasons, OPC recommends that the Commission remove from rates the remaining balance of unpaid legal fees previously approved by the Commission effective the date of the administrative hearing.¹² Further, in light of the Utility's slow payment of rate case expense to other consultants from the last rate case (EX 107, BSP 15, Exhibit "A") and the untimely and missed payments to Ms. Allen's firm for testimony in this rate case (TR 80; EX 108, BSP 20-21), the Commission should consider removing all or some the previously approved rate case expense for the other consultants which at the time of the contested hearing still remains outstanding. As of the date of the hearing, the remaining unpaid balance to the Radey law firm is \$116,423 (\$150,423-\$34,000) and the remaining unpaid balance to Mr. Seidman's firm is \$11,154 (\$65,428-\$54,204).¹³ It is only fair that the customers not be required to pay rate case expense to the Utility when there is a history of non-payment and no assurance that the Utility will continue making payments following the conclusion of this contested proceeding. As to the question of whether the Commission has authority to revisit a prior final order approving rate case expense without violating the doctrine of administrative finality, the answer is yes. See Peoples Gas Systems, Inc. v. Mason, 187 So.2d 335, 339 (Fla.1966), and Austin Tupler Trucking, Inc. v. Hawkins, 377 So.2d 679 (Fla.1979). These two cases recognize an exception to the doctrine of administrative finality where there is a demonstrated public interest. The Court in Peoples Gas warned against being too doctrinaire in the application of administrative finality. Peoples Gas at 339; see also McCaw Communications of Florida, Inc. v. Clark, 679 So. 2d 1177, 1179 (Fla. 1996). In Austin Tupler, the Court noted that "Florida

¹² The Utility has been on notice since the date of OPC's protest of this issue that these funds might be subject to refund. Thus, the issue of retroactive ratemaking to remove these rates does not attach.

¹³ Amounts approved for Radey (\$99,783+\$50,640) and Seidman in the Final Order less amount paid through start of the hearing (Final Order at 34; Ex. 59, BSP 65, BSP 35, and BSP 42).

decisions recognize that an administrative agency may alter a final decision under extraordinary circumstances.” Austin Tupler at 801 (citations omitted).

Extraordinary circumstances include “a substantial change in circumstances, or fraud, surprise, mistake, or inadvertence. . . .” Austin Tupler at 801 (quoting Annot., 73 A.L.R.2d 939, 951-52 (1960)). The Court noted that the Commission was granted broad power under Section 366.05(1), F.S., “to exercise all judicial powers, issue all writs and do all things, necessary or convenient to the full and complete exercise of its jurisdiction and the enforcement of its orders and requirements.” Id.¹⁴ As such, the Commission has the authority to alter previously entered final rate orders under extraordinary circumstances. Id. at 801.

It is undisputed that the Utility stopped making payments to its law firm during the last rate case and then attempted to negotiate a legal bill less than the amount authorized by Order No. PSC-11-0010-SC-WU. The circumstances alleged by OPC are truly extraordinary. The stopping of payments and then attempting to negotiate and lower its legal bill constitute extraordinary circumstances (or a substantial change in circumstances) which abrogates administrative finality and opens the door for the Commission to revisit the amount of rate case expense it previously authorized and remove all or a portion of the previously authorized rate case expense remaining in rates. Further, if any portion of previously authorized rate case expense remains in rates, the Commission should require the filing of quarterly reports in the docket file, showing the amounts being paid and the remaining balance, in order to verify that the Utility is complying with its order.

Issue 7: What is the appropriate amount of additional rate case expense associated with the protest of Order No. PSC-12-0435-PAA-WU?

*The Commission has discretion to remove all unreasonable and unsupported rate case expense. As recommended by OPC witness Vandiver, the remainder of rate case expense should be apportioned equally between the 12 issues. This methodology is reasonable and consistent with the lodestar method used by the Commission in Order No. PSC-94-0738-FOF-WU, issued June 15, 1994. As a matter of good regulatory policy, a utility should not be allowed carte blanche to cross protest a PAA order and raise new and costly issues simply because another party protested the PAA order. For any rate case expense approved, the Commission has the discretion to

¹⁴ This language corresponds to Section 367.121(1)(g), F.S., “To exercise all judicial powers, issue all writs, and do all things necessary or convenient to the full and complete exercise of its jurisdiction and the enforcement of its orders and requirements.”

require quarterly reports during the amortization period showing that rate case expense payments are being made.*

ARGUMENT:

In its cross-protest petition, WMSI requested “additional rate case expense necessitated by OPC’s Protest.”¹⁵ (TR 241, 247). OPC protested four issues and the Utility cross-protested eight issues, six of which total less than three percent of the revenue requirement included in the PAA Order. (TR 241, 247). OPC and WMSI both protested diametrically different aspects of the service availability charge approved by the PAA Order. Issue 14 condenses OPC’s and WMSI’s protests into one issue. As such, there are 12 distinct contested issues to be adjudicated.

In response to Staff’s Fifth Set of Interrogatories No. 21, the Utility provided a schedule for rate case expense incurred subsequent to OPC’s protest (hereinafter, post-PAA protest rate case expense). (EX 61). This schedule contained actual and estimate to complete. The Utility requested \$93,922.88 for legal; \$16,816.50 (Law, Redd, Crona, CPAs); \$3,036.00 (Leonard & Withers, CPAs) for accounting; \$18,690.00 (Guastella Associates, LLC) to bolster Ms. Allen’s testimony; \$600 (postage); \$2,500.00 (FedEx/Legally Copied/Copies); and \$1,000 (St. George Inn). (EX 61). The Utility also provided some post-PAA protest rate case expense invoices in response to OPC discovery. (EX 71). This response also included billing invoices from Law, Redd, Crona, CPAs for Ms. Allen; from Guastella Associates, LLC for Mr. Guastella; and from Leonard & Withers, CPAs for some, but not all, of the services rendered for post-PAA protest rate case expense. EX 71. The Utility provided billing invoices from its law firm. (EX 61).

In response to OPC Request for Production Nos. 29(d), 51, and 52, the Utility provided the canceled checks showing proof of payment for rate case expense. (EX 108). The Utility also provided copies of the PAA and post-PAA engagement letters for Law, Redd, Crona, CPAs (for Ms. Allen’s testimony) and Guastella Associates, LLC (for Mr. Guastella’s testimony). (EX 109). The Utility indicated there is no written agreement with its law firm for legal representation. (TR 437). The engagement letter with Law, Redd, Crona, CPAs for Ms. Allen’s participation in the rate case estimates a fee of \$45,000 through a hearing and specifies a monthly payment plan of \$3,375 for 12 months. (EX 107). As Ms. Allen testified, the Utility has not made timely payments to her accounting firm. (TR 80). According to discovery, the

¹⁵ Docket No. I10200-WU, In re: Application for increase in water rates in Franklin County by Water Management Services, Inc., Cross-petition for a formal administrative hearing, pg. 3.

Utility made the September and December payments but missed the October and November payments. (EX 108, BSP 20-21). It is unknown whether the Utility made its January 2013 payment to Ms. Allen's firm.

Legal standard for determining reasonable rate case expense

It is well established that it is the Utility's burden to justify all its requested rate case expense.¹⁶ The Commission has broad discretion with respect to the allowance and disallowance of rate case expense. It would constitute an abuse of discretion to automatically award rate case expense without reference to the prudence of the costs incurred in the rate case proceedings.¹⁷ Rate case expense may be collected from customers only after the Commission makes a determination that the rate case expense costs incurred were reasonable, and any unreasonable rate case expense costs must be disallowed. Section 367.081(7), F.S.¹⁸ In those cases where rate case expense has not been supported by detailed documentation, it is Commission practice to disallow some or all unsupported amounts.¹⁹

Furthermore, in a post-PAA protest proceeding, all rate case expense costs for which the utility is seeking recovery should directly relate to one of the issues or areas of the PAA Order which were protested. It should be the burden of a utility to establish that rate case expense costs relate to one of the contested issues.²⁰ If rate case expense costs relates to non-protested issues (e.g., if a cost relates to the non-protested escrow account and amount approved by the PAA Order), it should be disallowed as unreasonable and that cost should be borne by the utility as a cost of doing business.

All consultants, including the law firm, should provide enough detail in their billing invoices so the Commission can determine whether the amount of time expended was reasonable. In federal court, when reviewing a motion for attorneys' fees and costs, the magistrate judge reviews the requested legal expense for reasonableness using the lodestar

¹⁶ See Florida Power Corp. v. Cresse, 413 So. 2d 1187, 1191 (Fla. 1982)

¹⁷ See Meadowbrook Util. Sys., Inc. v. FPSC, 518 So. 2d 326, 327 (Fla. 1st DCA 1987), rev. den., 529 So. 2d 694 (Fla. 1988)

¹⁸ While the statute references a rate case expense rule, to date, the Commission has not promulgated a rule for determining the reasonable level of rate case expense which a utility may recover.

¹⁹ Order No. PSC-10-0400-PAA-WS, issued June 18, 2010, in Docket No. 090392-WS, In re: Application for increase in water and wastewater rates in Lake County by Utilities Inc. of Pennbrooke, p. 22.

²⁰ See Florida Power Corp. v. Cresse, 413 So. 2d 1187, 1191 (Fla. 1982)

method.²¹ Four Green Fields Holdings, LLC v. Four Green Fields, an Irish Pub, Inc., 8:10-CV-2800-T-27EAJ, 2011 WL 5360143 (M.D. Fla. 2011) report and recommendation adopted sub nom. Four Green Fields Holdings, LLC v. Four Green Fields, 8:10-CV-2800-T-27EAJ, 2011 WL 5360123 (M.D. Fla. 2011).

“A reduction in fees is warranted for block billing, which refers to the practice of including multiple tasks in a single time entry.” Id. at 3.²² (emphasis added). “Either an hour-by-hour analysis of the requested hours or an across-the-board reduction can be used if necessary to reduce the number of hours to those deemed reasonable.” Id.²³ If this is the appropriate methodology for use in federal court for reviewing the reasonableness of attorneys’ fees and costs, then it is appropriate for the Commission to use in its review of legal and consulting fees. In this case, the invoices provided indicate that the law firm and Mr. Guastella use a “block billing” method. (EX 61; EX 71). Guastella’s one-page invoice provides no dates or times when work was performed, nor any detailed description for the 32.50 hours he billed. A review of the law firm’s invoices indicate there are many instances where the block billing description includes rate case expense for non-protested issues.²⁴ (EX 61) When block billing is used, OPC recommends at least a 10% across the board reduction which is consistent with one of the two methods adopted by the Court in Four Green Fields.

Removing all unreasonable, non-protest related, and unsupported rate case expense, and then apportioning the remaining rate case expense pro rata among the issues is consistent with the Commission’s prior decision in Order No. PSC-94-0738-FOF-WU, issued June 15, 1994.²⁵ The Commission at length addressed a utility’s entitlement to rate case expense for a partially successful appeal of a Commission decision to the First District Court of Appeal. Id. That utility

²¹ Four Green Fields at 2: “In evaluating Plaintiff’s request for attorney’s fees, the court must calculate the lodestar, which is the number of reasonable hours spent working on the case multiplied by a reasonable hourly rate. Loranger v. Stierheim, 10 F.3d 776, 781 (11th Cir.1994) (per curiam). The court must also determine whether an adjustment to the lodestar is necessary based on the results obtained. ACLU of Ga. v. Barnes, 168 F.3d 423, 427 (11th Cir.1999). The fee applicant bears the burden of establishing entitlement to an award and documenting appropriate hours and hourly rates. Hensley v. Eckerhart, 461 U.S. 424, 437, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983).”

²² Citing Kearney v. Auto-Owners Ins. Co., 713 F.Supp.2d 1369,1377–78 (M.D.Fla.2010); see also Bujanowski v. Koontes, No. 8:08-CV-0390-T-33EAJ, 2009 WL 1564263, at *2 (M.D.Fla. Feb.2, 2009).

²³ Citing Bivins v. Wrap It Up, Inc., 548 F.3d 1348, 1351–52 (11th Cir.2008) (per curiam).

²⁴ Examples of mixed blocked billing -- Ex.61, Invoice for 9/13/12, shows billing of 3.70 hours for the PAA protest items (reasonable RCE) and hours researching implementing PAA rates (non-relevant to any protested issue). Ex.61, Invoice for 10/29/12, shows billing for 2.80 hours associated with the meritless motion to dismiss (unreasonable RCE) and time for matters relevant to the post-PAA rate case protest (reasonable RCE).

²⁵ Order No. PSC-94-0738-FOF-WU, issued June 15, 1994, in Docket No. 900386-WU, In re: Application for a rate increase in Marion County by Sunshine Utilities of Central Florida, Inc.

raised five issues on appeal and succeeded on three, and the Commission awarded rate case expense accordingly, stating:

[W]e do not believe that a utility has a right to recover all rate case expenses associated with every appeal... [A]ll such expenses are not inherently reasonable. Some appeals are a prudent cost of doing business and some are not. In addition, and perhaps most importantly, if the Commission took the position that any appeal taken by a utility is inherently reasonable, then utilities would be encouraged to appeal all orders as a matter of course to the ultimate detriment of the ratepayers who would be paying the bill for their lack of discrimination as to issues that truly should be appealed.

Order No. 94-738-FOF-WU, at 8. This apportionment precedent is further supported by the Four Green Fields case, where the court makes adjustment based on the results obtained.²⁶ Supra at 3. In this case, a cross-protest is analogous to an appeal. Like an appeal, a cross-protest is discretionary. The Commission should follow the precedent established by this Order. This methodology balances the rights of the Utility with that of the customers. Once all the adjustments (being recommended below) to remove unsupported or unreasonable or non-protest related costs, the Commission should apportion the remaining amount of rate case expense among the 12 issues similar to the methodology recommended by OPC witness Vandiver.²⁷ (TR 247-250).

Specific rate case expense adjustments

No invoices were provided for “postage, FedEx/Legally Copied/Copies, or St. George Inn” to support those specific rate case expense amounts. There is no support to justify these expenses or determine whether these expenses are reasonable or whether they were directly related to an issue in the post-PAA protest. Thus, consistent with Commission practice, all or some of the inadequately supported post-PAA rate case expense should be disallowed.

Consistent with Commission practice for inadequately supported rate case expense, OPC recommends the entire amount of rate case expense associated with Leonard & Withers, CPA be

²⁶ Four Green Fields, supra “The court must also determine whether an adjustment to the lodestar is necessary based on the results obtained. ACLU of Ga. v. Barnes, 168 F.3d 423, 427 (11th Cir.1999).”

²⁷ In this case, the Utility is defending against four issues and raised an additional eight issues, thus the remaining amount rate case expense should be divided by 12. The Utility should receive one-twelfth of the rate case expense for each of the issues protested by OPC and one-twelfth for each of its successfully cross-protested issues. The actual total amount of rate case expense approved by the Commission would be directly tied to how many of the issues the Utility succeeded in protesting.

disallowed as unreasonable and not adequately supported. Ms. Withers is the Utility's long-time CPA. She did not participate in the post-PAA hearing or provide testimony, and there was no need for the Utility to incur this expense.

Mr. Guastella's rate case expense was also unreasonably incurred. His testimony concerning Issues 1, 10, and 10(a) was duplicative of other witnesses' testimony and merely designed to bolster their testimony. Ms. Allen provided direct and rebuttal testimony for Issues 1 and 10(a). When asked why his testimony was necessary to bolster Ms. Allen's testimony, WMSI's own response is telling:

Commission staff and the Commission did not accept the expert accounting testimony of Jeanne Allen with regard to the protested items, and the utility has no reason to believe that her testimony will be any more persuasive at the final hearing than it was prior to the PAA Order. Accordingly, the utility decided that it was prudent to obtain the services of John Guastella, who has more expertise and unquestioned credibility regarding the protested items, and other rate setting questions.

(EX 55, Utility's response to OPC discovery.) It is unreasonable for customers to incur rate expense for two witnesses to testify to the same Issues 1 and 10(a), especially after the Utility implied it did not believe Ms. Allen could provide competent expert testimony on the protested issues to which Mr. Guastella also testified.²⁸ His direct and rebuttal testimony on Issue 10 added nothing to the discussion which was more than adequately addressed by Mr. Brown's rebuttal testimony.

The entire amount of Ms. Allen's post-PAA protest rate case expense may not be adequately supported. The undated schedule entitled "Rate Case Expense Estimate for Formal Administrative Hearing" shows total projected costs of \$15,910, and does not match the \$16,816.50 being requested. (EX61). There is no way to verify whether all of her expenses were reasonably incurred. If the Commission determines there is no detailed support for all of her post-PAA protest rate case expense, the Commission is within its discretion to disallow some or all of Ms. Allen's firm's rate case expense. As such, OPC would recommend disallowing at least 10% of Ms. Allen's post-PAA expense.

Legal rate case expense adjustments

²⁸ Beyond being unreasonable, his testimony was exceedingly (and excessively) expensive: \$18,690 for 16 pages of direct and rebuttal testimony amounts to \$1,168 per page (not including his 24 page resume).

With respect to its legal fees, WMSI provided no justification why its law firm's hourly rate increased from \$340 per hour to \$350 per hour or why that increase during the midst of a contested proceeding is reasonable and should be borne by the ratepayers. Thus, OPC's recommended rate case expense will use the legal hourly rate of \$340 per hour in all calculations.

During the course of this proceeding, WMSI incurred legal expense related to three motions that were subsequently denied.²⁹ As such, OPC recommends disallowance of these expenses as being unreasonably incurred. Denying all rate case expense associated with these motions is consistent with the Commission's practice of removing expenses related to a utility's motion subsequently denied.³⁰ (TR 244-245). Hearing exhibit No. 61 contains the billing invoices and indicates on what dates the legal expense was incurred for these motions. Because of the extensive use of "block billing," OPC estimated 8.2 hours were billed.³¹ Thus, \$2,788 (8.2 x \$340) should be removed.

The Utility also incurred legal expense objecting to OPC's discovery and responding to OPC's two motions to compel. The Commission later granted in part OPC's motion to compel by Order No. PSC 12-0641-PCO-WU, issued December 4, 2012. OPC succeeded in compelling 34 of 60 discovery responses to which the Utility objected. (TR 243-244.) Because OPC had a 57% success rate, the Utility should only be allowed a pro rata amount of 43% of the rate case expense associated with these objections. (TR 244.) It is unreasonable for the customers to bear the full cost of rate case expense where the Utility was only partially successful in opposing OPC's motions. Similarly, OPC recommends a partial disallowance of any rate case expense associated with the Utility's motion for temporary protective order which was granted in part and denied in part by Order No. PSC-13-0033-PCO-WU, issued January 15, 2013. Hearing exhibit No. 61 contains the billing invoices and indicates on what dates the legal expense was incurred

²⁹ The Utility's October 30, 2012, "Motion to dismiss OPC's protest of PAA order" subsequently and summarily denied by Order No. PSC-12-0620-PCO-WU, issued November 19, 2012. The Utility's January 7, 2013, "Motion for order prohibiting interference with financing" subsequently and summarily denied by Order No. PSC-13-0045-PCO-WU, issued January 24, 2013. The Utility's motion for protective order was denied by Order No. PSC-13-0032-PCO-WU, issued January 15, 2013.

³⁰ Order No. PSC-12-0102-FOF-WS, issued March 5, 2012, in Docket No. 100330-WS, In re: Application for increase in water/wastewater rates in Alachua, Brevard, DeSoto, Hardee, Highlands, Lake, Lec, Marion, Orange, Palm Beach, Pasco, Polk, Putnam, Seminole, Sumter, Volusia, and Washington Counties by Aqua Utilities Florida, Inc., p. 129.

³¹ OPC estimate that 5.2 hours was spent drafting the first motion, reviewing OPC's response, and the Commission order denying the motion, followed by 2.0 hours for drafting the second motion, and 1.0 drafting the protective order and reviewing OPC's response, for a total of 8.2 hours.

for opposing OPC's motion to compel and the Utility's motion for temporary protective order. Because of the extensive use of "block billing," OPC estimates that 18.2 hours were billed. Since the Utility was only 43% successful, OPC recommends allowing 7.90 hours to the actual billed hours. Thus, \$3,502 (10.30 x \$340) should be removed.

In addition, legal expense associated with issues not protested by either party is should be removed as unreasonably incurred. Any legal expenses not directly related to the protested issues of the parties should be borne by the Utility as a cost of doing business. According to the invoices submitted by WMSI, the law firm billed for expenses related to filing a motion to seek disbursements from the escrow account to purchase land, travel to Commission conferences unrelated to the protested issues, administrative expenses related to implementing PAA rates, and other expenses related to non-protested issues. Because of the extensive use of "block billing," OPC estimates the total number of hours spent on non-protested issues to be 15.30 hours. Thus, \$5,202 (15.30 x \$340) should be removed.

Through January 7, 2013, a total of 41.7 hours of legal expense was unreasonably incurred. Deducting that amount from the 131.20 hours billed by the law firm leaves 89.50 hours actually billed. The next question is whether the billing invoices are detailed enough for the Commission to adequately review for reasonableness. OPC submits that the use of "block billing" does not permit adequate review of the time spent on any particular task described in the invoices. Thus, consistent with the discussion below related to "block billing," OPC believes a 10% reduction in actual billed hours is reasonable. Thus, 89.50 hours should be reduced to 80.60 hours, plus 7.90 hours referenced above. Total allowable actual billable hours prior to apportionment = 88.50 hours (80.60 + 7.90) at \$340 per hours.

OPC also recommends an adjustment to the "estimate to complete" rate case expense. Thus, the estimated 122.00 hours to complete the rate case should be reduced to 110.00 hours, and the recommended hourly charge is \$340 per hour. The total number of legal billable hours (actual and estimated) for apportionment = 198.5 (88.50+110.00).

Amount of rate case expense before apportionment

The Utility requested a total of \$136,565.38 in post-PAA protest rate case expense. OPC recommends removing \$37,587.06 as being unsupported or unreasonable, leaving \$98,978.32 to

be apportioned pro rata among the 12 contested issues, or \$8,248.19 per issue. The workpapers containing OPC's recommended reductions are attached as an exhibit to this brief.

Rate Expense Reporting Requirements

As previously discussed, the Utility has a history of non-payment and slow payment of rate case expense owed to its consultants and attorneys. Thus, the Commission should require WMSI to make quarterly reports to the Commission to ensure that the Utility is paying its vendors from the rate case expense collected from its customers.

Issue 9: How should the net gain on sale of land and other assets be treated?

The Commission should reinstate and continue the amortization of the remaining balance of the \$242,000 net gain on sale land and other assets as determined by Order No. PSC-11-0010-SC-WU to be amortized to the benefit of the ratepayers. Reinstatement of the gain on sale amortization and combining the remaining balance with the gain on sale approved by the PAA Order would materially reduce customer rates. As shown in HWS-36, OPC calculates the remaining amount of this gain on sale to be amortized to be \$153,292.

ARGUMENT:

Final Order PSC-11-0010-SC-WU

The net gain on sale at issue in this case relates to the \$242,040 net gain on sale of land and other assets determined by the Commission in Order No. PSC-11-0010-SC-WU, issued January 3, 2011, in Docket No. 100104-WU. That previously approved amortization amount was omitted from the PAA Order in the instant case. In the last rate case, WMSI provided the Commission an exhibit showing gains and losses on sale which formed the basis for the Commission's finding of a net gain on sale. (EX 73, BSP 469).³² After the full administrative hearing, the Commission calculated the total net gain on sale of these assets to be \$242,040, and ordered it to be amortized to the benefit of the ratepayers over a five-year period, for an annual amortization amount of \$48,408. Order No. PSC-11-0010-SC-WU at 38. The Utility appealed this and other issues to the First District Court of Appeal, and the Commission's decision was affirmed.

³² Because of repeated copying, Ex. 73, BSP 469, it is nearly unreadable. OPC is attaching a more legible copy of the Utility's response to Interrogatory No. 86 for convenience of the reader.

Commission Precedent

The Final Order constitutes precedent which the Commission should follow. To OPC's knowledge, there are no cases where the Commission ordered the amortization of gain on sale for five years to the benefit of the ratepayers and subsequently let that benefit expire after less than two years of amortization. Therefore, OPC recommends the amortization of gain on sale of land and other assets be re-instated and added to the gain on sale calculated by the PAA Order for the benefit of WMSI's customers.

PAA Order No. PSC-12-0435-PAA-WU

OPC also takes issue with the PAA Order's calculation of the gain on sale for several reasons. First, the PAA Order failed to address or reference the Final Order and failed to follow the Commission's practice of articulating when it was departing from precedent in the discussion of the issue.³³ Second, the PAA Order's discussion of net gain on sale of land and other assets inexplicably failed to address, reference, or distinguish the prior Final Order. It failed to mention the fact the Commission ordered the \$242,040 gain on sale be amortized to the benefit of the customers. Third, there is no explanation why the customers should not continue to receive the benefit of previously ordered amortization.

Instead of addressing the previously ordered gain on sale, the PAA Order simply states, "We have not included those assets that would otherwise be fully amortized within a year of when the rates would go into effect." PAA Order at 28. This is a conclusory statement without any citation to any prior Commission orders or clarifying policy reason supporting this treatment. As if no previously ordered gain on sale was still in effect, the footnote at the end of this conclusory statement describes three assets not to be included in the gain on sale calculation. Footnote number 58 in the PAA Order states:

The following transactions fall into this category and were not included in staff's calculation: (1) disposition of a 2005 dump truck on 2/16/2007; (2) disposition of a 2001 truck on 8/14/2007; and, (3) the disposition of Commonwealth Office Park lots 5 & 6 on 11/1/2007."

³³ Order No. PSC-12-0400-FOF-EI, issued August 3, 2012, in Docket No. 110138-EI, In Re: Petition for increase in rates by Gulf Power Company. In denying Gulf's motion for reconsideration, the Commission stated: ([T]he principal of *stare decisis* should be followed by us in that cases with similar facts should be decided similarly, absent an articulated policy reason for departing from our prior practice.").

Order No. PSC-12-0435-PAA-WU at 28. The footnote fails to mention the 2005 dump truck gain on sale on was \$5,125.42; the 2001 truck gain on sale was \$12,542.90; and the two Commonwealth Office Park lots (Commonwealth lots) gain on sale was \$213,879.39. (EX 73, BSP 469). Omitting reference to the total calculated gain on sale in the prior Final Order and the individual gain on sale amounts from this footnote appears to be an inadvertent oversight because the omission represents a material rate increase to the customers.

OPC agrees with the Commission's practice of amortizing gains from the sale of specific utility assets over a period of five years to the benefit of the ratepayers and the authority cited in the PAA Order.³⁴ That is what the Commission did in the prior rate case, and the Commission calculated a net gain on sale of \$242,040 to be amortized over a five-year period. However, nothing in the order cited in the PAA Order contemplated resetting the gain on sale amortization within the five-year amortization period in a subsequent rate case. Those orders simply did not address the issue being protested in this rate case.

Recommendation

To balance the interests and expectations of the customers and a utility alike regarding the disposition of the amortization of a gain on sale, when a utility subsequently files a new rate case within the five-year amortization period, the Commission should take the remaining balance of the previously approved gain on sale amortization, add it to any gain or loss on sale calculated in the subsequent rate case, and amortize that total amount over five years or over any period of time which the Commission believes is in the best interest of the utility and its customers. That would ensure that customers receive the full benefit of the previously ordered gain on sale. OPC witness Schultz calculated the remaining balance on the gain on sale to be approximately \$153,292. (TR 157)

³⁴ See Order Nos. PSC-07-0205-PAA-WS, issued March 6, 2007, in Docket No. 060258-WS, In re: Application for increase in water and wastewater rates in Seminole County by Sanlando Utilities Corp. (PAA Order approving a 5-year amortization of an \$18,405 gain on sale of land to the benefit of the ratepayers); PSC-04-0947-PAA-SU, issued September 28, 2004, in Docket No. 040733-SU, In re: Disposition of gain on sale of land held for future use in Marion County by BFF Corp. (Settlement approving a gain on sale); PSC-02-1159-PAA-GU, issued August 23, 2002, in Docket No. 020521-GU, In re: Petition for approval to amortize gain on sale of property over five-year period by Florida Public Utilities Company (PAA Order approving a 5-year gain on sale); and PSC-98-0451-FOF-EI, issued March 30, 1998, in Docket No. 970537-EI, In re: 1997 depreciation study by Florida Public Utilities Company, Marianna Division (Final Order approving a 4-year and 5-year gain on sale).

By not carrying forward the remaining amortization of the gain on sale, the omission increased customer rates by nearly \$48,000 per year or a 3.7 % rate increase. Reinstating the Commission Ordered gain on sale and adding it to the gain on sale calculated by the PAA Order would benefit the customers tremendously and pay for nearly all the post-PAA protest rate case expense after unreasonable rate case expense is deducted (addressed under Issue 7).

How was the prior gain on sale calculated?

OPC provides this explanation to counter the Utility's specious claim that the two Commonwealth lots were never in rate base or utility plant. (TR 327). In the last rate case, WMSI provided the Commission a response to Staff Interrogatory No. 86 showing gains and losses on sale which formed the basis for the Commission's finding of a \$242,040 net gain on sale. (EX 73, BSP 468). The largest portion of that net gain on sale related to the sale of the two Commonwealth lots in Tallahassee which the Utility purchased in 2006 for \$236,000 (TR 327; EX100). The Utility's response to No. 86 also included information about the sale of other assets including the two trucks previously described.

The purchase of the two Commonwealth lots was recorded on WMSI's general ledger as Utility land Account No. 303, Land and Land Rights, (EX99 BSP 1-6). In its 2006 Annual Report to the Commission, WMSI reported the purchase of the Commonwealth lots to the Commission as being an addition to Account No. 303, Land and Land Rights (EX 76, BSP 563-566). The Utility subsequently spent approximately \$25,000 making improvements to the property. (EX 99; BSP 1-14; EX 97, POD No. 57). Then on November 1, 2007, the Utility sold the two lots to BMG for \$480,000 (which represented a significant gain on the sale of these lots), and on the same day BMG recorded a mortgage on the property in the amount of \$360,000. (EX 100, BSP 03-04). The net check to the Utility at closing was \$229,000, which is more than the \$213,879.39 gain on sale which the Utility reported to the Commission in the last rate case. (TR 327; EX 73, BSP 468). Despite WMSI's assertions that these lots were never in rate base or utility plant in service (TR 327), the Utility's own books and records plainly demonstrate otherwise. If the Utility had intended these lots to be non-utility property when they were originally purchased, WMSI could have recorded the purchase of the lots in Account 121.10, Non-Utility Property-Land, as it did when it reacquired the two lots in 2010 along with the

remaining balance of BMG's mortgage on the property.³⁵ (EX99, BSP 15, 18; EX100, BSP10). The evidence shows that WMSI recorded the purchase of the two lots as utility property which was purchased and improved with utility funds, thus the gain on sale was properly recorded and accounted for in the Commission's calculation of the gain on sale approved in the last rate case.

Issue 14: Should the Utility be authorized to revise certain service availability charges, and, if so, what are the appropriate charges?

Service availability charges (SAC) should be set at a combined amount of \$5,310 and subject to a true-up after the pro forma plant is completed. The entire SAC (or alternatively, the increase in SAC) should be escrowed so that those funds will be available for future capital improvements.

ARGUMENT:

The Commission's PAA Order No. PSC-12-0435-PAA-WU set the combined service availability charge at \$5,310, an increase of \$3,690. Utility witness Allen recommended a combined charge of \$10,004.47. (TR 55) Ms. Allen's calculation includes the total cost of the current net plant in rate base plus the pro forma plant, and then develops a charge to recover 75% of the plant costs from the remaining 408 customers. (TR 77 and EX 4, JA-3, Page 25 of 30). OPC witness Vandiver agrees with the methodology used in the PAA order and that the Utility's request is "excessive and highly speculative, with the potential to stunt future growth." (TR 252) WMSI agrees that the plant included in the service availability charge calculation is designed to serve existing and future customers; however, the Utility believes that if the requested service availability charges are not approved, a surcharge should be applied to the existing customers. (EX 60, BSP 80-81) This surcharge would completely disregard the fact that the current customers are paying for 100% of the current and pro forma plant as it is included in rate base at 100%. Depreciation expense is included on this plant as well as a return based on the overall cost of capital.

OPC witness Vandiver further testified that the PAA Order allowed rates to be designed to include the cost of the pro forma plant and that the increase related to that plant should be escrowed subject to true-up when the plant is complete. (TR 253) However, the PAA Order did

³⁵ As of October 15, 2010, the Utility is legally obligated to pay the remaining balance of BMG's mortgage on the two lots which is \$318,274. (Ex.99, BSP 18; Ex.100, BSP 10). This "purchase" does not strengthen the financial position of the Utility. The Commission should address the prudence of this transaction under Issue 10 when it addresses the prudence of the Utility's decision to advance more than \$1.2 million dollars to its President and associated companies.

not set up any similar protection for the service availability charges. WMSI has been ordered by this Commission on past occasions to escrow the entire service availability charges collected to ensure their availability for capital improvements. (EX 110, BSP 08).³⁶ The Commission should follow this precedent and require the total approved service availability charges be escrowed pending the completion of the pro forma plant. In the alternative, the increase in these charges related to the pro forma plant should be escrowed (same as the increase in the service rates) and subject to a true up upon completion of the construction.

Because both the Utility and OPC protested this issue, this is a double issue as it relates to calculating reasonable rate case expense pursuant to Issue 7. The Utility should be allowed 1/12 of total remaining amount of rate case expense for defending against OPC's protest, but 1/12 should be disallowed for failing to increase the service availability charge.

REMAINING ISSUES ADDRESSED BELOW

Issue 1: **What is the appropriate working capital allowance?**

The working capital allowance should be zero as was determined by PAA Order PSC-120435-PAA-WU. Commission Rule 25-30.115, F.A.C. requires the balance sheet approach for Class A utilities and the Utility did not provide sufficient justification to use another method.

ARGUMENT:

The Commission's PAA Order No. PSC-12-0435-PAA-WU (PAA Order) set the working capital allowance at zero by using the balance sheet approach, as required by Rule 25-30.115, Florida Administrative Code (F.A.C.). Utility witness Allen recommends calculating the working capital allowance at 1/8 of Operation and Maintenance Expenses. (TR 56) WMSI agrees that it is a Class A utility. (EX 60, BSP 075). As OPC witness Schultz testified, WMSI has used debt and accounts payable to fund operations. Investors have not provided interest free debt; therefore, there are no investor loans that can be considered as a source of working capital. (TR 153) Witness Schultz also reviewed the Utility's Accounts Payable Aging Report (EX 42) to identify the numerous amounts owed to vendors that are over 90 days old.

Rule 25-30.115, F.A.C., addresses the appropriate working capital allowance for Class A utilities. The Utility has not provided sufficient evidence to show why the rule should not apply

³⁶ See Order No. PSC-94-1383-FOF-WU, issued November 14, 1994, in Docket No. 940109-WU, In re: Petition for interim and permanent rate increase in Franklin County by St. George Island Utility Company, Ltd.

in this case. There are no sources of capital used to fund a working capital allowance. Therefore, the working capital allowance should be zero, as calculated in the PAA order. The Utility failed to carry its burden of proof on its protested issue and overall rate case expense should be reduced by 1/12.

Issue 2: What is the appropriate rate base for the test year ended December 31, 2010?

Fall-out from other issues.

COST OF CAPITAL

Issue 3: What is the appropriate weighted average cost of capital including the proper components, amounts, and cost rates associated with the capital structure for the test year ended December 31, 2010?

The appropriate weighted average cost of capital should remain at 5.51%.

ARGUMENT:

The Commission's PAA Order No. PSC-12-0435-PAA-WU established the weighted average cost of capital at 5.51%. Utility witness Allen testified that the average cost of capital should be 5.96%. (EX 3, Page 7 of 8) The primary difference is the calculation of the effective interest rate on the Centennial Bank loan which closed in June 2012. (EX 63) Witness Allen included annual life insurance costs of \$39,258 and closing costs and points of \$6,893. (TR 57) OPC witness Schultz testified that it is not appropriate to include the cost of the life insurance in the effective interest rate. (TR 155). There was no justification for changing the cost of capital upward; however, there could be an argument for lowering it. (TR 155).

The Utility documented that the insurance cost is for two policies issued in February 2008. The first policy is for \$1 million and the second is for \$2 million. However, the primary beneficiary of the first policy is Marilyn B. Brown and the primary beneficiary of the second policy is Barbara S. Withers, Trustee. (EX 66, BSP 00216). Utility witness Brown provided evidence that the policies were assigned to Centennial Bank.³⁷ (EX 63, BSP 0131-0138).

OPC witness Schultz testified that he believes life insurance is typically required by a bank when it is uncomfortable with the financial position of a company. (TR 204) He has also testified extensively regarding the financial position of WMSI, as discussed in more detail in

³⁷ Neither policy assignment document appears to have the signatures of the insured or beneficiaries.

Issue 10. Further, the cost of the life insurance policy should not become a recurring O&M expense because the loan is due to be paid off by July 2014. (EX 63).

OPC asserts that these two policies were originally purchased for the benefit of the named beneficiaries four years before Mr. Brown was required to pledge these policies as additional collateral for the Centennial Bank loan. The life insurance collateral was likely required because the Utility was in poor financial condition and leveraged in debt directly related to the \$1.2 million advanced to the WMSI president and his companies.

Because the Utility has not fully supported that the life insurance is a necessary cost for the Utility or for the loan, the customers should not bear that additional cost. OPC recommends maintaining the PAA Order established the weighted average cost of capital. Since the Utility failed to carry its burden of proof on its protested issue, overall rate case expense should be reduced by 1/12.

Issue 4: Should any adjustments be made to contractual services – accounting expense?

Yes. Contractual Services – Accounting expense requested in the Utility's Minimum Filing Requirements (MFRs) should be reduced to \$3,667 as established by PAA Order No. PSC-12-0435-PAA-WU.

ARGUMENT:

The Commission's PAA Order No. PSC-12-0435-PAA-WU set the contractual services – accounting expense at \$3,667 for the test year. This amount was established based on a review of the Utility's accounting manual and the duties that are assigned to the accounting consultant by the Final Order issued in the last rate case.³⁸ The Final Order states that the only responsibility not covered by Utility employees is the preparation of the Federal Corporate Tax Return and the Florida Corporate Tax return.

The Utility protested this issue. The Utility requested expense is 260% higher than the amount included in the last rate case. The direct testimony provided by the Utility merely argued that the 5-year average used in the prior case should be updated to include the higher test year expense. (TR 57) However, there was no evidence presented to document whether there are additional duties required by the outside accountant or that the work performed has changed in

³⁸ ³⁸ See Order No. PSC-11-0010-SC-WU, issued January 3, 2011, in Docket No. 100104-WU, In re: Application for increase in water rates in Franklin County by Water Management Services, Inc., Page 26.

the last two years. In addition, OPC witness Schultz pointed out that as of the end of December 2011, the Utility had still not paid \$4,500 of the amount expensed in 2010 for these services. (TR 155; EX 42).

Without any evidence to support any changes in the work performed or any reason for the costs to increase, the Utility failed to meet its burden of proof and the test year expense should be \$3,667. Further, overall rate case expense should be reduced by 1/12 for this Utility issue.

Issue 5: Should any adjustments be made to transportation expense?

Yes. Transportation expense requested in the MFRs should be reduced by \$8,989 to \$31,721 as established by PAA Order No. PSC-12-0435-PAA-WU.

ARGUMENT:

The test year transportation expense includes \$5,738.88 for vehicle gas, repairs, and maintenance for the two administrative employees (Brown and Chase), as well as a \$3,177.12 pro forma adjustment to increase the expense for estimated mileage reimbursement. (EX 87) The Utility did not provide sufficient documentation to support the \$5,738.88 and the Commission staff audit report recommended that this amount be removed from the test year expense, as well as an additional \$73.³⁹ (EX 57)

The Utility's pro forma adjustment proposes to replace the test year expenses of \$5,738.88 with an estimated expense of \$8,916 for mileage reimbursement for the two employees. However, the Utility was unable to provide documentation from the 2010 test year to support this expense. Utility witness Allen argues that the Commission did not order that the Utility maintain these logs until 2011, so there was no expectation by the Utility that logs were a requirement for the 2010 test year. (TR 59) However, as the PAA order points out, Commission Order No. PSC-94-1383-FOF-WU, issued in Docket No. 940109-WU, specifically addressed mileage logs for field employees, and the two employees at issue in this case were on notice that they should also keep logs. When asked if she was familiar with the IRS rules related to transportation, Utility witness Allen, a certified public accountant, testified that she was not a tax expert. (TR 74). Utility witness Brown, however, testified that he believed the IRS has rules and regulations as it relates to the use of vehicles in a business, but that he never maintained a

³⁹ Page 15 of 26 of Hearing Exhibit 57 recommends a reduction of \$244, but Commission Order No. PSC-12-0435-PAA-WU notes that the Utility subsequently provided documentation for \$171, leaving a \$73 adjustment.

mileage log or transportation records for the IRS. (TR 357). A prudently managed Class A utility should require all its employees to maintain adequate transportation logs.

Further, the Utility is wholly situated in Franklin County and Utility witness Allen stated that the reimbursement was for Utility related travel, both in Tallahassee and to St. George Island. (TR 58) WMSI provided no documentation or evidence supporting why Mr. Brown, Ms. Chase, and the other administrative staff are not located nearer to the actual operations of the Utility. It is unclear how having two offices located many miles apart provide any benefit to the customers or the Utility. It does not appear to be in the best interest of the customers to continue paying this transportation expense.⁴⁰

The Utility has not supported its request for transportation expense. There is insufficient documentation showing the cost for the \$5,812 (\$5,739 + \$63) and there is no support showing benefit to WMSI for the pro forma increase of \$3,177 for the estimated mileage reimbursement.⁴¹ The Utility failed to carry its burden of proof on its protested issue and overall rate case expense should be reduced by 1/12.

Issue 8: Should any adjustments be made to miscellaneous expense?

Yes. Miscellaneous expense requested in the MFRs should be reduced to \$72,698 as established by PAA Order No. PSC-12-0435-PAA-WU.

ARGUMENT:

The Commission's PAA Order No. PSC-12-0435-PAA-WU set the miscellaneous expense at \$72,698 for the test year. The Utility disagrees with the adjustment of \$9,320 that capitalized invoices to plant accounts.⁴² Utility witness Allen testified that this adjustment included an adjustment of \$6,735 related to repairs for damage to a drive well and the remainder related to meters. (TR 59) She argued that the Utility received insurance proceeds to defray the expense as it was for the repair of damage sustained in a lightning strike and that the adjustment should be offset by this amount. (TR 60) The invoice supporting the repair cost (HR EX 70, BS

⁴⁰ While not an issue in the PAA protest, how is it a benefit to customers to pay the expenses for two offices, an administrative office located in Tallahassee (for the convenience of the owner) and an operations office on St. George Island?

⁴¹ The Utility requested \$8,916 as the total reimbursement, but offset this in the pro forma adjustment as it attempted to substitute this expense for the \$5,739 in unsupported expenses, leaving a net pro forma adjustment of \$3,177.

⁴² see page 7 of Commission Order No. PSC-12-0435-PAA-WU, issued August 22, 2012.

00304) shows a repair date of November 2010 and the Utility witness confirmed that this is the invoice supporting the item in her testimony. (TR 88) However, the insurance proceeds that witness Allen references indicates a lightning damage claim dated August 21, 2010. (HR EX 8, JA-7, Page 1 of 9) It is unclear from the testimony and exhibits how these items relate. The Utility has failed to make a clear relationship between these two items. The PAA adjustment should continue to be made as the Utility has not supported its argument, and rate case expense decreased as discussed under Issue 7.

Issue 10(a): Should any adjustment be made to the WMSI President's salary?

Yes. It should be reduced to offset the \$1.1 million of imprudently added interest on the DEP loan which directly resulted from the \$1.2 million imprudently advanced to the Utility president and his companies. To ensure customers do not pay that additional interest, the Commission should reduce the President's salary as discussed below, and if necessary, impute the added interest against revenues in order offset the imprudently added interest in a more timely manner.

ARGUMENT:

The Commission's PAA Order No. PSC-12-0435-PAA-WU recognized that the Utility incurred additional interest costs related to the refinancing of the DEP loan and reduced the President's salary to remove a portion of these costs from being borne by the ratepayers. The Utility protested the salary reduction. Utility witness Brown argues that his salary is fair and reasonable (TR 336) and when asked if he has compared his salary to other CEOs of Commission-regulated water utilities in Florida, he makes a comparison to one utility – Marion Utilities. (TR 420) Witness Brown describes Marion Utilities as the same size as the Utility. After reviewing its annual report, on cross examination he states "the revenues were in the same ball park" as his Utility. (TR 421). He also testified on cross that Marion Utilities has about 6,000 water customers and WMSI has approximately 2,000 customers. (TR 422 and EX 106). Thus, the comparison between WMSI and Marion Utilities is not an apples-to-apples comparison.

Because of the \$1.2 million imprudently advanced to WMSI's president and associated companies, WMSI was forced to renegotiate its DEP loan several times even through the Commission had approved rates that should have been sufficient to allow the Utility to repay the DEP loan. These renegotiations of the DEP loan were unnecessary and directly added more than

\$1.1 million in additional interest which the customers will eventually have to pay. PAA Order at 27. The increase in the DEP loan interest and the advances of \$1.2 million were not prudent business decisions. Thus, the Commission should further reduce the President's salary in order to prevent the customers from having to pay for any of the imprudently added interest. The salary reduction should be increased so that \$1.1 million in additional interest is offset over a 10 to 15 year period, instead of the 55 plus year period approved by the PAA Order. To reduce the impact to the president's salary, the Commission could look to imputing some or all of the added interest against the revenue requirement to help offset the imprudently added interest. The Utility failed to carry its burden of proof to increase the president's salary, and overall rate case expense with this issue should be reduced by 1/12.

REVENUE REQUIREMENT

Issue 11: What is the appropriate revenue requirement?

Fall-out from other issues.

Issue 12: Is a repression adjustment appropriate in this case, and, if so, what is the appropriate adjustment to make for this Utility?

Fall-out from other issues.

Issue 13: What are the appropriate water rates for the Utility?

Fall-out from other issues.

OTHER:

Issue 15: WITHDRAWN

Issue 16: In determining whether any portion of the implemented PAA rates should be refunded, how should the refund be calculated, and what is the amount of the refund, if any?

* This is a fall-out issue and should be based on the outcome of other issues. If OPC succeeds on all the issues it protested, necessitating a refund, the refund should be calculated according to standard Commission practice for calculating refunds.*

Issue 17: In determining whether any portion of the implemented PAA rates should be refunded, how should the refund be calculated, and what is the amount of the refund, if any?

* Same as OPC's position for Issue 16.*

Issue 18: What is the appropriate amount by which rates should be reduced four years after the established effective date to reflect the removal of the amortized rate case expense as required by Section 367.0816, F.S.?

Fall-out of rates approved by the Commission in Issue 7.

ISSUE 19: Should this docket be closed?

No. It should be held open.

ARGUMENT:

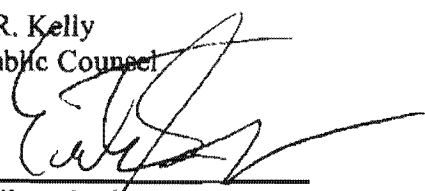
No. This docket should be held open so the Commission can monitor the Utility's ongoing compliance with the final order and ensure that this Utility continues to operate in the best interest of the Utility and its Customers.

CONCLUSION

For the reasons stated herein, OPC respectfully requests the Commission should take whatever steps are necessary to ensure that this Utility is operated in the best interest of the Utility and its customers, and order the necessary rate reductions for adjustments related to the continued amortization of the gain on sale and prior rate case expense authorized by this Commission.

Respectfully submitted,

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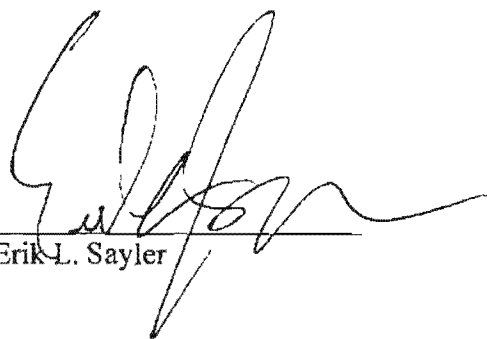
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **CITIZENS' POST-HEARING STATEMENT OF POSITIONS AND POST-HEARING BRIEF** has been furnished by U.S. Mail and/or electronic mail on this 11th day of February, 2013, to the following:

Martha Barrera
Michael Lawson
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Mr. Gene D. Brown
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Erik L. Sayler

OPC Current Rate Case Expense Workpapers

OPC Recommended Adjustment to
Current Rate Case Expense
Issue 7

	Utility *	OPC Adjustments	Adjusted Expense
Sundstrom, Friedman & Fumero	93,922.88	(20,367.00)	73,555.88
Law, Redd, Crona CPAs	16,816.50	(1,681.65)	15,134.85
Leonard & Withers CPAs	3,036.00	(3,036.00)	0.00
Guastella Associates LLC	18,690.00	(18,690.00)	0.00
Postage	600.00	(600.00)	0.00
Fed-Ex / Copies	2,500.00	(2,500.00)	0.00
St. George Inn	1,000.00	(1,000.00)	0.00
	<u>136,565.38</u>	<u>(47,874.65)</u>	<u>88,690.73</u>

* Source: Hearing Exhibit 61

Actual and Estimated Legal Expenses							
Description	Date	Hours	Charge	Reasonable RCE	Non-Protected Issue	Oppose discovery	Denied Motions
Actual Legal Fees							
September Block Billing Detail							
TELEPHONE CONFERENCE WITH MR. BROWN; REVIEW NEW ESCROW AGREEMENT AND LETTER TO PSC STAFF; INITIAL REVIEW OF OPC PROTEST OF PAA ORDER	9/12/2012	0.4	136.00	0.2	0.2		
SEVERAL TELEPHONE CONFERENCES WITH PSC ATTORNEY JAEGER WHO TELEPHONED; REVIEW PAA ORDER AND OUTLINE ISSUES; TELEPHONE CONFERENCE WITH MR. BROWN REGARDING CROSS-PETITION; RESEARCH AND DRAFT NOTICE OF IMPLEMENTATION OF PAA RATES AND FINALIZE TARIFF SHEETS; RESEARCH AND DRAFT NOTICE OF WITHDRAWAL OF PRE-FILED TESTIMONY; BEGIN RESEARCH AND DRAFT OF CROSS-PETITION	9/13/2012	3.7	1,258.00	0.7	3.0		
REVIEW CORRESPONDENCE FROM ATTORNEY JAEGER, REVISE CUSTOMER NOTICE AND LETTER TO ATTORNEY JAEGER; TELEPHONE CONFERENCE WITH AND LETTER TO JOHN GUASTELLA; REVIEW COMMENTS FROM MR. BROWN AND MS. ALLEN AND REVISED CROSS-PETITION	9/14/2012	1.5	510.00	0.8	0.7		
TELEPHONE CONFERENCE WITH ATTORNEY JAEGER; RESEARCH AND DRAFT MOTION TO WITHDRAW FUNDS FROM ESCROW; TELEPHONE CONFERENCE WITH MR. BROWN WHO TELEPHONED; REVISE MOTION AND DRAFT MOTION FOR ORAL ARGUMENT; REVIEW AND INCORPORATE MR. BROWN'S REVISIONS	9/20/2012	1.6	544.00		1.6		
TELEPHONE CONFERENCE WITH PSC ATTORNEY BARRERA WHO TELEPHONED REGARDING IMPLEMENTING PAA RATES AND PROCEDURES	9/25/2012	0.2	68.00		0.2		
REVIEW LETTER FROM PSC ATTORNEY BARRERA REGARDING CUSTOMER NOTICE AND ESCROW; REVISE CUSTOMER NOTICE AND LETTER TO ATTORNEY BARRERA; TELEPHONE CONFERENCE WITH ATTORNEY BARRERA WHO TELEPHONED AND LETTER TO MR. BROWN; TELEPHONE CONFERENCE	9/27/2012	1.4	476.00		1.4		
WITH MR. BROWN WHO TELEPHONED; REVISE TARIFF SHEETS AND LETTER TO PSC STAFF	9/28/2012	0.5	170.00		0.5		
TELEPHONE CONFERENCE WITH MS. VANESSELSTINE WHO TELEPHONED REGARDING CHANGES TO TARIFF AND CUSTOMER NOTICE; MAKE REVISIONS AND LETTER TO MS. VANESSELSTINE	9/30/2012		46.75				
PHOTOCOPIES							
Subtotal September 2012 Charges		9.3	3,208.75	1.7	7.6		
October Block Billing Detail							
CORRESPONDENCE FROM OPC ATTORNEY, PSC ATTORNEY AND WITH MS. CHASE AND MR. BROWN	10/2/2012	0.4	136.00	0.4			
CORRESPONDENCE WITH MS. CHASE AND MS. ALLEN; TELEPHONE CONFERENCE WITH PSC ATTORNEY BARRERA; CORRESPONDENCE WITH OPC REGARDING PAA PATES ESCROWS; REVIEW ORDER ESTABLISHING PROCEDURE AND LETTER TO MR. BROWN CONCERNING SAME	10/3/2012	0.6	204.00	0.2	0.4		
CORRESPONDENCE WITH MS. CHASE REGARDING CUSTOMER NOTICE; CORRESPONDENCE MR. BROWN AND MS. ALLEN REGARDING MS. ALLEN'S PRE-FILED TESTIMONY; REVIEW STAFF RECOMMENDATION ON IMPLEMENTATION OF PAA RATES AND LETTER TO MR. BROWN CONCERNING SAME	10/4/2012	0.5	170.00	0.2	0.3		
INITIAL REVIEW OF OPC DISCOVERY AND ORDER ESTABLISHING PROCEDURE AND LETTER TO MR. BROWN CONCERNING SAME	10/6/2012	0.5	170.00	0.5			
TELEPHONE CONFERENCE WITH MR. BROWN WHO TELEPHONED ABOUT OPC DISCOVERY AND PRE-FILED TESTIMONY	10/8/2012	0.2	68.00	0.2			
CONFERENCE WITH OPC AND PSC STAFF REGARDING ESCROW; CONFERENCE WITH MR. BROWN, MS. CHASE AND MS. ALLEN REGARDING PRE-FILED TESTIMONY	10/9/2012	3.7	1,258.00	2.0	1.7		
PREPARE FOR AND PARTICIPATE IN CONFERENCE CALL WITH MR. BROWN AND MR. GUASTELLA	10/10/2012	0.6	204.00	0.6			
CORRESPONDENCE WITH MR. BROWN; LETTER TO PSC ATTORNEY BARRERA; PREPARATION OF PRE-FILED TESTIMONY; BEGIN RESEARCH AND DRAFT OBJECTIONS TO OPC'S REQUEST TO PRODUCE	10/11/2012	1.4	476.00	0.8		0.6	
FINALIZE OBJECTIONS TO OPC'S REQUEST TO PRODUCE; RESEARCH AND DRAFT OBJECTIONS TO DISCOVERY; ASSIST IN RESEARCH AND DRAFTING OF PRE-FILED TESTIMONY; INITIAL REVIEW OF OPC'S SECOND SET OF DISCOVERY; REVIEW STAFF INTERROGATORIES AND REQUEST TO PRODUCE AND INFORMATION FROM MR. BROWN AND DRAFT PROPOSED RESPONSES; LETTER TO MR. BROWN	10/12/2012	6.3	2,142.00	4.3		2.0	
TRAVEL TO TALLAHASSEE FOR PSC AGENDA (TRAVEL TIME SPLIT WITH ANOTHER CLIENT)	10/13/2012	1.1	374.00	1.1			
PREPARE FOR AND ATTEND PUBLIC SERVICE COMMISSION AGENDA AND REPORT CONFERENCE WITH MR. BROWN REGARDING AGENDA AND OPC SECOND SET OF DISCOVERY AND RETURN TO CENTRAL FLORIDA (TRAVEL TIME SPLIT WITH ANOTHER CLIENT)	10/15/2012	2.0	880.00			2.0	
ORGANIZE RESPONSES TO STAFF'S DISCOVERY AND LETTER TO MR. BROWN	10/16/2012	4.2	1,428.00	2.2		2.0	
TELEPHONE CONFERENCE WITH OPC ATTORNEY WHO TELEPHONED TO DISCUSS OBJECTIONS TO DISCOVERY; LETTER TO MR. BROWN; SEVERAL TELEPHONE CONFERENCE WITH MR. BROWN; REVIEW OPC'S THIRD SET OF DISCOVERY; CORRESPONDENCE WITH ATTORNEY SAYLOR AND ATTORNEY BARRERA	10/18/2012	0.3	102.00	0.3			
TELEPHONE CONFERENCE WITH MR. BROWN; RESEARCH AND DRAFT OBJECTIONS TO OPC SECOND DISCOVERY; FINALIZE RESPONSES TO STAFF'S FIRST DISCOVERY; MISCELLANEOUS CORRESPONDENCE WITH ATTORNEYS SAYLOR AND BARRERA	10/19/2012	1.3	442.00	1.3			
SEVERAL TELEPHONE CONFERENCES WITH OPC ATTORNEY SAYLOR WHO TELEPHONED; TELEPHONE CONFERENCE WITH MR. BROWN; REVIEW CORRESPONDENCE FROM OPC ATTORNEY SAYLOR REGARDING FIRST DISCOVERY REQUESTS AND LETTER TO MR. BROWN CONCERNING SAME	10/22/2012	1.6	544.00	1.0		0.6	
REVIEW STAFF'S RESPONSES TO OPC DISCOVERY AND LETTER TO PSC ATTORNEY REGARDING SAME; LETTER TO MR. BROWN LETTER TO OPC ATTORNEY REGARDING FIRST DISCOVERY OBJECTIONS; CORRESPONDENCE MR. BROWN ABOUT DISCOVERY AND OPC PROTEST;	10/23/2012	0.7	238.00	0.7			
REVIEW AND COMMENT TO MR. BROWN AND ATTORNEY BARRERA ON LATEST ISSUES LIST; TELEPHONE CONFERENCE WITH MS. CHASE WHO TELEPHONED REGARDING DISCOVERY RESPONSES; REVIEW AND DRAFT RESPONSES TO OPC'S FIRST DISCOVERY; RESEARCH AND DRAFT MOTION FOR TEMPORARY PROTECTIVE ORDER; CORRESPONDENCE WITH OPC; TELEPHONE CONFERENCE WITH MR. BROWN	10/24/2012	0.8	272.00	0.8			
CORRESPONDENCE WITH OPC, STAFF AND MS. CHASE REGARDING DOCUMENT PRODUCTION; REVIEW MISCELLANEOUS CORRESPONDENCE WITH AND TELEPHONE CONFERENCE WITH MR. BROWN	10/25/2012	1.9	646.00	1.9			
BEGIN RESEARCH AND DRAFT OF MOTION TO DISMISS OPC PROTEST	10/26/2012	0.6	204.00	0.6			
REVIEW AND REVISE MOTION TO DISMISS OPC PROTEST AND LETTER TO MR. BROWN CONCERNING SAME; REVIEW RESPONSE FROM MR. BROWN AND TELEPHONE CONFERENCE WITH MR. BROWN; RESEARCH AND DRAFT OBJECTION TO OPC AND INTERROGATORIES; TELEPHONE CONFERENCE WITH REPORTER WHO HAD SPOKEN WITH OPC ATTORNEY SAYLOR	10/28/2012	1.2	408.00				1.2
LETTER TO CLERK WITH ESCROW AGREEMENT; FINALIZE MOTION TO DISMISS; SEVERAL TELEPHONE CONFERENCE WITH MR. BROWN WHO TELEPHONED	10/29/2012	2.8	952.00	0.3		1.0	1.5
RESEARCH AND DRAFT RESPONSES TO OPC'S SECOND SET OF DISCOVERY; TELEPHONE CONFERENCE WITH OPC ATTORNEY SAYLOR	10/30/2012	1.2	408.00			0.2	1.0
FEDERAL EXPRESS	10/31/2012	1.2	408.00	1.2			
TRAVEL EXPENSE	10/31/2012		75.93				
LEXIS SERVICE	10/31/2012		248.97				
PHOTOCOPIES	10/31/2012		12.80				
	10/31/2012		510.25				
Subtotal October 2012 Charges		35.1	12,781.95	20.6	2.4	5.4	3.7
November Block Billing Detail							
CORRESPONDENCE WITH MS. CHASE AND FINALIZE RESPONSES TO OPC'S SECOND DISCOVERY; REVIEW OPC SECOND DISCOVERY TO STAFF; REVIEW OPC RESPONSE TO REQUEST FOR CONFIDENTIAL TREATMENT; REVIEW AND RESPOND TO MISCELLANEOUS CORRESPONDENCE FROM STAFF AND OPC; REVIEW OF OPC MOTION TO COMPEL	11/1/2012	1.1	374.00	0.9		0.2	
BEGIN RESEARCH AND DRAFT OF RESPONSE TO MOTION TO COMPEL; REVIEW PAA FILINGS IN TRIAL PREPARATION REGARDING CONTESTED ISSUES	11/2/2012	3.7	1,258.00	2.0		1.7	
FINALIZE DRAFT OF RESPONSE TO OPC MOTION TO COMPEL AND LETTER TO MR. BROWN CONCERNING SAME; REVIEW RESPONSE FROM MR. BROWN	11/4/2012	1.6	544.00			1.6	
FINALIZE AND FILE RESPONSE TO MOTION TO COMPEL; REVIEW CORRESPONDENCE FROM AND TELEPHONE CONFERENCE WITH MR. BROWN; REVIEW OPC'S RESPONSE TO MOTION TO DISMISS AND LETTER TO MR. BROWN CONCERNING SAME; INITIAL REVIEW OF OPC'S SECOND MOTION TO COMPEL; REVIEW STAFF'S RESPONSE TO OPC'S SECOND DISCOVERY TO STAFF	11/5/2012	1.1	374.00	0.2		0.7	0.2
TRAVEL TO TALLAHASSEE FOR DEPOSITIONS SCHEDULED BY OPC; CONFERENCE WITH MR. BROWN, MS. CHASE AND MR. MITCHELL BEFORE AND AFTER DEPOSITION; ATTEND DEPOSITION OF MR. MITCHELL; REVIEW PSC ORDER ACKNOWLEDGING IMPLEMENTATION OF PAA RATES AND LETTER TO MR. BROWN	11/6/2012	7.7	2,618.00	6.7	1.0		
CONFERENCE WITH MR. BROWN, AND MS. CHASE BEFORE AND AFTER DEPOSITION; ATTEND DEPOSITION OF MR. BROWN; RETURN TO LAKE MARY OFFICE	11/7/2012	10.0	3,400.00	10.0			
LETTER TO MR. BROWN AT PSC REGARDING ANNUAL REPORT-SOURCES AND USES RECONCILIATION; REVIEW AND RESPOND TO CORRESPONDENCE FROM OPC ATTORNEY SAYLOR REGARDING CONSULTANTS REVIEW OF CONFIDENTIAL DOCUMENTS	11/8/2012	0.3	102.00	0.3			
RESEARCH AND DRAFT RESPONSE TO OPC'S SECOND MOTION TO COMPEL; TELEPHONE CONFERENCE WITH MS. CHASE	11/12/2012	0.8	272.00			0.8	
REVIEW DRAFT OF AND FINALIZE RESPONSES TO OPC'S THIRD DISCOVERY	11/13/2012	0.4	136.00	0.4			
REVIEW STAFF RECOMMENDATION ON USE OF PAA RATE ESCROW AND LETTER TO MR. BROWN CONCERNING SAME; TELEPHONE CONFERENCE WITH MR. BROWN WHO TELEPHONED	11/14/2012	0.3	102.00		0.3		
REVIEW CORRESPONDENCE FROM PSC ATTORNEY BARRERA AND ANALYZE DISCOVERY REQUIRED AND LETTER TO MS. CHASE CONCERNING SAME; REVIEW CONFIDENTIALITY AGREEMENT FOR OPC CONSULTANT; REVIEW CONFIDENTIALITY AGREEMENT FOR SETTLEMENT NEGOTIATIONS; TELEPHONE CONFERENCE WITH MR. BROWN	11/16/2012	1.3	442.00	1.3			
TELEPHONE CONFERENCE WITH MR. MAUREY OF PSC STAFF REGARDING STAFF RECOMMENDATION; TELEPHONE CONFERENCE WITH MR. BROWN REGARDING SAME AND DISCOVERY RESPONSES TO OPC; REVIEW ORDER DENYING MOTION TO DISMISS AND LETTER TO MR. BROWN	11/19/2012	0.8	272.00		0.6	0.2	
REVIEW OPC OFFER AND LETTER TO MR. BROWN; TELEPHONE CONFERENCE WITH MR. BROWN	11/20/2012	0.4	136.00	0.4			

Actual and Estimated Legal Expenses

Description	Date	Hours	Charge	Reasonable RCE	Non-Protetsted Issue	Oppose discovery	Denied Motions
REVIEW ORDER ON OPC'S MOTION TO COMPEL AND LETTER TO MR. BROWN	11/21/2012	0.3	102.00				0.3
RESEARCH AND DRAFT RESPONSES TO DISCOVERY ORDERED BY PREHEARING OFFICER; TRAVEL TO TALLAHASSEE FOR PSC AGENDA	11/26/2012	4.6	1,564.00			4.6	
CONFERENCE WITH MR. BROWN IN PREPARATION FOR AGENDA; ATTEND AGENDA ON ESCROW WITHDRAWAL; RETURN TO LAKE MARY OFFICE; RESEARCH AND DRAFT COUNTER-OFFER TO OPC	11/27/2012	7.0	2,380.00	5.0	2.0		
REVIEW AND COMMENT TO MR. BROWN ON PROPOSED ISSUES; REVIEW AND DRAFT PROPOSED RESPONSE TO ATTORNEY SAYLOR'S COMMENTS ON SETTLEMENT	11/29/2012	0.5	170.00	0.5			
REVISE LIST OF ISSUES AND LETTER TO ATTORNEYS BARRERA AND SAYLOR CONCERNING SAME; REVIEW AND RESPOND TO CORRESPONDENCE FROM ATTORNEY SAYLOR REGARDING SETTLEMENT	11/30/2012	0.3	102.00	0.3			
TRAVEL EXPENSE	11/30/2012		487.74				
PHOTOCOPIES	11/30/2012		49.50				
Subtotal November 2012 Charges		42.2	14,885.24	28.0	3.9	9.8	0.5
December / January Block Billing Detail							
REVIEW PSC ORDER ALLOWING WITHDRAWAL FOR LOT PAYMENTS AND LETTER TO MR. BROWN CONCERNING SAME	12/4/2012	0.2	68.00		0.2		
REVIEW CORRESPONDENCE FROM MR. BROWN AND TELEPHONE CONFERENCE WITH MR. MAUREY OF THE PSC STAFF; TELEPHONE CONFERENCE WITH MS. CHASE; DRAFT REQUEST TO WITHDRAW FUNDS; REVIEW OPC COMMENTS ON ISSUES AND TELEPHONE CONFERENCE WITH MR. BROWN	12/5/2012	1.1	374.00	0.5	0.6		
REVIEW STAFF'S SECOND AND THIRD PRODUCTION OF DOCUMENTS AND SECOND SET OF INTERROGATORIES AND LETTER TO MR. BROWN CONCERNING SAME; REVIEW AND COMMENT TO MR. BROWN ON REVISED LIST OF ISSUES; REVIEW PSC STAFF'S PRE-FILED TESTIMONY AND LETTER TO MR. BROWN	12/6/2012	0.9	306.00	0.9			
REVIEW CORRESPONDENCE FROM ATTORNEY SAYLOR AND ATTORNEY BARRERA; TELEPHONE CONFERENCE WITH ATTORNEY BARRERA; REVIEW NEW PSC DISCOVERY AND LETTER TO MR. BROWN	12/7/2012	0.7	238.00	0.7			
REVIEW CORRESPONDENCE FROM OPC ATTORNEY SAYLOR AND PSC ATTORNEY BARRERA REGARDING OPC PRE-FILED TESTIMONY; REVIEW SCHULTZ AND VANDIVER TESTIMONY AND LETTER TO MR. BROWN AND MR. GUASTELLA CONCERNING SAME	12/9/2012	1.3	442.00	1.3			
TELEPHONE CONFERENCE WITH MR. BROWN; LETTER TO MR. BROWN AND MR. GUASTELLA; DRAFT LETTER TO RELEASE ESCROW FUNDS; TELEPHONE CONFERENCE WITH MR. MAUREY WHO TELEPHONED; DRAFT NOTICE OF TECHNICAL HEARING; DRAFT AUTHORIZATION TO WITHDRAW ESCROW FUNDS AND LETTER TO MR. BROWN AND LETTER TO MR. MAUREY	12/11/2012	1.2	408.00	1.2			
CORRESPONDENCE WITH OPC ATTORNEY, PSC ATTORNEY AND MR. BROWN REGARDING HEARING; REVIEW PSC INTERROGATORIES TO OPC; REVIEW DRAFT OF MR. BROWN'S PRE-FILED REBUTIAL TESTIMONY; PREPARE FOR AND PARTICIPATE IN CONFERENCE CALL WITH MR. GUASTELLA AND MR. BROWN; REVIEW NOTICE OF HEARS AND DRAFT AFFIDAVIT OF MAILING AND LETTER TO MR. BROWN	12/12/2012	2.3	782.00	2.3			
REVIEW AND COMMENT UPON MR. BROWN'S PRE-FILED TESTIMONY; REVIEW OPC'S FOURTH DATA REQUEST AND LETTER TO MR. BROWN CONCERNING SAME	12/14/2012	1.0	340.00	1.0			
TELEPHONE CONFERENCE WITH MR. BROWN WHO TELEPHONED REGARDING PRE-FILED REBUTIAL	12/15/2012	0.2	68.00	0.2			
REVIEW AND COMMENT UPON OPC'S SECOND INTERROGATORIES TO STAFF; REVIEW AND COMMENT UPON MR. BROWN'S LATEST DRAFT OF PREFILED TESTIMONY AND EXHIBITS; RESEARCH AND DRAFT PRE-HEARING STATEMENT; ANALYZE LEGAL RATE CASE EXPENSE AND UPDATE ESTIMATE AND LETTER TO MR. BROWN	12/16/2012	3.7	1,258.00	3.7			
FINALIZE MOTION FOR CONFIDENTIALITY; REVIEW AND COMMENT UPON PRE-FILED TESTIMONY OF MR. BROWN, MS. ALLEN AND MR. GUASTELLA; REVIEW STAFF'S FOURTH INTERROGATORIES AND LETTER TO MR. BROWN CONCERNING SAME; FINALIZE PRE-HEARING STATEMENT; REVIEW AND COMMENT UPON STAFF'S PRE-HEARING STATEMENT; REVIEW AND COMMENT UPON OPC OBJECTIONS TO STAFF'S DISCOVERY	12/17/2012	4.2	1,428.00	3.5			0.7
RESEARCH AND DRAFT DISCOVERY TO OPC; REVIEW, RESEARCH AND RESPOND TO CORRESPONDENCE FROM MS. BARRERA'S ASSISTANT; RESEARCH AND DRAFT REQUEST FOR PROTECTIVE ORDER; REVIEW, RESEARCH AND RESPOND TO CORRESPONDENCE FROM MS. CHASE REGARDING DISCOVERY SCHEDULE; ASSIST MS. CHASE IN RESPONDING TO STAFF DISCOVERY; REVIEW STAFF OBJECTIONS TO OPC INTERROGATORIES; RESEARCH GAIN ON SALE DECISIONS; TELEPHONE CONFERENCE WITH MR. BROWN WHO TELEPHONED; TELEPHONE CONFERENCE WITH RESPOND TO CORRESPONDENCE FROM PSC ATTORNEY BARRERA	12/18/2012	3.7	1,258.00	3.7			
CORRESPONDENCE WITH OPC ATTORNEY, PSC ATTORNEYS AND MR. BROWN	12/19/2012	0.2	68.00	0.2			
REVIEW OPC'S MOST RECENT DISCOVERY AND LETTER TO MR. BROWN; REVIEW CORRESPONDENCE FROM MR. BROWN REGARDING ESCROW	12/20/2012	0.4	136.00	0.4			
REVIEW OPC'S INITIAL OBJECTIONS TO WMSI DISCOVERY; REVIEW OPC RESPONSE TO MOTION FOR PROTECTIVE ORDER; REVIEW AND COMMENT UPON MR. GUASTELLA'S PROPOSED INTERROGATORY RESPONSES; TELEPHONE CONFERENCE WITH MR. BROWN; REVIEW AND COMMENT TO MR. BROWN UPON PROPOSED PRE HEARING ORDER	12/21/2012	0.9	306.00	0.6			0.3
RESEARCH AND DRAFT RESPONSES TO STAFF'S 2ND AND 3RD INTERROGATORIES AND 2ND, 3RD AND 4TH PRODUCTION OF DOCUMENTS; RESEARCH AND DRAFT NOTICES OF SERVICE OF RESPONSES; LETTER TO MR. BROWN; TELEPHONE CONFERENCE WITH MS. CHASE WHO TELEPHONED	12/26/2012	2.2	748.00	2.2			
CORRESPONDENCE AND TELEPHONE CONFERENCE WITH MS. CHASE FINALIZE RESPONSES TO STAFF'S THIRD INTERROGATORIES AND FOURTH REQUEST TO PRODUCE	12/27/2012	1.0	340.00	1.0			
RESEARCH LEGAL ISSUES	12/28/2012	1.2	408.00	1.2			
LETTER TO MR. BROWN; REVIEW AND RESPOND TO CORRESPONDENCE FROM MS. CHASE AND REVISE AFFIDAVIT AND LETTER TO MS. CHASE; CORRESPONDENCE WITH OPC REGARDING PRODUCTION PURSUANT TO STAFF REQUEST; REVIEW AND COMMENT UPON OPC RESPONSES TO STAFF'S DISCOVERY;	1/2/2013	0.7	245.00	0.7			
DRAFT NOTICE OF SERVICE OF OPC DISCOVERY RESPONSES; FINALIZE DISCOVERY RESPONSES; TELEPHONE CONFERENCE WITH PSC ATTORNEY LAWSON AND MS. CHASE; CORRESPONDENCE WITH MS. ALLEN; TRAVEL TO TALLAHASSEE FOR GENE BROWN DEPOSITION;	1/3/2013	5.1	1,785.00	5.1			
CONFERENCE WITH MR. BROWN AND ATTEND MR. BROWN'S DEPOSITION; RETURN TO LAKE MARY OFFICE; RESEARCH AND DRAFT REQUEST TO WITHDRAW FUNDS FROM ESCROW	1/4/2013	7.6	2,660.00	7.0	0.6		
RESEARCH AND DRAFT RESPONSES TO STAFF'S FOURTH AND FIFTH INTERROGATORIES; BEGIN RESEARCH AND DRAFT OF RESPONSES TO OPC FIFTH INTERROGATORIES AND 5TH REQUEST TO PRODUCE AND STAFF'S FIFTH INTERROGATORIES; REVIEW AND COMMENT UPON PROPOSED PRE-HEARING ORDER AND REVIEW OPC COMMENTS; REVIEW CORRESPONDENCE BETWEEN OPC AND STAFF; RESEARCH AND DRAFT MOTION TO RESTRAIN OPC AND LETTER TO MR. BROWN	1/7/2013	4.8	1,680.00	1.8			3.0
FEDERAL EXPRESS	1/7/2013		130.55				
TRAVEL EXPENSE	1/7/2013		474.58				
OPERATOR CONFERENCE CALL	1/7/2013		7.06				
PHOTOCOPIES	1/7/2013		1,338.75				
Subtotal December 2012 / January 2013 Charges		44.6	17,296.94	39.2	1.4		4.0
Total Charges Post-PAF Legal Fees			131.2	48,172.88	89.5	15.3	18.2
Reduction for Hourly Rate (Reduction of hourly rate to \$340)				(182.00)			
Percentage Reduction				10%		57%	
Allowable Hours				80.55		7.9	
Adjusted Actual Legal Fees				33,455.88			
Estimated Legal Fees							
		Hours	Charge	Adj Hrs	Adjusted Amount *	Comments	
Travel to Tallahassee, conference with client and attend Pre-Hearing Conference		12.0	4,200.00	12.00	4,080.00		
Research and prepare cross-examination		16.0	5,600.00	16.00	5,440.00		
Travel to and from St George Island; Preparation and attend two days of hearing		52.0	18,200.00	44.0	14,960.00	Assume three full days, half day Thurs, and travel	
Research and Draft Post-Hearing Brief		30.0	10,500.00	30.0	10,200.00		
Review Staff Recommendation and conference with Client		2.0	700.00	2.0	680.00		
Attend Commission Conference on Final Action		10.0	3,500.00	6.0	2,040.00	Assume split 8 hour travel time with another client, plus 2 hour Agenda	
Estimated Cost to Attend Commission Conferences, Prehearing, and Hearing			2,450.00		2,450.00		
Estimated Photocopier Costs			500.00		250.00	Insufficient support	
Estimated Courier Costs			100.00		-	Insufficient support	
Total Estimated Costs		122.0	45,750.00	110.0	40,100.00		
Total Attorney Fees and Costs			93,922.88		73,555.88		
* Adjusted to Reduce Hourly Rate to \$340							

Source: Hearing Exhibits 61 and 71