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From: Roberts, Brenda [ROBERTS.BRENDA@leg.state.fl.us]
Sent: Friday, September 28, 2012 3:59 PM
To: Filings@psc.state.fl.us
Cc: Sayler, Erik; Vandiver, Denise; Reilly, Steve; Gene Brown; Martha Barrera; Marty Friedman; Ralph Jaeger
Subject: e-filing (Dkt. No. 110200-WU)

Attachments: Citizens' Response to WMSI's Motion to Allow Withdraws from Escrow.pdf
Electronic Filing

a. Person responsible for this electronic filing:

Erik L. Sayler, Associate Public Counsel
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c/o The Florida Legislature
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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 8 pages.

e. The document attached for electronic filing is Citizens' Response to Water Management Services Inc.'s Motion to Allow Withdrawal from Escrow.

Thank you for your attention and cooperation to this request.

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DOCUMENT NUMBER-DATE

06534 SEP 28 2012

9/28/2012

FPSC-COMMISSION CLERK

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-SU

Filed: September 28, 2012

**CITIZENS' RESPONSE TO WATER MANAGEMENT SERVICES, INC.'S
MOTION TO ALLOW WITHDRAWALS FROM ESCROW**

The Office of Public Counsel (Citizens) requests the Florida Public Service Commission (Commission) to carefully review and question Water Management Services, Inc.'s (WMSI, or Utility) Motion to Allow Withdrawals from Escrow (Motion), and responds as follows:

1. WMSI accurately states that Citizens declined to protest the requested pro forma plant and land approved by Order PSC-12-0435-PAA-WU, issued August 22, 2012 (PAA Order or Order). The Citizens did not protest those portions of the PAA Order because the Order expressly requires WMSI to provide the Commission with all data, including final invoices and cancelled checks, necessary to enable the Commission to perform a "true-up of all **prudently** incurred investments and costs associated with the construction of pro forma plant." (emphasis added)
2. According to the PAA Order, the Commission's verification of the prudence and cost of all expenditures associated with construction of pro forma plant, also expressly includes the admonition to WMSI to perform "appropriate due diligence" before committing to the purchase of land to accommodate the new ground storage facility. This is a particularly important admonition given the recent significant decline in land values on St. George Island. It appears from WMSI's motion, that its additional due diligence investigating alternative sites for the new ground storage facility has yielded a geographically acceptable site at a **significantly reduced**

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cost. Citizens believe that WMSI performing the same additional due diligence with regard to the other costs associated with construction of pro forma plant will yield similar results. Ultimately, it is WMSI that is responsible for making all of the decisions concerning the most cost effective and prudent course of action regarding the construction of pro forma plant.

3. Citizens believe that proactive staff involvement on the front-end will be well worth the time and effort of the Commission, and help ensure better value to the utility and customers, and reduce the time and costs associated with the Commission's prudence and true-up review. The oversight provided by the Commission's staff in administering the escrow account should eliminate controversy and disputes that would otherwise surface in the Commission's prudence and true-up review and hopefully result in a more streamlined Commission prudence and true-up review.

4. While Citizens applaud the additional due diligence performed by WMSI with regard to securing land at a significantly reduced price, we do need to express several concerns that should be addressed by the Commission. Citizens understand that a substantial number of the lots that the Utility has under contract are literally underwater and may not be buildable, unless WMSI can get a fill permit from the Army Corp of Engineers. In the satellite image, the western most portion of the parcel appears to show wetland or a nearly dry pond. (See Google Map coordinates "29.663089, -84.867598" or <http://goo.gl/maps/x5p8a>) Second, the Utility has not demonstrated a need to purchase 24 lots, when apparently 3 to 4 lots may provide an adequate area for constructing the new ground storage tank and ancillary buildings. Citizens understand that WMSI currently serves all its customers with only three lots. According to the Franklin County GIS, WMSI has one lot for the elevated storage tank, and two nearby adjoining lots for the WMSI offices, service vehicle lot, and groundwater storage tank. Thus, it does not appear prudent for WMSI to acquire or purchase all 24 lots when far fewer would suffice. Third, if the

agreement with the bank requires the purchase of all 24 lots, and WMSI utilizes only 3 to 4 for the pro forma plant, what will happen to the remaining lots not needed for Utility purposes? The Commission should take affirmative action to ensure that the title to those lots remains with the Utility. Further, any gain on sale should be retained (and not diverted) by the Utility and amortized to the benefit of the customers consistent with the treatment of a similar gain on sale identified by Order No. PSC-11-0010-SC-WU, issued January 3, 2011.

5. While Citizens declined to protest the proposed pro forma projects and land requested by the Utility, that does not prevent Citizens from participating in the true-up proceeding on the pro forma plant once it is placed into service. However, until the pro forma plant is placed into service it will primarily be the responsibility of the Commission's staff and its administration of the escrow account to do everything practically within its means to ensure that the proposed land transaction and construction of pro forma plant is conducted in a way that best serves the public interest.

6. Citizens object to WMSI's misleading statement on page 2 of its Motion: "However, as a result of CITIZENS's protest, WMSI does not have the resources to close on the purchase of the bank-owned lots by November 8, 2012, closing date provided in the contract." First, if Citizens had not protested the PAA Order, WMSI would still be in the same financial predicament it currently finds itself with no one else to blame. More importantly, WMSI's cash flow problems as evidenced by the Commission's cash flow audit were caused by the Utility management's past decisions and not by Citizens protest of the PAA Order. Second, Commission staff's cash flow audit unequivocally confirmed that more than \$1.2 million dollars of Utility cash flowed out of Utility operations into Account 123 for non-utility purposes. Arguably, the Utility investment in Account 123 (which includes Brown Management Group (BMG) now wholly owned by WMSI) far exceeds the cost to purchase the land required for the pro forma plant without needing to tap

into the PAA ordered escrow account. At a minimum, the Utility should be able to obtain enough cash from Account 123 for the \$15,000 monthly payment. If the Commission and its staff believe purchasing this parcel of land at this price is in the best interests of WMSI and its customers, then Citizens requests that the Commission order the Utility to liquidate up to \$190,000 of assets in Account 123 (or held by BMG) in order to effectuate the purchase. Alternatively, the Commission should order an increase in the percentage of money being escrowed by \$15,000 a month to cover the monthly payments. Because the Utility currently lacks the ability to make these payments due solely to its prior cash flow management decisions, the interest portion of this transaction should be borne by the Utility and its shareholders, not the customers. Thus the Commission should deny WMSI's request to use funds from the PAA ordered escrow account to the land.

7. Citizens believe that WMSI is mistaken in its interpretation of the Amendatory Order to the PAA Order. The Amendatory Order No. PSC-12-0435A-PAA-WU, issued September 11, 2012, clarified how the PAA ordered escrow account may be used, stating: "Our staff shall have administrative authority to authorize all payments from this escrow account on the bank loan for construction contracts for the pro forma plant, the interest payments on the loan while the pro forma plant items are being constructed, and the DEP loan as they become due." The Amendatory Order clarified that no moneys from the escrow account would be used to directly pay any construction contracts. It was with this understanding that Citizens did not protest the pro forma portion of the PAA Order.

8. Citizens would like WMSI to clarify its statement in paragraph 4: "... since the PAA Order was protested, the funds to be held pursuant to the PAA order are not held pursuant to these escrow requirements." Is WMSI affirmatively stating that it will not be escrowing any funds because of Citizens protest of the PAA Order? If that is what WMSI is alleging, the

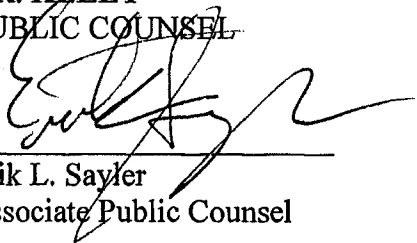
Commission needs to clarify the Utility's escrow requirements. Consistent with the requirements of Section 367.081(8) and 367.082(2)(a), F.S., and consistent with past Commission practice, WMSI should be ordered to escrow at least an additional 13.36% of PAA revenues. The purpose of this additional escrow account is to guarantee the Utility's ability to refund with interest to its ratepayers the revenue impact of the issues protested by Citizens, in the event Citizens prevails on its issues. The estimated revenue impact of each Citizen's protested issue is detailed in Attachment "A". This 13.36% escrow requirement is in lieu of the 8.17% of interim rates approved, currently being escrowed by the Utility, but in addition to the 35.25% of PAA revenues that must be escrowed to make payments on the DEP loan and the loan to fund the construction of pro forma plant. Normally, a utility would be required to escrow the full PAA increase. But, we recognize the fact that the Utility is required to escrow 35.25% for debt service, and this limited escrow for the protection of the part of the PAA increase which is being protested is reasonable under the circumstances.

9. In paragraph 5 of the Motion, if WMSI is requesting the Commission to approve funds previously placed in the interim rate escrow account to be used to make a payment to DEP, this request should be denied. These funds were placed in escrow to guarantee the Utility's ability to refund with interest to its ratepayers over collection of revenues in rates that are ultimately disallowed by the Commission. As a result of Citizens protest, there is a continuing need to protect this money to guarantee any future refund that might be ordered by the Commission. The PAA Order contemplates payments being made to DEP from funds in the 35.25% escrow account, not from an escrow account to fund potential refunds.

10. Citizens believe that WMSI's request for oral argument is well founded and joins in this request.

WHEREFORE, the Office of Public Counsel respectfully request that the Commission deny WMSI's request to use funds from the PAA ordered escrow account to the land. The Commission should also deny WMSI request to use funds escrowed to pay potential refunds, to be diverted to make a payment on the DEP loan. Finally, the Commission should clarify WMSI's obligation to escrow at least an additional 13.36% of PAA revenues, to be dedicated to pay only potential refunds ordered by the Commission on the issues protested by Citizens.

J.R. KELLY
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Attorney for the Citizens
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Attachment "A"

Water Management Services, Inc.

<u>CITIZENS Protested Issues</u>	<u>Annual Revenue Impact</u>
Account 123 (recovery 10 years)	\$ 121,508
Rate Case Expense amortization	57,295
Over Recovery of Legal / 4 years	3,872
Amortization of Gain	48,408
Service Availability - No revenue requirement impact	0
Total Impact Protested Issues	<u>\$ 231,082</u>
Gross Up Impact	<u>\$ 241,971</u>
PAA Revenue Requirement	\$ 1,811,648
Percent of PAA Revenue Requirement	<u>13.36%</u>

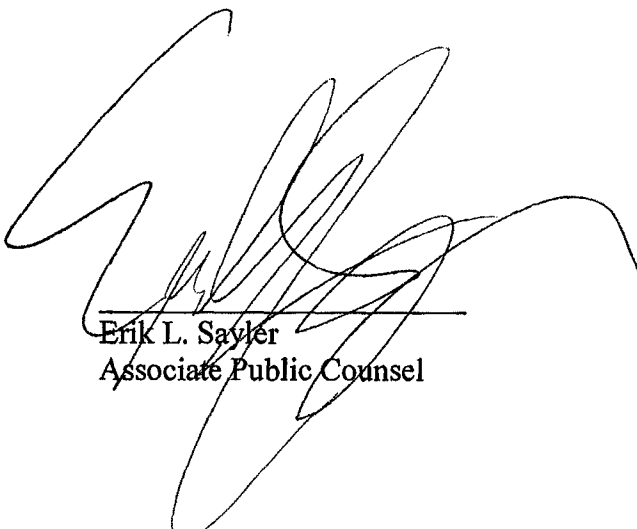
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing **OFFICE OF PUBLIC COUNSEL'S RESPONSE TO WATER MANAGEMENT SERVICES, INC.'S MOTION TO ALLOW WITHDRAWALS FROM ESCROW** has been furnished by electronic mail and U.S. Mail to the following parties on this 28th day of September, 2012, to the following:

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