

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Application for increase in water )  
and wastewater rates in Alachua, Brevard, )  
Highlands, Lake, Lee, Marion, Orange, )  
Palm Beach, Pasco, Polk, Putnam, )  
Seminole, Sumter, Volusia and Washington )  
Counties by Aqua Utilities Florida, Inc. )  
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DOCKET NO. 060368-WS

July 19, 2007

**AQUA UTILITIES FLORIDA, INC.'S RESPONSE  
IN OPPOSITION TO OPC'S MOTION TO COMPEL**

Aqua Utilities Florida, Inc. (herinafter "AUF") hereby files its Response in Opposition to OPC's Motion to Compel, which was filed with the Commission on July 16, 2007.<sup>1</sup> In support, AUF states as follows:

**INTRODUCTION**

1. AUF filed specific written objections to OPC Interrogatories Nos. 1, 2, 5, 6, 10, 12, 15, 16, 21(f), 25, 29, 31, 36, 40 (a)-(d), 42, 97, 106, 110, 121, 129, 134 and 182, as well as OPC Document Requests Nos. 4, 5, 17, 18, 26, 29, 30, 40, 42, 48, 128, 130, 133, 134, 143, 153, and 174. Accordingly, AUF timely responded to such discovery requests pursuant to Rule 1.340, Florida Rules of Civil Procedure, and its responses are not past due. OPC's Motion fails to address AUF's specific objections and the

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<sup>1</sup> AUF is filing this expedited response upon direction of Commission Staff and based upon its understanding that the Commission intends to rule upon OPC's Motion prior to the 7-day response period provided by Rule 28-106.204, Florida Administrative Code. By filing this response, AUF does not waive objections to the Commission's expedited consideration of OPC's Motion and the lack of opportunity to respond thereto. AUF's objections were made promptly, and OPC's decision to wait until its testimony was due before moving to resolve those objections and to compel other production is insufficient grounds to deny AUF a reasonable response period. AUF reserves the right to reassert its general objections as necessary upon response to OPC's discovery.

Commission should decline to consider OPC's Motion or compel responses to the above-referenced discovery requests until such time as OPC does so.<sup>2</sup>

2. AUF has attempted in good faith to cooperate with OPC's discovery. AUF has provided OPC with responses to a number of items to which it filed objections. Further, AUF intends to respond to all other items sought by OPC, and is diligently attempting to do so as soon as possible.

3. Given the brief amount of time available to prepare this Response, AUF will limit its discussion to its objections to items highlighted in yellow (indicating that a response is past due or non-responsive) on Attachment 1 to OPC's Motion. In the event that OPC seeks to compel additional responses to other items not highlighted in Attachment 1, AUF reserves the right to respond to such request.

### **AUF'S SPECIFIC OBJECTIONS TO OPC INTERROGATORIES**

#### **OPC Interrogatory No. 1:**

For each interrogatory response, indicate the witness who will sponsor the response and be able to answer cross-examination, indicate the witness who will sponsor the response and be able to answer cross-examination questions concerning the response

AUF's Objection: AUF objects to the extent this interrogatory implies that the individual or individuals sponsoring the response to a particular interrogatory will be appearing as witnesses in this proceeding or otherwise encroaches of AUF's work product privilege in the preparation for the final hearing in this matter. Subject to and without waiving this objection, in response to this Interrogatory No.1, AUF will provide the name(s) to the individual(s) who provided the response to each interrogatory.

AUF Argument: AUF has already provided a witness list and designated areas of expertise in exhibit JS-1 in Jack Schreyer's filed testimony. There is no Commission rule or order that requires a regulated company to provide additional

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<sup>2</sup> OPC notes that it "filed a pleading to dispute the grounds" for AUF's objections. AUF assumes that OPC is referring to three documents it designated as a "Response to Aqua Utilities' Objections." In fact, OPC filed only one such Response with the Commission on April 18, 2007; the Responses do not address each and every objection raised by AUF, and none of OPC's Responses sought to compel production. In some cases, OPC's response was sufficient to resolve the issue raised by AUF, but in other cases, it was not. None of OPC's Responses were incorporated in its Motion to Compel, and none are properly before the Commission in connection with such Motion.

witnesses solely to sponsor responses to document requests or interrogatories posed by Staff, OPC, or other parties to a Commission proceeding. AUF's provision of the name of the person who provided the response is sufficient to permit OPC to conduct further investigation and discovery, if OPC had desired to do so; and is consistent with Commission practice.

**OPC Interrogatories Nos. 2, 5, 6, 31, 36 and 40:**

These interrogatories sought information regarding various properties for periods of time including the time before AUF acquired such properties. AUF objected to providing information only prior to its period of ownership, as follows:

AUF Objection: AUF objects on the grounds that these interrogatories are overbroad. AUF clarifies that it purchased AquaSource Utility, Inc. (hereinafter "AquaSource") in 2003 and Florida Water Services Corporation ("Florida Water") in 2004 and should only need to provide information for the time period in which AUF owned these systems.

In addition to AUF's specific objections, AUF generally objected to each Interrogatory and Document Request to the extent it seeks information for stated period of time that is longer than is relevant for purposes of the issues in this proceeding.

AUF Argument: As stated in its objection, AUF has provided and will provide information beginning in 2003 for the former AquaSource Properties and in 2004 for the former Florida Water properties. AUF is committed to maintaining the books and records of Companies that it has acquired. In this instance, however, the Company is simply asking that there be a cutoff date for providing information. Many of the referenced questions require voluminous research and staff time to answer and are not relevant to the instant rate request.

**OPC Interrogatory No. 97:**

For each plant addition in the 2006 and 2007 capital budget, please provide the following:

- a. A discussion of the status of the addition.
- b. The original estimated date of completion, the current estimated date of completion, and the actual date of completion if applicable.
- c. The status of the engineering and permitting efforts, if the plant addition has not been through the bidding process.
- d. The actual cost to complete the addition, the amount expended as of April 2007 if the addition is not complete, and the current estimate of the completed cost of the addition.

- e. A statement if any of the pro forma plant if required by the Florida Department of Environmental Protection, and explain why it is required.

AUF Objection: AUF requests clarification of the minimum or threshold dollar amount of plant additions to which this interrogatory refers. To the extent that this interrogatory refers to or requests information regarding all plant additions in the 2006 and 2007 capital budget without limitation as to a minimum or threshold dollar amount, AUF objects that this interrogatory is overbroad and overly burdensome in that it requires an excessive amount of staff time and effort to research and respond in connection with minor investment amounts.

Subject to discussion with OPC and determination of a minimum or threshold dollar amount, and without waiving the foregoing objection and request for clarification, AUF will respond to this interrogatory in connection with major capital expenditures estimated to exceed \$20,000 in total project cost, as defined and discussed in the Direct Testimony and Exhibits of Gerard P. Connolly, Jr.

AUF Argument: AUF continues to work with OPC and its consultants to provide the specific information requested by OPC's consultant, and has agreed to provide every item of information sought by the consultant. OPC provided no response to this Objection.

**OPC Interrogatory No. 110:**

For purposes of this request please refer to the attachment provided in Company's response response to OPC's Interrogatory 20.

- a. Please identify each affiliate that is not charged for the insurance costs and explain why these costs are not charged to each affiliate identified.
- b. Please explain what insurance-GL and insurance-WC stand for, and please explain why under insurance-WC, the total says bonuses.
- c. Please explain why auto insurance is allocated from AA and what automobiles are being insured. Please provide the names and titles of the individuals that drive the automobiles and the reasons for the use of the automobiles.
- d. Is the cost of the automobiles charged to AUF?
- e. If yes, please state the amount allocated to AUF by system for the years 2005 and as projected for 2006 and 2007 and the account the amounts are charged to.

AUF Objection: AUF objects to Part (c) on the grounds that it is overly broad and vague in that there is no time frame indicated and it requests information for every automobile within AA. Subject to and without waiving objections, AUF will provide the names and assigned automobiles for Florida beginning in early 2006.

AUF Argument: AUF will provide automobile insurance that is being allocated to AUF by Aqua America. Information regarding automobiles and costs that are not

allocated to AUF and for unlimited periods of time is overly broad, vague, and is neither relevant nor will it lead to discovery of information relevant to this case.

**OPC Interrogatory No. 121:**

For purposes of this request, please refer to the information provided in response to OPC POD 35.

- a. Please explain why Aqua Services, Inc. has no Operating Revenues for 2004, 2005 and 2006.
- b. Please explain why Aqua Services, Inc. has negative Operations and Maintenance expenses for 2004, 2005, and 2006.
- c. Please explain why the Parent company has negative Operations and Maintenance, Depreciation, and Amortization expenses and positive taxes other than income taxes for 2004, 2005, and 2006.
- d. Please state by non-regulated company the cash flows from operating activities that are captured in the category "Other" for 2004, 2005, and 2006.
- e. Please explain the purchase or sale of fixed assets by Aqua Services, Aqua Resources, and Aqua America, Inc., for 2004, 2005, and 2006. In particular, please explain what assets were purchased or sold, when they were purchased or sold, if the sold assets were included in rate base in any fashion, and the net gain, after tax, of any assets sold.
- f. Please explain what gave rise to the cash flows from investing activities captured in the description "Other" by Aqua America, Inc. for 2006.
- g. Please explain why SES does not have any property, plant, and equipment for 2004, 2005, and 2006.
- h. Please explain why Aqua America, Inc. has negative utility plant in service for 2004, 2005, and 2006.
- i. Please explain by non-regulated company what encompasses the balance sheet category Trade for each of the years provided.
- j. Please explain what is included in other assets shown on Aqua America's balance sheet.

AUF Objection: AUF objects to Part (e) on the grounds that it is overly broad. Subject to and without waiving this objection, in response to this Interrogatory No. 121, AUF will provide will provide the information as it relates to Florida.

AUF Argument: Part (e) of this interrogatory is overly broad in that it seeks company-wide information that is completely unrelated to this rate case. Such requests are not only irrelevant, but are extremely time-consuming to research and answer.

**OPC Interrogatory No. 129:**

Provide all costs included in the 2005, projected 2006, and projected 2007 test years associated with employee relocations. Identify the amount of employee relocation costs incurred by the Company for the years 2003 and 2004. Please identify all employee relocations and where the employees were relocated from. To the extent that employee relocations expenses are a result of allocations from any affiliate, please identify the amount charged to the Company.

AUF Objection: AUF objects to the interrogatory as overly broad. Without waiving this objection, in response to this Interrogatory No. 129, AUF will provide the information as it relates to Florida and to the extent that employee relocation expenses are a result of allocations from any Aqua affiliate, will identify the affiliate and the amount charged to the Company.

AUF Argument: The information to be provided by AUF will enable OPC to determine the amount and prudence of employee relocation expenses at issue in this case.

**OPC Interrogatory No. 134:**

For the purposes of this request, please refer to the response to OPC POD 2. For each adjustment shown in this spreadsheet, please explain how the adjustment increase or decreased NOI.

AUF Objection: AUF requests clarification as to which spreadsheet the question refers to.

AUF Argument: AUF will respond based on the clarification provided by OPC.

**OPC Interrogatory No. 182:**

For each interrogatory response, indicate the witness who will sponsor the response and be able to answer cross-examination, indicate the witness who will sponsor the response and be able to answer cross-examination questions concerning the response.

AUF Objection: AUF objects to the extent this interrogatory implies that the individual or individuals sponsoring the response to a particular interrogatory will be appearing as witnesses in this proceeding or otherwise encroaches of AUF's work product privilege in the preparation for the final hearing in this matter. Subject to and without waiving this objection, in response to this Interrogatory No.1, AUF will provide the name(s) to the individual(s) who provided the response to each interrogatory.

AUF Argument:  
AUF has already provided a witness list and designated areas of expertise in exhibit JS-1 in Jack Schreyer's filed testimony. There is no Commission rule or order that requires a regulated company to provide additional witnesses solely to sponsor responses to document requests or interrogatories posed by Staff, OPC, or

other parties to a Commission proceeding. AUF's provision of the name of the person who provided the response is sufficient to permit OPC to conduct further investigation and discovery, if OPC had desired to do so; and is consistent with Commission practice.

### **AUF'S SPECIFIC OBJECTIONS TO OPC DOCUMENT REQUESTS**

#### **OPC Document Request No. 17:**

Please provide a copy of any appraisals of property purchased by the Company since the last rate case for each of the systems in this docket that involved an affiliated party.

AUF Objection: AUF objects to this document request on the grounds that it is vague and ambiguous. Depending on what is intended by this question, AUF reserves an objection to this document request on the ground that the information sought is not reasonable calculated to lead to admissible evidence. AUF request clarification of OPC's use of the terms or phrases "Company," "since the last rate case," and "that involved an affiliated party"

AUF Argument: AUF is not aware of any appraisals of property purchased by the Company since the last rate case for each of the systems in this docket that involved an affiliated party and therefore has no responsive documents.

#### **OPC Document Request No. 40:**

Please provide the minutes of any business development or acquisition committee meetings conducted during the last 18 months.

AUF Objection: AUF objects on the grounds that this document request is not reasonably calculated to lead to admissible evidence and request information that constitutes proprietary confidential business information.

AUF Argument: This request is unrelated to the instant rate case. Furthermore, information on cost related to the parent and the affiliate service company has already been provided.

#### **OPC Document Request No. 42:**

Please provide all memos, reports, meeting minutes, and other documents prepared by or for Aqua America, Inc. concerning the sale and or purchase of any water or wastewater systems in Florida since 2002.

AUF Objection: AUF objects on the grounds that this interrogatory is overbroad, vague and ambiguous, and is not reasonably calculated to lead to admissible evidence.

AUF Argument: AUF has provided and will continue to provide information on cost related to the parent and the affiliate service company and this request is no more than an expedition for information unrelated to the instant rate case that calls for costly and time-consuming research regarding unrelated matters.

**OPC Document Request No. 128:**

To the extent not previously provided, please provide the workpapers, calculations, and other necessary documents that would allow an individual to re-compute the amounts allocated to AUF be each and every affiliate, for each of the test years 2005 and as projected for 2006 and 2007. The information provided should allow one to recompute the allocation factors and redistribute all costs that been charged to AUF by Aqua Services or any other affiliate that charges costs to AUF. The information provided should allow one to recomputed allocations and then carry any associated adjustments, by system, to the expense and rate base items included in the instant rate proceeding. To the extent the Company has provided the requested information, please identify where it has been provided.

AUF Objection: AUF objects to this request to the extent it requires the Company to prepare information in a particular format or perform calculations, studies or analyses not previously prepared or performed. The information requested is not available in Excel format nor can the Company provided the information to allow one to recomputed the allocation factors and redistribute costs off site.

AUF Argument: AUF has provided allocation information, but such information is not available in specific format requested. Neither the Commission's rules nor the Rules of Civil Procedure require AUF to create new forms of documentation upon request by another party.

**OPC Document Request No. 130:**

For purposes of this request, please refer OPC Interrogatory 27. The response provided did not include the requested information in electronic spreadsheet format with all formulas and links intact. Please provide the electronic spreadsheet with all formulas and links intact of Attachment 27.

AUF Objection: AUF objects to this request to the extent it requires the Company to prepare information in a particular format or perform calculations, studies or analyses not previously prepared or performed. The information requested is not available in Excel format nor can the Company provide the information allow one to recomputed the data off site.

AUF Argument: AUF has provided allocation information, but such information is not available in specific format requested. Neither the Commission's rules nor the Rules of Civil Procedure require AUF to create new forms of documentation upon request by another party.



**OPC Document Request No. 143:**

Please provide by general ledger account the total amounts charged directly and allocated by Aqua Services, Inc., to each Aqua system for the years 2004, 2005, 2006 and 2007 to date, and as projected for 2006 and 2007. Please provide the requested in electronic spreadsheet format (i.e. Excel spreadsheet) with all formulas and linked files intact.

AUF Objection: AUF objects to this request to the extent it requires the Company to prepare information in a particular format or perform calculations, studies, or analysis not previously prepared or performed.

AUF Argument: AUF's objection still stands. However, AUF provided a schedule of allocations, which include customer counts for all years requested. Percentages are calculated by taking the prior year ending state customer count divided by the total customer count for that allocation group

**OPC Document Request No. 174:**

For each interrogatory and POD response, indicate the witness who will sponsor the response and be able to answer cross examination questions concerning the response.

AUF Objection: AUF objects to the extent this interrogatory implies that the individual or individuals sponsoring the response to a particular interrogatory will be appearing as witnesses in this proceeding or otherwise encroaches on AUF's work product privilege in the preparation for the final hearing in this matter. Subject to and without waiving this objection, in response to this Interrogatory No.1, AUF will provide the name(s) to the individual(s) who provided the response to each interrogatory.

AUF Argument: AUF has already provided a witness list and designated areas of expertise in exhibit JS-1 in Jack Schreyer's filed testimony. There is no Commission rule or order that requires a regulated company to provide additional witnesses solely to sponsor responses to document requests or interrogatories posed by Staff, OPC, or other parties to a Commission proceeding. AUF's provision of the name of the person who provided the response is sufficient to permit OPC to conduct further investigation and discovery, if OPC had desired to do so; and is consistent with Commission practice.

Respectfully submitted this 19<sup>th</sup> day of July, 2007.

*/s/ Marsha E. Rule*

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ATTORNEYS FOR AQUA UTILITIES  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by email and U.S. Mail this 19<sup>th</sup> day of July, 2007, to the following:

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*/s/ Marsha E. Rule*

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