

# Holland & Knight

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July 11, 2011

*Via Hand-Delivery*

Ms. Ann Cole  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Betty Easley Conference Center, Room 110  
Tallahassee, FL 32399-0850

Re: In Re: Application for increase in water and wastewater rates in Alachua, Brevard, DeSoto, Highlands, Lake, Lee, Marion, Orange, Palm Beach, Pasco, Polk, Putnam, Seminole, Sumter, Volusia, and Washington Counties by Aqua Utilities Florida, Inc., Docket No. 100330-WS

Dear Ms. Cole:

On behalf of Aqua Utilities Florida, Inc. ("AUF"), enclosed for filing are the original and seven (7) copies of AUF's Cross-Petition to protest certain portions of Commission Order No. PSC-11-0256-PAA-WS.


Please acknowledge receipt by stamping the extra copy of this letter "filed" and returning the copy to me. Thank you for your assistance.

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Enclosures

Sincerely,

HOLLAND & KNIGHT LLP

  
Gigi Rollini

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Ann Cole  
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cc: Ralph Jaeger, Esq.  
Caroline Klancke, Esq.  
J.R. Kelly, Esq.  
Patricia Christensen, Esq.  
Kenneth Curtin  
Kelly Sullivan  
Troy Rendell

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Application for increase in water and wastewater rates in Alachua, Brevard, DeSoto, Hardee, Highlands, Lake, Lee, Marion, Orange, Palm Beach, Pasco, Polk, Putnam, Seminole, Sumter, Volusia, and Washington Counties by Aqua Utilities Florida, Inc.

Docket No. 100330-WS

Dated: July 11, 2011

**CROSS-PETITION OF AQUA UTILITIES FLORIDA, INC.**

Aqua Utilities Florida, Inc. ("AUF"), pursuant to Sections 120.80(13)(b), 120.569, and 120.57, Florida Statutes, and Rules 25-22.029(3) and 28-106.201, Florida Administrative Code ("F.A.C."), files this Cross-Petition to protest certain portions of Commission Order No. PSC-11-0256-PAA-WS (the "PAA Order"). In support of the Cross-Petition, AUF states:

**Background**

AUF filed its application for rate relief with the Commission on September 1, 2010. In effort to minimize rate case expense—a cost which is ultimately borne by the ratepayers—AUF requested that the Commission process its application under the proposed agency action ("PAA") procedures set forth in Section 367.081(8), Florida Statutes. During the course of the PAA proceeding, AUF responded to more than 308 interrogatories and 148 requests for production of documents propounded by the Office of Public Counsel ("OPC") and other intervening parties, and 230 individual data requests from Commission Staff. After reviewing AUF's extensive responses to discovery, conducting customer meetings in nine locations around the state, hearing from customers and other stakeholders, and reviewing a detailed analysis and recommendation from its Staff, the Commission issued the PAA Order on June 13, 2011. The PAA Order granted in part, and denied in part, the rate relief requested by AUF. Although AUF found portions of the PAA Order objectionable, it was prepared to accept the PAA Order in the spirit of

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compromise to avoid protracted litigation and minimize rate case expense. However, on July 1, 2011, the OPC filed a Petition on Proposed Agency Action (“OPC Petition”) which fundamentally challenged the rates approved in the PAA Order and demanded that the Commission conduct a formal administrative hearing. On July 1, 2011, another party of record, Ms. Lucy Wambsgan, filed a Petition on Proposed Agency Action (“Wambsgan Petition”), which challenged the PAA Order on many of the same grounds as the OPC Petition.

As explained above, AUF initially elected not to protest the PAA Order in hopes that it could minimize rate case expense and avoid protracted litigation. However, OPC’s and Ms. Wambsgan’s demands that disputed issues in this case be fully litigated in a formal administrative hearing take away the opportunity for those cost savings to occur. Moreover, the relief requested by the OPC Petition and the Wambsgan Petition, if granted, would deny AUF the compensatory rate relief to which it is entitled under the Florida and United States Constitutions and Chapter 367, Florida Statutes. Therefore, AUF is left with no alternative but to exercise its rights under Rule 25-22.029(3), F.A.C, and file this Cross-Petition to bring to the Commission’s attention material defects in the PAA Order which affect AUF’s substantial interests.

### **The Parties**

1. The name and address of the agency affected and the agency’s docket number is:

Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
Docket No. 100330-WS

2. The name and mailing address of the Applicant that initiated this docket are:

Aqua Utilities Florida, Inc.  
P.O. Box 2480  
Lady Lake, Florida 32158-2480

(352) 787-0980 (Telephone)  
(352) 787 6333 (Facsimile)

3. The name and mailing address of the Cross-Petitioner are:

Aqua Utilities Florida, Inc.  
P.O. Box 2480  
Lady Lake, Florida 32158-2480  
(352) 787-0980 (Telephone)  
(352) 787 6333 (Facsimile)

4. The names and address of the persons authorized to receive notices and communications with respect to this Cross-Petition are:

D. Bruce May, Jr.  
Florida Bar No. 354473  
Gigi Rollini  
Florida Bar No. 684491  
Holland & Knight, LLP  
Post Office Drawer 810  
Tallahassee, Florida 32302-0810  
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-and-

Kimberly A. Joyce, Esq.  
Manager of Regulatory Affairs  
Aqua America, Inc.  
762 West Lancaster Avenue  
Bryn Mawr, PA 19010  
(610) 645-1077 (Telephone)  
(610) 519-0989 (Facsimile)

#### **Receipt of Notice**

5. AUF received notice of the PAA Order on or about June 13, 2011. AUF was served with copies of the OPC Petition and Wambsgan Petition on July 1, 2011.

#### **Substantial Interests**

6. AUF provides water and wastewater utility services in 17 Florida counties that are subject to the Commission's jurisdiction. In those counties, AUF's water and wastewater rates

are regulated by the Commission. The PAA Order establishes the rates and charges that AUF can charge for the water and wastewater services it provides to the public. Therefore, the PAA Order affects directly the substantial interests of AUF.

**Disputed Issues of Material Fact and Law**

7. This Cross-Petition is filed for the purpose of seeking Commission action on the following disputed issues of material fact and law arising from the PAA Order:

- a) Whether the Commission erred in failing to find that AUF's quality of service was satisfactory.
- b) Whether the PAA Order failed to properly include the following pro forma plant additions in AUF's rate base:
  - (i) The Breeze Hill Wastewater Inflow and Infiltration (I&I) Project, which was completed in March 2011.
  - (ii) The Lake Josephine and Sebring Lakes AdEdge Water Treatment Project, which will be installed and operational prior to the evidentiary hearing in this proceeding.
  - (iii) The Leisure Lakes AdEdge Water Treatment Project, which will be installed and operational prior to the evidentiary hearing in this proceeding.
  - (iv) The Peace River Water Treatment Project, which is required by Florida Department of Environmental Protection ("FDEP") Consent Order and will be installed and operational prior to the evidentiary hearing in this proceeding.

- (v) The Village Water Wastewater Disposal Project, which is required by FDEP Consent Order and will be installed and operational prior to the evidentiary hearing in this proceeding.
  - (vi) The Tomoka Twin Rivers Water Treatment Plant Tank Lining Project, which has been completed and is operational.
  - (vii) The Sunny Hills Water System Water Tank Replacement Project, which will be installed and operational prior to the evidentiary hearing in this proceeding.
- c) Whether the amount of rate case expense reflected in the PAA Order is accurate and properly reflects the full rate case expense that has been and will be incurred through the conclusion of the formal administrative hearing.
  - d) Whether the leverage formula used to calculate the Utility's return on equity ("ROE") properly reflects the leverage formula approved by the Commission at the time of the Commission's final decision in the formal administrative hearing.
  - e) Whether the ROE penalty imposed in the PAA Order is consistent with Commission precedent and Section 367.111(2), Florida Statutes.
  - f) Whether the disallowance of salary expense in the PAA Order is consistent with Commission precedent.
  - g) Whether the adjustment to IT project cost allocations in the PAA Order is based on accurate factual assumptions.
  - h) Whether the adjustment to incentive compensation in the PAA Order is consistent with Commission precedent.

- i) Whether the amount of the regulatory asset in the PAA Order (which is related to the deferred interim rate relief) is properly calculated to reflect the actual date that AUF implemented the PAA rates.

**Laws Entitling Cross-Petitioner to Relief in Relation to Alleged Facts**

8. The rules and statutes entitling AUF to relief include, but are not necessarily limited to, the following: Sections 120.80(13)(b), 120.569 and 120.57(1), Florida Statutes, and Rule 25-22.029(3), F.A.C., which entitle AUF to an administrative hearing for the reasons discussed above; and Section 367.081, Florida Statutes, which entitles AUF to compensatory rates and bestows on AUF the right to recover the full amount of environmental compliance costs.

**Ultimate Facts Alleged**

9. AUF has supplied the Commission, the OPC and the parties with thousands of pages of data, documents, audio tapes, and reports that demonstrate that the quality of service provided by AUF is satisfactory, and that AUF has implemented policies and programs to proactively improve customer service. Specifically, this evidence shows that AUF: (i) has good customer service and consistently complies with environmental requirements; (ii) has been proactive in establishing quality of service performance goals to ensure that its good customer service will be maintained into the future; (iii) has consistently met all quality performance metrics and standards agreed upon by the parties and Commission Staff; and (iv) has taken proactive steps to address customer concerns regarding aesthetic issues, such as color, odor, taste, and pressure.

10. The Commission's proposal to impose a 25 basis point ROE penalty on AUF because it deemed AUF's attempt to address customer satisfaction as "marginal" contravenes the



specific directives set forth in Section 367.111(2), Florida Statutes. Section 367.111(2) authorizes the Commission to reduce a utility's ROE only where the utility is found to have failed to provide its customers with water or wastewater service that meet the standards promulgated by the FDEP or the water management districts.<sup>1</sup> There is no such finding in the PAA Order. In fact, the PAA Order expressly found that "the quality of the treated water and wastewater service and the operational condition of AUF's plants and facilities, including the Chuluota System, shall be considered satisfactory." PAA Order at 33. Furthermore, the proposed ROE penalty contravenes Commission precedent. The Commission has never reduced a utility's ROE based on a finding that the utility's quality of service is "marginal."

11. The PAA Order significantly understates AUF's rate base by failing to consider the following pro forma plant additions:

- a) The Breeze Hill Wastewater Inflow and Infiltration (I&I) Project, which was completed in March 2011. Competent, substantial evidence supporting this project will be presented in the formal evidentiary hearing. Failure to include this pro forma plant addition understates rate base by approximately \$72,500.
- b) The Lake Josephine and Sebring Lakes AdEdge Water Treatment Project, which will be installed and operational prior to the evidentiary hearing in this proceeding. Competent, substantial evidence supporting this project will be presented in the formal evidentiary hearing. Failure to include this pro forma plant addition understates rate base by approximately \$75,000.
- c) The Leisure Lakes AdEdge Water Treatment Project, which will be installed and operational prior to the evidentiary hearing in this proceeding. Competent,

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<sup>1</sup> Even in those instances, the Commission's authority to reduce the utility's ROE only extends until the time that the standards are met. *Id.*

substantial evidence supporting this project will be presented in the formal evidentiary hearing. Failure to include this pro forma plant addition understates rate base by approximately \$40,000.

- d) The Peace River Water Treatment Project, which is required by FDEP Consent Order and will be installed and operational prior to the evidentiary hearing in this proceeding. Competent, substantial evidence supporting this project will be presented in the formal evidentiary hearing. Failure to include this pro forma plant addition understates rate base by approximately \$67,000.
- e) The Village Water Wastewater Disposal Project, which is required by FDEP Consent Order and will be installed and operational prior to the evidentiary hearing in this proceeding. Competent, substantial evidence supporting this project will be presented in the formal evidentiary hearing. Failure to include this pro forma plant addition understates rate base by approximately \$217,000.
- f) The Tomoka Twin Rivers Water Treatment Plant Tank Lining Project has been completed and is operational. Competent, substantial evidence supporting this project will be presented in the formal evidentiary hearing. Failure to include this pro forma plant addition understates rate base by approximately \$9,000.
- g) The Sunny Hills Water System Water Tank Replacement Project, which will be installed and operational prior to the evidentiary hearing in this proceeding. Competent, substantial evidence supporting this project will be presented in the formal evidentiary hearing. Failure to include this pro forma plant addition understates rate base by approximately \$200,000.

12. The leverage formula employed in the PAA Order to calculate AUF's authorized ROE is out of date. At the June 14, 2011, Agenda Conference, the Commission voted to approve a new authorized range of return on common equity for water and wastewater utilities in Docket No. 110006-WS.<sup>2</sup> This approved range of return on common equity should be utilized to establish AUF's ROE.

13. The Commission's proposal to disallow any salary increases jeopardizes AUF's quality of service by making it difficult to attract and retain competent employees and contravenes Commission precedent. See Order No. PSC-11-0010-SC-WU (January 3, 2011) (a 3% salary increase found to be "reasonable"). The salary increases requested in AUF's MFRs are based on a market study which the Commission has implicitly relied upon in the past to increase salaries. See Order No. PSC-09-0385-FOF-WS at pp. 109-111 (May 29, 2009). Furthermore, the American Waterworks Association compensation survey demonstrates that the requested salary increases are reasonable.

14. The PAA Order improperly proposes to reduce AUF's Plant, Accumulated Depreciation, and Depreciation Expense by \$50,058, \$20,460, and \$146,949, respectively for allocated IT plant costs. The proposed reduction to those expense items is based on an erroneous premise. Staff's recommendation dated May 12, 2011 incorrectly assumes that those expense items relate to reallocated costs that were assigned to 8 systems. That assumption, which is embedded in the PAA Order, is incorrect. None of those 8 systems, which were subsequently sold, utilized the IT Project; therefore, the costs of the IT Project were never allocated to those systems.

15. The total rate case expense of \$778,269 approved in the PAA Order is understated because it fails to take into account the significant, additional expense that AUF will incur in

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<sup>2</sup> The Commission's vote was memorialized in Order No. PSC-11-0287-PAA-WS (July 5, 2011).

litigating this case in a formal administrative hearing. In AUF's last fully-litigated rate case, the approved rate case expense was \$1,501,609. If this case proceeds to formal administrative hearing, rate case expense of similar proportions are expected to be incurred by AUF and, thus, should be included in the final revenue requirement.

16. The incentive compensation costs included in AUF's MFRs relate to incentive compensation models employed by AUF which encourage operational efficiencies. Those operational efficiencies directly enhance the reliability and cost-effectiveness of utility service and thus benefit customers as well as shareholders. Accordingly, AUF's incentive compensation costs should be shared equally between shareholders and customers.

17. In its MFRs, AUF proposed to defer recovery of a portion of interim rate relief to which it was entitled and requested the Commission to recognize the amount of that deferred interim rate relief as a regulatory asset to be recovered over a two-year period once final rates are determined. The PAA Order appropriately approved the regulatory asset concept; however, it miscalculated the amount of the regulatory asset. The Commission's miscalculation of the amount of the regulatory asset is attributed to the erroneous assumption that the PAA rate would be implemented in May 2011. After OPC and Ms. Wambsgan filed formal protests to the PAA Order, and in accordance with Section 367.081(8), Florida Statutes, AUF filed a request that the Commission acknowledge AUF's implementation of the PAA rates. Those PAA rates will not be implemented until the Commission provides the requested acknowledgment. Thus, the amount of the regulatory asset in the PAA Order is understated. The Commission must recalculate the appropriate amount of the regulatory asset taking into account the appropriate effective date of the PAA rates.

**Reservation of Rights**

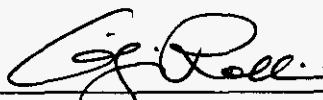
18. AUF reserves the right to amend this Cross-Petition based upon information obtained from discovery or other means.

**Request for Relief**

WHEREFORE, AUF as Cross-Petitioner respectfully requests that the Commission conduct a formal administrative hearing and issue a final order approving the rate relief requested by AUF in the hearing.

Respectfully submitted this 11th day of July, 2011.

**HOLLAND & KNIGHT LLP**



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*Attorneys for Aqua Utilities Florida, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was furnished by hand-delivery or overnight delivery\*\* this 11th day of July, 2011 to:

Ralph Jaeger  
Caroline Klancke  
Office of General Counsel  
Florida Public Service Commission  
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Tallahassee, Florida 32399-0850

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