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Subject: 100330-WS

Attachments: 100330-WS - AUF'S POST-HEARING BRIEF.pdf

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b. Docket number and title for electronic filing are: Docket No. 100330-WS - 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.

c. The name of the party on whose behalf the document is filed: Aqua Utilities Florida, Inc. ("AUF").

d. Total number of pages: 59 (includes appendices)

e. Brief description of filing: AUF's POST HEARING BRIEF

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PROMOTING, MARKETING, OR RECOMMENDING TO ANOTHER PARTY ANY TAX-RELATED MATTER HEREIN.****

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: December 30, 2011

POST-HEARING BRIEF

OF

AQUA UTILITIES FLORIDA, INC.

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TABLE OF CONTENTS[1]

[1]AUF's Post-Hearing Brief does not address issues that were stipulated and accepted at the Final Hearing. Also, the Post-Hearing Brief does not address issues that have been designated as "Fallout" issues.

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

PRELIMINARY STATEMENT

Aqua Utilities Florida, Inc. will be referred to as "AUF," the "Company" or the "Utility." Aqua America, Inc. will be referred to as "AAI" or "Aqua America." The Florida Public Service FPSC will be referred to as the "FPSC." The Office of Public Counsel will be referred to as "OPC." Intervener, the Office of the Attorney General, will be referred to as the "AG." Intervener, YES Communities, Inc. d/b/a Arredondo Farms, will be referred to as "YES." Intervener, Pasco County, Florida, will be referred to as "Pasco County." The Florida Department of Environmental Protection will be referred to as "FDEP," and the relevant water management districts as "WMD." The United States Environmental Protection Agency will be referred to as "EPA." The final order in AUF's last rate case—Order No. PSC-09-0385-FOF-WS—will be referred to as the "Final Order." The Florida First District Court of Appeal will be referred to as the "1st DCA."

Citations to the Final Hearing Transcript will be designated as "Tr." followed by page number. Citations to exhibits will be designated by "Ex." followed by the exhibit number, and page number, if applicable.

This rate case is being litigated under the FPSC's proposed agency action ("PAA") procedures as set forth in Sections 367.081(8) and 120.80(13)(b), Florida Statutes, and Rule 25-22.029, F.A.C.[2] On June 13, 2011, the FPSC issued Order No. PSC-11-0256-PAA-WS ("PAA Order"). Pursuant to Section 120.80(13)(b) and Rule 25-22.029, issues in the PAA Order not identified in a petition or cross-petition are deemed stipulated. Accordingly, AUF reaffirms its agreement to the following issues deemed stipulated pursuant to Section 120.80(13)(b), Florida Statutes, as set forth in the Prehearing Order No. PSC-11-0544-PHO-WS (Nov. 23, 2011): PAA Issue 2,[3] PAA Issue 3, PAA Issue 4, PAA Issue 5, PAA Issue 6, PAA Issue, 7, PAA Issue 8, PAA

[2]R. 25-22.029, F.A.C. provides that "One whose substantial interest may or will be affected by the FPSC's proposed action may file a petition for a . . . hearing, in the form provided by Rule 28-106.201, F.A.C. Any such petition shall . . . identify the particular issues in the proposed action that are in dispute. Issues in the proposed action that are not identified in the petition or a cross-petition shall be deemed stipulated."

[3]The issues are numbered as designated in the Staff PAA recommendation dated May 12, 2011, which was approved by the FPSC at the May 24, 2011 Agenda Conference and memorialized in the PAA Order.

Issue 9, PAA Issue 10, PAA Issue 11, PAA Issue 12, PAA Issue 16, PAA Issue 18, PAA Issue 19, PAA Issue 21, PAA Issue 23, PAA Issue 25, PAA Issue 29, PAA Issue 30, PAA Issue 31, PAA Issue 34, PAA Issue 41, PAA Issue 42, and PAA Issue 48. AUF also reaffirms its agreement with Staff regarding the Type B Stipulation on Issue 12, an issue on which the OPC and the other interveners take no position. AUF's Post-Hearing Brief does not address those issues that were stipulated and accepted at the Final Hearing. Furthermore, the Prehearing Order designated the following as "Fallout" issues: 8, 9, 10, 11, 13, 15, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, and 37. "Fallout" issues are not addressed in the brief because they are subject to resolution of the issues in dispute. The disputed issues addressed in AUF's Post-Hearing Brief are: 1, 2, 3, 4, 5, 6, 7, 14, 16, 17, 18, 19, 20, 21, 22, 31A, 38 and 39.

BASIC POSITION AND CASE BACKGROUND

AUF operates 60 jurisdictional water systems and 27 jurisdictional wastewater systems in 17 Florida counties.[4] Since rates were last established in Docket No. 080121-WS, AUF has invested over $11 million in infrastructure improvements to comply with FPSC directives and applicable federal, state and local regulations. As a result of AUF's infrastructure investments, its ongoing quality control initiatives, its customer service enhancements, and its water quality improvement projects, AUF's overall quality of service is good and has improved significantly since the last rate case.

At the same time, despite ongoing efforts to control and reduce expenses, AUF has continued to experience significant erosion of rates of returns which necessitate rate relief. The relief requested is not excessive; rather, it is the minimum required to enable AUF to continue to provide adequate and efficient service, and an opportunity to earn a fair rate of return on its investments as provided by law.

Although AUF is not opposed to the cap-band rate structure set forth in the PAA Order, the record also supports moving to a statewide uniform rate.

ISSUES AND ARGUMENT

QUALITY OF SERVICE

ISSUE 1: What is AUF's quality of service?

AUF: *AUF's overall quality of service is good, and has significantly improved since the Company's last rate case.*

In every rate case involving a water or wastewater utility, the FPSC determines the utility's overall quality of service by evaluating three criteria: (i) the quality of the utility's product; (ii) the operational condition of the utility's plant and facilities; and (iii) the utility's attempt to address customer satisfaction. *See* Rule 25-30.433(1), F.A.C. The overwhelming evidence in this

[4]Alachua, Brevard, DeSoto, Hardee, Highlands, Lake, Lee, Marion, Orange, Palm Beach, Pasco, Polk, Putnam, Seminole, Sumter, Volusia, and Washington.

proceeding demonstrates that AUF's quality of service is good under each of the criteria in Rule 25-30.433(1), and has significantly improved since the last rate case.

A. The Quality of the Product and the Operational Condition of the Facilities.

AUF operates 60 water systems and 27 wastewater systems that are the subject of this rate case. (Tr. 208, 213.) The record demonstrates that AUF is committed to operating its systems in compliance with all applicable standards of FDEP, the various health departments, and the WMDs. (Tr. 208.) The testimonies of FDEP witnesses and AUF witness Luitweiler show that most of AUF's water and wastewater systems have recently been inspected by the applicable regulatory agencies and have no outstanding compliance issues. (Tr. 208-209, 410-11.) There have been no Notices of Violation issued for any of the systems since AUF's last rate case. (Tr. 209.) The FDEP witnesses testified that the overall operation and maintenance of AUF's water and wastewater systems are satisfactory. (Tr. 410, 428, 947, 950, 973, 1029.) The record also shows that AUF has taken aggressive steps to resolve all of the environmental compliance issues identified in the last rate case. (Tr. 209, 228.) At the conclusion of AUF's last rate case, AUF had five open consent orders for the following systems: the Chuluota water System, The Woods water System, the Zephyr Shores water System, the South Seas wastewater System, and the Village Water wastewater System. All of those consent orders have now been closed with the exception of the Village Water consent order. (Tr. 209.) The only reason the Village Water consent order remains open is that AUF continues its efforts with the FDEP to find economically viable effluent disposal alternatives that will not impose undue cost burdens on its customers. (Tr. 277-80.)

The record shows that many of AUF's water and wastewater systems were constructed 40 to 50 years ago and the age and original construction of those systems can present environmental compliance challenges. (Tr. 213.) Furthermore, the raw water sources for many of AUF's water systems contain naturally occurring constituents, including iron and sulfides, which can present aesthetic water quality challenges for particular customers and communities that can be difficult and

expensive to address. (Tr. 214-15.) Where such concerns arise, the record shows that AUF interacts with its customers and attempts to effectively resolve such issues. (Tr. 1636, 1646-58.)

There is undisputed evidence that AUF is in compliance with the applicable FDEP, county health department, and WMD standards for the vast majority of its water and wastewater systems, and the Company has no outstanding Notices of Violation. Currently, AUF only has three outstanding consent orders, which relate to (1) effluent disposal at the Village Water wastewater system, (2) increased storage tank capacity at the Sunny Hills water system, and (3) naturally occurring Gross Alpha Particle Activity at the Peace River water system. Undisputed evidence demonstrates that AUF is working diligently to resolve each of these matters and has moved forward to invest capital where necessary. (Tr. 1640.) As stated, AUF continues to work closely with FDEP on a cost-effective effluent disposal alternative for Village Water that will not have an adverse impact on customer rates. (Tr. 278-80.) With respect to the Sunny Hills system, the FDEP has issued a construction permit, AUF has executed a contract for the construction of the tank and related improvements required by the consent order, and the tank is being fabricated. (Tr. 1641; Ex. 294.) With respect to the Peace River system, it remains in compliance with the maximum contaminant levels ("MCLs") for naturally occurring Gross Alpha Particle Activity and for Combined Radium. Results of special testing under the consent order, however, triggered a requirement for radium removal treatment. (Tr. 1641.) AUF has moved forward diligently with this project, which will be completed by February 15, 2012. (*Id.*)

Notably, no witness for OPC testified as to the operational condition of AUF's plants and facilities. Furthermore, none of the OPC witnesses that testified on water and wastewater quality had any experience in water or wastewater quality analysis. OPC's chief witness on water and wastewater quality actually acknowledged that AUF's environmental compliance records have improved since AUF's last rate case. (Tr. 753, 832.)

Pasco County and YES attempted to argue that the quality of AUF's water and wastewater service was deficient. However, close review of the record shows that those arguments lack credible evidentiary support. Neither Pasco County nor YES offered any expert testimony to support their claims regarding alleged water and wastewater quality deficiencies. Furthermore, the witnesses proffered by Pasco County and YES on the quality of AUF's water and wastewater service had no demonstrated knowledge of water or wastewater quality analysis. (Tr. 976, 1266, 1296.)

Pasco County witness Mariano insinuated that there were "potential environmental concerns" regarding AUF's wastewater treatment plant at Palm Terrace. (Tr. 977.) However, the actual evidence shows that issues have been promptly addressed by AUF when they have arisen. (Tr. 1649.) The testimony of AUF witness Luitweiler shows that when AUF received correspondence from FDEP dated June 23, 2011, regarding its Palm Terrace wastewater facility, the Company proactively addressed the issues raised, documented its actions in response to FDEP on July 22, 2011, and met with FDEP on July 28, 2011, to discuss the actions taken. (Tr. 212.) The substantive issue raised by FDEP related to the installation of a replacement force main at Palm Terrace to convey treated wastewater effluent to a spray field. Undisputed evidence shows that the main had been installed by a previous owner before the system was acquired by AUF, and traversed a concrete apron conveying storm water to a Pasco County storm water pond. AUF applied to Pasco County for a permit to replace the main on June 1, 2011, and finally received the permit July 20, 2011. Construction was completed on August 3, 2011. FDEP was present to witness the completion and testing of the new force main. Furthermore, AUF has provided to FDEP thorough written responses which document that the issues identified by FDEP have been resolved. (Tr. 441, 452, 460, 462.)

Pasco County witness Mariano repeated allegations that AUF had failed to properly issue precautionary boil water advisories. (Tr. 976-77.) Those claims were refuted by AUF's witness Luitweiler who confirmed that AUF follows FDEP guidelines on issuing precautionary boil water

advisories. (Tr. 264-65, 1627-28.) The evidence also shows that Pasco County's policies and practices with respect to precautionary boil water advisories is virtually the same to those of AUF. (Ex. 350.) Finally, not one of FDEP witnesses gave any indication that AUF's policies and practices for issuing precautionary boil water advisories failed to comply with FDEP guidelines.

Lay witnesses for YES claimed that the quality of water at AUF's Arredondo Farms system is unsatisfactory because it is "hard." (Tr. 1303, 1318, 1323.) That testimony was thoroughly rebutted by AUF witness Luitweiler who testified that the quality of water supplied at the Arredondo Farms system meets all primary and secondary federal and state drinking water standards. (Tr. 207, 217.)[5] The record further shows that there is no SMCL for hardness. (Tr. 217-18.) The hardness of the water in Arredondo Farms is around 320 mg/L as calcium carbonate. (Tr. 218.) Mr. Luitweiler testified that this is not exceptionally hard water for Florida, and there are many other water systems throughout Florida that have hard water. (Tr. 218.) The FDEP witness responsible for systems in Alachua County testified that the maintenance and operation of AUF's water treatment plants and distribution facilities at Arredondo Farms and Arredondo Estates are satisfactory. (Tr. 1369.)

The FPSC has consistently recognized that it is not unusual for Florida water utilities to experience water "hardness" issues, and it has not taken punitive actions against utilities that do.[6] Indeed, in the 1996 rate case involving the Arredondo Farms system (which was then owned by Arredondo Utility Corporation), the FPSC expressly found that, while the water at the system was hard, it did not present a health hazard. *See* Order No. PSC-96-0728-FOF-WS at 2-3. The FPSC went on to conclude that the "treated water provided by Arredondo meets or exceeds all

[5]Witness Luitweiler explained that the EPA National Primary Drinking Water Regulations set enforceable Maximum Contaminant Levels ("MCLs") for drinking water to protect the public from contaminants that might present some risk to human health. (Tr. 214-215.) He also explained that the EPA also sets non-mandatory Secondary Maximum Contaminant Levels ("SMCLs") for 15 other constituents based on aesthetic considerations such as taste, color and odor. SMCLs are established as guidelines to assist public water suppliers in managing their drinking water systems. These constituents are not considered to present a risk to human health at or below the SMCL. (Tr. 214.)

[6]*See, e.g.*, Order No. PSC-00-2054-PAA-WS (Oct. 27, 2000); Order No. PSC-96-0728-FOF-WS (May 30, 1996); Order No. PSC-93-0027-FOF-WS (Jan. 5, 1993).

requirements for safe drinking water" and that the utility had satisfactory water quality. *Id.* There is no evidentiary basis for the FPSC to reverse its previous decision and conclude otherwise in this case.

B. The Utility's Attempt to Address Customer Satisfaction.

1. Customer Satisfaction Through Programs to Improve Water Quality.

Aesthetic Water Quality Improvement Program

AUF has taken significant steps to address customer satisfaction in the area of aesthetic water quality. (Tr. 214, 291.) The raw water source for some of AUF's water systems contains naturally occurring "aesthetic" constituents, including iron and sulfides, which at times can cause color, taste, and odor issues for individual customers. (Tr. 214.) Environmental regulators do not consider these subjective aesthetic qualities to cause health issues and, as such, they are considered secondary standards. These constituents can often be difficult and expensive to treat or remove. (Tr. 214-15.)

In 2008, AUF initiated its original aesthetic water quality program ("Original Aesthetic Program") to address customer comments related to aesthetic water quality made during the last rate case. (Tr. 215.) Although aesthetic water quality standards are not typically enforced by environmental agencies, AUF went beyond its statutory obligations and proactively developed its Original Aesthetic Program as a plan to effectively address its customers' aesthetic water quality concerns. (Tr. 214.) As part of that plan, AUF reviewed comments from customers at the public hearings, complaints dealing with aesthetic water quality issues, aesthetic water quality sampling data, and feedback from its area coordinators. (Tr. 215.) AUF also surveyed customers on aesthetic water quality and reviewed those systems that had documented exceedences of Safe Drinking Water Act standards. Through this process, AUF identified 7 water systems where individual customers had expressed the most concern regarding aesthetic water quality issues: Lake Josephine, Leisure Lakes, Sebring Lakes, Rosalie Oaks, Tangerine, Tomoka View, and Zephyr Shores. (*Id.*) OPC and

AUF later agreed that these same 7 systems would be the focus of the Phase II Monitoring Plan's aesthetic water quality component. The Phase II Monitoring Plan, including the aesthetic water quality component, was approved by the FPSC in Order No. PSC-10-0297-PAA-WS. (Tr. 1714.)

The evidence shows that work has been completed at the Rosalie Oaks (flushing hydrants and blowoffs), Zephyr Shores (flushing hydrants, blowoffs, and installation of sequestration treatment), Tangerine (pipe replacement and looping, and installation of sequestration treatment) and Tomoka View (chloramination) systems. (Tr. 215-16.) The evidence also shows that work on installation of AdEdge treatment to remove hydrogen sulfide at Lake Josephine, Sebring Lakes and Leisure Lakes was slowed due to FDEP permitting delays. (Tr. 216.) Nevertheless, the record demonstrates that the AdEdge treatment projects for Lake Josephine and Sebring Lakes were nearly complete at the time of the hearing and are expected to be on line in December 2011. The AdEdge treatment project at Leisure Lakes is now permitted and the equipment has been fabricated. (Tr. 229, 1626, 1639, 1660.)

A downward trend in the number of water quality complaints from customers in these systems shows that customers are seeing the benefits of these aesthetic water quality improvements. (Tr. 216, 281, 300, 1635.) Particularly telling is the testimony of Mr. Dave Bussey given at the customer service hearing in New Port Richey on October 11, 2011. Mr. Bussey has been a vocal critic of AUF and testified at seven of the ten customer service hearings held in the case. When asked about the results of the secondary water quality improvement initiative, Mr. Bussey agreed that AUF's initiative had improved the quality of water at Zephyr Shores. (Tr. 826-27, 1640.)

The evidence shows that in selecting the systems to be part of AUF's Original Aesthetics Program, priority was given to systems with SMCL exceedences for taste and odor (due mainly to naturally occurring hydrogen sulfide) and discolored water (due mainly to naturally occurring iron and manganese). The Arredondo Farms system was not included in the Original Aesthetics Program because it had no SMCL exceedences and no issues related to primary standards. (Tr. 217.) The

system, however, has been included in AUF's second phase of the aesthetic improvement project, along with Hermit's Cove, River Grove and Arredondo Estates. (Tr. 216-17.) Specific options under consideration to address the hardness of the water at Arredondo Farms currently include softening processes other than lime softening (which would be very expensive for this small system), adding a sequestering agent tailored to address the effects of calcium and magnesium hardness, or purchasing water from Gainesville Regional Utilities. (Tr. 1640.) AUF's ultimate goal is to find a solution that will maximize benefits to customers and minimize upward pressure on rates. (Tr. 220, 1640.)

Chuluota

The FPSC excluded the Chuluota water and wastewater systems from rate relief in the last rate case because it found that the quality of service for those systems was unsatisfactory. (Tr. 209.) That finding of unsatisfactory service was based primarily on water quality compliance issues involving disinfection byproducts (TTHMs), which were ongoing at the conclusion of the last rate case. (Tr. 209.) In this case, undisputed evidence demonstrates that AUF has invested over $2.1 million in an ion exchange system to address the TTHM issue. As a result of those improvements, the Chuluota system has been in compliance with TTHM standards for all of 2010 and 2011. FDEP closed the consent order for the Chuluota system in December 2010. A follow-up inspection in January 2011 noted that the plant was in good operating condition with no deficiencies. In addition to significantly reducing TTHMs and achieving compliance, the newly installed ion exchange treatment process has greatly improved the aesthetic quality of the water to the point where the number of water quality complaints and inquiries from Chuluota customers has dropped dramatically. (Tr. 210, 228.) Furthermore, the FDEP has commended AUF on its efforts to improve the water quality at Chuluota. (Tr. 834; Ex. 311, Tabs 6, 7.)

2. Addressing Customer Satisfaction Through Service Enhancements.

The record shows that AUF is constantly looking for ways to enhance customer satisfaction. (Tr. 288-89.) AUF continues to ensure that its customer service representatives ("CSRs") at its call centers are well trained to respond to customers in an effective, prompt and courteous manner. (Tr. 280). The positive results of this training were confirmed by OPC witness Poucher at the hearing. Mr. Poucher recanted his prefiled testimony and stated "this company obviously has been working on the call center. . . . and I think they're . . . far improved today as a result of these cases and as a result of the monitoring program. They know we are looking at them and it's good." (Tr. 930-31.)

In addition to CSR training, undisputed evidence shows that, since its last rate case, the Company has: (i) formed a "Complaint Analysis and Remediation Team" ("CART") at its call centers to identify trends or potential problem areas, and to appropriately resolve customer concerns (Tr. 288-89); (ii) developed an electronic work queue ("EWQ") that is used to monitor and track supervisor customer call-backs in order to improve CSR responsiveness and ensure that escalated calls coming into the call center are responded to in a timely fashion (Tr. 293); (iii) purchased equipment to facilitate on-site meter tests to achieve efficiencies and enhance customer confidence in the process (Tr. 303-04, 580); and, (iv) standardized its processes for its field technicians to improve the interactions between the field technicians and the call center in order to enhance customer responsiveness and efficiency (Tr. 289). AUF has also worked with representatives of YES to create a task force to address unique issues surrounding the Arredondo Farms mobile home park.[7] (Tr. 1334-35, 1843.)

3. Addressing Customer Satisfaction by Billing and Payment Improvements.

Evidence shows that customer input is extremely important to AUF, and the Company continues to take steps to address billing and payment issues raised by customers in the last rate

[7]The record shows that the resident population at the park has been largely transient for years, which results in a high number of move-in and move-outs, which in turn causes a higher number of service orders and presents billing challenges. (Tr. 367-68; Ex. 196 at 99, 112-19.) The task force has worked effectively to address these issues. (Tr. 1334-36, 1843.)

case, and in customer meetings and customer service hearings in this case. (Tr. 290-91.) For example, the record shows that: (i) to address customer requests for online payment options, AUF has developed a new program—Aqua Online—that allows utility customers to view and pay bills online free of charge (Tr. 291); (ii) to address the concerns of its customers who often use their Florida home as a second residence in the winter, AUF offers those seasonal customers the option to suspend payment of the base facility charge when the customer resides outside of Florida (Tr. 336-37); and, (iii) to better educate seasonal customers of the various programs available, AUF also mails out an informational brochure to encourage customers to contact the call center when they leave for the summer so that their account is properly noted as "seasonal" (Tr. 289, 304).

Furthermore, the record confirms that AUF is sensitive to customers who expressed concerns that their water service had been discontinued for nonpayment, and has adopted delinquency and termination policies that are more consumer friendly than what is required by the FPSC's rules. *Compare,* Rule 25-30.320(2), F.A.C. Under the FPSC's rules, a customer has 21 days to make a payment before being considered delinquent. Once an account becomes delinquent, those rules authorize the utility to terminate service for nonpayment for <u>any</u> amount past due, provided that the utility supplies the customer with at least 5 working days written notice in advance of termination. *Id.* Under AUF's more customer-friendly policy, the customer is provided at least 10 days advance written notice indicating that service will be discontinued if payment is not received. (Tr. 291.) AUF also attempts to call the customer prior to discontinuing service, which is not required by the FPSC's rules. (Tr. 291-92, 372.) Furthermore, unlike the FPSC's rules that allow for service to be terminated for failure to pay <u>any</u> amount of an outstanding bill, AUF's policy is to proceed with service termination <u>only</u> in those instances where the outstanding amount owed exceeds $100. (Tr. 292, 372.) It is also noteworthy that, although not required by FPSC Rules, AUF routinely offers a payment plan for outstanding bills for qualified customers. (Tr. 292.)

Furthermore, when AUF discontinues service for failure to pay, AUF's policy is to reinstate service within the next business day following the date of payment confirmation. (Tr. 292.)[8]

The record demonstrates that AUF's bills are issued at regular intervals of 26 to 35 days. (Tr. 1728-29.) In those isolated incidents where bills are issued for longer periods of time, AUF has implemented a process where an alert message is placed on a customer bill if the bill covers a period of more than 35 days. The long period bill alert advises the customer that he or she can enter into a payment arrangement upon contacting the call center. (Tr. 292.) Likewise, AUF has implemented a process whereby an alert message is placed on a customer's bill that is abnormally high. (Tr. 292.) The high bill alert prompts the customer to investigate for potential leaks by visiting Aqua's website for more detailed information on water conservation and leak detection protocols. (Tr. 304.) Although not required by the FPSC's rules, AUF has also implemented leak adjustment policies that are customer friendly. (Tr. 1735.) When a customer contacts a service representative with respect to water consumption, the representative informs the customer of ways to check for leaks. Although not required by FPSC rules, the customer is offered an opportunity for a leak adjustment credit to his or her bill where the repair of the leak is documented. (Tr. 393-94, 1735.)

AUF's customer friendly billing policies are also reflected in the fact that AUF implemented a pool credit policy in 2009, which allows the utility's customers to receive a credit on their wastewater bill for the water used to fill the customer's pools. The credit is based on the difference in a customer's typical monthly water usage and the cap used to calculate the wastewater bill. (Tr. 1735.)

Witnesses for OPC and YES go to great length in their attempts to disparage AUF billing protocols by claiming that AUF's policies and practices on backbilling are improper. (Tr. 731-32.)

[8]When AUF witness Chambers was questioned during the Technical Hearing, YES' counsel suggested that AUF's field service technicians were insensitive to customers. Nothing could be further from the truth. Review of the entire transcript of the deposition of AUF field service technician, Steve Grisham, shows that AUF's field technicians are empathetic to customers and go the extra mile to meet customers' needs. (Ex. 196 at 19-21, 81, 83, 98-99, 101, 112-19.)

Those claims are unfounded. Overwhelming evidence adduced at the hearing shows that the number of backbills are minimal. (Tr. 395-96, 1725.) Further, AUF's protocol for backbilling customers is appropriate and complies with Florida law. (Tr. 1727-28.) Both Rule 25-30.350 and AUF's approved Tariff allow AUF to backbill for up to 12 months of service. (Tr. 1724-25, 1727.) Thus, when AUF revises a bill to send to a customer to account for services that were rendered but were undercharged, the bill will be calculated based on the total amount of usage measured through the meter for the total time that service was received. If this period exceeds 365 days, AUF's policy is to include an adjustment on the bill that credits the customer for usage beyond the 365-day look-back period. AUF's practice is expressly designed to ensure that the backbilled period does not exceed 12 months. (Tr. 1727.) Furthermore, AUF's policy is to allow the customer to pay the backbill over the same time period in which the underbilling occurred or some other mutually agreeable time. (Tr. 1727.)

The FPSC and Florida's courts have specifically recognized that all utilities have a right and an obligation to "backbill" customers for services that were rendered but were undercharged or not billed.[9] The court in *Corporation de Gestion Ste-Foy, Inc. v. Fla. Power & Light,* 385 So. 2d 124 (Fla. 3d DCA 1980) found that a public utility "is not only permitted but is required to collect undercharges from established rates, whether they result from its own negligence, or even from a specific contractual undertaking to charge a lower amount." *Id.* at 126 (emphasis added). The court explained that it would be improper for a utility to give preferential treatment or to charge one customer less than another customer for the same service. *Id.* The Florida Supreme Court later endorsed this principle when it expressly upheld the right of a water utility to backbill for water undercharges. *Jacksonville Elec. Auth. v. Draper's Egg & Poultry Co.,* 557 So. 2d 1357 (Fla. 1990). In similar fashion, the FPSC has explained the reason why a water utility is entitled to

[9]The FPSC's rules expressly recognize that water, wastewater, electric and gas utilities can, and do, "backbill" their customers. For example, Rule 25-30.350, which authorizes a water and wastewater utility to "backbill" customers, is virtually identical to the FPSC's rules that authorize "backbilling" by electric utilities (Rule 25-6.106) and natural gas utilities (Rule 25-7.0851). Further, OPC's witness on billing testified that "back-billing is a fact of life" in the telecommunications industry. (Tr. 843.)

backbill pursuant to Florida Administrative Code Rule 25-30.350 "regardless of whether the utility was aware of the connection or not, the customer has received service for which it has not paid." *See* Order No. PSC-94-0501-FOF-WU (Apr. 27, 1994).

The record is devoid of evidence to support allegations by OPC witness Poucher and YES witness Kurz that the volume of "backbilling" on AUF's system is unacceptable. At the outset, the record also shows that there is no numerical threshold for "backbilling" in Florida. (Tr. 843, 1725.) That said, for the period January 2009 through March 2011 (which includes the test year), AUF's records show that the Company issued approximately 625,000 bills, of which only approximately 0.07% could be considered a "backbill" as contemplated by the FPSC's rules. (Tr. 1725.) The evidence also shows that the volume of "backbilling" at Arredondo Farms is not excessive. (Tr. 1732-33; Ex. 64.) The evidence shows that from January 2009 through March 2011 AUF issued approximately 9,261 bills to customers in Arredondo Farms. (Ex. 299.) The record indicates that only 5 of those bills reflect backbills. (Ex. 301.) Clearly, "backbilling" on AUF's system is minimal compared to the total bills issued by AUF. (Tr. 1725.)

While the issuance of a backbill is required in certain circumstances, the record shows that the Company has procedures specifically designed to minimize instances where "backbilling" may occur. These measures center around "zero consumption" meter reads, which testimony shows are a primary root cause of backbilling. (Tr. 1726, 1728.) Zero consumption is often simply a reflection of a correct read for a seasonal customer who is not currently residing in Florida. (*Id.*; *see also* Tr. 846.) However, a zero consumption read could also be attributable to some problem with the ERT or meter. If a "zero consumption" account is reported, a field representative is sent out to investigate whether the zero consumption read is correct (and likely a seasonal account) or is due to an ERT or meter issue. (Tr. 319.)

The record also reflects that AUF's policy on backbilling is more restrictive than that permitted by Rule 25-30.350, F.A.C. (Tr. 1724-25.) A utility in Florida can backbill for more than

twelve months of service where the relevant undercharge was not due to the utility's mistake. However, AUF's policy is to backbill for no longer than twelve months of service even where the undercharge was not attributable to AUF. (Tr. 1727.)

The record further shows that AUF has procedures in place to ensure that a customer is not backbilled for more than twelve months of service. AUF longstanding protocol requires service order specialists to review accounts to ensure that that the customer is not backbilled for more than twelve months of service. (Tr. 1727.) AUF has recently implemented another procedure that requires any bill for a period longer than 365 days of service to be reviewed a second time electronically to ensure that the proper credit has been applied to the customer's account before a backbill is mailed to the customer. (Tr. 316; Ex. 199 at 132.)

Order No. PSC-11-0368-PAA-WU (Sept. 1, 2011) puts OPC's and YES' tenuous allegations of improper backbilling in perspective. In that rate case, the FPSC addressed circumstances where a water utility--Lighthouse Utilities--had backbilled customers. The FPSC granted the utility rate relief, found its quality of service to be satisfactory, and took no punitive action against the company. There is no evidentiary basis for the FPSC to treat AUF differently.

4. Ensuring Customer Satisfaction by Quality Control Metrics.

The record shows that AUF has proactively established its own quality of service metrics as part of a robust quality assurance program to achieve and maintain customer satisfaction. (Tr. 292, 294.) AUF's self-imposed metrics are not established at easily attained levels; instead, those goals are designed to challenge employees to stretch their customer service performance toward excellence. (Tr. 295.) AUF's quality control metrics are reflected in the Phase II Monitoring Reports that the FPSC approved in Order No. PSC-10-0297-PAA-WS. (Tr. 298-99.) The results of the Phase II Monitoring Report, which are part of the record in this case, show that AUF has made steady improvement in the quality of customer service since the last rate case. (Tr. 299-300; Ex. 65.)

C. AUF's Efforts to Address Customer Satisfaction Have Been Successful.

AUF's efforts to address customer satisfaction have produced meaningful results. As mentioned, the empirical results of Phase II Monitoring demonstrate that AUF's quality of service has steadily improved since the last rate case. (Tr. 299-300; Ex. 65.) Furthermore, undisputed evidence shows that the volume of complaints filed against AUF has fallen dramatically since the last rate case. In 2007, 186 complaints were filed with the FPSC regarding AUF. In 2010, that number dropped to 142, a reduction of approximately 24%. (Tr. 1718.) More recently, for the first seven months of 2011 AUF averaged 10 complaints per month. By comparison, the average number of complaints filed regarding AUF in 2009 and 2010 were 18 per month and 13 per month, respectively. (Tr. 293.) These are significant reductions given that customer complaint volumes typically increase during the course of a contested rate case proceeding. (Tr. 1718-19.)

The reduction in the volume of complaints is even more impressive given the well orchestrated efforts by OPC, YES, Pasco County, FlowFlorida and Food and Water Watch to encourage customers to flood the FPSC with complaints in hopes that the sheer volume of complaints would persuade the FPSC to deny AUF's request for rate relief. (Tr. 1719.) The record also shows that some of these entities have other ulterior motives. For example, Food and Water Watch is a Washington, D.C. lobbying group whose political agenda is to abolish privately-owned water utilities throughout the country. (Tr. 877.) Food and Water Watch's annual report reveals that it helped create FlowFlorida for the purpose of complaining to the FPSC and reducing AUF's return on equity so that local governments could "remunicipalize" those systems. (Tr. 877; Ex. 323 at 7.) Evidence adduced at the hearing indicates that two leaders of FlowFlorida attended 7 out of the 10 customer service hearings and worked closely with Food and Water Watch to organize letter writing campaigns and actively encourage customers to complain. (Ex. 65 at 39; Ex. 321; Ex. 322.) That evidence also confirms that Pasco County Commissioner Jack Mariano communicates regularly with FlowFlorida representatives and has assisted FlowFlorida representatives in organizing rallies

against AUF. (Tr. 882, 1500-01; Ex. 322, 325.) The record also shows that Mr. Mariano formally appeared before the FPSC at its May 24, 2011 Agenda Conference and urged the FPSC to reduce AUF's return on equity in order to force AUF to sell its system to the County. (Tr. 879, 1500-01; Ex. 325 at 131.) Commissioner Mariano's request to reduce AUF's ROE tracks almost verbatim the "remunicipalization" strategy set forth in Food and Water Watch's annual report. (Tr. 879; Ex. 323, 325.)

The dramatic reduction in the number of complaints during this rate case is also impressive given the aggressive and inflammatory tactics employed by the OPC representative responsible for encouraging customers to complain and attend the service hearings. For example, this OPC representative characterized AUF's rate case as a "war" (Tr. 791-792), and described AUF to a Food and Water Watch representative as using its position "to steal from customers." (Tr. 887; Ex. 321.)

ISSUE 2: What, if any, additional actions should be taken by the FPSC based on AUF's quality of service?

AUF: *No further action should be taken by the FPSC because AUF's quality of service is good and has significantly improved since the last case.*

OPC witnesses Dismukes and Poucher argue that AUF's quality of service is unsatisfactory and recommend that the FPSC impose an ROE penalty of 100 basis points. Their arguments and recommendations are unfounded. As shown in Issue 1, AUF's overall quality of service is good and has significantly improved since AUF's last case. Furthermore, in the last case the FPSC did not impose an ROE penalty for those systems in this rate case and there is no valid reason to depart from that precedent.

The FPSC's authority to impose an ROE penalty on a utility is not unlimited. OPC cites Section 367.111, Florida Statutes, as the legal basis for its recommended ROE penalty. But the plain reading of that statute authorizes the FPSC to reduce a utility's ROE only if it is shown that the utility has failed to provide water and wastewater service that meets standards promulgated by

the FDEP or the WMDs. When asked, OPC witnesses could not identify any promulgated FDEP or WMD standard that AUF failed to meet in this case. (Tr. 847, 1191.)

The Florida Supreme Court has cautioned that the FPSC's authority to reduce earnings is a "powerful tool" to bring about improved utility services, but it should be used "carefully" so as to avoid depressing earnings to a level that would jeopardize the utility's ability to continue service improvement programs. *See Askew v. Bevis,* 283 So. 2d 337, 340 (Fla. 1973). In keeping with this warning, the FPSC has been careful to limit ROE penalties to egregious situations such as where the utility has flagrantly disregarded environmental regulations or ignored FPSC rules. *See, e.g.,* Order No. PSC-03-0699-PAA-SU and Order No. PSC-98-0763-FOF-SU. There is no evidence in this case, and indeed no claim, that AUF has flagrantly disregarded FDEP's or the FPSC's rules, charged unauthorized rates, or ignored staff's requests for information. Indeed, as shown in Issue 1, AUF is committed to taking actions beyond that required by law in order to improve customer service. (Tr. 1453.)

The Supreme Court decision in *Gulf Power Co. v. Wilson,* 577 So.2d 270 (Fla. 1992) is particularly instructive in addressing whether the FPSC should impose an ROE penalty on AUF. In that case, the utility's management admitted that a senior executive had for years been engaged in corrupt practices such as theft, misuse of utility property and inappropriate political contributions. Because of those extraordinary circumstances, the FPSC reduced Gulf Power's rate of return by 50 basis points, but limited that ROE reduction for a period of two years on the basis that utility management had shown a commitment to address its prior problems. None of those extraordinary circumstances are present in this case. The punitive ROE penalty recommended by the OPC ignores AUF's good faith efforts to provide and improve its quality of service to customers. Thus, those recommendations should be rejected.

OPC witnesses Poucher and Vandiver also recommend that the FPSC impose what would be a third round of monitoring for AUF. (Tr. 637, 760.) The record, however, reflects that additional

monitoring is not required and would impose unnecessary costs on the utility and its customers. For over two years now, AUF's service quality already has been the focus of two separate and rigorous monitoring plans. (Tr. 295-300.) The Initial Monitoring Plan was imposed at the conclusion of AUF's last rate case and required AUF to file monthly reports on customer complaints, call center sound recordings, and meter reading logs and route schedules from May 2009 through October 2009. (Tr. 296.) AUF complied with the FPSC's Initial Monitoring Plan in all respects, which in turn allowed FPSC Staff to objectively review first-hand AUF's responses to customer complaints, its handling of calls coming into the call centers, and the accuracy of its meters and billing. (Tr. 295-96.) At the end of that intensive independent review process, FPSC Staff filed a detailed report that concluded AUF's handling of customer complaints, meter reading, customer billing and environmental compliance was adequate. (Tr. 296.) The FPSC considered Staff's report, noted that its Staff had spent an extraordinary amount of time objectively reviewing the quality of AUF's customer service, and affirmed that its Staff had independently reviewed over 700 sound recordings and determined that "the majority were handled in a courteous and professional manner and the representatives were taking the appropriate action to resolve all issues in the call." Order No. PSC-10-0218-PAA WS (Apr. 6, 2010) at 6. The FPSC also acknowledged that AUF had implemented a number of other measures to improve its customer service with respect to its call center, its field technicians and its customer outreach. (*Id.*) The FPSC ultimately concluded that the results of the Initial Monitoring Plan showed "substantial improvement in AUF's customer service, [but that] additional monitoring was required to ultimately render a determination as to the adequacy of AUF's quality of service." *Id.* at 12 (emphasis added).

Recognizing that its Initial Monitoring Plan had imposed substantial cost and time requirements on Utility and Staff, the FPSC directed its Staff to continue with a more limited monitoring of AUF's customer service from May through the end of 2010. In so doing, the FPSC ordered AUF to collaborate with the OPC, Staff and other parties to "develop a cost-effective,

efficient, and meaningful monitoring plan, and to bring the supplemental monitoring plan to us within 45 days." *Id.* at 13. Thereafter, AUF, OPC and the parties all ultimately agreed to a proposed Phase II Monitoring Plan that eliminated the requirements that AUF produce sound recordings, meter reading information, and complaint logs, but continued a more limited monitoring of customer service and certain aesthetic water quality issues. To ensure that this Phase II Monitoring Plan was cost-effective and efficient, the reporting requirements specifically agreed upon by OPC and AUF were structured around (i) non-proprietary reports that AUF was already using internally to monitor and ensure quality of service (with the exception of one report that was created specifically for the Phase II Monitoring Plan), and (ii) an aesthetic water quality improvement program that AUF already had underway. (Tr. 298.)

By Order No. PSC-10-0297-PAA-WS (May 10, 2010) ("Phase II Monitoring Order"), the FPSC approved the Phase II Monitoring Plan agreed to by the OPC and AUF, and acknowledged that many of its customer service concerns regarding meter reading, meter accuracy and billing that led to the Initial Monitoring Plan had been addressed. Pursuant to the FPSC's directives, AUF filed a final report on February 28, 2011, summarizing the results of AUF's Phase II reporting requirements. Those monitoring results, which are part of the record in this case, show that AUF has good customer service and consistently complies with environmental requirements. (Ex. 65.) Furthermore, record evidence shows that the Initial Monitoring Plan and the Phase II Monitoring Plan have imposed significant costs on AUF in excess of $230,000. (Tr. 1569-74; Ex. 341, 342.) In light of AUF's demonstrated commitment to improved customer service, additional monitoring is unnecessary and would not be cost-effective.[10]

[10]OPC's request for continued monitoring rings hollow especially when OPC was so apathetic to the monitoring plans it initially worked to develop and ultimately agreed to. That apathy was exemplified at the hearing when OPC witness Poucher admitted that, while AUF had complied with OPC's request and provided OPC with the audio tapes of all of the calls into the call centers, the OPC had never attempted to listen to even one of the tapes. (Tr. 895-98.) Furthermore, Mr. Poucher admitted that the OPC had never visited and inspected the Company's call center even though such inspection visit was expressly contemplated by the FPSC's Phase II Monitoring Order. (Tr. 899.)

RATE BASE

ISSUE 3: What is the appropriate amount of pro forma plant, and related depreciation and property taxes, for the following specific protested pro forma plant projects: Breeze Hill Wastewater I&I Project; Lake Josephine and Sebring Lakes AdEdge Water Treatment Project; Leisure Lakes AdEdge Water Treatment Project; Peace River Water Treatment Project; Tomoka Twin Rivers Water Treatment Plant Tank Lining Project; and, Sunny Hills Water System Water Tank Replacement Project?

AUF: *AUF's pro forma plant additions which have been protested in this case are prudent projects needed to address and improve water quality and to comply with FDEP requirements. The appropriate amount of pro forma plant and related depreciation and property taxes are more fully detailed below.*

As AUF witness Luitweiler testified, to include a pro forma project in rate base, the FPSC requires documentation supporting the purpose, design and price of the project to allow sufficient evaluation of the project's prudence and cost—typically executed contracts, work orders and current price quotes. (Tr. 222.) OPC Witness Woodcock, the only other witness to address AUF's pro forma plant requests, conceded that if AUF secured bids and provided proof that construction would be underway within the required period, then the projects should be placed into rate base. (Tr. 626.) AUF's undisputed evidence supports the purpose, design and price of these six pro forma plant projects, and also demonstrates that each has been or will be placed into service within the required period. Thus, these six projects should be included in rate base.

*1. **Breeze Hill Wastewater I&I Project***—As shown in the MFRs, the Breeze Hill wastewater system previously had a high amount of I&I. AUF proposed an I&I rehabilitation project in its rate case filing to address the excessive I&I. This project was completed in March 2011. On May 31, 2011, this project was closed from Construction Work In Progress ("CWIP") into plant in service. The total amount of this now-closed project is $78,164.65, including overhead. Also included in Exhibit PL-4 is the internal AC290 report verifying the closing date and total amount of this project. Thus, $78,165 for the in-service plant should be included in rate base. (Tr. 222-23; Ex. 58.)

*2. **Lake Josephine And Sebring Lakes AdEdge Water Treatment Project***—The Lake Josephine and Sebring Lakes AdEdge Water Treatment Project has been designed, permit applications have

been submitted to FDEP, and the Filtration equipment from AdEdge was delivered on October 12, 2011. A contractor was engaged to complete installation of AdEdge treatment at both facilities by November 2011. Thus, $372,759.50 for these two projects should be included in rate base as pro forma plant. (Tr. 222, 1624; Ex. 57, 216, 217.)

*3. **Leisure Lakes AdEdge Water Treatment Project***—The Leisure Lakes AdEdge Water Treatment Project has been designed, a permit application has been submitted to FDEP, and filtration equipment was ordered from AdEdge while the permit application was pending at FDEP. A construction permit was finally issued by FDEP on October 6, 2011. Work on installing treatment is to begin as soon as the units at Lake Josephine and Sebring Lakes have been completed. AUF expects construction to be completed by mid-January 2012. Thus, $105,799.04, plus additional costs for installation, inspection and certification for this project should be included in rate base as pro forma plant. (Tr. 223-24, 234, 1626; Ex. 60, 220.)

*4. **Peace River Water Treatment Project***—AUF completed the Peace River Water Treatment Project design and submitted the permit application to FDEP. AUF executed a contract with the treatment system (WRT) supplier on August 23, 2011, and a contract for construction on November 18, 2011. The project is expected to be completed by February 15, 2012. Thus, $204,680.89, which is required by a FDEP Consent Order, should be included in rate base as pro forma plant. (Tr. 224, 236, 1625; Ex. 61, 219.)

*5. **Tomoka Twin Rivers Water Treatment Plant Tank Lining Project***—This project's need was identified in a February 2, 2010, Volusia County Department of Health (VCHD) letter, which pointed out the age and condition of AUF's concrete block tank at the Tomoka Twin Rivers plant. The previous owner failed to coat the tank. The project to reline the tank was completed in May 2011, and AUF has provided invoices totaling $41,046. On June 30, 2011, this project was closed from CWIP into plant in service. The total amount of this now-closed project is $48,065.70,

including overhead. Thus, $48,066 for the in-service plant should be included in AUF's rate base in this rate case. (Tr. 223; Ex. 59.)

*6. **Sunny Hills Water System Water Tank Replacement Project***—AUF completed design for a new water tank and piping, and the design and construction permit application was filed with FDEP on June 6, 2011. As of the final hearing, AUF not only had bids, but had a signed contract, the tank had been ordered, and AUF had authorized a contractor to commence work. (Tr. 233.) Indeed, the contract for installation of the storage tank, piping and related improvements required by FDEP was executed on September 14, 2011. Thus, $267,885.29 for this project should be included in rate base as pro forma plant. (Tr. 224, 233, 1625; Ex. 62, 218.)

AUF has demonstrated that all six of the aforementioned projects will be completed by February 2012, within 24 months after the end of the historic base year. (Tr. 221-25, 234-37, 1624-26, 1641, 1660.) OPC's assertions that AUF's pro forma plant projects will not be completed within 18 months from the end of the historic test year references a non-existent standard. (Tr. 54, 234, 236-37.) Section 367.081(2)(a)(2.), Fla. Stat., provides that, in fixing rates which are just, reasonable, compensatory and not unfairly discriminatory, the FPSC "shall consider utility property, including land acquired or facilities constructed or to be constructed within a reasonable time in the future, not to exceed 24 months after the end of the historic base year," not 18 months. (Emphasis added.)

Moreover, 3 of these projects were performed to comply with environmental requirements, including: (1) Peace River Gross Alpha Treatment; (2) Sunny Hills Additional Storage; and (3) Tomoka Twin Rivers Tank Liners. (Tr. 225.) The Lake Josephine/Sebring Lakes AdEdge and Leisure Lakes AdEdge Treatment projects were undertaken due to the FPSC-approved Phase II Aesthetic Water Quality Improvement. (Tr. 225.) AUF is entitled to recover the costs of these projects pursuant to Section 367.081, Florida Statutes.[11]

[11] *See* § 367.081(2)(a)(2.)(c.), Fla. Stat. ("The commission [FPSC] shall approve rates . . . which allow a utility to

ISSUE 4: What are the appropriate used and useful percentages and the associated composite used and useful percentages for the following specific protested water treatment and related facilities of Arredondo Estates, Arredondo Farms, Breeze Hill, Carlton Village, East Lake Harris/Friendly Center, Fern Terrace, Hobby Hills, Interlachen/Park Manor, Lake Josephine/Sebring Lakes, Picciola Island, Rosalie Oaks, Silver Lake Estates/Western Shores, Tomoka View, Twin Rivers, Venetian Village, Welaka, and Zephyr Shores?

AUF: *Other than the stipulations agreed to and accepted during the course of the proceeding, the appropriate used and useful ("U&U") percentages for the remaining water treatment and related facilities for protested water treatment and related facilities are identified in the Direct and Rebuttal Testimony of William Troy Rendell and the Rebuttal Testimony of Frank Seidman.*

OPC's disagreement with the PAA Order's U&U determinations for the protested water treatment systems stems from OPC witness Woodcock's deviation from Rule 25-30.4325(4), including refusing to treat a single well system as 100% U&U (the "One-Well Rule") and built-out systems as 100% U&U; failing to make proper fire flow adjustments (Rule 25-30.4325(1)(c)); and refusing to recognize the FPSC's practice of treating a system as 100% U&U if its calculated U&U ratio equals or exceeds 90%. These deficiencies are addressed below.

As Mr. Woodcock acknowledges, the Breeze Hill, Fern Terrace, Rosalie Oaks and Twin Rivers systems each have a single well. (Tr. 618; Ex. 73.) The FPSC has repeatedly held that Rule 25-30.4325(4) requires that "a water treatment system with one well should be considered 100[%]" U&U. Order No. PSC-08-0593-PAA-WU (Sept. 12, 2008); *see also, e.g.*, Order No. PSC-96-1320-FOF-WS (Oct. 30, 1996).

Despite this clear regulatory directive, Mr. Woodcock claims that general provisions in Rule 25-30.4325(3) authorize an alternative calculation for wells greater than 150 gpm, and alternative treatment if that calculation produces a U&U of less than 75%. Mr. Woodcock's reliance on Rule 25-30.4325(3)'s general language is misplaced. Rule 25-30.4325(4) is specific to the instant situation; thus, subsection (3)–a more general rule–must yield. *See, e.g., Palm Beach Canvassing Bd. v. Harris,* 772 So.2d 1273, 1287 (Fla. 2000) (explaining that specific provisions govern over

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recover from customers the full amount of environmental compliance costs [including] all reasonable expenses and fair return on any prudent investment incurred by a utility in complying with . . . any permitting, enforcement, or similar decisions of the [EPA, FDEP], a water management district, or any other governmental entity with similar regulatory jurisdiction.").

general provisions). Moreover, Mr. Woodcock's exceptions to the One-Well Rule would generate the type of unnecessary costs and inefficiencies the FPSC sought to avoid by adopting the One-Well Rule in the first instance. (Ex. 225.) As AUF witness Seidman's testimony explains, the FPSC "has consistently found that systems with one well . . . are 100% [U&U] unless it appears that the system was not prudently designed." (Tr. 1610.) Mr. Woodcock's testimony does not say there is anything "imprudent" about these systems. (Tr. 617-18.) Thus, there is no basis to determine that AUF's one-well systems are less than 100% U&U.

The record also shows that Arredondo Estates and Farms, East Lake Harris/Friendly Center, Hobby Hills, Interlachen/Park Manor, Tomoka and Zephyr Shores are built out. (Ex. 68, 244; Tr. 480, 1805-11.) Rule 25-30.4325(4) and FPSC precedent require that these systems be treated as 100% U&U unless any was not prudently designed. *See, e.g.,* Order No. PSC-03-1440-FOF-WS (Dec. 22, 2003). Mr. Woodcock ignores the Rule and precedent in favor of his own, unique calculation to produce a U&U of less than 100% for these systems, even though they are each built out. (Tr. 608-13.) Mr. Woodcock has not said that they were imprudently designed. (Tr. 612-13.) Thus, there is no basis to determine that these built out systems are less than 100% U&U.

OPC also disagrees with the FPSC's approach of treating a system as 100% U&U if its calculated U&U ratio equals or exceeds 90%. Contrary to claims by Mr. Woodcock, considering a system to be 100% U&U when the applicable formula produces a ratio of 90% is not mere arithmetic rounding. Instead, it is a proper evaluation of cost that should be recognized as necessary to provide service to existing customers taking into account prudence of investment, economies of scale, and other factors recognized in Rule 25-30.4325(2), F.A.C. *See* Order No. PSC-03-1440-FOF-WS (finding that it is not unreasonable to consider distribution and collection systems that are 80% or more built-out to be 100% U&U in instances where there is no real growth potential and the existing lines are the minimum size needed to serve existing customers).

Just as it did in the last rate case, OPC also proposes to eliminate fire flows from U&U calculations for Silver Lake and Lake Josephine/Sebring Lakes based on Mr. Woodcock's claim that hydrants in the service area do not "provide fire service to the entire service area." (Tr. 616.) This proposal ignores FPSC precedent that allows fire flow even for systems with limitations on the amount of fire flow available.[12] Nor has there been any evidentiary showing made that AUF has been cited by authorities for inadequate fire protection. As it did in the last rate case, the FPSC should again reject OPC's recommendation to exclude fire flow from the U&U calculations.

Finally, the FPSC should reject Mr. Woodcock's philosophical challenge to the FPSC's precedent interpreting Rule 25-30.4325(4) and use of the protested systems' prior U&U determinations based on that precedent. *See, e.g.*, Order No. PSC-03-1440-FOF-WS ("When a rate case is filed, prior FPSC orders involving the same systems or system components from prior rate cases should be reviewed and considered as part of the analysis in the current rate case proceeding."). As AUF witnesses Rendell and Seidman both testified, there have been no material structural or operational changes to AUF's systems since the last rate case to justify deviating from the FPSC's previously approved U&U methodologies and resulting percentages.[13] (Tr. 1612-17; Ex. 224.)

ISSUE 5: What are the appropriate used and useful percentages and the associated composite used and useful percentages for the following specific protested water distribution systems of Arredondo Estates, Beecher's Point, Breeze Hill, Gibsonia Estates, Interlachen/Park Manor, Kingswood, Oakwood, Orange Hill/Sugar Creek, Palm Port, Palms Mobile Home Park, Peace River, Piney Woods, Ravenswood, River Grove, Rosalie Oaks, Silver Lake Estates/Western Shores, Silver Lake Oaks, Skycrest, Stone Mountain, Sunny Hills, The Woods, Twin Rivers, Venetian Village, Village Water, Welaka and Wootens?

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[12] *See* Final Order ("[W]e have consistently included fire flow in the U&U calculation over OPC's objections in prior cases, even when there are few hydrants in the service area."); *see also* Order No. PSC-96-1320-FOF-WS (finding that it is appropriate to include fire flow in the U&U analysis, even if that protection is only available to a limited number of customers in the service area).

[13] AUF witness Rendell explained during OPC's questioning that, while additional treatment was being completed at the Leisure Lakes, Lake Josephine, Sebring Lakes, and Peace River water treatment systems as reflected in AUF's pro forma plant requests, these post-test year additions are solely for the treatment of water and do not add any additional capacity. (Tr. 516.) Because treatment additions have no bearing on the appropriate U&U determination, *see* Rule 25-30.4325 (defining factors pertinent to U&U calculation), they also do not constitute evidence to support a "change in policy" from the U&U percentages determined appropriate for the systems at issue in AUF's last rate case. (Tr. 522.)

AUF: *Other than the stipulations agreed to and accepted during the proceeding, the appropriate U&U percentages for the specific protested water distribution systems are identified in AUF's MFRs and the Direct and Rebuttal Testimony of William Troy Rendell and Rebuttal Testimony of Frank Seidman.*

OPC's challenge to the PAA Order's U&U determinations for the protested water distribution systems—aside from the same complaint as to reliance on prior orders already addressed in Issue 4—stems from Mr. Woodcock's philosophical disagreement with the established practice of treating a built-out system as 100% U&U. (Tr. 623.) Contrary to Mr. Woodcock's contention, considering a built-out system to be 100% U&U in this circumstance is not mere arithmetic rounding. Instead, it is a practice rooted in the history of Florida's water and wastewater system development, and properly includes evaluation of cost that should be recognized as necessary to provide service to existing customers within the service area. (Tr. 1618-19.) *See* Order No. PSC-03-1440-FOF-WS (considering distribution and collection systems that are 80% or more built-out to be 100% U&U where there is no real growth potential and the existing lines are the minimum size needed to serve existing customers).

ISSUE 6: What are the appropriate used and useful percentages and the associated composite used and useful percentages for the following specific protested wastewater treatment and related facilities of Arredondo Farms, Breeze Hill, Fairways, Florida Central Commerce Park, Holiday Haven, Jungle Den, Kings Cove, Leisure Lakes, Morningview, Palm Port, Peace River, Rosalie Oaks, Silver Lake Oaks, South Seas, Summit Chase, Sunny Hills, The Woods, Valencia Terrace, Venetian Village, and Village Water?

AUF: *Other than the stipulations agreed to and accepted during the proceeding, the appropriate U&U percentages for the specific protested wastewater treatment and related facilities are identified in AUF's MFRs and in the Direct and Rebuttal Testimony of William Troy Rendell and the Rebuttal Testimony of Frank Seidman.*

Aside from complaints about built-out conditions and relying on prior orders that are addressed in Issues 4 & 5, OPC's disagreement with the PAA Order's U&U determinations for the protested wastewater treatment plants and related facilities centers on Mr. Woodcock's claim that lower flows or lower growth has occurred in five systems since the last rate case.

As AUF witness Seidman testified, Rules 25-30.432 and 25-30.4325 already contemplate whether flows have decreased due to conservation or a reduction in the number of customers. (Tr. 1614-17.) These rules recognize that, when demand on a system decreases, the plant is no less used and useful in the public service than it was before the reduction in demand, even if mathematical calculations show otherwise. (*Id.*) The PAA Order is wholly consistent with the FPSC's rule authority and prior orders for these systems, and OPC has offered no viable justification for deviation. (*Id.*; *see also* Tr. 475-78, 484-87.)

ISSUE 7: What are the appropriate used and useful percentages and the associated composite used and useful percentages for the following specific protested wastewater collection systems of Beecher's Point, Breeze Hill, Fairways, Holiday Haven, Jungle Den, Peace River, Rosalie Oaks, Silver Lake Oaks, Sunny Hills, The Woods and Village Water?

AUF: *Other than the stipulations agreed to and accepted during the proceeding, the appropriate U&U percentages for the specific protested wastewater collection systems are identified in AUF's MFRs and in the Direct and Rebuttal Testimony of William Troy Rendell and the Rebuttal Testimony of Frank Seidman.*

OPC's challenge to the PAA Order's U&U determinations for the protested water distribution systems stems from Mr. Woodcock's philosophical disagreement with reliance on prior orders and the established practice of treating a built-out system as 100% U&U. (Tr. 623.) For the same reasons discussed in Issues 4 & 5 herein, OPC has provided no evidentiary basis for the FPSC to deviate from the PAA Order's U&U percentages.

NET OPERATING INCOME

ISSUE 14: What are the appropriate billing determinants for the test year?

AUF: *The appropriate test year billing determinants to be used are those contained in the MFRs and the billing analysis filed in this case.*

The record shows that the billing determinants in AUF's MFRs are reasonable and appropriate because they are based on an accurate and representative number of bills, ERCs, and consumption data for AUF's water and wastewater systems that are part of this rate case. (Tr. 92; Ex. 230.) Among other things, billing determinants measure consumption over a given period and

are used in a rate case to determine the aggregate revenues from rates. AUF's billing determinants show that consumption on AUF's system has declined by approximately 20.8% over the past four years. (Tr. 1495-96.) The Company believes that the drop in consumption is largely attributable to two factors that have arisen since the last case: (1) customers installing shallow irrigation wells to replace AUF as their source for irrigation water; and (2) the FPSC (at the direction of the WMDs districts) imposing an aggressive three-tiered inclined block conservation rate structure which was expressly designed to reduce customer consumption. (Tr. 1492-93.) Both of these factors are outside of the Utility's control. (*Id.*) Moreover, the testimony of Staff witness Stallcup and AUF witness Szczygiel show that the drop in consumption experienced by AUF in the test year was not an anomaly, and is representative of consumption levels expected during the time that the new rates will be in effect. (Tr. 1390, 1496-97; Ex. 214.)

OPC, through the testimony of Ms. Dismukes, recommends that the FPSC artificially impute $372,925 to AUF's test year revenues to remove the revenue impact of this drop in consumption. (Tr. 1133.) However, as recognized by Staff witness Stallcup, Ms. Dismukes' proposed adjustment, if adopted, would be confiscatory and contrary to long-standing policy. (Tr. 1390.) Indeed, Florida's regulatory jurisprudence confirms that a utility should not be penalized when the customer consumption is reduced for factors that are beyond the utility's control. For example, the FPSC has expressly recognized that the installation of wells by customers and the imposition of a conservation rate structure by the FPSC can prevent a utility from achieving its authorized rate of return and thus warrant rate relief. *See* Order No. PSC-02-1114-PAA-WS (Aug. 14, 2002) ("The proliferation of wells subsequent to the most recent SARC has greatly reduced the number of gallons sold by the utility. Ultimately, this resulted in the utility not achieving its approved rate of return for its water system, which led to the utility filing the instant case."); *see also*, Order No. PSC-11-0010-SC-WU (Jan. 3, 2011) (FPSC expressly recognized a decrease in consumption due to the installation of irrigation wells in setting rates.)

ISSUE 16: Should adjustments be made to the allocation methodology used to allocate costs and charges to AUF by AAI and its affiliates?

AUF: *No. The allocation methodology is a fair, reasonable and accurate method to allocate costs and charges to AUF by Aqua America, Inc. and its affiliates.*

The record shows that AAI and its affiliates allocate costs and charges to AUF in accordance with the policy set forth in AAI's Corporate Charges Allocations Manual. (Tr. 82-83; Ex. 52.) AUF'S affiliate cost allocation policy ensures that costs are properly allocated to AUF's ratepayers. (*Id.*) No witness has challenged AUF's affiliate cost allocation methodology in this case. (Tr. 1248.) AUF'S affiliate cost allocation methodology was previously analyzed, reviewed and approved by the FPSC in Docket No. 080121-WS. *See* Final Order at 75-78. There is no evidentiary basis to deviate from that precedent.

ISSUE 17: Should any adjustments be made to affiliate revenues, costs and charges allocated to AUF's systems?

AUF: *No adjustments should be made to affiliate revenues, costs and charges allocated to AUF's systems. Affiliate costs allocated to AUF are reasonable and benefit customers because they are below the relevant market. Moreover, AUF's affiliate costs have actually gone down since AUF's last rate case. OPC has not provided any credible evidence to support its recommended adjustments.*

Ample record evidence shows that AUF's affiliate costs are reasonable, below market, and provide definitive benefits to its customers. (Tr. 79, 83; Ex. 53, 208, 209.) Furthermore, AUF's affiliate costs in this case are actually less than the affiliate costs in AUF's last rate case. (Tr. 1455-57; Ex. 208.)

Like many other electric, gas, telephone and water utility holding companies, AAI has a number of operating subsidiaries, of which AUF is one. As an affiliate of AAI, AUF has access to a full range of cost-effective utility related services that enhance AUF's ability to provide water and wastewater services to its customers. AAI makes those services available to AUF through two service companies: Aqua Services Inc. ("ASI") and Aqua Customer Organization ("ACO"). (Tr. 83.) ASI provides AUF and other AAI operating subsidiaries with centralized management,

accounting, engineering, human resources, IT support, legal, and rate case support at cost. (*Id.*) ACO provides AUF with customer billing and call center operations at cost. (*Id.*) AUF's affiliate relationship with AAI (ASI and ACO) allows it to take advantage of economies of scale provided by AAI's common ownership of numerous companies which saves AUF costs that otherwise would be passed on to customers. (*Id.*)

Florida's standard for reviewing a utility's transactions with an affiliate is "whether the transactions exceed the going market rate or are otherwise inherently unfair." *GTE v. Deason*, 642 So. 2d 545, 548 (Fla. 1994). The *GTE* case is particularly instructive and deserves close attention here. In *GTE* the Florida Supreme Court reviewed an FPSC rate case decision that, among other things, prohibited GTE from recovering certain costs that the company had incurred by purchasing services from its affiliates. The Court overturned the FPSC finding that the FPSC "abused its discretion in its decision to reduce in whole or in part certain costs between GTE and its affiliates." *Id.* at 547. The Court's ruling was based on its finding that GTE had put on evidence in the rate case that its costs from affiliates did not exceed the costs that GTE would have incurred had it "purchased services and supplies elsewhere." *Id.*

AUF has met its burden under *GTE* to show that the costs that it incurs from affiliates do not exceed the market and are not inherently unfair. (Tr. 83, 85; Ex. 53.) The reasonableness of AUF's affiliate charges is fully supported by its application for rate relief, MFRs, testimony, exhibits, discovery responses, and a Florida-specific market study that demonstrates that affiliate charges are below market. (Tr. 84-85; 1453-86; Ex. 53, 208-13.)

Suggestions by OPC witness Dismukes that AUF did not meet the *GTE* test for affiliate transactions ring hollow when one compares the evidentiary support for affiliate charges in this case to the evidence in AUF's last rate case. In the last case, the FPSC found that AUF had met its burden under the *GTE* case based on the testimony of Mr. Szczygiel who explained that AUF's relationship with ASI produced savings to customers. Final Order at 78. In this case, AUF again

proffered the testimony of Mr. Szczygiel, but also filed a Florida-specific market study to address whether the service charges allocated to AUF by ASI and ACO exceed what AUF would have paid had it secured those same services from other sources. (Tr. 83, 85, 1175; Ex. 53.) That market study, which was sponsored by Mr. Szczygiel, empirically demonstrates that AUF's affiliate charges are below what AUF would pay in the market. (*Id.*) More precisely, using the overall savings calculated in Exhibit 53 and the allocation ratios contained in Exhibit 277 (Volume 1, Appendix 1 of AUF's MFRs), the centralized management, accounting, engineering, and legal services provided by ASI to AUF produce annual statewide savings benefits of approximately $712,634 (Tr. 85; Ex. 53, 277); and the centralized customer service functions provided by ACO to AUF produce annual statewide savings of approximately $792,630. (*Id.*)[14] Thus, the record demonstrates that AUF's relationship with ASI and ACO produce annual statewide savings to customers of approximately $1.5 million. Distributing those statewide savings to AUF's jurisdictional systems produces total savings of approximately $905,717 in this rate case--$428,792 related to ASI, and $476,925 related to ACO. (*Id.*)

AUF's market study is analogous to the evidence on which the Supreme Court relied in *GTE*. In that case, GTE presented evidence that its affiliate costs "were no greater than they would have been had GTE purchased services and supplies elsewhere." 642 So. 2d at 547. Similarly, AUF's market study provides evidence that AUF's customers benefit by having centralized services provided by AAI at a cost lower than AUF would incur had it obtained those services elsewhere from non-affiliated sources. (Tr. 85; Ex. 53.) The record also shows that FPSC Staff thoroughly reviewed the study and concluded that AUF "has met its burden of proof by demonstrating that AUF's requested affiliate charges are reasonable and that customers are benefiting from the remaining allocated affiliate charges." Staff Recommendation at 87 (May 12, 2011).

[14]OPC witness Dismukes does not take issue with the customer service related costs allocated by ACO to AUF. (Tr. 1119, 1477-78; Ex. 211.)

In response to AUF's analysis showing that AUF's affiliate costs are below market, OPC proffered the testimony of Ms. Kimberly Dismukes. Notably, Ms. Dismukes did not identify any specific affiliate charge to AUF that is above market or is otherwise inherently unfair. (Tr. 1080-1125, 1163-78, 1465, 1474, 1484.) Rather, she simply made a series of unsupported claims that AUF's market study understates the costs of the services ASI provides to AUF, and overstates the costs of outside vendors to make it appear that AUF saves money by using ASI services rather that obtaining those services from non-affiliated vendors. (*Id.*, 1091.) For example, Ms. Dismukes claimed that AUF has understated the hourly rates for ASI's in-house engineering, legal, accounting and management service employees by assuming that 100% of those ASI employees' hours would be billable. (Tr. 1094-96, 1098, 1103.) Her claim was debunked by AUF witness Szczygiel who showed that, in calculating the internal hourly rate for ASI employees for purpose of the market study, AUF appropriately recognized that ASI employees in fact bill out approximately 1,838 hours per year, not the 2,080 hours per year as claimed by Ms. Dismukes. (Tr. 1465.)

Witness Szczygiel also refuted Ms. Dismukes' claim that the study fails to take into account potential discounts from outside firms. (Tr. 1465-66.) He explained that, based on his experience as an outside contractor, discounts are not a certainty in the market; thus, it would be speculative for AUF to assume that discounts are available. (*Id.*)

Mr. Szczygiel also discredited Ms. Dismukes' claim that AUF's study understates the hourly rates of ASI employees because those rates exclude travel expenses. He explained that AUF's market study was designed to compare ASI's rate to what a typical consultant would charge for similar services, and consultants typically bill their clients separately for travel. (*Id.*) This was confirmed by Ms. Dismukes who admitted that her hourly rate did not include travel because she billed her clients separately for travel. (Tr. 1157.)

Mr. Szczygiel refuted Ms. Dismukes' claims that the market rate analysis for engineering firms is deficient because only two engineering firms were considered. He pointed out that to support

its positions in this case OPC retained the engineering services of Mr. Andrew Woodcock, who charges OPC at a rate of $185 per hour--higher than both ASI's engineering rate and the market rate that AUF analyzed. (Tr. 1466-67.) Mr. Szczygiel also pointed out that Ms. Dismukes improperly distorted relevant data in an attempt to show that the average hourly rates for outside attorneys, accountants, and management consultants are lower that that used in the market study. (Tr. 1459, 1467-69.)

Ms. Dismukes relied on these feeble arguments to make a series of self-serving "adjustments" to AUF's market study. The major thrust of her "adjustments" was to arbitrarily increase by 40% the hourly rate of each ASI service category in the market study. (Tr. 1469-70.) Ms. Dismukes also made similar arbitrary adjustments to include travel, computer hardware/software and other costs to artificially inflate the hourly rate of ASI employees included in the market study. (Tr. 1099-1101; Ex. 116.) Even if one were to assume that all of Ms. Dismukes' arbitrary adjustments are legitimate, Ms. Dismukes' Schedule 14 shows that the only affiliate charges that exceed the market rate are $79,968 in "management charges." (Ex. 117.) However, the record shows that (i) in the last case, the FPSC found that AUF's management fees from affiliates were reasonable; and (ii) in this case, AUF's management fees from affiliates are less than the management fees allocated in AUF's last rate case. (Tr. 1475-76, 1512; Ex. 208.) *See also* Final Order at 75-78.

Although AUF disagreed with Ms. Dismukes' purported concerns about the market study, the Company updated its analysis to be conservative and to address her claims. (Tr. 1470-72, 1512; Ex. 209.) First, AUF excluded all ASI employees that hold less than a Bachelors' degree in the accountant and management categories to address Ms. Dismukes' claims that combining various accounting functions and management functions into one accounting rate and one management rate "hides" the differences in education and experience needed to perform the function. (Tr. 1471.) Second, AUF included travel expense, computer hardware and software maintenance costs in the hourly rate of each type of employee to address Ms. Dismukes' purported concerns. (*Id.*) Third, AUF obtained three

additional engineer proposals and adjusted the hourly rate for outside engineers to include this additional rate information. (*Id.*) This updated analysis demonstrates that charges for ASI services incurred by AUF are still well below market rates in each and every service category. (*Id.*)

If AUF were a stand-alone company, the record shows that it would have to obtain from outside sources those tax, accounts payable, accounts receivable, payroll, rate making, human resources, engineering, legal, management, and other services that it currently obtains from ASI. (Tr. 1472.) Thus, the market studies performed by AUF are the most comprehensive comparison that could be shown to address what AUF would actually be charged if it had to go to outsiders and obtain similar services. (*Id.*; Ex. 53, 209.) There is no doubt that AUF has met its burden under the *GTE* case to show that the costs that it incurs from affiliates do not exceed the market and are not inherently unfair. (*Id.*)

Having failed in her attempts to undermine the Florida market study, Ms. Dismukes next tries to attack AUF's affiliated costs by resorting to the same tired arguments that she raised and that were rejected by the FPSC in AUF's last rate case. (Tr. 1080-1125, 1163-78, 1645.) Just as in the last case, Ms. Dismukes does not address the reasonableness and the necessity of specific affiliated charges or propose any adjustments to specific affiliated charges. (*Id.*, 1117, 1474, 1484.) Rather, she recommends that the FPSC make a significant "blanket" adjustment to test-year expenses--$653,387 for water and $322,922 for wastewater--based on a shallow "peer group" comparison[15] which she claims shows that AUF's relationships with AAI and its affiliates are not efficient. (*Id.*, 1119; Ex. 326.) Ms. Dismukes' argument that AUF's relationship with its affiliates is inefficient is flat out wrong and unsupported by the record.[16] Ms. Dismukes ignores the facts that the FPSC

[15]Ms. Dismukes suggests that her "peer group" comparison is analogous to AUF's Florida market study. She is incorrect. AUF's Florida market study was designed and performed pursuant to the Supreme Court's directives in *GTE v. Deason* to address whether the service charges allocated to AUF exceed what AUF would have paid had it secured those same services from other outside sources. This analysis is fundamentally different from Ms. Dismukes' peer group comparison, which attempts to set AUF's rates based upon the purported expenses of other utilities.

[16]OPC witnesses Dismukes and Poucher suggested that AUF and its affiliates have an inefficient management structure. That suggestion simply is false and conveniently ignores that management fees allocated to AUF in this case are lower than the management fees allocated by the affiliates in the last case. (Tr. 1474-76, 1484, 1512; Ex. 208.) Also contrary

found no issues with AUF's affiliated charges in the last rate case, and that AUF's affiliated charges in this case are less than the affiliated charges in the last case. (Tr. 585-86, 1474-77, 1512; Ex. 208.) *See* Final Order at 75-78.

Furthermore, Ms. Dismukes' "blanket" adjustment to affiliated charges based on her shallow "peer group" comparison was previously rejected in AUF's last rate case and has been similarly rejected in cases for other water and wastewater utilities.[17]

OPC witness Dismukes attempts to resuscitate her flawed "peer group" comparison by including in her groups of "peers" those Class B and Class C utilities that operate in a county where AUF operates. (Tr. 1114.) However, Ms. Dismukes' changes to her peer group are superficial and do nothing to repair the fundamental legal flaws with her analysis. (Tr. 1480-85.) As the FPSC recognized in AUF's last rate case, the Florida 1st DCA has warned that it would be improper to adjust a utility's recorded expenses based on the type of "peer group" comparison advanced by Ms. Dismukes. In *Sunshine Utils. of Cent. Fla., Inc. v. Fla. Pub. Serv. Comm'n*, 624 So. 2d 306 (Fla. 1st DCA 1993), the court held that a comparative analysis of the salaries of other utility executives did not constitute competent, substantial evidence to support a downward adjustment to the utility president's salary in a rate case:

> In determining whether an executive's salary is reasonable compared to salaries paid to other company executives, the comparison must, *at the minimum*, be based on a showing of *similar* duties, activities, and responsibilities in the person receiving the salary.

Id. at 311. (emphasis added.)[18]

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to their suggestions, AUF does not have excessive layers of management. AUF's entire administrative office is comprised of 13 people (including clerical personnel) who handle approximately 90 utility systems serving over 34,000 customers in 19 counties throughout Florida. (Tr. 1578.) It is preposterous to suggest that AUF's management structure is inefficient.

[17] *See* Final Order at 78; *see also* Order No. PSC-94-1383-FOF-WS (Nov. 14, 1994) (rejecting OPC's recommendation to adjust a utility's expenses base upon a "peer group" comparison proposed by Ms. Dismukes, stating that it is not appropriate to "use . . . raw data to make adjustments to O&M expenses, without consideration of all factors which may differentiate this utility."); Order No. PSC-93-1288-FOF-SU ("We find it is inappropriate to make a reduction when the record does not support an argument that any specific [affiliate] charge is unreasonable.").

[18] At the Technical Hearing, Ms. Dismukes presented a list of FPSC orders which she claimed demonstrated that the FPSC has relied on "peer group" comparisons to adjust recorded O&M expenses. (Ex. 331.) That simply is not true. Close review of the listed orders show that Orders Nos. 22352 and PSC-98-0802-FOF-EI only make passing reference

In this case, Ms. Dismukes has not shown that the utilities in her "peer group" have operating costs, operating characteristics, or infrastructure that are similar to AUF. (Tr. 1114-15, 1165-74.) She stated that the source data for her "peer group" costs was derived solely from unaudited reports which the utilities had filed with the FPSC and which Ms. Dismukes cobbled together in an attempt to compare the Administrative and General (A&G) expenses of those utilities to the A&G expenses allocated to AUF. (Tr. 1113-14, 1168-74.) Review of the record shows that the source data relied on by Ms. Dismukes does not permit an "apples to apples" comparison with AUF. At the outset, Ms. Dismukes' "comparison" overstates AUF's administrative expenses allocated from affiliates by improperly including "in-state administrative costs" as affiliate charges. (Tr. 1455-58.) The record shows that "in-state administrative costs" are incurred within AUF and do not represent affiliate charges. (Tr. 1458-59.) When these "in-state administrative costs" are excluded, Ms. Dismukes' comparison shows that AUF's allocated administrative expenses are actually lower than her "comparison group." (Tr. 1456, 1477-78; Ex. 210.)

Furthermore, Ms. Dismukes made no showing that any of the utilities included in her peer group operated 87 separate water and wastewaters systems throughout Florida as does AUF. (Tr. 1166-67.) She admitted that she had never audited the books and records of the utilities in her "peer group", and has never audited the books and records of AUF. (Tr. 1169-70, 1236.) The record also shows that she had never inspected any of the facilities of those utilities and had no baseline understanding of whether the condition of their facilities was similar to AUF's systems. (Tr. 1166, 1195.) Furthermore, she made no attempt to address whether any of the systems in her "peer group"

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to "peer groups" in the context of a utility's capital structure and ROE, and in both cases, the FPSC did not utilize a peer group to adjust any recorded cost of the utility. In Order No. 22352, the FPSC actually stated that "imputing" capital structure different from the company's actual structure could "force the company to move towards a less efficient capital structure." Orders Nos. PSC-08-0327-FOF-EI and PSC-92-1197-FOF-EI involved market salary surveys and again had nothing to do with adjusting a utility's recorded O&M expenses based upon the operating costs of another utility. Order No. PSC-92-1138-FOF-SU involved the FPSC establishing initial rates as part of an original certification proceeding where the utility had no actual records (including no actual recorded O&M expenses) on which to rely. Furthermore, Orders Nos. 24084, 15725, 12174, and 10821, had nothing to do with adjusting test year recorded O&M cost of a utility based upon the cost structure of another utility. Moreover, those orders were all issued prior to the 1st DCA's stern warning in *Sunshine* regarding the use of "peer group" comparisons.

had environmental compliance records similar to AUF. (Tr. 1169-70.) Moreover, Ms. Dismukes made no effort to determine whether the utilities in her "peer group" are in need of rate relief and had *no idea* whether any of those utilities were operating at a loss. (Tr. 1475.) Simply put, the record is devoid of evidence that the utilities in Ms. Dismukes' "peer group" are similar to AUF. In fact, the record shows that the operations of the utilities in Ms. Dismukes' "peer group" group are likely very different from AUF's operations and AUF's relationship with its parent, AAI. (Tr. 1483.)

Finally, as expressly noted in the PAA Order, OPC's recommendation to adjust AUF's affiliated charges based on the purported cost structures of other companies while ignoring the actual costs of the Utility violates fundamental principles of cost-of-service regulation and would be confiscatory and thus unconstitutional. *See* PAA Order at 74-75.

ISSUE 18: What is the appropriate amount of Corporate Information Technology (IT) charges allocated to AUF by its parent, Aqua America, Inc.?

AUF: *The appropriate amount of the Corporate IT charges allocated to AUF by Aqua America, Inc., is $2,406,888.11 as appropriately reflected in the MFRs.*

As explained in Issue 17, ASI provides to AUF and other AAI operating subsidiaries IT software and software support services, which allows AUF to take advantage of the economies of scale provided by AAI's common ownership of numerous companies. The record shows that this structure allows AUF to share IT software and support costs with other affiliated companies, thus saving AUF from the cost of acquiring such IT software and support services on its own. (Tr. 87.) The major IT systems that ASI provides to AUF include required asset tracking, customer service, billing, collections, and service delivery management. (*Id.*) The cost of these Corporate IT services are allocated to AUF based on the number of customers. (*Id.*)

The PAA Order noted that, following the filing of this rate case, AAI divested itself of 8 operating subsidiaries. PAA Order at 68. The proposed order, however, mistakenly assumed that AAI had previously allocated Corporate IT costs to those "divested" subsidiaries, and thereafter

"reallocated" those Corporate IT costs to AUF and other surviving operating utilities. Based on this misunderstanding, the PAA Order proposed to reduce the amount of allocated Corporate IT costs, accumulated depreciation, and depreciation expense by $50,058, $20,461, and $8,343.[19] However, the record in this case shows that AAI did not reallocate Corporate IT costs to AUF after AAI had sold several of its operating subsidiaries. (Tr. 88.) Indeed, Exhibit 293 provides the 13-month average of the Corporate IT Asset before and after the referenced divestment, and confirms that AAI in fact did not reallocate the Corporate IT costs to remaining systems. Thus, AUF respectfully submits that the Corporate IT allocations set forth in the MFRs should be restored.[20]

ISSUE 19: Should any adjustments be made to Incentive Compensation?

AUF: *No adjustments should be made to Incentive Compensation. Neither the OPC nor any of the other interveners filed testimony attempting to rebut AUF's testimony regarding the need for, and the appropriateness of, Incentive Compensation.*

The Incentive Compensation contained in AUF's MFRs reflects a pay-for-performance compensation structure that links executive compensation to achievement of goals designed specifically to drive excellence in providing reliable and efficient utility services to AUF's customers. (Tr. 89-90; Ex. 197 at 37-38.) The FPSC has expressly recognized "that an incentive compensation plan is an appropriate tool to motivate employees to work efficiently and effectively. The incentive portion of salary gives the employee the opportunity to earn the market average salary." *See* Order No. PSC-09-0411-FOF-GU (June 9, 2009).

There is no dispute that the Company and its parent, AAI, must attract and retain a highly skilled management team to provide safe, reliable, and efficient water and wastewater service to its customers. (Tr. 89.) AAI has an outside consultant annually benchmark its executive compensation package against the market to ensure that its total compensation is competitive. That study shows

[19] This misunderstanding appears to emanate from a mistaken belief that AAI follows the same allocation methodology as Utilities, Inc. (*Id.*) This is not correct. Unlike Utilities, Inc., AAI's cost distribution method fairly allocates project costs only to those subsidiaries that benefit from the project. (Tr. 88.)

[20] AUF does not disagree with the FPSC's proposal to change the amortization period for Corporate IT assets from 6 to 10 years.

that at present AAI's executive compensation is at or below utility industry benchmarks. (Tr. 90; Ex. 197 at 57-64.)

The record shows that pay-for-performance incentive compensation is an important component in AAI's overall compensation model that is needed to attract and retain a qualified management team. (Tr. 89.) If that incentive component were removed from AAI's overall compensation package, executive compensation would fall substantially below market and make it difficult for AAI to retain qualified management. (Tr. 89.) The FPSC has recognized that lowering or eliminating incentive compensation would result in the utility's employees being paid below market based on their total compensation, which in turn would adversely affect the utility's ability to compete in the market for highly skilled employees. Order No. PSC-09-0283-FOF-EI at 59 (Apr. 30, 2009).

The testimony of AUF witness Szczygiel confirms that the Incentive Compensation in AUF's MFRs is comprised of bonus and dividend payments tied to specific goals that are designed to improve customer service, enhance environmental compliance, control costs, and improve efficiencies and productivity. (Tr. 89; Ex. 197 at 120-121.) These goals are designed to, and in fact do, benefit customers. (*Id.*) The fact that some of the goals are also linked to financial performance does not detract from the benefits that AUF's incentive compensation structure provides to customers. (Ex. 197 at 37-38.) Indeed, the FPSC has expressly found that "[i]ncentive plans that are tied to the achievement of corporate goals are appropriate and provide an incentive to control costs." Order No. PSC-92-1197-FOF-EI (Oct. 22, 1992).

Notably, neither the OPC nor any other intervener filed testimony attempting to rebut Mr. Szczygiel's testimony that AUF's incentive compensation is needed and appropriate.[21] (Ex. 203 at 21-22.)

[21]In response to a request by Staff, AUF witness Szczygiel provided a late-filed exhibit to his deposition, which calculated the impact that an across-the-board 25% reduction to executive compensation would have on AUF's Florida rate case. (Ex. 295.) The exhibit shows that a 25% reduction in total executive compensation would result in an $18,042 reduction in

ISSUE 20: Should any adjustment be made to Salaries and Wages - Employees Expense?

AUF: *No.*

In its MFRs, AUF requested a merit-based salary increase for eligible employees and a targeted pro forma market-based salary increase for its operators and field technicians. (Tr. 490-93, 576-77, 588.) The FPSC has made it clear that a utility needs to take "appropriate action to assure that its employee salaries are on the same level as other utility employees so that the Company will be competitive in hiring and retaining well trained and effective employees." *See* Order No. PSC-08-0327-FOF-EI (May 19, 2009). This is precisely what AUF is proposing to do in this case. Because of AUF's current pay scale, the Company has had difficulty retaining qualified employees. (Tr. 578, 589.) The record shows that both the merit based increase and the targeted market-based increase are needed for AUF to attract and retain qualified employees. (Tr. 578-79, 1813; Ex. 70.)

The merit-based salary increase is founded on the Company's review of industry benchmarks and is consistent with a long line of FPSC orders. (Tr. 490-93, 576-77, 589-90.) *See* Order No. PSC-11-0010-SC-WU (Jan. 3, 2011) (in granting an across-the-board 3% salary increase, the FPSC recognized that a utility's salaries must be competitive and keep pace with inflation in order to attract and retain qualified employees.).[22]

The record also shows that in order for AUF to continue to provide its customers with reliable and efficient water and wastewater services, it must be able to attract and retain qualified operators and field technicians. To do this, the Company has to remain competitive in terms of salary. AUF's pro-forma salary increase for operators and field technicians is based on an updated market study originally performed by Saje Consulting Group Inc., which evaluated AUF's salary structure, and benchmarked the Company against other utilities, as well as the general industry. (Tr. 589-90; Ex. 70.)

AUF's rate case expense, which is less than the compensation reduction contemplated in the PAA Order. (Ex. 295.)

[22]See also Order No. PSC-11-0385-PAA-WS (Sept. 13, 2011) at 9 ("in light of the economic climate in Florida and throughout the U.S., a 3[%] increase in salaries is more reasonable"); Order No. PSC-11-0366-PAA-WU, at 7 (Aug. 31, 2011) ("in light of the economic climate in Florida and throughout the U.S., a 3[%] increase in salaries is more reasonable"); Order No. PSC-11-0010-SC-WU (Jan. 3, 2011) (approving OPC's recommendation of a 3% increase in salaries.); Order No. PSC-06-1027-PAA-WU (Dec. 11, 2006); Order No. PSC-09-0385-FOF-WS (May 29, 2009); Order No. PSC-10-0131-FOF-EI (Mar. 5, 2010). (Tr. 1812 - 1813.)

Furthermore, Staff has evaluated AUF's requested salary increase in the context of the American Water Works Association 2008 compensation survey and has concluded that the market-based increase requested by AUF is reasonable. (Tr. 542-43.)

Finally, OPC and the interveners presented no evidence to rebut the need for the proposed salary increases. OPC simply argued that now is not the right time for the increase. (Tr. 54, 684-85.) While AUF is cognizant of, and empathetic to, economic conditions facing the Company and its customers, it must also plan for the long-term future and, to do that, it needs to have competitive salaries to retain and attract qualified employees. That said, the record shows that AUF has been conservative in its request for salary increases. The Company's actual salary expense in this rate case is less than the salary expense in AUF's last rate case. (Tr. 562, 590-91, 1378.)

ISSUE 21: Should any adjustment be made to Bad Debt Expense?

AUF: *No.*

The evidence shows that AUF recorded bad debt expense of $389,420 for the test year. (Tr. 93.) The record also shows that longstanding FPSC's policy is to set bad debt expense using a three-year average. (Tr. 1178-79, 1182, 1486-88.)[23] AUF's three-year average calculation of bad debt expense is $386,221. (Tr. 93, 1125; Ex. 54.) Thus, the record shows that AUF's bad debt expense during the test year was not abnormal, and there is no legitimate basis for adjusting those expenses.

Although OPC witness Dismukes recognizes that the FPSC's longstanding practice is to use a three-year average to test the reasonableness of a utility's bad debt expense, she recommends that the FPSC ignore precedent because she claims that AUF has "problems" with billing, customer

[23]Order No. PSC-04-1110-PAA-GU, at 22 (Nov. 8, 2004); Order No. PSC-94-0170-FOF-EI, at 20 (Feb. 10, 1994); Order No. PSC-93-0165-FOF-EI, at 69-70 (Feb. 2, 1993); Order No. PSC-92-1197-FOF-EI, at 48 (Oct. 22, 1992); Order No. PSC-92-0924-FOF-GU, at 6 (Sept. 3, 1992); Order No. PSC-92-0580-FOF-GU, at 30-31 (June 29, 1992); Order No. PSC-07-0505-SC-WS, at 41-42 (June 13, 2007); Order Nos. PSC-10-0585-PAA-WS, at 30-31 (Sept. 22, 2010); Order No. PSC-10-0423-PAA-WS, at 23-24 (July 1, 2010); Order No. PSC-10-0407-PAA-SU, at 18 (June 21, 2010); Order No. PSC-08-0327-FOF-EI, at 59-60 (May 19, 2008); Order No. PSC-04-0128-PAA-GU, at 34-35 (Feb. 9, 2004); Order No. PSC-01-0316-PAA-GU, at 20 (Oct. 27, 2003); Order No. PSC-03-0038-FOF-GU, at 8 (Jan. 6, 2003); Order No. PSC-04-0820-PAA-WS, at 13 (Aug. 23, 2004); Order No. PSC-04-1110-PAA-GU, at 22 (Nov. 8, 2004).

service and meter reading that contribute to the level of bad debt expense. (Tr. 1128.) However, Ms. Dismukes conceded that she could not quantify how AUF's alleged billing, customer service or meter-reading practices impacted the Company's level of bad debt expense. (Tr. 1232.) Her speculation provides no legitimate basis for the FPSC to deviate from its longstanding practice of setting bad debt expense using a three-year average.

Rather than follow precedent, Ms. Dismukes again proposes that the FPSC establish AUF's bad debt expense using a shallow comparative analysis of the bad debt figures of other Florida water utilities. (Tr. 1180-83.) As more fully explained in Issue 17, it would be improper to rely on such a "peer group" comparison to establish AUF's bad debt expense. Ms. Dismukes provides no evidence that the utilities in her peer group have customer demographics and collections policies similar to AUF. (Tr. 1182-83.) She states only that the utilities in her "peer" group operate in the same county as AUF. (Tr. 1182.) However, she concedes that there can be different socio-economic conditions in different parts of the same county that could affect bad debt expense. (Tr. 1182-83.) Ms. Dismukes fails to demonstrate that the utilities in the comparison group have service areas with economic conditions similar to AUF, and fails to consider the credit worthiness of AUF's customers compared to other systems. (*Id.*) Moreover, she makes no effort to show (and indeed cannot show) that the utilities in the comparison group have rate structures similar to AUF's unique cap-band structure. *Compare* Order No. PSC-96-1320-FOF-WS (Oct. 30, 1996)(recognizing that utilities without uniform rates are likely to have higher bad debt expenses). Finally, imputing historic bad debt factors of other utilities to AUF ignores the likelihood that the current economic downturn will have a significant impact on bad debt expense. *See* Order No. PSC-92-0580-FOF-GU (June 29, 2992) (expressly noting that an overall economic downturn will have a pronounced impact on bad debt expense regardless of increased collection efforts).

ISSUE 22: What is the appropriate amount of rate case expense?

AUF: *The appropriate amount of rate case expense is $1,584,791.*

A water and wastewater utility is entitled to recover in rates all reasonable expense incurred in the course of a rate case. § 367.081(7), Fla. Stat. In AUF's last rate case, it incurred approximately $1,782,586 in rate case expense and was authorized to recover $1,501,609. Final Order at 103. In this proceeding, AUF has incurred $1,584,791 in rate case expense. (Tr. 1502; Ex. 340.) That rate case expense has been properly documented and shown to be reasonable in light of the issues, the number of parties, the discovery, and the litigation tactics employed by interveners and other interested third parties. (Tr. 1498-1511; Ex. 340.)

The record shows that AUF and its consultants have been as efficient as possible and have attempted in good faith to keep rate case cost at a minimum. In fact, AUF sought rate relief in this proceeding through the FPSC's proposed agency action ("PAA") process under Section 367.081, Florida Statutes, which was specifically designed to "limit rate case expense" by streamlining rate case procedures. *See* Order No. PSC-11-0384-PCO-WS at 5 (Jan. 5, 2011).[24] One of the primary cost savings of the PAA process is that formal discovery is held to a minimum and information is gathered through informal data requests from Staff. However, OPC made the unprecedented request to expand discovery in the PAA phase of the case knowing full well that such action "will almost certainly increase the rate case expense." *See e.g.*, Order No. PSC-08-0536-PCO-WS (Aug. 18, 2008). In ruling on OPC's request to expand discovery, the Prehearing Officer recognized that expanding the scope of discovery could result in excessive rate case expense, but also recognized that AUF's request for rate relief involved 87 systems in 17 counties throughout Florida. Balancing these two "countervailing considerations" the Prehearing Officer initially limited discovery to 400

[24]The OPC has expressly recognized that by processing a rate case as a PAA "rate case expense would be lower, resulting in lower rates to customers", and has criticized a utility for failing to use the PAA process. Order No. PSC-96-1147-FOF-WS (Sept. 12, 1996).

interrogatories, 400 requests for production of documents, and 250 requests for admissions, all including subparts. Order No. PSC-11-0018-PCO-WS at 4.

When the FPSC voted to approve the PAA Order at the May 24, 2011 Agenda Conference, AUF's rate case expense had reached $778,269. At that time, the parties were reminded that a protest could cause rate case expense to escalate to the detriment of ratepayers. (Ex. 325 at 381.) Only two entities protested the PAA Order prior to the PAA deadline: the OPC and Ms. Wambsgan. Ms. Wambsgan has withdrawn from the case. Thus, but for OPC's protest, the rate case expense in this case would not have exceeded the amount of rate case expense in the PAA Order.

While OPC certainly has a duty to represent the ratepayers, as warned by the FPSC, its decision to protest the case has inevitably caused rate case expense to substantially increase. (Tr. 1593.) For example, after filing its protest, OPC reignited its discovery machine. By AUF's conservative count, AUF responded to over 991 interrogatories and 347 requests for production of documents, including subparts. (Tr. 1499-1500.) Of that discovery, AUF estimates that OPC propounded 796 interrogatories and 299 requests for production of documents. (Tr. 1505.) The volume of discovery propounded by OPC is unprecedented in a PAA rate case. (Tr. 692, 1596-97.) Responding to this massive discovery has required tremendous amount of time and effort by in-house employees as well as by consultants and outside counsel.[25] (*Id.*) Rate case expense, including legal fees, is directly proportional to the volume of discovery in a rate case. (Tr. 1213.) There is no doubt that OPC's massive discovery caused AUF to incur a significant amount of rate case expense. (Tr. 695.)

[25]In Florida, an attorney must be personally involved in the preparation of discovery and responses thereto in a rate case. R. Regulating Fla. Bar 4-3.4. In responding to discovery, AUF has strictly adhered to the discovery protocols required by the Florida Rules of Civil Procedure and the FPSC's Order on Prehearing Procedure in this case. OPC's allegations that counsel or the Company frustrated the discovery process are baseless. OPC witness Dismukes' claims concerning how documents are to be produced through discovery were previously rejected by the FPSC in Order No. PSC-09-0239-PCO-EI (recognizing it is permissible and customary to make responsive documents available at a utility's premises for inspection and copying, and denying intervener's request that the utility "provide the requesting parties with hard copies or electronic copies of documents responsive to discovery requests"). While it is customary to make responsive documents available at the responding party's premises for inspection and copying, contrary to Ms. Dismukes' allegations, AUF also provided OPC with electronic versions of non-confidential documents. (Tr. 1504.)

The litigation tactics of the OPC and other interveners also have caused rate case expense to increase. Records produced by OPC confirm that OPC has closely coordinated with interveners YES and Pasco County, as well as with non-party special interest groups such as FlowFlorida and Food and Water Watch, to escalate this $4 million dollar rate case into full-blown, multi-party litigation. (Tr. 1499-1500.) Two individuals associated with Food and Water Watch and FlowFlorida intervened but mysteriously withdrew from the case when confronted with discovery inquiring as to their motivations. (Tr. 1500.) Furthermore, YES and OPC took the unprecedented action of deposing an AUF field service technician for over 4 hours even though that person was not a testifying witness in the case. (Ex. 196.) This unprecedented deposition increased rate case expense and took a valuable and busy employee off-line for over two days, which interfered with the Company's ability to provide service to its customers.

Faced with an expense that it helped create, OPC, through witnesses Dismukes and Vandiver, propose a series of reductions to rate case expense that ignore precedent and are unfounded. For example, Ms. Dismukes recommends that the FPSC allow AUF to recover only 50% of the reasonable rate case expenses it incurred. (Tr. 1138-39.) Ms. Dismukes, however, concedes that there is no statutory or precedential support in Florida for this approach (Tr. 1139, 1189), and admits that she made the same recommendation in AUF's last rate case which was rejected by the FPSC in the Final Order. (Tr. 1139, 1189, 1502.) Not only is OPC's recommendation without legal merit, but it is also inequitable. Having caused rate case expense to increase with its voluminous discovery, it is unfair for OPC to now recommend that the FPSC deny AUF its lawful right to recover all of its reasonable rate case expense in this case.

OPC witness Dismukes also recommends that a substantial portion of reasonable rate case expense be disallowed because AUF petitioned the FPSC for rate relief prior to its previous rate case expense being fully amortized. There is no precedent for this type of adjustment to rate case expense. Ms. Dismukes would have the FPSC believe that in applying for rate relief AUF somehow

acted improperly. That claim is completely without merit. Since AUF's last rate case was filed in 2008, AUF has invested over $11 million in additional capital to improve the quality of water and wastewater services and comply with environmental regulations. (Tr. 43-44, 94.) Under Florida law, AUF has no mechanism other than a rate case to recover those significant capital investments. Furthermore, Ms. Dismukes' recommended adjustment is inconsistent with prior FPSC decisions, including its recent rate case decision in Order No. PSC-11-0514-PAA-WS (Nov. 3, 2011), which authorize a utility to recover rate case expense even though rate case expense from a prior case had not been fully amortized.

OPC witness Vandiver recommends disallowance of Aqua's rate department employees for the time they have worked on this rate case. Her recommendation contradicts the FPSC's decision in the last case, in which Aqua's rate department employees' work was deemed recoverable as rate case expense. (Tr. 698-99.)[26] There is no basis for deviating from that precedent here. The time worked by Aqua's rate department employees has been properly documented, and is considerably less expense than using outside consultants. (Tr. 1507-09, 1513, 1552, 1580, 1582-84.) Moreover, changing or imposing a new standard without any guidance or advance notice is legally improper. Ms. Vandiver's argument that there is "double recovery" of salaries is without merit. For the rate department employees identified by Ms. Vandiver, only 1.25% of their collective salaries were charged to Florida for non-rate case related activities. (Tr. 1507.) Thus, there is no potential for "double recovery" of their salary expenses. This is in stark contrast to Order No. PSC-11-0587-PAA-SU (Dec. 21, 2011) where the FPSC proposed to remove from rate case expense time spent by utility employees whose salaries are already recoverable through Salary and O&M Expense.

Ms. Vandiver also proposes that the FPSC reduce the legal expenses incurred by AUF by imputing an hourly rate to an average rate set forth in a Florida Bar survey. (Tr. 649-51.) Again,

[26]If the FPSC accepts Ms. Vandiver's recommendation, this could have the perverse effect of considering these expenses as annual operating expenses, which would be recovered on a dollar for dollar basis as opposed to rate case expense which is amortized over 4 years. (Tr. 1508.)

this recommendation radically departs from precedent. Furthermore, the survey upon which Ms. Vandiver relies is based on but a sample of some Florida attorneys. (Tr. 688.) The survey does not come close to reflecting actual hourly rates of public utility law specialists that are needed to handle a fully litigated rate case of this magnitude. (Tr. 688-89, 1511.) Ms. Vandiver agreed that it would not be "prudent" for AUF to use an attorney who was not a public utility law expert in a fully litigated rate case such as this. (Tr. 690.) Ms. Vandiver also conceded that she didn't know whether the survey she relied on included the hourly rates of Florida attorneys with expertise in fully litigated utility rate cases. (Tr. 688-89.)

The lawyers used by AUF in this rate case are exactly the same as those who represented AUF in its last rate case. Neither OPC nor any other party in the last rate case raised an issue with their already discounted hourly rates, and the FPSC did not make any adjustments to reduce their rates. Moreover, the FPSC has recently approved an hourly rate of $400 for a lawyers' work in a water utility rate case, which rate is higher than AUF counsel's hourly rate in this case. *See* Order No. PSC-11-0010-SC-WU at 32 (Jan. 3, 2011). (Tr. 688.)

ISSUE 31A: Are the resulting rates affordable within the meaning fair, just and reasonable, pursuant to Sections 367.081 and 367.121, F.S.?

AUF: *Yes. The record is clear that the cap-band rate structure in the PAA Order and the uniform rate structure proposed by AUF are both designed to produce affordable rates. There is no "affordability" test for setting a utility's revenue requirement under Chapter 367, Florida Statutes. Rather, consideration of "affordability" must be limited to designing an appropriate rate structure.*

The record clearly reflects that the capband rate structure in the PAA Order and the uniform rate structure proposed by AUF both address and produce affordable rates. (Tr. 434-36, 438, 498, 1393.) The record also shows that uniform rates for multi-system utilities like AUF benefit customers by ensuring that rates are kept as low as possible. (Tr. 495-500.) The FPSC recognized those benefits by adopting uniform rates for electric and natural gas utilities in the state, and there is no legal impediment for the FPSC to similarly adopt uniform rates for AUF's customers. (Tr. 497-98.)

During the course of this case, OPC made repeated attempts to inject a new and undefined "affordability" criterion to reduce AUF's revenue requirement. OPC witnesses argued that economic conditions justify reduction in rates even if the costs are reasonable and necessary. (Tr. 58, 740-47, 852.) Although the Company is sensitive to past and present economic conditions, OPC's arguments are nothing more than an attempt to divert the FPSC's attention from the evidence supporting the need for rate relief, and are in blatant contravention of the Florida Statutes and case law.[27]

The FPSC is required to fix water and wastewater utility rates that are just, reasonable, compensatory, and not unfairly discriminatory. § 367.081(1), Fla. Stat. Those rates must be established by the FPSC at a level which will allow a utility the opportunity to recover its prudently incurred expenses and to earn a fair return on its investments. *See, e.g., United Telephone Co. v. Mayo,* 403 So. 2d 962, 966 (Fla. 1981); *Keystone Water Co. v. Bevis*, 278 So. 2d 606 (Fla. 1973). In determining a utility's rates, the FPSC must consider whether rates are confiscatory and deprive a utility of a fair return. *See Westwood Lake, Inc. v. Dade County*, 264 So. 2d 7 (Fla. 1972). To that end, the Florida Supreme Court has made it clear that a regulated public utility is entitled to earn a fair rate of return on capital investment and failure to allow a fair rate of return would violate the utility's process rights. *See Gulf Power Co. v. Bevis*, 289 So. 2d 401 (Fla. 1974); *Keystone Water Co.*, 278 So. 2d at 606.

Consistent with the Supreme Court's directives, the Florida First District Court of Appeal has confirmed that "in the aggregate, rates and charges" must assure a water and wastewater utility an opportunity to recover its "revenue requirement," which it described as "the cost of the service the utility provides, operating expenses as well as the cost of capital." *Southern States Utilities, Inc. v. Fla. Pub. Serv. Comm'n*, 714 So. 2d 1046, 1053 (Fla. 1st DCA 1998). Moreover, the court explained that, while an "affordability" criterion may be used to design a utility's rate structure,

[27]OPC and YES witnesses made anecdotal claims that AUF's rates and services had devalued homes and businesses. However, there is no showing in the record that AUF's rates and services have any correlation to home or business values, foreclosures, or occupancy rates. (Tr. 1279-82, 1286, 1813-14; Ex. 226; Ex 253; Ex. 332.)

such criterion cannot be used to decrease a utility's "overall revenue requirement." *Id.* ("Before setting rates for separate classes of customers, the utility must establish and the PSC must approve a determination of the utility's overall revenue requirements."). In other words, to the extent a random "affordability" criterion would cap the rates of certain systems at a level that would interfere with the recovery of the revenue requirement, the resulting "shortfall" would need to be recovered from the remaining ratepayers of the utility to ensure the utility is afforded an opportunity to recover its "revenue requirement" as required by law. *Id.* Thus, if "affordability" is to be made part of this rate case, under Florida law, its pertinence must be confined to determining the appropriate design of AUF's rate structure. *Id.*

As stated, Chapter 367, Florida Statutes, provides clear direction to the FPSC on how to establish rates for a water and wastewater utility. OPC's own witnesses concede that there is no "affordability" test in Chapter 367 or the FPSC's rules for setting a utility's revenue requirement. (Tr. 851, 853-54.) Indeed, nowhere in Chapter 367 are the terms "affordable," "affordability," or "unaffordable" ever used. Moreover, the Legislature has not included any such term in Chapter 367 despite knowing precisely how to do so.[28]

To deprive AUF of its revenue requirement based on novel, undefined and unsupported "affordability" criteria would constitute an unconstitutional taking and a gross betrayal of the regulatory compact. OPC's attempts to inject a new "affordability" criterion in rate setting were properly rejected in the Prehearing Order, which struck OPC's proposed Issue 24 and included Issue 31A as a "rate structure" issue. *See* Prehearing Order, at 81-83.

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[28]For instance, the Legislature has specifically chosen in Ch. 364, Fla. Stat., to make "affordability" relevant to the development of telecommunications rates. But, even there, "affordability" has never been used to deprive a telephone company of its right to recover its revenue requirement. Rather, federal and state law provide for a telecommunications company offering below-cost rates to low-income customers to receive subsidies from the Universal Service Fund thus making the company "whole." Those laws also define eligibility for such subsidies. In Florida, no similar scheme even remotely exists for water and wastewater utilities. *See, e.g., Maddox v. State*, 923 So. 2d 442, 446-47 (Fla. 2006) (stating that the Legislature's use of different terms in different statutory sections indicates that different meanings were intended); *Leisure Resorts, Inc. v. Frank J. Rooney, Inc.*, 654 So. 2d 911, 914 (Fla. 1995) (holding that where the Legislature has used a term in one section of a statute but omitted the term in another section, the court will not read the term into the sections where it was omitted).

ISSUE 38: In accordance with Order No. PSC-10-0707-FOF-WS, what is the amount and who would have to pay the regulatory asset (or deferred interim revenues), if it is ultimately determined by the FPSC that the Utility was entitled to those revenues when it first applied for interim rates?

AUF: *Using the August 1, 2011, effective date of the implemented PAA rates, a 245-day period is appropriate for the calculation of any regulatory asset. However, the amount of any regulatory asset is subject to the resolution of the other issues. (Tr. 495.)*

ISSUE 39: Should this docket be closed?

AUF: *Yes. AUF has demonstrated that its quality of service is satisfactory, that it has made significant improvements, and that further monitoring should not be required.*

Respectfully submitted this 30th day of December, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished by email and U.S. Mail this 30th day of December, 2011 to: Ralph Jaeger, Caroline Klancke, Office of General Counsel, Florida Public Service FPSC, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850; J.R. Kelly, Patricia Christensen, Office of Public Counsel, c/o The Florida Legislature, 111 W Madison St, Room 812, Tallahassee, FL 32399-1400; Joseph D. Richards, Senior Assistant County Attorney, Pasco County Attorney's Office, 8731 Citizens Drive, Suite 340, New Port Richey, FL 34654; Kenneth M. Curtin, Adams and Reese LLP, 150 Second Avenue North, Suite 1700, St. Petersburg, Florida 33701; and Cecilia Bradley, Senior Assistant Attorney General, Office of the Attorney General, The Capitol - PL01 Tallahassee, FL 32399-1050.

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