

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

Re: Application for limited proceeding rate increase in Brevard County, by Aquarina Utilities, Inc.

DOCKET NO. 20190080-WS

FILED: April 3, 2020

**OFFICE OF PUBLIC COUNSEL'S MOTION TO RESCHEDULE THE CUSTOMER MEETING AND CONTINUE THE DOCKET**

The Citizens of the State of Florida ("Citizens"), by and through the Office of Public Counsel ("OPC"), pursuant to Rule 28-106.204, Florida Administrative Code ("F.A.C."), hereby move to reschedule the Customer Meeting and continue the docket time schedule in this Docket. In support of this motion, OPC states as follows:

1. On April 1, 2019, Aquarina Utilities, Inc., (Aquarina or the Utility), filed its Application for Limited Proceeding Rate Increase in Brevard County, ("the Application"). According to the Utility's subsequent changes to its rate request, Aquarina is currently asking the Commission to raise the average residential customer's rates by approximately 51.12%.
2. On August 21, 2019, after Aquarina purportedly corrected deficiencies in its original filing, PSC Staff established the Utility's official filing date as July 31, 2019. However, the proposed rates submitted by Aquarina as of the July 31, 2019 official filing date were virtually the same as the old rates being charged to customers before the Utility filed its application for this limited proceeding.<sup>1</sup> In its April 24, 2019 Deficiency Notice to Aquarina, Staff requested Aquarina produce a "schedule of current and proposed rates" pursuant to Rule 25-30.445(4)(k), F.A.C. (Doc. No. 03909-2019). However, the rates the Utility presented on July 31, 2019 in response to Staff's request were actually only lists of

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<sup>1</sup> Aquarina's July 31, 2019 filing lists rates and increases related to its standard index increase. A utility is not required to file an application for limited proceeding just to obtain an index increase, so a listing of the index increases in response to a data request seeking rates the utility proposes for the rate case increase is not responsive to the request for MFR data.

the Utility’s current rates adjusted for the already-approved 2019 index increase, *not* the proposed rate increases the Utility planned to seek in its limited proceeding rate case.

<b>Residential &amp; General Service Base Facility Charge by Meter Size</b>	<b>Aquarina’s 7/31/2019 list of “current rates”</b>	<b>Aquarina’s 7/31/2019 list of “pending rates”</b>	<b>Aquarina’s 7/31/2019 list Percentage Increase</b>	<b>Aquarina’s November 10, 2019 Notice to Customers Proposed Rates</b>	<b>Aquarina’s November 10, 2019 Notice to Customers Percentage Increase</b>
<b>5/8" x 34/4</b>	\$19.43	\$19.80	1.9%	\$29.97	54.25%
<b>3/4"</b>	\$29.15	\$29.70	1.89%	\$44.95	54.20%
<b>1"</b>	\$48.58	\$49.50	1.89%	\$74.94	54.26%
<b>1-1/2"</b>	\$97.15	\$99.00	1.9%	\$149.84	54.24%
<b>2"</b>	\$155.44	\$158.40	1.9%	\$239.74	54.23%
<b>3"</b>	\$310.88	\$316.18	1.9%	\$479.49	54.24%
<b>4"</b>	\$485.75	\$495.00	1.9%	\$749.20	54.24%
<b>6"</b>	\$971.50	\$990.00	1.9%	\$1,498.40	54.24%
<b>Charge per 1,000 gallons</b>	\$7.05	\$7.18	1.84%	\$10.87	54.18%

- So, on the July 31, 2019 “official filing date,” Aquarina had failed to file a true “schedule of current and proposed rates for all classes of customers,” as required by Rule 25-30.445(4)(k), which outlines the required Minimum Filing Requirements (“MFRs”) applicable to this case. Because the Utility failed to comply with the MFR requirements on July 31, 2019, that was not an accurate official filing date.

4. On November 15, 2019, Aquarina filed an Affidavit stating that on November 12, 2019, it mailed a Notice of Proposed Rate Increase dated November 10, 2019 to all customers. (Document No. 10953-2019). However, the proposed rates included in the November Notice were materially different from the rates proposed by the Utility on its official filing date of July 31, 2019.
5. The documents filed as of the July 31, 2019 official date of filing did not reflect the average 51% increase in residential rates which was eventually included in the Notice to customers Aquarina mailed out on November 12, 2019.<sup>2</sup> Thus, it appears the customers never received proper notice of Aquarina's actual proposed rates when the Utility originally filed its petition and attempted corrections to deficiencies; instead, the real proposed rates were not mailed to customers until November 12, 2019.
6. On February 6 and 7, 2020, the utility changed its proposed rates again when it filed updated and corrected updated rates.<sup>3</sup>
7. Pursuant to Rule 25-30.446(5)(a) and Rule 25-30.446(5)(b)(4), F.A.C., Aquarina was required to provide all customers with "a comparison of current rates and charges and the proposed new rates and charges" within 50 days after the official date of filing established by the Commission. As such, using the July 31, 2019 official filing date previously set by the PSC, the required Notice to customers and the comparison of current to proposed new rates and charges was due to customers by September 19, 2019. In violation of Rule 25-30.446, Aquarina did not mail the required rate and charges comparison until November

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<sup>2</sup> In addition to dramatically and belatedly increasing the proposed Residential and General Services charges in the November Notice, Aquarina further introduced a new charge of \$1,109.60 for a "Golf Course Non-Potable Standby Charge" which also had not been disclosed in its original application or in its July 31, 2019 Deficiency Correction. The Utility attempted to impose this new charge in November, despite the fact that the Golf Course had previously informed Aquarina unequivocally in September that the Golf Course did not agree to accept back up irrigation service from the Utility. *See* Document No. 10823-2019. It appears the Utility abandoned the attempt to impose this new \$1,109.60 charge in its February 7, 2020 "corrected, updated" proposed rates.

<sup>3</sup> Aquarina's February 6, 2020 proposed rate "update" included a \$.02 decrease for 1" water service and decreases to irrigation service. Aquarina's February 7, 2020 "corrected update" to its proposed rates made a \$.05 increase for 4" water service and a \$.03 decrease in 8" irrigation service.

12, 2019 – almost two months after the Rule required the Notice be provided to customers. (Doc. No. 10953-2019).

8. A Customer Meeting was scheduled and noticed to occur on March 26, 2020 in the Aquarina Community Center Conference Room in Melbourne Beach, Florida. (Doc. No. 01267-2020).
9. On March 9, 2020, the Governor of Florida declared a state of emergency via Executive Order 20-52, due to the Coronavirus Disease 2019 (COVID-19).
10. On March 16, 2020, the Customer Meeting was canceled. (Doc. No. 01413-2020). The Notice of Cancellation of Customer Meeting states “Commission staff is requesting that any person who wishes to comment or provide information regarding the proposed rate increase should do so in one of the five manners (letter, email, fax, website, or phone) ... by April 10, 2020.” *Id.*
11. The Staff Recommendation is currently scheduled to be issued April 23, 2020, the Agenda conference is scheduled for May 5, 2020, and the PAA Order is due May 26, 2020.
12. OPC requests the Commission postpone all remaining docket dates in the Time Schedule (CASR) until a Customer Meeting can be held in the community where the customers live in Melbourne Beach, or in the alternative, reschedule the Customer Meeting to occur via videoconference technology *prior to* the issuance of the Staff Recommendation, and maintain the recording of the meeting in the official docket file.
13. As explained above, the Utility has changed or amended its proposed rates several times since the official filing date of July 31, 2019 was established. The proposed rates were substantially changed in November 2019, and as recently as February 7, 2020, the utility filed yet again “corrected, updated” rates.

14. According to Commission precedent, where a utility has materially amended its rate request, it is appropriate to reschedule the Customer Meeting and restart the clock on the statutory deadline by which an order must be issued. *Cf., In Re: Application of Southern States Utilities, Inc., Western Shores and Venetian Village, for a rate increase*, Order No. 11311, Docket No. 820105-WS (CR) ; 82 FPSC 125; 1982 Fla. PUC Lexis 145 (re-establishing an official date of filing where a utility's initial application was substantially altered). By rescheduling the Customer Meeting in this case and continuing the remaining CASR dates to accommodate holding the Customer Meeting before the Staff Recommendation and Agenda Conference, the Commission could maintain all the applicable statutory and due process requirements.
15. Considering the current state of emergency and the unprecedented, exigent circumstances caused by the Coronavirus pandemic, it is within the Commission's discretion to suspend the CASR and reschedule the Customer Meeting to ensure due process and justice for customers who have been led to believe they would have the opportunity for direct, community-wide dialog with representatives of the state agency to discuss their concerns, questions, and complaints about their service and the proposed rate increase.
16. Starting in or about November 2019, OPC has been contacted by customers of Aquarina Utilities, Inc., including one customer who, as President of Aquarina Golf, Inc., (AGI), represents the interests of numerous customers. This customer advised OPC that AGI is an affiliate of Aquarina Community Services Association (ACSA), which is the association to which most homeowners and customers belong. The representatives of both AGI and ACSA have stated their customer groups oppose the rate increase.
17. Whether or not a customer meeting is specifically required in PAA proceedings, fairness and equity dictate that once scheduled and relied upon by customers, the Customer Meeting should go forward at a rescheduled date after extraordinary events such as a worldwide pandemic and State of Emergency disrupt the schedule. At least one customer has advised OPC that he cannot see how it is fair for customers' rates to be increased without providing

the customers the opportunity, as a group, to engage in the dialog that is only possible at a Customer Meeting.

18. This case was filed a year ago. Since its initial filing and over the course of the past twelve months, the Utility has had numerous opportunities to correct its filing deficiencies, change its proposed rates, correct its proposed rates, and periodically provide additional information to Staff. The fault or blame for that lies directly with the Utility. On the other hand, the customers were to be given *only one* opportunity to directly address Commission Staff in a community setting. And now, due to circumstances beyond their control, those customers no longer have that one opportunity. Thus, it is patently unfair for customers to have their chance to speak directly to Staff completely canceled near the end of the docket schedule, roughly one month before the Staff Recommendation is due and two months before the Agenda conference at which the vote on the Utility's requested rate increase will occur.
19. Additionally, it is unfair and unjust to force the customers to travel upwards of five hours one way to Tallahassee for their one opportunity to speak directly to Staff and Commission at the Agenda Conference *on the same day the decision is likely to be made in their case*, a month after the Staff's Recommendation has already been completed and published to Commissioners. The bottom line is that the customers of Aquarina deserve better treatment and should be given an opportunity to address the agency in person and to engage in a dialog with agency personnel with the rest of their community present before the Staff issues its Recommendation.
20. As such, the Customer Meeting should be rescheduled to take place before the Staff Recommendation is issued, the remaining case activity dates should be postponed to accommodate the rescheduled Customer Meeting, and, if necessary, the Customer Meeting should take place using videoconferencing or other technology. Additionally, all of Aquarina's customers should be allowed to fully participate in the Agenda Conference in real time by phone or video conference, so that they may address the Commissioners directly during the Agenda Conference.

Requirement to Confer

Pursuant to Rule 28-106.204(3), F.A.C., the undersigned counsel contacted counsel for Aquarina concerning this Motion. Aquarina's counsel advised the undersigned that Aquarina "strenuously objects to any further delay in this proceeding." OPC notes that, prior to this date, neither OPC nor the customers have sought any extensions of time or otherwise caused any delay in this proceeding. OPC has not filed a single motion in this case prior to this document. To the extent there has been any delay in the case to date, it is because of Aquarina's filing deficiencies and failures to cure its filing deficiencies. Any and all delays have been due to the fact that Aquarina repeatedly failed to file the information required by the applicable Rules.

Respectfully submitted this 3<sup>rd</sup> day of April, 2020.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Office of Public Counsel's Motion to Reschedule the Customer Meeting and Continue the Docket has been furnished by electronic mail on this 3<sup>rd</sup> day of April 2020, to the following:

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