

COMMISSIONERS:  
MATTHEW M. CARTER II, CHAIRMAN  
LISA POLAK EDGAR  
KATRINA J. MCMURRIAN  
NANCY ARGENZIANO  
NATHAN A. SKOP

STATE OF FLORIDA



TIMOTHY DEVLIN, DIRECTOR  
DIVISION OF ECONOMIC REGULATION  
(850) 413-6900

# Public Service Commission

September 29, 2009

RECEIVED-FPSC  
09 SEP 30 PM 4: 15  
COMMISSION  
CLERK

Honorable Kelli Stargel  
405 House Office Building  
402 South Monroe Street  
Tallahassee, FL 32399

**Re: Aqua Utilities Florida, Inc. - Docket No. 080121-WS**

Dear Representative Stargel:

This letter is in response to your letter dated September 18, 2009, to Chairman Carter, regarding the Commission recent approval of a rate increase for Aqua Utilities Florida, Inc. (Aqua or Utility). In your letter, you had expressed specific concerns about Lake Gibson Estates' approved rates in comparison with the City of Lakeland (City) rates, as well as other municipalities rates contained in the City's rate chart. You also requested the current average water and wastewater rate bills of Aqua's 82 systems before and after the recently approved increase by the Commission, as well as the percentage change in the bills for each system. Moreover, you asserted that concerns over former PSC employees who now work for the Utility need to be investigated for both a perception and preferential treatment perspective.

With regard to a comparison of the City's and Aqua's rates, rates do vary between utilities for a variety of reasons. As utility rates are designed to cover the cost to run the utility and provide a reasonable return on the utility's investment, a multitude of factors will determine the level of rates to be charged. Such factors include: the type of water and/or wastewater treatment method used, the level of debt and equity, the number of customers and the amount of plant that is being used to serve the customers. Some utilities may have older infrastructure that is almost fully depreciated, where some may have new expensive equipment that has been depreciated very little. Also, by statute we do not regulate any municipal or county-owned utilities, therefore, we do not have information on their plant investments, operating costs, and/or rates. However, there are also many differences between Commission-regulated water and wastewater utilities and municipally-owned utilities that affect rates. For example, municipally-owned systems do not have to pay any income or property taxes and have access to low interest construction loans. Further, a city or county may issue bonds to finance capital improvements.

DOCUMENT NUMBER - DATE  
10101 SEP 30 09  
FPSC-COMMISSION CLERK

To address your request for the current average water and wastewater bills for each of Aqua's 82 systems, staff has attached two sets of tables. Each table shows what the typical residential customer bill was under the old rates, the new rates, and the percentage change. In the first set of tables, per your request, the water and wastewater bills are shown using the "Capband" rates actually approved by the Commission. The second set of tables shows the water and wastewater bills using the "Stand-Alone" rates that would have resulted had the Commission not adopted the 'Capband' methodology. I have included this second set of tables to illustrate how the "Capband" methodology helped to reduce the bills for many smaller wastewater systems such as Lake Gibson Estates.

Regarding your concerns over former PSC employees who now work for the Utility, there is one former PSC employee now working for Aqua. Section 112.313(9)(a), Florida Statutes, prohibits an agency employee from personally representing "another person or entity for compensation before the agency with which he or she was employed for a period of 2 years following vacation of the position, unless employed by another agency of state government." However, a person who was employed by the Public Service Commission on December 31, 1994 was grandfathered in and this provision is not applicable to him or her. Section 350.0605(2), Florida Statutes, restricts former employees of the Public Service Commission from representing any client before the Commission on any matter that he or she participated in that was pending when the employee left the Commission. The Florida Commission on Ethics has reviewed the individual's situation in question and found that he was grandfathered in under the statute and that he was not participating in a matter that was pending before the Public Service Commission when he left the Commission's employment in its opinion CEO 08-21 dated September 10, 2008 (See attached opinion of the Florida Commission on Ethics).

We understand that it is never pleasant to experience an increase in rates. During these difficult economic times, any increase in customer bills creates more of a hardship. If it had been possible to prevent an increase in rates, I am certain that our Commissioners would have voted to do so. However, the Commission must abide by the laws that dictate how rate cases like the recent Aqua case must be handled. Basically, these laws require the Commission to calculate rates that will let a utility cover its prudently incurred operating costs and allow an opportunity to earn a fair rate of return on its rate base (or investment level) that has been devoted to public use and deemed prudent by the Commission.

As set forth in Section 367.081(2)(a)1., the Commission has the responsibility to establish rates that are just, reasonable, compensatory and, not unfairly discriminatory. The rates are to include a fair return on the investment of the utility in property used and useful in the public service. The specific language of Section 367.081(2)(a)1. is as follows:

(2)(a)1. The commission shall, either upon request or upon its own motion, fix rates which are just, reasonable, compensatory, and not unfairly discriminatory. In every such proceeding, the commission shall consider the value and quality of the service and the cost of providing the service, which shall include, but not be limited to, debt interest; the requirements of the utility for working capital; maintenance, depreciation, tax, and operating expenses incurred in the operation of all property used and useful in the public service; and a fair return on the investment of the utility in property used and useful in the public service. However, the commission shall not

allow the inclusion of contributions-in-aid-of-construction in the rate base of any utility during a rate proceeding, nor shall the commission impute prospective future contributions-in-aid-of-construction against the utility's investment in property used and useful in the public service; and accumulated depreciation on such contributions-in-aid-of-construction shall not be used to reduce the rate base, nor shall depreciation on such contributed assets be considered a cost of providing utility service.

Both the Commission staff and the Office of Public Counsel (OPC), who represents customers in rate case proceedings before the Commission, scrutinized the Utility's request in great detail. This level of scrutiny included an examination by Commission staff auditors of Aqua's books and records since the Commission last established the Utility's rate base, responses to numerous data requests asking for additional support documentation, and field inspections of the Utility's water and wastewater facilities by Commission staff engineers. Expert witness testimony by Aqua, OPC, and Commission staff was proffered and admitted at an evidential hearing which addressed numerous rate base, capital structure, and operating cost issues. Based on the evidentiary record, the Commission reduced the Utility's total requested rate base of approximately \$8.4 million by over \$2.3 million. However, the remainder of the Utility's request was found to be necessary to provide safe and reliable service to its customers. I am providing some case background information, as well as some financial data which serves as the basis in concluding why an increase was deemed necessary.

As general background, almost all of the individual systems owned by Aqua were previously owned by Florida Water Service (FWS), another large water company, which operated a number of large and small utilities across the state. Beginning in 2001, FWS pulled out of the Florida market, and began selling off their systems. Although local governments were able to buy any of the FWS systems, only the larger, more efficient less costly systems were purchased by city and county governments where the systems were located. Eventually, only the smaller, less efficient higher cost systems were left. Smaller systems tend to be more expensive to operate because they are not able to take advantage of the economies of scale and efficiencies available to larger systems. The advantage of serving both large and small utilities is that the costs necessary to run all systems can be spread over a larger customer base, allowing everyone to enjoy relatively lower rates. In 2004, these smaller, more costly systems were purchased by Aqua. In its recent rate case, Aqua sought rates that would recover the actual costs of operating these smaller systems without the benefit of being subsidized by larger more efficient systems.

The PSC is required by Florida law to allow utilities to recover prudent costs of providing utility service. The absence of subsidization, which had previously come from the larger systems, contributed to the significant increase in the recently approved rates. In order to mitigate the impact of the rate increase on individual utility systems, the PSC grouped utility systems with similar costs into rate groups, or bands, to spread the costs over more customers and keep rates lower than would be possible on an individual utility system basis. While some systems in a group may be paying more than they would on a stand alone basis today, that could change in a few years when that system requires significant upgrades or repairs. The groupings help smooth the costs to all customers in the rate group into the future, similar to the averaging of costs experienced under FWS.

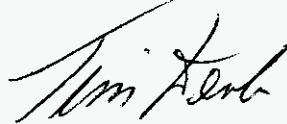
Honorable Kelli Stargel

Page 4

September 29, 2009

I hope you found the above information helpful. While it is unfortunate that rates had to be increased, it was unavoidable given the circumstances surrounding the case. If you have any other questions, please let me know.

Sincerely,



Tim Devlin

Director, Division of Economic Regulation

TD/bf

Attachments

cc: Chairman Matthew M. Carter II  
Commissioner Lisa Polak Edgar  
Commissioner Katrina J. McMurrian  
Commissioner Nancy Argenziano  
Commissioner Nathan A. Skop  
Dr. Bane, Executive Director  
Division of Economic Regulation (Willis, Bulecza-Banks, Kummer, Fletcher, Stallcup)  
Office of General Counsel (Helton, Brubaker, Jaeger)  
Office of Commission Clerk (Docket No. 080121-WS)

**Table 1: Aqua Water Systems**  
**Average Residential Bill at 7.034 kgals/month**  
(7.034 kgals is the average residential consumption across all water systems)

System No.	System	Old Rates	Approved Rates	Percentage Increase
1	48 Estates	\$29.03	\$53.68	84.9%
2	Arrendondo	\$30.38	\$65.25	114.8%
4	Beechers Pt	\$45.01	\$65.25	45.0%
5	Carlton Village	\$45.74	\$44.07	-3.7%
6	Chuluota	\$37.61	\$37.61	0.0%
7	E. Lake Harris	\$42.72	\$65.25	52.8%
8	Fern Terrace	\$31.39	\$44.07	40.4%
9	FL Cen Com Pk	N/A	N/A	N/A
10	Friendly Ctr	\$44.61	\$65.25	46.3%
11	Gibsonia Estates	\$10.36	\$53.68	418.0%
12	Grand Terrace	\$24.95	\$44.07	76.6%
13	Haines Creek	\$20.30	\$65.25	221.4%
14	Harmony Homes	\$46.20	\$65.25	41.2%
15	Hermits Cove	\$42.79	\$65.25	52.5%
16	Hobby Hills	\$24.95	\$65.25	161.5%
17	Holiday Haven	\$42.88	\$65.25	52.2%
18	Imperial	\$31.38	\$65.25	107.9%
19	Interlachen Park	\$37.61	\$53.68	42.7%
20	Jasmine Lakes	\$31.67	\$28.80	-9.0%
21	Jungle Den	\$41.82	\$65.25	56.0%
22	Kings Cove	\$17.33	\$28.80	66.2%
23	Kingswood	\$31.38	\$65.25	107.9%
24	Lake Gibson Est	\$14.22	\$44.07	209.8%
25	Lake Josephine	\$21.35	\$65.25	205.6%
26	Lake Osborne Est	\$18.51	\$53.68	190.0%
27	Lake Suzy	\$55.17	\$65.25	18.3%
28	Leisure Lakes	\$42.48	\$65.25	53.6%
29	Morningview	\$45.60	\$65.25	43.1%
30	Oakwood	\$31.38	\$65.25	107.9%
31	Ocala Oaks	\$23.47	\$28.80	22.7%
32	Orange Hill	\$19.27	\$53.68	178.6%
33	Palm Port	\$43.73	\$65.25	49.2%
34	Palm Terrace	\$31.38	\$65.25	107.9%
35	Palms MHP	\$42.45	\$65.25	53.7%
37	Picciola Island	\$31.38	\$28.80	-8.2%
38	Piney Woods	\$35.46	\$44.07	24.3%
39	Pomona Park	\$35.46	\$65.25	84.0%
40	Quail Ridge	\$46.62	\$53.68	15.1%
41	Ravenswood	\$26.52	\$53.68	102.4%
42	River Grove	\$37.61	\$65.25	73.5%
43	Rosalie Oaks	\$18.57	\$65.25	251.4%
45	Sebring Lakes	\$25.08	\$65.25	160.1%
46	Silver Lake Est	\$16.85	\$28.80	70.9%
47	Silver Lake Oaks	\$44.70	\$65.25	46.0%
48	Skycrest	\$44.20	\$65.25	47.6%
49	South Seas	N/A	N/A	N/A
50	St Johns Highlands	\$42.53	\$44.07	3.6%
51	Stone Mountain	\$48.48	\$65.25	34.6%
52	Summit Chase	\$27.81	\$65.25	134.6%
53	Sunny Hills	\$43.42	\$44.07	1.5%
54	Tangerine	\$19.68	\$28.80	46.3%
55	The Woods	\$19.68	\$65.25	231.5%
56	Tomoka	\$14.63	\$65.25	346.1%
57	Valencia Terrace	\$24.95	\$44.07	76.6%
58	Venetian Village	\$37.64	\$53.68	42.6%
59	Village Water	\$30.64	\$65.25	113.0%
60	Welaka/Saratoga	\$42.96	\$65.25	51.9%
61	Wooten	\$42.80	\$65.25	52.4%
62	Zephyr Shores	\$41.68	\$65.25	56.5%

Note: Florida Central Commerce Park and South Seas have no residential water customers.

**Table 1: Aqua Wastewater Systems**  
**Average Residential Bill at 6 kgals/month**  
(6 kgals is the 'capped' residential wastewater kgal amount)

System No.	System	Old Rates	Approved Rates	Percentage Increase
1	48 Estates			
2	Arrendondo	\$36.66	\$77.02	110.1%
4	Beechers Pt	\$63.67	\$82.25	29.2%
5	Carlton Village			
6	Chuluota	\$70.07	\$70.07	0.0%
7	E. Lake Harris			
8	Fern Terrace			
9	FL Cen Com Pk	N/A	N/A	N/A
10	Friendly Ctr			
11	Gibsonia Estates			
12	Grand Terrace			
13	Haines Creek			
14	Harmony Homes			
15	Hermits Cove			
16	Hobby Hills			
17	Holiday Haven	\$69.17	\$77.02	11.4%
18	Imperial			
19	Interlachen Park	\$65.50	\$77.02	17.6%
20	Jasmine Lakes	\$27.35	\$77.02	181.6%
21	Jungle Den	\$69.77	\$82.25	17.9%
22	Kings Cove	\$28.68	\$45.03	57.0%
23	Kingswood			
24	Lake Gibson Est	\$26.81	\$82.25	206.8%
25	Lake Josephine			
26	Lake Osborne Est			
27	Lake Suzy	\$82.36	\$77.02	-6.5%
28	Leisure Lakes	\$36.10	\$45.03	24.7%
29	Morningview	\$69.82	\$77.02	10.3%
30	Oakwood			
31	Ocala Oaks			
32	Orange Hill			
33	Palm Port	\$69.84	\$77.02	10.3%
34	Palm Terrace	\$44.13	\$77.02	74.5%
35	Palms MHP			
37	Picciola Island			
38	Piney Woods			
39	Pomona Park			
40	Quail Ridge			
41	Ravenswood			
42	River Grove			
43	Rosalie Oaks	\$55.53	\$82.25	48.1%
45	Sebring Lakes			
46	Silver Lake Est			
47	Silver Lake Oaks	\$69.82	\$77.02	10.3%
48	Skycrest			
49	South Seas	\$52.25	\$77.02	47.4%
50	St Johns Highlands			
51	Stone Mountain			
52	Summit Chase	\$25.65	\$45.03	75.6%
53	Sunny Hills	\$69.60	\$77.02	10.7%
54	Tangerine			
55	The Woods	\$69.60	\$77.02	10.7%
56	Tomoka			
57	Valencia Terrace	\$36.10	\$45.03	24.7%
58	Venetian Village	\$56.27	\$77.02	36.9%
59	Village Water	N/A	N/A	N/A
60	Welaka/Saratoga			
61	Wooten			
62	Zephyr Shores	\$68.63	\$77.02	12.2%

Note: Florida Central Commerce Park and Village Water have no residential wastewater customers.

**Table 2: Aqua Water Systems**  
**Average Residential Bill at 7.034 kgals/month - Stand-Alone Rates**  
(7.034 kgals is the average residential consumption across all water systems)

System No.	System	Old Rates	Stand-Alone Rates	Percentage Increase
1	48 Estates	\$29.03	\$46.71	60.9%
2	Arrendondo	\$30.38	\$48.70	60.3%
4	Beechers Pt	\$45.01	\$190.18	322.6%
5	Carlton Village	\$45.74	\$34.41	-24.8%
6	Chuluota	\$37.61	\$37.61	0.0%
7	E. Lake Harris	\$42.72	\$147.76	245.9%
8	Fern Terrace	\$31.39	\$32.92	4.9%
9	FL Cen Com Pk	N/A	N/A	N/A
10	Friendly Ctr	\$44.61	\$61.27	37.3%
11	Gibsonia Estates	\$10.36	\$46.19	345.7%
12	Grand Terrace	\$24.95	\$39.83	59.6%
13	Haines Creek	\$20.30	\$49.93	146.0%
14	Harmony Homes	\$46.20	\$75.99	64.5%
15	Hermits Cove	\$42.79	\$154.29	260.6%
16	Hobby Hills	\$24.95	\$49.56	98.6%
17	Holiday Haven	\$42.88	\$85.54	99.5%
18	Imperial	\$31.38	\$85.48	172.4%
19	Interlachen Park	\$37.61	\$47.72	26.9%
20	Jasmine Lakes	\$31.67	\$27.51	-13.1%
21	Jungle Den	\$41.82	\$146.94	251.4%
22	Kings Cove	\$17.33	\$17.05	-1.6%
23	Kingswood	\$31.38	\$91.57	191.8%
24	Lake Gibson Est	\$14.22	\$32.77	130.4%
25	Lake Josephine	\$21.35	\$61.11	186.3%
26	Lake Osborne Est	\$18.51	\$46.76	152.7%
27	Lake Suzy	\$55.17	\$56.78	2.9%
28	Leisure Lakes	\$42.48	\$99.11	133.3%
29	Morningview	\$45.60	\$116.22	154.8%
30	Oakwood	\$31.38	\$93.67	198.5%
31	Ocala Oaks	\$23.47	\$32.76	39.6%
32	Orange Hill	\$19.27	\$41.94	117.7%
33	Palm Port	\$43.73	\$84.64	93.5%
34	Palm Terrace	\$31.38	\$52.97	68.8%
35	Palms MHP	\$42.45	\$203.90	380.4%
37	Picciola Island	\$31.38	\$24.87	-20.7%
38	Piney Woods	\$35.46	\$40.06	13.0%
39	Pomona Park	\$35.46	\$60.48	70.6%
40	Quail Ridge	\$46.62	\$41.18	-11.7%
41	Ravenswood	\$26.52	\$42.86	61.6%
42	River Grove	\$37.61	\$49.66	32.0%
43	Rosalie Oaks	\$18.57	\$121.26	552.9%
45	Sebring Lakes	\$25.08	\$221.96	784.9%
46	Silver Lake Est	\$16.85	\$17.43	3.4%
47	Silver Lake Oaks	\$44.70	\$185.70	315.4%
48	Skycrest	\$44.20	\$52.32	18.4%
49	South Seas	N/A	N/A	N/A
50	St Johns Highlands	\$42.53	\$34.81	-18.2%
51	Stone Mountain	\$48.48	\$194.38	300.9%
52	Summit Chase	\$27.81	\$68.12	144.9%
53	Sunny Hills	\$43.42	\$34.77	-19.9%
54	Tangerine	\$19.68	\$30.92	57.1%
55	The Woods	\$19.68	\$184.82	839.0%
56	Tomoka	\$14.63	\$65.80	349.8%
57	Valencia Terrace	\$24.95	\$32.91	31.9%
58	Venetian Village	\$37.64	\$44.38	17.9%
59	Village Water	\$30.64	\$58.06	89.5%
60	Welaka/Saratoga	\$42.96	\$77.93	81.4%
61	Wooten	\$42.80	\$229.16	435.4%
62	Zephyr Shores	\$41.68	\$102.64	146.2%

Note: Florida Central Commerce Park and South Seas have no residential water customers.

Table 2: Aqua Wastewater Systems  
Average Residential Bill at 6 kgals/month - Stand-Alone Rates  
(6 kgals is the 'capped' residential wastewater kgal amount)

System No.	System	Old Rates	Stand-Alone Rates	Percentage Increase
1	48 Estates			
2	Arrendondo	\$36.66	\$70.63	92.7%
4	Beechers Pt	\$63.67	\$384.24	503.5%
5	Carlton Village			
6	Chuluota	\$70.07		-100.0%
7	E. Lake Harris			
8	Fern Terrace			
9	FL Cen Com Pk	N/A	N/A	N/A
10	Friendly Ctr			
11	Gibsonia Estates			
12	Grand Terrace			
13	Haines Creek			
14	Harmony Homes			
15	Hermits Cove			
16	Hobby Hills			
17	Holiday Haven	\$69.17	\$162.63	135.1%
18	Imperial			
19	Interlachen Park	\$65.50	\$163.74	150.0%
20	Jasmine Lakes	\$27.35	\$67.72	147.6%
21	Jungle Den	\$69.77	\$224.40	221.6%
22	Kings Cove	\$28.68	\$42.50	48.2%
23	Kingswood			
24	Lake Gibson Est	\$26.81	\$197.66	637.3%
25	Lake Josephine			
26	Lake Osborne Est			
27	Lake Suzy	\$82.36	\$68.63	-16.7%
28	Leisure Lakes	\$36.10	\$47.37	31.2%
29	Morningview	\$69.82	\$136.02	94.8%
30	Oakwood			
31	Ocala Oaks			
32	Orange Hill			
33	Palm Port	\$69.84	\$101.37	45.1%
34	Palm Terrace	\$44.13	\$67.74	53.5%
35	Palms MHP			
37	Picciola Island			
38	Piney Woods			
39	Pomona Park			
40	Quail Ridge			
41	Ravenswood			
42	River Grove			
43	Rosalie Oaks	\$55.53	\$293.64	428.8%
45	Sebring Lakes			
46	Silver Lake Est			
47	Silver Lake Oaks	\$69.82	\$167.25	139.5%
48	Skycrest			
49	South Seas	N/A	N/A	N/A
50	St Johns Highlands			
51	Stone Mountain			
52	Summit Chase	\$25.65	\$41.72	62.6%
53	Sunny Hills	\$69.60	\$106.08	52.4%
54	Tangerine			
55	The Woods	\$69.60	\$133.58	91.9%
56	Tomoka			
57	Valencia Terrace	\$36.10	\$49.78	37.9%
58	Venetian Village	\$56.27	\$82.50	46.6%
59	Village Water	N/A	\$0.00	N/A
60	Weiaka/Saratoga			
61	Wooten			
62	Zephyr Shores	\$68.63	\$80.87	17.8%

Note: Florida Central Commerce Park and South Seas have no residential water customers.



## POST-EMPLOYMENT RESTRICTIONS

### UTILITY COMPANY EMPLOYEE APPEARING BEFORE PSC IN RATE CASE AFTER PARTICIPATING IN EARLIER RATE CASE AS A PSC EMPLOYEE

To: *Lawrence E. Sellers, Jr., Esquire (Tallahassee)*

#### SUMMARY:

A former PSC employee would not be prohibited by Section 112.313(9)(a)4, Florida Statutes, from representing a utility company in a rate case before the PSC within two years of his termination because he is grandfathered-in. His employment with the PSC began in November 1987, and Section 112.313(9)(a)4, Florida Statutes, is inapplicable to PSC employees who held their positions as of December 31, 1994. Section 350.0605(2), Florida Statutes, prohibits a former PSC employee from "switching sides" and coming back before the PSC representing a utility on the same matter that he had been involved in as a PSC employee. However, the 2008 rate case that the former employee is now involved in as an employee of the utility company is not the same matter as the 2006 rate case that he was involved in as a PSC employee. Therefore, the former PSC employee's involvement in the 2008 rate case does not violate Section 350.0605 (2), Florida Statutes.

#### QUESTION:

Would a former employee with the Florida Public Service Commission be prohibited by Sections 112.313(9)(a)4 and 350.0605(2), Florida Statutes, from participating in a rate case on behalf of a utility company when he had previously worked on a different rate case for the same utility company as a PSC employee?

Based upon the specific facts presented, your question is answered in the negative.

In your letter of inquiry, you relate that Mr. William T. Rendell has authorized your firm to seek an advisory opinion on his behalf concerning the post-employment provisions in Sections 112.313(9) and 350.0605(2), Florida Statutes. By way of background, you explain that from November 1987 until January 2008, he was employed by the Florida Public Service Commission (PSC), most recently as the Public Utilities Supervisor in the Division of Economic Regulation, Bureau of Rate Filings, Surveillance, Finance & Tax. Upon leaving the PSC, he became the Manager of Rates with a utility company that provides water and wastewater services to approximately 117,000 Florida residents through its ownership of 72 water systems and 31 wastewater systems in 17 different counties. These systems were acquired from other companies in recent years and many need major improvements. You indicate that some systems applied for rate increases 10 years ago but for others, it has been 15 years since they sought an increase.

Rates for investor-owned water and wastewater utility companies are set and regulated by the PSC pursuant to Chapter 367, Florida Statutes. By law, those rates are to be set at a level that gives the utility an opportunity to recover its "cost of service," namely, the costs it incurs in providing service plus a reasonable return ("rate of return") on its "rate base." A utility company may apply to the PSC for a rate increase by filing certain records-known as "Minimum Filing Requirements" (MFRs)-that show its current rates do not allow for it to recover its "cost of service." This type of filing is referred to as a "rate case" or "rate proceeding," and in order to accurately address a utility's "cost of service" as part of a rate case, a "test year" period is chosen that is

representative of the utility's current (and expected future) operations in terms of revenues, operation and maintenance expenses, taxes, depreciation, and a fair return on investment.<sup>1</sup>

On December 1, 2006, the utility company filed an application for an increase in the interim and final water and wastewater rates based on a historical test year period ending December 31, 2005, with some projected adjustments. This filing was assigned Docket No. 060368-WS, and covered 80 systems (56 water and 24 wastewater) in 15 counties throughout Florida. The utility's MFRs predicted that its earnings during the test year would fall below the earnings level authorized by the PSC. In addition to requesting a rate increase, the utility also requested a county-wide uniform rate structure as a result of grouping its facilities into 15 geographic regions within county boundaries, with each county having its own unique rates. You advise that, eventually, interveners in the case filed a joint motion to dismiss the rate case on several grounds, including assertions that the utility company's MFRs for its operating expenses were flawed. Thereafter, PSC staff recommended that the joint motion to dismiss be granted. Instead of seeking to amend its application to address the alleged deficiencies in its MFRs, the utility company filed a notice of voluntary dismissal on August 27, 2007, which was acknowledged by the PSC at its agenda conference the following day, and which was codified in Order No. PSC-07-0773-FOF-WS on September 24, 2007.<sup>2</sup>

With regard to the utility company's 2006 rate case, you advise that the employee was primarily responsible for supervising the accounting aspects of the case, and that he shared supervisory responsibilities with another supervisor on the engineering data. A third supervisor from a different section handled the cost of capital issues, and a supervisor and bureau chief from another bureau were assigned to the rate issues, including rate structure. You advise that the employee had no direct responsibilities in either the cost of capital or rate structure issues. Nearly three months after the entry of Order No. PSC-07-0773-FOF-WS, the employee was approached by the utility company regarding prospective employment. In accordance with internal PSC procedures, he notified his supervisor and immediately terminated any on-going involvement with Docket No. 060368-WS, including participation in staff conferences or meetings with the utility company. He also has had no involvement with Docket No. 060368-WS as a utility company employee, we are advised.

On May 22, 2008, the utility company filed a new, different application for an increase in interim and final water and wastewater rates based on a historic test year period ending December 31, 2007. The 2008 case was assigned Docket No. 080121-WS, and encompasses 57 water systems and 25 wastewater systems in 16 counties. With its new application, the utility company submitted new MFRs to support its request for a rate increase-MFRs that are distinct and different from the MFRs filed under the previous docket-and with different data and financial projections. The utility company also seeks to adopt a "consolidated" statewide uniform rate structure for all of its customers instead of the varying rate structures for its systems that it presently employs. This would allow the utility company to take advantage of economies of scale and share the cost of running the business over its entire customer base and minimize the financial impact on customers for expenditures that benefit only a single system. The proposed statewide uniform rate structure is materially different from the 15 separate county-wide rate structures it sought under the prior docket.

With this extensive background, we are asked to decide whether "switching sides" by the former PSC employee violates the post-employment provisions in either the Code of Ethics or Chapter 350, Florida Statutes.

The applicable language in Section 112.313(9)(a), Florida Statutes, provides:

4. An agency employee, including an agency employee who was employed on July 1, 2001, in a Career Service System position that was transferred to the Selected Exempt Service System under chapter 2001-43, Laws of Florida, may not personally represent another person or entity for compensation before the agency with which he or she was employed for a period of 2 years following vacation of position, unless employed by another agency of state government.

...

6. This paragraph is not applicable to:

...

c. A person who was a defined employee of the State University System or the Public Service Commission who held such employment on December 31, 1994;

....

Section 112.313(9)(a)4., Florida Statutes, prohibits certain "defined employees" from personally representing a person or entity for compensation before their former agency for a period of two years after they terminate their employment. When this prohibition was initially enacted, it did not cover PSC employees. However, with the enactment of Chapter 94-277, Laws of Florida, the Legislature made PSC (and State University System) employees subject to the prohibition but grandfathered-in those who were in their positions as of December 31, 1994. Since you have advised that the employee began working for the PSC in November 1987 and remained there until January 2008, he clearly is grandfathered-in and not in violation of Section 112.313(9)(a)4, Florida Statutes, as a result of his personal representation of the utility company before the PSC within two years of his departure.

Chapter 350, Florida Statutes, also contains standards of conduct that are applicable to PSC members and staff and, pursuant to Section 350.043, Florida Statutes, we have jurisdiction to interpret and advise persons of these provisions. Section 350.0605(2), Florida Statutes, restricts the representation of clients before the PSC by former employees. It provides:

Any former employee of the commission is prohibited from appearing before the commission representing any client regulated by the Public Service Commission on any matter which was pending at the time of termination and in which such former employee had participated.

This provision prohibits a PSC employee from "switching sides" in a proceeding and coming back before the PSC representing a utility on the same matter that he had been involved in as a PSC employee.

It is undisputed that the former PSC employee participated in the utility company's 2006 rate case while he was employed by the PSC. It also is undisputed that the former PSC employee is presently participating in the utility company's 2008 rate case as a utility company employee. The issue, then, is whether his previous and current participation in the two proceedings involve the same "matter" for purposes of Section 350.0605(2), Florida Statutes. Chapter 350, Florida Statutes, does not define the term "matter." However, we note that a similar type of prohibition contained in the Rules Regulating The Florida Bar, particularly Rule 4-1.11(e) (Special Conflicts of Interest for Former and Current Government Officers and Employees), contains the following definition:

**Matter Defined.** As used in this rule, the term "matter" includes:

- (1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties; and
- (2) any other matter covered by the conflict of interest rules of the appropriate government agency.

Rule 4-1.11 contains the following Comment on Subdivision (e):

For purposes of subdivision (e) of this rule, a "matter" may continue in another form. In determining whether 2 particular matters are the same, the

lawyer should consider the extent to which the matters involve the same basic facts, the same or related parties, and the time elapsed.

Clearly, the Rules Regulating The Florida Bar are not applicable to the employee since he is not an attorney; nor would we have the authority to interpret them even if he was. However, we note that Bar rules governing conflicts of interest are designed to protect client confidentiality, Estright v. Bay Point Improvement Association, Inc., 921 So.2d 810 (Fla. 1st DCA 2006).<sup>3</sup> Since Rule 4-1.11 has a purpose similar to Section 350.0605(2), Florida Statutes, its definition of "matter" is helpful in resolving our issue, and it also favors using the PSC's case docketing system as a "bright-line test" for determining whether something is the same "matter." In CEO 91-33, we observed that

a "docketed case" or "docket" is established to record and identify any matter of official commission interest or concern which may be addressed by the PSC in formal proceedings. Matters to be docketed can include letters, petitions, applications, complaints, and staff reports or filings which involve the exercise of the commission's statutory authority. . . . It is also our understanding that a docket generally entails a formal proceeding, with the filing of pleadings and documents by interested parties. We are advised that the PSC's Division of Records and Reporting serves as a clerk to the commission, and assigns docket numbers as well as maintains the working files for all docketed cases. As in most formal proceedings, either administrative or judicial, when a party to a PSC docket files a document or pleading, the pleading contains a docket number, is filed in the clerk's office, and is also served on the other parties to the proceeding. . . .

CEO 91-33 addressed the statutory obligations of PSC members with regard to ex parte communications and, in that opinion, we equated the term "proceeding" with "docket." Further, we are advised that the PSC uses the terms "matter" and "docket" synonymously and interchangeably to mean a specific legal proceeding.

You also assert that the 2008 rate case is significantly different from the 2006 rate case. Even though the same utility company was the subject of both proceedings, the 2008 rate case constitutes a different docket/legal proceeding and involves a materially different subject than the 2006 Rate Case. Among other things, the 2008 case involves:

- a different application,
- a different number of systems in a different number of counties,
- different financial data,
- different engineering data,
- different MFRs based on a different test year,
- a different rate structure,
- a different rate increase,
- different customer service hearings and different customer comments, and
- different testimony.

Based upon all of the foregoing, we believe that the Legislature clearly intended the word "matter" in Section 350.0605(2), Florida Statutes, to denote a specific legal proceeding and, in practice before the PSC, a specific legal proceeding is referred to as a "docket." Consequently, we find that the 2006 rate case and the 2008 rate case are not the same "matter," and that the former PSC employee did not violate Section 350.0605 (2), Florida Statutes, by his participation in the 2008 rate case on behalf of his employer, the utility company.

Your question is answered accordingly.

**ORDERED** by the State of Florida Commission on Ethics meeting in public session on September 5, 2008 and **RENDERED** this 10th day of September, 2008.

---

Cheryl Forchilli, *Chair*

---

[1] Part V of Chapter 25-30, F.A.C., contains the procedural requirements for seeking rate increases by water and wastewater utilities.

[2] We are advised that even though Docket No. 060368-WS was effectively concluded with the entry of Order No. PSC-07-0773-FOF-WS, it remained open administratively so that staff could confirm that customers received refunds of the interim rate increases they paid during the pendency of the proceeding.

[3] There is no suggestion that the employee disclosed confidential information to the utility company that he obtained as a PSC employee, which is prohibited by Section 112.313(8), Florida Statutes.