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June 16, 2009

VIA HAND DELIVERY

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COMMISSION CLERK

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

Re: *In Re: Application for increase in water and wastewater rates in Alachua, Brevard, DeSoto, Highlands, Lake, Lee, Marion, Orange, Palm Beach, Pasco, Polk, Putnam, Seminole, Sumter, Volusia, and Washington Counties by Aqua Utilities Florida, Inc., Docket No. 080121-WS*

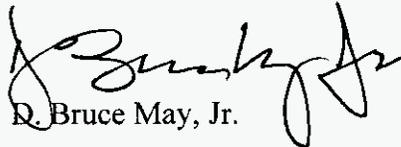
Dear Ms. Cole:

On behalf of Aqua Utilities Florida, Inc. ("AUF"), enclosed for filing are the original and seven (7) copies of AUF's Response to Non-Party Polk County Board of Commissioner's Request for Reconsideration.

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

Sincerely,

HOLLAND & KNIGHT LLP


D. Bruce May, Jr.

DBM:kjg
Encls.

COM	cc:	Ralph Jaeger, Esq. (w/encl.)
ECR	___	Katherine Fleming, Esq. (w/encl.)
GCL	2	Caroline Klancke, Esq. (w/encl.)
OPC	___	Erik Sayler, Esq. (w/encl.)
RCP	1	Charles Beck, Esq. (w/encl.)
SSC	___	Cecilia Bradley, Esq. (w/encl.)
SGA	___	Honorable Sam Johnson (w/encl.)
ADM	___	Kimberly A. Joyce, Esq. (w/encl.)
CLK	___	

DOCUMENT NUMBER DATE
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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 080121-WS

FILED: June 16, 2009

**AQUA UTILITIES FLORIDA, INC.'S RESPONSE TO NON-PARTY
POLK COUNTY BOARD OF COMMISSIONER'S REQUEST FOR
RECONSIDERATION**

Aqua Utilities Florida, Inc. ("AUF"), by and through its undersigned attorneys, and pursuant to Rule 25-22.060(3), Florida Administrative Code, respectfully opposes the letter dated June 4, 2009 to Chairman Carter from Mr. Sam Johnson, Chairman of the Polk County Board of County Commissioners ("Board"), requesting reconsideration of Order No. PSC-09-0385-FOF-WS (the "Order")¹. As discussed below, the Board is not a party to this proceeding and, therefore, is not legally entitled to seek reconsideration of the Order. Moreover, the Board's letter fails to identify any point of fact or law that the Commission overlooked or failed to consider in rendering the Order. Accordingly, the Board's request must be denied.

1. Reconsideration of a final Commission order is provided for in Rule 25-22.060, Florida Administrative Code, and is available to "[a]ny party to a proceeding who is adversely affected by the order of the Commission[.]" Thus, the plain reading of Rule 25-22.060 shows that the Commission's rules do not afford non-parties leave to file post-hearing pleadings. Indeed, the Commission has consistently ruled that reconsideration is a post-hearing relief afforded only to parties. See *In re: Application for rate increase in Brevard, Charlotte/Lee, Citrus, Clay, Duval, Highlands, Lake, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, Volusia, and Washington Counties by So. States Utils., Inc.; Collier County*

¹ The Board served the undersigned with its letter by regular U.S. mail. See Fla. Admin. Code R. 28-106.103.

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by *Marco Shores Utils. (Deltona)*; *Hernando County by Spring Hill Utils. (Deltona)*; and *Volusia County by Deltona Lakes Utils. (Deltona)*, 93 F.P.S.C. 11:38, Docket No. 920199-WS, Order No. PSC-93-1598-FOF-WS (Nov. 2, 1993) (rejecting a request for reconsideration by non-party Hernando County Board of Commissioners); see also *In re: Investigation regarding the appropriateness of payment for Dial-Around (10XXX, 950, 800) compensation from interexchange telephone companies (LXCs) to pay telephone providers (PATS)*, 93 FPSC 7:379, Docket No. 920399-TP, Order No. PSC-93-1032-FOF-TP (July 13, 1993) (denying a motion for reconsideration filed by a non-party as an "after-the-fact" amicus motion); *In re: Application by Lazy Days Mobile Home Village for 1987 Price Index Rate Adjustment in Lee County*, 88-1 F.P.S.C. 428, Docket No. 870937-SU, Order No. 18732 (Jan. 25, 1988) (reconsideration is a post-hearing relief available only to parties).

2. It is undisputed that the Board neither sought nor was granted leave to intervene as a party in this rate case proceeding. Thus, the Board is not a party to the proceedings and, as a matter of law, is not entitled to seek reconsideration.

3. Furthermore, the Board's request for reconsideration fails to identify a point of fact or law that the Commission overlooked or failed to consider in rendering the Order. Instead, it complains in general about the level of the new rates, which was an issue that the parties and the Commission addressed extensively during the hearing. The Commission has made it clear that the purpose of reconsideration is to bring to the attention of the Commission a "point which it overlooked or failed consider when it rendered its order in the first instance, and it is not intended as a procedure for rearguing the whole case merely because the losing party disagrees with the judgment." See *In re: Application for rate increase in Brevard, Charlotte/Lee, Citrus, Clay, Duval, Highlands, Lake, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam,*

Seminole, Volusia and Washington Counties by So. States Utils., Inc.; Collier County by Marco Shores Utils. (Deltona); Hernando County by Spring Hill Utils. (Deltona); and Volusia County by Deltona Lakes Utils. (Deltona), 97 FPSC 11:237, Docket No. 920199-WS; Order No. PSC-97-1449-FOF-WS (Nov. 18, 1997) (citing *Diamond Cab Co. v. King*, 146 So. 2d 889, 891 (Fla. 1962)). In its letter dated June 4, 2009, the Board simply reargues matters that were already considered in the underlying rate case. Therefore, the Board's request fails to meet the clear standard for a motion for reconsideration.²

Conclusion

For the reasons stated above, AUF respectfully requests that the Commission enter an order denying the non-party Board's request for reconsideration of Order No. PSC-09-0385-FOF-WS.

Respectfully submitted this 16th day of June, 2009 by:



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² See also *Stewart Bonded Warehouse v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Pingree v. Quaintance*, 394 So. 2d 162 (Fla. 1st DCA 1981).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished by U.S. mail
this 16th day of June, 2009 to the following:

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