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- a. Bruce May
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- b. *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*
- c. Aqua Utilities Florida, Inc.
- d. 4 pages.
- e. AUF's Response to the Florida Attorney General's Petition for Leave to Intervene

Thanks.

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8/1/2008

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

DATE: August 1, 2008

**AQUA UTILITIES FLORIDA, INC.'S RESPONSE TO THE
FLORIDA ATTORNEY GENERAL'S PETITION FOR LEAVE TO INTERVENE**

Aqua Utilities Florida, Inc. ("AUF"), by and through its undersigned counsel and pursuant to Rule 25-22.039, Florida Administrative Code, responds to the Petition for Leave to Intervene (the "Petition") filed by the Florida Attorney General ("AG") on July 25, 2008, and states:

1. Florida Administrative Code Rule 25-22.039 requires that a petition to intervene in a Commission proceeding shall comply with Florida Administrative Code Rule 28-106.201(2).

2. Rule 28-106.201(2) provides that a petition "shall contain" the following:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

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(e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

3. The requirements of Rules 25-22.039 and 28-106.201 are designed to require a potential intervenor to frame the issues that it deems relevant, so that the existing parties and the tribunal are on notice of that which the intervenor intends to prove. It also affords the parties the opportunity to prepare and respond accordingly. Failure to plead intervention improperly deprives existing parties of due process, leaving the parties, as well as the tribunal, to guess what the potential intervenor intends to prove or submit in the proceeding. *See, e.g., Brookwood Extended Care Ctr. of Homestead LLP v. Agency for Health Care Admin.*, 870 So. 2d 834, 838-41 (Fla. 3d DCA 2003).

4. AUF does not necessarily oppose the AG's participation as a party in this proceeding, provided that intervention is properly pled. However, the AG's Petition fails to comply with the requirements of Rule 28-106.201(2). Importantly, the AG's Petition contains neither "[a] statement of all disputed issues of material fact," nor "[a] concise statement of the ultimate facts alleged."¹ Fla. Admin. Code R. 28-106.201(2)(d), (e). Such omissions leave the existing parties and the tribunal vulnerable to having issues interjected into the case that are


¹ The AG's Petition cites *State ex rel. Shevin v. Yarborough*, 257 So. 2d 891 (Fla. 1972), as authority for the AG's right to intervene in this proceeding. However, the court in that case determined that the AG had standing to intervene in a Florida Power Corp. rate case only because it concluded that State government was a substantial consumer of electricity supplied by Florida Power, and thus the AG had "status to represent the State as a consumer" in the rate case. *Id.* at 894. The AG's Petition fails to plead that the State is a substantial consumer of water or wastewater service supplied by AUF.

beyond the agency's jurisdiction to resolve, may expand the scope of the existing proceeding inappropriately,² which in a rate case would be a direct cost to ratepayers.³

5. Based on the foregoing, AUF respectfully requests that the AG be required to submit an amended petition which conforms with Florida Administrative Code Rules 25-22.039 and 28-106.201, and is limited in scope consistent with the Commission's jurisdiction and those matters legitimately at issue in this rate case.

Respectfully submitted this 1st day of August, 2008.

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-and-

² See Fla. Admin. Code R. 25-22.039 ("Intervenors take the case as they find it."); see also *Panda Energy Int'l v. Jacobs*, 813 So.2d 46, 50 (Fla. 2002) ("[W]e conclude that the PSC did not abuse its discretion in limiting Panda's opportunity to participate in discovery. Florida Administrative Code Rule 25-22.039, which provides for intervention in PSC proceedings, states, 'Intervenors take the case as they find it.'").

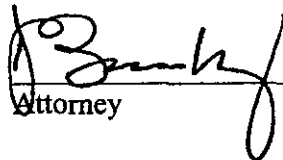
³For this same reason, if the AG amends its Petition and that amended petition is ultimately granted, the AG should not be permitted to engage in discovery that is duplicative to the extensive discovery propounded by the Office of Public Counsel. Such action would unnecessarily increase the cost of this rate case, without providing any additional benefit to the citizens of Florida.

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CERTIFICATE OF SERVICE

I hereby certify that the original and a true and correct copy of the foregoing was furnished by U.S. Mail and facsimile to **Cecilia Bradley, Esq., Office of the Attorney General**, The Capitol – PL01, Tallahassee, FL 32399-1050, fax: (850) 488-4872; and a true and correct copy of the foregoing was furnished by U.S. Mail and electronic transmission to **Charles Beck, Esq., Office of Public Counsel**, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400, beck.charles@leg.state.fl.us; and by U.S. Mail and electronic transmission to **Ralph Jaeger, Esq., Office of General Counsel, Florida Public Service Commission**, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, RJaeger@psc.state.fl.us; and courtesy copies of the foregoing were furnished by electronic transmission to **Katherine Fleming, Esq.** (keflemin@psc.state.fl.us), **Caroline Klancke, Esq.** (cklancke@psc.state.fl.us), **Erik Sayler, Esq.** (esayler@psc.state.fl.us), this 1st day of August, 2008.



Attorney