

BEFORE THE PUBLIC SERVICE COMMISSION

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

DOCKET NO. 060368-WS  
ORDER NO. PSC-07-0598-PCO-WS  
ISSUED: July 25, 2007

ORDER DENYING REMAINING PORTION OF OPC'S MOTION TO COMPEL  
DISCOVERY AND REQUIRING AQUA UTILITIES FLORIDA, INC. TO PROVIDE  
CERTAIN DISCOVERY RESPONSES BY AUGUST 8, 2007

I. OPC's Motion to Compel

On July 16, 2007, the Office of Public Counsel (OPC) filed a Motion to Compel Aqua Utilities Florida, Inc. (Aqua, AUF, or utility) to answer by July 20, 2007, all discovery requests propounded by OPC and by staff. The discovery requests propounded by OPC fall into two basic categories: (1) OPC discovery to which Aqua has specifically objected, but on which OPC has filed a pleading to dispute the grounds for the objection; and (2) OPC discovery to which Aqua has not specifically objected and which is overdue for response.

By Order No. PSC-07-0592-PCO-WS, issued July 19, 2007, the portion of the Motion to Compel concerning the overdue discovery to which Aqua has not specifically objected was granted in part and denied in part, and Aqua was ordered to provide responses to all overdue discovery not subject to a specific objection by July 20, 2007, to the extent possible. Aqua was ordered to file the remaining uncontested responses by no later than the close of business on Monday, July 23, 2007.

This Order addresses the portion of the Motion to Compel concerning the OPC discovery to which Aqua has specifically objected. OPC notes that its prefiled testimony is due on August 7, 2007, and that it is imperative that it receive the discovery responses requested from both OPC and staff in time to prepare its testimony. OPC states that out of 183 OPC interrogatories, Aqua has not responded to 99 of them, and that "on average, the responses are more than 40 days overdue." Also, out of 174 OPC requests for production of documents (PODs), OPC states that Aqua has not responded to 91 of them, and that "on average, the responses are 33 days overdue." OPC notes that this does not include discovery requests propounded by staff, and that a substantial portion of Aqua's responses to those requests are also overdue. OPC states that it does not duplicate staff discovery to avoid redundancy. However, OPC relies on that discovery in drafting its testimony and some of the responses to staff discovery are overdue by more than one month.

DOCUMENT NUMBER-DATE

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## II. Aqua's Response to Motion to Compel

On July 19, 2007, at staff counsel's suggestion, Aqua filed an expedited Response in Opposition to OPC's Motion to Compel (Response). In a footnote, Aqua states that it does not waive objections to the Commission's expedited consideration of OPC's Motion to Compel and the lack of opportunity to respond thereto. AUF states that its objections were made promptly and that OPC's decision to wait until its testimony was due before moving to resolve those objections and to compel other production is insufficient grounds to deny AUF a reasonable response period.

In its Response, Aqua points out that by filing specific objections to OPC Interrogatories 1, 2, 5, 6, 10, 12, 15, 16, 21(f), 25, 29, 31, 36, 40(a)-(d), 42, 97, 106, 110, 121, 129, 134 and 182, and to OPC PODs 4, 5, 17, 18, 26, 29, 30, 40, 42, 48, 128, 130, 133, 134, 143, 153, and 174, Aqua has timely responded to those discovery requests and that therefore its responses to those discovery requests are not overdue. Aqua states that OPC's Motion to Compel fails to address Aqua's specific objections and that the Commission should decline to consider OPC's Motion to Compel responses to those discovery requests until such time as OPC does so. In a footnote, Aqua states that OPC filed a response to Aqua's objections on April 18, 2007, but that the responses do not address each and every of Aqua's objections and that none of OPC's responses sought to compel production. Aqua argues that therefore, none of OPC's responses to Aqua's specific objections are properly before the Commission in connection with its Motion to Compel.

Aqua states that it has provided OPC with responses to a number of items to which it filed objections and that it intends to respond to all other items sought by OPC, and is diligently attempting to do so as soon as possible.

## III. Overdue Discovery Involving Specific Objections

On March 20, 2007, OPC propounded its First Set of Interrogatories (1 through 43) and First Request for PODs (1 through 45) on Aqua. On March 30, 2007, Aqua filed specific objections to Interrogatories 1, 2, 5, 6, 31, 36, and 40, and to PODs 17, 40, and 42. OPC filed its response to those objections on April 18, 2007.

On April 27, 2007, OPC propounded its Second Set of Interrogatories (44 through 97) and Second Set of PODs (46 through 126) on Aqua. On May 11, 2007, Aqua filed specific objections to Interrogatory 97, and to POD 48. OPC did not file a response to those objections, but in its Motion to Compel, states that its Interrogatory No. 97 stands as written.

On May 10, 2007, OPC propounded its Third Set of Interrogatories (100 through 139) and Third Set of PODs (127 through 169) on Aqua. On May 21, 2007, Aqua filed specific objections to Interrogatories 110, 121, 129, and 134, and to PODs 128 and 130. On June 12, 2007, OPC filed its response to those objections.

On May 23, 2007, OPC propounded its Fourth Set of Interrogatories (140 through 183) and Fourth Set of PODs (170 through 174) on Aqua. On June 4, 2007, Aqua filed specific

objections to Interrogatory 140, and to POD 174. On June 12, 2007, OPC filed its response to those objections.

On June 15, 2007, OPC propounded its Fifth Set of Interrogatories (184 through 193) and Fifth Request for PODs (175 through 180) on Aqua. Aqua filed general objections on June 25, 2007, but has not specifically objected to any of this discovery.

On June 21, 2007, OPC propounded its Sixth Set of Interrogatories (194 through 195) and Sixth Request for PODs (181 through 201) on Aqua. Aqua filed general objections on June 28, 2007, but has not specifically objected to any of this discovery. Aqua has also filed "General Objections and Reservation of Rights" with its other responses to both OPC and staff discovery requests.

Commission rules do not require OPC to have filed its Motion to Compel contemporaneously with its responses to Aqua's specific objections. Aqua's specific objections, OPC's responses, and rulings thereon are addressed below.

#### A. Interrogatories

##### OPC Interrogatories No. 1 and 182:

1. and 182. For each interrogatory response, indicate the witness who will sponsor the response and be able to answer cross-examination questions concerning the response.

Aqua's Objection: AUF objects to the extent this interrogatory implies that the individual or individuals sponsoring the response to a particular interrogatory will be appearing as witnesses in this proceeding or otherwise encroaches on AUF's work product privilege in the preparation for the final hearing in this matter. Subject to and without waiving this objection, in response to this Interrogatory No. 1 [and Interrogatory No. 182], AUF will provide the name(s) of the individual(s) who provided the response to each interrogatory.

In its Response, Aqua further states that it has already provided a witness list and designated areas of expertise in exhibit JS-1 in Jack Schreyer's prefiled testimony. There is no rule or order that requires a regulated company to provide additional witnesses solely to sponsor responses to document requests or interrogatories. AUF's provision of the name of the person who provided the response is sufficient to permit OPC to conduct further investigation and discovery and is consistent with Commission practice.

OPC's Response: To the extent that AUF knows the witness able to answer questions on the subject matter of the interrogatory, the Company should be required to provide the name of the witness. If there will be no witness at the hearing, the Company should be required to so state, such that OPC can further explore how questions about discovery responses can be resolved, or subpoena persons that can testify on the subject matter of the discovery responses. There have been situations where there is no witness able to

answer questions about responses to interrogatories, or where the witness most able to respond to the question has been excused. OPC's interrogatory is designed to avoid these complications which leave the record incomplete. The Commission should overrule AUF's objection and require that the Interrogatory be answered as set forth above.

Ruling: By having already provided a witness list and designated areas of expertise in Mr. Schreyer's prefiled testimony, Aqua has waived any right to assert that this information is privileged. To the extent that AUF knows the name of the witness who is best able to answer questions on the subject matter of the interrogatories at this time, Aqua shall provide the name of that witness. Objection overruled.

OPC Interrogatories No. 2, 5, 6, 31, 36, and 40:

2. By system, separated between water and wastewater, please list all legal expenses included in the test years (historic, intermediate, and projected), the actual year ending 2006, and the preceding three years, please provide the following:
5. State the amount of storm damage recovery expenses included in each of the test years (historic, intermediate, and projected), and the amount actually incurred during 2002, 2003, 2004, 2005, and 2006.
6. By system, for any and all transfers and/or sales of parcels of land or assets to or from the Company's utility operations from non-related or related parties (former or present: parent company, affiliated company, or greater than 5% owners) please provide for the last five years:
31. For each system, please provide a schedule similar to page 2 of B-6, stating the amount of expense allocated or directly charged to the system by each affiliate for the test years (historic, intermediate, and projected), and the proceeding [sic] two years.
36. For each system, please provide a schedule comparable to page 1 of B-6, for the years 2001-2004.
40. Insurance (a-d)
  - a. Please state the amount of D&O insurance expense included in test years (historic, intermediate, and projected) expenses, and the previous two calendar years, by system.
  - b. Please state the persons names and titles that are insured by the D&O insurance expense identified in response to (a).
  - c. Please state the amount of directors and officers life insurance expense included in test years (historic, intermediate, and projected) expenses, and the previous two calendar years, by system.

d. Identify all other insurance carried by Aqua America, Inc., which is associated with the directors, officers, and/or owners of Aqua America, Inc.

Aqua's Objection: AUF objects to these interrogatories on the grounds that they are overbroad. AUF clarifies that it purchased AquaSource Utility, Inc. ("AquaSource") in 2003 and Florida Water Services Corporation ("Florida Water") in 2004 and should only need to provide information for the time period in which AUF owned these systems.

OPC's Response: There is no rule or regulation of the Commission that would prevent the Company from disclosing historical financial information of its operations merely because the water and sewer systems were recently purchased by AUF. It is typical that when a regulated water/wastewater utility is purchased by another company, the books and records of the system are transferred to the purchasing utility. To do otherwise would be imprudent on the part of the purchasing utility. When AUF purchased the systems, it became the custodian of the records possessed by those systems.

Moreover, the Commission routinely processes rate cases for utility companies that have been purchased or acquired by other regulated utilities. To the best of OPC's knowledge, absent extraordinary circumstances, the Commission has not permitted the acquiring utility to refuse to produce financial information or documents merely because certain companies or systems were acquisitions.

The Commission has always found historical information to be an important part of its evaluation of the reasonableness of future projections. One need only to look to the MFRs required by the Commission to see the significance that the Commission places on historical information and to ascertain that such information is available to the Company. For example, MFR Schedule A-4 for the Arrenondo [sic] Estates/Farms system contains annual balances of additions and retirements to rate base since 1995—the date rate base was last established by the Commission. Obviously, the Company has data for this system back to the year 1995—far beyond the time period requested by OPC. Similarly, MFR Schedule B-7 for the Arrenondo [sic] Estates/Farms system contains comparative operation and maintenance expenses for the historical year 2000 compared to 2005. Again, it is clear that historical data for this system, as well as most, if not all, of the other systems in the instant rate application is available.

AUF did not object to these interrogatories on the basis of relevancy. Rather, its objection was that it should provide information only for the time period in which AUF owned these systems. If the Commission were to accept such a hollow objection, it would send the inappropriate signal to utilities that they do not need to acquire or maintain the books and records of the companies that they purchase. Moreover, it would prevent OPC and the Commission from thoroughly examining the investment and expenses upon which the Company's rate request is founded.

For all the reasons stated above, the Commission should overrule the Company's objection and order that the information requested be provided.

Ruling: OPC's requests appear not to be overly broad and are reasonably calculated to lead to the discovery of admissible evidence. Therefore, to the extent that Aqua has access to the requested information, it shall respond. Objection overruled.

OPC Interrogatory No. 97:

97. For each plant addition in the 2006 and 2007 capital budget, please provide the following:
- a. A discussion of the status of the addition.
  - b. The original estimated date of completion, the current estimated date of completion, and the actual date of completion if applicable.
  - c. The status of the engineering and permitting efforts, if the plant addition has not been through the bidding process.
  - d. The actual cost to complete the addition, the amount expended as of April 2007 if the addition is not complete, and the current estimate of the completed cost of the addition.
  - e. A statement if any of the pro forma plant is required by the Florida Department of Environmental Protection, and explain why it is required.

Aqua's Objection: AUF requests clarification of the minimum or threshold dollar amount of plant additions to which this interrogatory refers. To the extent that this interrogatory refers to or requests information regarding all plant additions in the 2006 and 2007 capital budget without limitation as to a minimum or threshold dollar amount, AUF objects that this interrogatory is overbroad and overly burdensome in that it requires an excessive amount of staff time and effort to research and respond in connection with minor investment amounts.

Subject to discussion with OPC and determination of a minimum or threshold dollar amount, and without waiving the foregoing objection and request for clarification, AUF will respond to this interrogatory in connection with major capital expenditures estimated to exceed \$20,000 in total project cost, as defined and discussed in the Direct testimony and Exhibits of Gerard P. Connolly, Jr.

OPC's Response: In its Motion to Compel, OPC states that "OPC and Aqua have discussed; However OPC's Interrogatory stands as written."

Ruling: Aqua has agreed to respond to this interrogatory in connection with major capital expenditures estimated to exceed \$20,000 in total project cost. If OPC determines that additional information is required beyond the information it receives by way of AUF's response to this interrogatory, it may serve additional interrogatories, as required. Objection sustained.

OPC's Interrogatory No. 110 c.:

110. For purposes of this request please refer to the attachment provided in Company's response to OPC's Interrogatory 20.
- c. Please explain why auto insurance is allocated from Aqua America and what automobiles are being insured. Please provide the names and titles of the

individuals that drive the automobiles and the reason for the use of the automobiles.

Aqua's Objection: AUF objects on the grounds that it is overly broad and vague in that there is no time frame indicated and it requests information for every automobile within Aqua America. Subject to and without waiving this objection, AUF will provide the names and assigned automobiles for Florida beginning in early 2006.

OPC's Response: As a compromise, OPC is willing to accept AUF's offer to provide the data requested for early 2006. However, OPC objects to providing only the information for the names and assigned automobiles for Florida. The question specifically addresses automobile insurance that is being allocated or charged to AUF by Aqua America. To the extent that these costs are to be borne by Florida ratepayers, an explanation of why the insurance is being allocated and names and titles of the individuals that drive the automobiles is directly relevant to OPC evaluation of the reasonableness of these expenses. The Commission should order that the information as originally requested by OPC with a time frame of 2006 be provided.

In its Response to the Motion to Compel, Aqua states that it will provide automobile insurance that is being allocated to AUF by Aqua America. Information regarding automobiles and costs that are not allocated to AUF and for unlimited periods of time is overly broad, vague, and is neither relevant nor will it lead to discovery of information relevant to this case.

Ruling: With the understanding that Aqua is willing to provide automobile insurance that is being allocated to AUF, the objection is sustained.

OPC's Interrogatory 121 e.:

For Purposes of this request, please refer to the information provided in response to OPC POD 35.

- e. Please explain the purchase of sale or fixed assets by Aqua Services, Aqua Resources, and Aqua America, Inc., for 2004, 2005, and 2006. In particular, please explain what assets were purchased or sold, when they were purchased or sold, if the sold assets were included in rate base in any fashion, and the net gain, after tax, of any assets sold.

Aqua's Objection: AUF objects to Part (e) on the grounds that it is overly broad. Subject to and without waiving this objection, in response to this Interrogatory No. 121, AUF will provide the information as it relates to Florida.

OPC's Response: OPC is not certain what is meant when AUF states that it will provide the information as it relates to Florida. The question was not limited to Florida, but relates to assets of AUF's affiliates. To the extent that cost of assets of any of these affiliates have been or are currently included in AUF's rate base, the information

requested should be provided. To the extent that these costs are to be borne by Florida ratepayers, an explanation of any sale of such assets are directly relevant to OPC evaluation of the reasonableness of the costs included in rate base. The Commission should order that the information as originally requested by OPC be provided.

In its Response to the Motion to Compel, Aqua states that this interrogatory is overly broad in that it seeks company-wide information that is completely unrelated to this rate case.

Ruling: With the understanding that Aqua will provide the information to the extent it is not completely unrelated to this rate case, the objection is sustained.

OPC's Interrogatory No. 129:

129. Provide all costs included in the 2005, projected 2006, and projected 2007 test years associated with employee relocations. Identify the amount of employee relocation costs incurred by the Company for the years 2003 and 2004. Please identify all employee relocations and where the employees were relocated from. To the extent that employee relocations expenses are a result of allocations from any affiliate, please identify the amount charged to the Company.

Aqua's Objection: AUF objects to the interrogatory as overly broad. Without waiving this objection, in response to this Interrogatory No. 129, AUF will provide the information as it relates to Florida and to the extent that employee relocation expenses are a result of allocations from any Aqua affiliate, will identify the affiliate and the amount charged to the Company.

OPC's Response: OPC does not agree that the request is overly broad. OPC accepts AUF's offer to provide the information as it relates to Florida and to the extent that employee relocation expenses are a result of allocations from any Aqua affiliate, will identify the affiliate and the amount charged to the Company.

Ruling: Objection sustained with the understanding that the requested information will be provided in accordance with AUF's offer to provide the information as it relates to Florida.

OPC's Interrogatory No. 134:

134. For the purposes of this request, please refer to the response to OPC POD 2. For each adjustment shown in this spreadsheet, please explain how the adjustment increased or decreased NOI.

Aqua's Objection: AUF requests clarification as to which spreadsheet the question refers to.

OPC's Response: The question refers to spreadsheet B O&M Adjs.



Ruling: With OPC having responded to Aqua's objection and clarifying the spreadsheet to which it referred, Aqua's objection is overruled.

B. Production of Documents (PODs)

OPC's POD No. 17:

17. Please provide a copy of the Company's most recent Operations and Maintenance Performance Report and Capacity Analysis Report for the wastewater plants involved in this docket.

Aqua's Objection: AUF requests clarification as to the specific documents requested by OPC under this document request.

OPC's Response: The Operation Maintenance Performance Report is the same as defined in DEP Rule 62-600.720 Operation and Maintenance Manual. The Capacity Analysis Report is the same Capacity Analysis Report as required DEP Rule 62-555.348.

Ruling: With OPC having responded to Aqua's objection and clarifying the documents to which it referred, Aqua's objection is overruled. Nevertheless, it appears that Aqua has already responded to this POD. In its Response to the Motion to Compel, Aqua advises that it is not aware of any appraisals of property purchased by the Company since the last rate case for each of the systems in this docket that involved an affiliated party and therefore has no responsive documents.

OPC's POD No. 40:

40. Please provide the minutes of any business development or acquisition committee meetings conducted during the last 18 months.

Aqua's Objection: AUF objects on the grounds that this document request is not reasonably calculated to lead to admissible evidence and requests information that constitutes proprietary confidential business information.

OPC's Response: The requested business development or acquisition committee meetings are relevant and likely to lead to admissible evidence. The parent company of AUF is in the business of buying, selling, owning and operating water and wastewater systems across the United States. Costs related to the parent and/or the affiliated service company are charged to AUF. These charges are believed to be allocated<sup>1</sup> to the Company and are a function of the number of water and wastewater systems owned by the parent company, Aqua America, Inc. To the extent that Aqua America, Inc. is on the verge of, or has acquired a new system, this information and related information would

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<sup>1</sup> OPC has discovery outstanding on the issue of how costs from the Parent company and Service company are charged and/or allocated to the AUF and its sister regulated water and sewer companies.

be revealed in the documents requested in the POD. Clearly, if the Company's projections are inconsistent with or different from the information revealed through the documents responsive to this POD, OPC would utilize this information in the presentation of its case and make appropriate adjustments.

Concerning the claim of confidentiality, this can be resolved with a protective agreement.

In its Response to the Motion to Compel, Aqua states that this request is unrelated to the instant rate case and that information on cost related to the parent and the affiliate service company has already been provided.

Ruling: OPC's request appears to be reasonably calculated to lead to the discovery of admissible evidence. Therefore, Aqua's objection is overruled. Aqua shall answer this discovery request to the extent that it has not already fully responded, under a protective agreement with OPC if deemed necessary.

OPC's POD No. 42:

42. Please provide all memos, reports, meeting minutes, and other documents prepared by or for Aqua America, Inc. concerning the sale and or purchase of any water or wastewater systems in Florida since 2002.

Aqua's Objection: AUF objects on the grounds that this interrogatory is overbroad, vague, and ambiguous, and is not reasonably calculated to lead to admissible evidence.

OPC's Response: OPC does not believe that this POD is overbroad, vague, and ambiguous, or not reasonably calculated to lead to admissible evidence. To the contrary, the information sought in this POD is extremely relevant to this case. The parent company of AUF is in the business buying, selling, owning and operating water and wastewater systems across the United States. Costs related to the parent and/or the affiliated service company are charged to AUF. These charges are believed to be allocated<sup>2</sup> to the Company and are a function of the number of water and wastewater systems owned by the parent company, Aqua America, Inc. To the extent that Aqua America, Inc. is on the verge of, or has acquired a new system, this information and related information would be revealed in the documents requested in the POD. Clearly, if the Company's projections are inconsistent with or different from the information revealed through the documents responsive to this POD, OPC would utilize this information in the presentation of its case and make appropriate adjustments.

In addition, the time period of this request would include the period where Aqua America, Inc. was in the process of buying the current AUF systems. Information in these minutes could reveal information about the terms and conditions of the sale that are not oblivious [sic] from the Purchase and Sale agreement, but could affect the terms of the investment and costs that make up the current rate case expense. For these reasons,

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<sup>2</sup> OPC has discovery outstanding on the issue of how costs from the Parent company and Service company are charged and/or allocated to the AUF and its sister regulated water and sewer companies.

the documents sought by OPC are relevant and likely to lead to admissible evidence. The Commission should dismiss the Company's objection and order the documents to be produced.

In its Response to the Motion to Compel, Aqua states that it has provided and will continue to provide information on cost related to the parent and the affiliate service company and this request is no more than an expedition for information unrelated to the instant rate case that calls for costly and time-consuming research regarding unrelated matters.

Ruling: It appears that OPC's request is not overbroad, vague, or ambiguous, and is reasonably calculated to lead to the discovery of admissible evidence. Therefore, the objection is overruled. Aqua shall provide the documents as requested by OPC to the extent it has not already been provided.

OPC's POD No. 48 states:

48. Please provide all documents supporting the pro-forma plant additions/improvements to Plant in Service, including but not limited to: invoices, budgets, signed contracts, bids if the project has not been completed, and any requirements of the DEP for the proposed plant additions. Please provide the data in electronic format.

Aqua's Objection: AUF requests clarification of the minimum or threshold dollar amount of plant additions/improvements and time period to which this document request refers. To the extent that this interrogatory [sic] refers to or requests information regarding all plant additions/improvements to Plant in Service, without limitation as to a minimum or threshold dollar amount or time period, AUF objects that this interrogatory is overbroad and overly burdensome in that it requires an excessive amount of staff time and effort to research and respond in connection with minor investment amounts and an unlimited time period.

Subject to discussion with OPC and determination of a minimum or threshold dollar amount and applicable time period, and without waiving the foregoing objection and request for clarification, AUF will provide documents regarding pro-forma additions/improvements for the years 2006 and 2007 that exceed or are estimated to exceed \$20,000 in total project cost.

OPC's Response: In its Motion to Compel, OPC states that "OPC & Aqua are working together towards a mutual resolution."

Ruling: Objection sustained with the understanding that AUF will provide documents regarding pro-forma additions/improvements for the years 2006 and 2007 that exceed or are estimated to exceed \$20,000 in total project cost.

OPC's POD No. 128:

128. To the extent not previously provided, please provide the workpapers, calculations, and other necessary documents that would allow an individual to recompute the amounts allocated to AUF by each and every affiliate, for each of the test years 2005 and as projected for 2006 and 2007. The information provided should allow one to recompute the allocation factors and redistribute all costs that have been charged to AUF by Aqua Services or any other affiliate that charges costs to AUF. The information provided should allow one to recompute allocations and then carry any associated adjustments, by system, to the expense and rate base items included in the instant rate proceeding. To the extent the Company has provided the requested information, please identify where it has been provided.

Aqua's Objection: AUF objects to this request to the extent it requires the Company to prepare information in a particular format or perform calculations, studies or analyses not previously prepared or performed. The information requested is not available in Excel format nor can the Company provide the information to allow one to recompute the allocation factors and redistribute costs off site.

OPC's Response: OPC reads the Company objection as essentially stating that OPC, and for that matter the Commission, are prohibited from recomputing the allocation factors used to allocate costs from Aqua Services to the Company. In other words, to the extent that OPC or the Commission disagrees with the methodology employed by the Company or desires to update the data used by AUF for these allocations, it simply cannot be done. OPC does not request that AUF or its affiliates perform calculations, studies or analyses not previously prepared or performed. However, AUF bears the burden of demonstrating that its allocations and methodology are reasonable. If the methodology can not be replicated "off site," it is clearly not reasonable. OPC requests that the Commission order the Company to provide the information utilized by the Company in such a format that can be replicated "off site."

Ruling: To the extent that this POD requires AUF to prepare information in a particular format or perform calculations, studies or analyses not previously prepared or performed, the objection is sustained. To the extent AUF has provided the requested information, AUF shall identify where it has been provided.

OPC's POD No. 130:

130. For purposes of this request, please refer to OPC Interrogatory 27. The response provided did not include the requested information in electronic spreadsheet format with all formulas and links intact. Please provide the electronic spreadsheet with all formulas and links intact of Attachment 27 [sic].

Aqua's Objection: AUF objects to this request to the extent it requires the Company to prepare information in a particular format or perform calculations, studies or analyses not previously prepared or performed. The information requested is not available in Excel

format nor can the Company provide the information to allow one to recompute the data off site.

OPC's Response: OPC reads the Company objection as essentially stating that OPC, and for that matter the Commission, are prohibited from recomputing the allocation factors used to allocate costs from Aqua Services to the Company. In other words, to the extent that OPC or the Commission disagrees with the methodology employed by the Company or desires to update the data used by AUF for these allocations, it simply cannot be done. OPC does not request that AUF or its affiliates perform calculations, studies or analyses not previously prepared or performed. However, AUF bears the burden of demonstrating that its allocations and methodology are reasonable. If the methodology can not be replicated "off site" it is clearly not reasonable. OPC requests that the Commission order the Company to provide the information utilized by the Company in such a format that it can be replicated "off site."

Ruling: To the extent that this POD requires AUF to prepare information in a particular format or perform calculations, studies or analyses not previously prepared or performed, the objection is sustained. To the extent AUF has provided the requested information, AUF shall identify where it has been provided.

OPC's POD No. 143:

143. Please provide by general ledger account the total amounts charged directly and allocated by Aqua Services, Inc., to each Aqua system for the years 2004, 2005, 2006 and 2007 to date, and as projected for 2006 and 2007. Please provide the requested information in electronic spreadsheet format (i.e. Excel spreadsheet) with all formulas and linked files intact.

Aqua's Objection: AUF objects to this request to the extent it requires the Company to prepare information in a particular format or perform calculations, studies, or analysis not previously prepared or performed.

OPC's Response: OPC does not request that the Company prepare information in a particular format or perform calculations, studies or analyses not previously prepared or performed. OPC requests that the Commission order the Company to provide the data in the format in which it is available.

In its response to the Motion to Compel, AUF states that its objection still stands. However, AUF provided a schedule of allocations, which include customer counts for all years requested. Percentages are calculated by taking the prior year ending state customer count divided by the total customer count for that allocation group.

Ruling: Objection sustained with the understanding that Aqua will fully respond to this discovery request in the format in which it is available.

OPC's POD No. 153:

153. For purposes of this request, please refer to the Company's response to OPC Interrogatory 21. Please provide all documents and workpapers (in electronic spreadsheet format with all formulas and links intact) in your possession, custody or control, which demonstrate that the overhead and common costs associated with providing services to these contract companies have been appropriately assigned.

Aqua's Objection: AUF objects to this request as being vague and ambiguous and requests clarification as to the information being requested.

OPC's Response: OPC requests that where Aqua America, Inc. or Aqua Services, Inc. or Aqua Utilities Florida, Inc., (or any affiliates) provide contract operator services, that AUF demonstrate that overhead and common costs have been appropriately assigned to these companies.

Ruling: Given OPC's clarification, the objection is overruled.

OPC's POD No. 174:

174. For each interrogatory and POD response, indicate the witness who will sponsor the response and be able to answer cross-examination questions concerning the response.

Aqua's Objection: AUF objects to the extent this document request implies that the individual or individuals providing the response will be appearing as witnesses in this proceeding or otherwise encroaches on AUF's work product privilege in the preparation for the final hearing in this matter. The documents speak for themselves and the Florida Rules of Civil Procedure do not require AUF to provide a witness to sponsor documents provided in response to discovery requests. AUF will comply with its obligations under the applicable rules of procedure. See also AUF's Objection to OPC Interrogatory No. 182.

OPC's Response: To the extent that AUF knows the witness able to answer questions on the subject matter of the interrogatory [sic], the Company should be required to provide the name of the witness. If there will be no witness at the hearing, the Company should be required to so state, such that OPC can further explore how questions about discovery responses can be resolved, or subpoena persons that can testify on the subject matter of the discovery responses. There have been situations where there is no witness able to answer questions about responses to interrogatories [sic]. OPC's interrogatory [sic] is designed to avoid these complications which leave the record incomplete. The Commission should overrule AUF's objection and require that the Interrogatory be answered as set forth above.

In its Response to the Motion to Compel, Aqua states that it has already provided a witness list and designated areas of expertise in exhibit JS-1 in Jack Schreyer's prefiled

testimony. There is no rule or order that requires a regulated company to provide additional witnesses solely to sponsor responses to document requests or interrogatories. AUF's provision of the name of the person who provided the response is sufficient to permit OPC to conduct further investigation and discovery and is consistent with Commission practice.

Ruling: By having already provided a witness list and designated areas of expertise in Mr. Schreyer's prefiled testimony, Aqua has waived any right to assert that this information is privileged. To the extent that AUF knows the name of the witness who is best able to answer questions on the subject matter of the PODs at this time, Aqua shall provide the name of that witness. The objection is overruled.

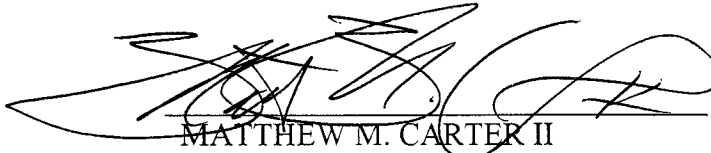
By way of filing its specific objections, Aqua has timely responded to the discovery requests in dispute and resolved herein. Therefore, OPC's Motion to Compel Aqua to substantively respond to those discovery requests by July 20, 2007, is denied. All discovery requests to which Aqua specifically objected and for which Aqua's objection is overruled by way of this Order, Aqua shall provide its substantive responses by no later than the close of business on Wednesday, August 8, 2007.

Based on the foregoing, it is

ORDERED by the Commissioner Matthew M. Carter II, as Prehearing Officer, that the portion of the Office of Public Counsel's Motion to Compel Discovery regarding those discovery requests that are subject to a specific objection is denied. It is further

ORDERED that all discovery requests to which Aqua Utilities Florida, Inc., specifically objected and for which the objection is overruled as set forth in the body of this Order, Aqua Utilities Florida, Inc. shall provide its substantive responses by no later than the close of business on Wednesday, August 8, 2007.

By ORDER of Commissioner Matthew M. Carter II, as Prehearing Officer, this 25th day of July, 2007.



MATTHEW M. CARTER II  
Commissioner and Prehearing Officer

( S E A L )

RRJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.