

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  
ORDER NO. PSC-08-0536-PCO-WS  
ISSUED: August 18, 2008

ORDER GRANTING CITIZEN'S REVISED MOTION  
TO REVISE DISCOVERY PARAMETERS SET FORTH IN  
ORDER NO. PSC-08-0429-PCO-WS ISSUED JUNE 27, 2008  
AND  
FIRST ORDER REVISING ORDER ESTABLISHING PROCEDURE

Background

On May 22, 2008, Aqua Utilities Florida, Inc. (AUF) filed its application for increased water and wastewater rates for 82 of its systems located in 16 different counties. By Order No. PSC-08-0343-PCO-WS, issued May 28, 2008, the Commission acknowledged that the Office of Public Counsel (OPC) had intervened in this docket. On July 25, 2008, the Office of the Attorney General filed a Petition to Intervene.<sup>1</sup>

Pursuant to Order No. PSC-08-0429-PCO-WS (Order Establishing Procedure), issued June 27, 2008,<sup>2</sup> OPC was limited to serving 750 interrogatories (including subparts) and 750 requests for production of documents upon AUF. On July 15, 2008, in its response to OPC's Second Set of Interrogatories, AUF asserted that the First and Second Set of Interrogatories served by OPC exceeded the 750 limit, but that it would answer those interrogatories. AUF further asserted that any additional interrogatories were not appropriate. On July 31, 2008, OPC served its Third and Fourth Set of Interrogatories on AUF.

OPC's Revised Motion

On the same date that OPC served its Third and Fourth Set of Interrogatories, OPC filed both a Motion (Original Motion) and a Revised Motion to Revise Discovery Parameters Set Forth in Order No. PSC-08-0429-PCO-WS issued June 27, 2008 (Revised Motion).<sup>3</sup> The Revised Motion replaced the Original Motion. In the Revised Motion, OPC requests that AUF be required to fully respond to all interrogatories served to date including its Third and Fourth

<sup>1</sup> The Attorney General was granted intervenor status by Order No. PSC-08-0497-PCO-WS, issued August 5, 2008.

<sup>2</sup> This Order was issued prior to the intervention of the Attorney General.

<sup>3</sup> In the first two sets of interrogatories, OPC asserted it served a total of 437 interrogatories, including subparts; whereas, AUF asserted OPC served 931 interrogatories.

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Set of Interrogatories, plus 200 additional interrogatories, if needed, in the future.<sup>4</sup> In support of its Revised Motion, OPC notes the challenges of this case, the 82 separate systems involved, the complicated system of corporate overheads and allocations, and the complexity of the billing analyses. OPC admits that the number of interrogatories including subparts served exceeds the 750 interrogatories permitted under the current Order Establishing Procedure.<sup>5</sup> OPC further notes that the Attorney General (AG) has agreed to limit itself to 250 interrogatories if OPC is allowed its interrogatories as requested, which reduces the number of interrogatories that the AG would otherwise be allowed to serve by 500.

On August 7, 2008, AUF timely filed its response to OPC's Revised Motion. In that response, AUF notes that the 750 interrogatories initially allowed by the Order Establishing Procedure allowed 25 times the ordinary limit of 30 allowed by the Florida Rules of Civil Procedure, and 750 interrogatories "sufficiently balanced the discovery right of the propounding parties, the burdens on the responding parties, and the cost impact to customers." In support of its response, AUF cited to other cases which it alleged were larger and more complicated or complex, and in which a much smaller number of interrogatories were allowed. In this case, AUF alleges that it is already answering 931 interrogatories and subparts, and that the third and fourth requests contain an additional 1,639 interrogatory requests.

Also, AUF argues that the offer of the AG to limit itself to 250 interrogatories, in return for the allowance of all the interrogatories requested by OPC would lead to further increases in rate case expense. Further, AUF notes that any legitimate and prudent expense in responding to discovery requests ultimately approved by the Commission will necessarily be passed on to the ratepayers, and that "a runaway discovery process does not ultimately serve the citizens of Florida."

### Ruling

In its First and Second Set of Interrogatories, OPC asserts it served a total of 437 interrogatories including subparts, while AUF asserts OPC served 931 interrogatories including subparts. For the Third and Fourth Set of Interrogatories, served concurrently with its Revised Motion, OPC asserts that it served a total of 327 interrogatories including subparts, while AUF asserts that it served an additional 1,639 interrogatories. In total, OPC asserts that it has only served 764 interrogatories including subparts; whereas, AUF asserts that OPC has served 2,570.

Our staff has counted the number of interrogatories and subparts for OPC's First through Fourth Sets of Interrogatories. In counting the interrogatories, staff attempted to discern what was appropriately considered as a subpart. In some instances, OPC sought information or an

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<sup>4</sup> Note: There appears to be a typo in OPC's Revised Motion, paragraph 7. In paragraph 7, OPC requests the Prehearing Officer permit all the interrogatories currently served on AUF to date, "including the fourth and fifth set of interrogatories being served today, plus 200 additional interrogatories in the future." OPC's reference to a "fifth set" of interrogators appears to be a typo, because, to date, OPC has served four sets of interrogatories, not five, and its motion to enlarge the number of interrogatories only references the serving of a third and fourth set.

<sup>5</sup> OPC admits that, through its Fourth Set of Interrogatories, it has served a total of 764 interrogatories, including subparts.

explanation why certain expenses increased dramatically over a period of years with each year listed. Staff did not treat each year as a subpart as the real question appeared to be why was there a dramatic increase over the years. Moreover, when there were multiple adjustments to test year revenues in the test year, and OPC asked for an explanation for these adjustments, our staff did not treat this as having multiple subparts. This was also true of multiple adjustments for any one expense in the test year. In some interrogatories involving multiple systems, it was difficult to count the number of subparts as it would likely vary depending on AUF's answers. However, other than the exceptions noted above, when determining the total number of interrogatories served, staff counted each individual interrogatory and subpart as a separate question, and also attempted to count each clearly delineated compound question within an interrogatory or subpart as a separate question.

Based on this criteria, our staff counted 1,377 interrogatories and subparts in OPC's first four sets of interrogatories.<sup>6</sup> This is 627 more interrogatories than what was allowed by the Order Establishing Procedure. Adding the 200 additional interrogatories requested by OPC, the total number of interrogatories requested by OPC would be 1,577. Although this is more than double the 750 interrogatories authorized by the Order Establishing Procedure, I do not find OPC's request to be unreasonable given the facts of this case.

I note that many of AUF's 82 systems were once part of the old Southern States Utilities, Inc. (Southern States) system. In the last major rate case involving 152 systems of Southern States, the Commission allowed 1,000 interrogatories for each party.<sup>7</sup> However, in that case, there were 16 parties listed. In this case, there are currently only three parties listed. Moreover, the AG has agreed to limit itself to 250 interrogatories. Therefore, at this point in time, not counting staff discovery requests, it appears that the maximum number of interrogatories that AUF faces is 1,827.<sup>8</sup> This is a large number of interrogatories and will almost certainly increase the rate case expense. However, OPC is charged with representing the citizens of the State of Florida, and states that it may need this amount of discovery to do so. With the proposed limitation on the AG's discovery, it does not appear that the discovery requests diverge greatly from the last Southern States rate case, the past rate case most analogous to this one.

Based on the above, OPC's Revised Motion shall be granted, and AUF shall answer all OPC's discovery propounded to date. OPC shall be limited to 200 additional interrogatories, including subparts, and the AG shall be limited to 250 interrogatories, including subparts. Absent good cause shown, no additional interrogatories over those allowed above shall be

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<sup>6</sup> The Commission's Count of Interrogatories shows a total of 1,377 interrogatories including subparts. Broken down by set, the count is as follows: First Set = 242; Second Set = 498; Third Set = 255; and Fourth Set = 382.

<sup>7</sup> See Order No. PSC-95-0943-PCO-WS, issued August 4, 1995, in Docket No. 950495-WS, In re: Application for rate increase and increase in service availability charges by Southern States Utilities, Inc., for Orange-Osceola Utilities, Inc. in Osceola County, and in Bradford, Brevard, Charlotte, Citrus, Clay, Collier, Duval, Highlands, Lake Lee, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, St. Johns, St. Lucie, Volusia, and Washington Counties. OPC had moved to increase the number of interrogatories from 30 permitted by the Florida Rules of Civil Procedure. Southern States argued that discovery should be limited to 500 interrogatories including subparts. The Prehearing Officer permitted an enlargement of discovery requests, granting 1,000 interrogatories, 500 requests for production of documents, and 200 requests for admission.

<sup>8</sup> This includes 1,577 from OPC, 250 from the AG, and does not include any of staff's interrogatories.

allowed for OPC and the AG. Finally, because AUF was advised of this ruling on August 11, 2008, all interrogatories, absent good cause shown, shall be answered no later than September 10, 2008.

In consideration of the above, it is

ORDERED by Commissioner Lisa Polak Edgar, as Prehearing Officer, that the Citizen's Revised Motion to Revise Discovery Parameters Set Forth in Order No. PSC-08-0429-PCO-WS, issued June 27, 2008, is granted. It is further


ORDERED that Aqua Utilities Florida, Inc. shall respond to all interrogatories served in the Office of Public Counsel's Third and Fourth Set of Interrogatories by September 10, 2008. It is further

ORDERED that the Office of Public Counsel shall be limited to 200 additional interrogatories, including subparts. It is further

ORDERED that the Attorney General shall be limited to 250 interrogatories, including subparts. It is further

ORDERED that the Order Establishing Procedure shall be modified as set forth in the body of this Order.

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 18th day of August, 2008.

  
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LISA POLAK EDGAR  
Commissioner and Prehearing Officer

( S E A L )

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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.