

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for limited proceeding rate
increase in Brevard County, by Aquarina
Utilities, Inc.

DOCKET NO. 20190080-WS
ORDER NO. PSC-2020-0109-PCO-WS
ISSUED: April 16, 2020

**ORDER DENYING THE OFFICE OF PUBLIC COUNSEL'S MOTION TO
RESCHEDULE CUSTOMER MEETING AND CONTINUE DOCKET**

Background

On April 1, 2019, Aquarina Utilities, Inc. (Aquarina or Company) filed an Application for a Limited Proceeding Rate Increase (Limited Proceeding). The Company has worked for a full year to answer each question that has been asked by Commission staff. Although a customer meeting is not required in such a proceeding, because the Company's last rate case was contentious, Commission staff scheduled a customer meeting in this Docket. On March 2, 2020, the Company provided notice of the meeting to its customers. Because of the declaration of a state of emergency in Florida based upon the COVID pandemic, the customer meeting was cancelled. On March 18, 2020, Aquarina provided its customers with a notice of the cancellation. This notice included five avenues for customers to provide information directly to Commission staff prior to staff completing its recommendation to the Commission in this Docket. These avenues included communications via letter, email, facsimile, the Commission's website, and telephone conversations directly with Commission technical staff. On April 3, 2020, the Office of Public Counsel (OPC) filed a Motion to Reschedule the Customer Meeting and Continue the Docket (Motion). On April 6, 2020, the Company filed its Response in Opposition to OPC's Motion (Response). The Motion and Response are the subject of this Order.

Review and Decision

OPC

In its Motion, OPC recounts the timing and history of this Docket and asserts that Aquarina failed to meet certain benchmarks. OPC does not assert that Aquarina's customers now lack any information required by the applicable rules. OPC notes that a customer meeting was scheduled, that the Governor declared a state of emergency, and that the customer meeting was then cancelled. OPC then recounts the schedule for Commission consideration of this matter: Commission staff's recommendation is due to be filed on April 23, 2020; the recommendation will be considered at the Commission's May 5, 2020 Agenda conference; a Proposed Agency Action Order is due to be issued by May 26, 2020. OPC then asks that this Commission postpone the foregoing events until a customer meeting can be held in the community served by the Company. In the alternative, OPC asks for a customer meeting to be held via videoconference technology prior to the issuance of Commission staff's recommendation, with a recording of the

meeting maintained in the official Docket file. OPC reiterates the timing of changes to the Company's filings and argues that the Company's most recent such change was February 7, 2020.

OPC argues that it is appropriate for this Commission to reschedule a customer meeting and reset statutory deadlines when a utility materially amends its rate request. OPC then argues that changing the case schedule, to provide for a customer meeting prior to Commission staff making its recommendation, would maintain all applicable statutory and due process requirements. OPC asserts that, in light of the current emergency, the Commission has discretion to grant the relief requested. OPC avers that such an eventuality would "ensure due process and justice for customers who have been led to believe they would have an opportunity for direct, community-wide dialogue with representatives of the state agency to discuss their concerns, questions, and complaints about their service and the proposed rate increase." OPC recounts its contacts with customers regarding this Docket beginning in November of 2019.

OPC argues that fairness and equity dictate that once scheduled and relied upon by customers, a customer meeting should go forward "[w]hether or not a customer meeting is specifically required in PAA proceedings." OPC recounts that one customer "cannot see how it is fair for customers' rates to be increased without providing the customers the opportunity, as a group, to engage in the dialog that is only possible at a [c]ustomer [m]eeting." OPC then asserts that filing deficiencies are the fault of the Company and that customers are now being asked to forego their only opportunity to directly address Commission staff in a community meeting. OPC contends that it is unfair and unjust to force customers to travel five hours one way to Tallahassee to speak at the Commission agenda conference on the day that the vote on this matter will be taken. OPC avers that the customers deserve "better treatment" and reiterates the importance of a community meeting with Commission staff. OPC then reiterates its request that the meeting (whether in person or via videoconferencing) be rescheduled to take place before the staff recommendation is completed. OPC also asserts that all of Aquarina's customers should be permitted to fully participate in Commission agenda conference in real time by telephone or video conferencing. Finally, OPC asserts that heretofore, it has not asked for any delay in this proceeding and that all such delays have been due to deficiencies in the Company's filing.

Aquarina

In its Response, Aquarina, argues that OPC has waived its right to object to cancellation of the customer meeting. In support of this position, the Company asserts that it included information in its notice of cancellation that normally would have been distributed at the customer meeting; this included a page for customers to complete and send to the Commission. Aquarina avers that OPC did not object at the time the meeting was cancelled and the method for hearing customer comments was established. Based upon the lapse in time between the customer meeting cancellation and OPC's Motion, Aquarina concludes that OPC has waived its right to object. The Company contends that OPC's arguments relating to changes in the Aquarina's rate request are "[t]otally unrelated" to whether the customer meeting should be rescheduled. Aquarina asserts that OPC ignores that the rates proposed to recover lost revenues have changed based upon Commission staff's investigation. The Company avers that "[t]he rates set forth in

the Rate Case Overview that was provided to customers in lieu of a customer meeting reflect the most recent iteration of those rates.” The Company asserts that the notice it is required to provide must first be approved by Commission staff. Aquarina argues that, once the required notice was so approved, the Company provided the notice within five days. As such, the Company argues that OPC’s arguments regarding notice are without merit. Aquarina recounts OPC’s Motion and then asserts: 1) “[t]here is no requirement that a customer meeting be held in a limited rate case proceeding;” 2) having been provided the Rate Case Overview and instructions on how comments can be made in the Docket, customers have been provided a reasonable opportunity to comment; and 3) customers have been employing the comment procedure.

Decision

The COVID-19 Pandemic has created extraordinary circumstances that will continue to impact Floridians. The Commission is not immune to these impacts. While the Commission must take into account the unusual circumstances created by this pandemic, it must simultaneously review and rule on the Dockets before it in a timely manner. The Commission must also ensure that these unusual circumstances do not create an environment of unresolved delays which in turn may create novel issues of fairness and due process.

Upon review, OPC is not persuasive in its Motion. As stated by the Company, and referenced by OPC, a customer meeting is not required in a Limited Proceeding pursuant to Rule 25-30.445, Florida Administrative Code. Additionally, mandating a new or rescheduled customer meeting, whether in-person or by other means, would likely result in delays and additional costs for the parties. Although a customer meeting is not required, customers are nonetheless afforded an opportunity to submit information or comments for the Commission by noon on May 4, 2020, for consideration at the May 5, 2020 Agenda Conference. Such submissions will be available for Commissioners to review prior to making a decision in this Docket. As such, OPC’s Motion shall be denied.

Based on the foregoing, it is

ORDERED by Commissioner Andrew Giles Fay, as Prehearing Officer, that the Office of Public Counsel’s Motion to Reschedule the Customer Meeting and Continue the Docket is denied.

By ORDER of Commissioner Andrew Giles Fay, as Prehearing Officer, this 16th day of April, 2020.



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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

CWM

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 25-22.0376, 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.