

BEFORE THE FLORIDA 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

Dated: July 23, 2007

RECEIVED-FPSC
07 JUL 23 PM 4: 20
COMMISSION
CLERK

**AQUA UTILITIES FLORIDA, INC.'S
MOTION FOR RECONSIDERATION**

Aqua Utilities Florida, Inc. ("AUF") by and through its undersigned counsel, files this Motion for Reconsideration of Order No. PSC-07-0579-CFO-WS pursuant to Rule 25-22.0376, Florida Administrative Code. In support, AUF states as follows:

1. On February 23, 2007, AUF filed its Request for Confidential Classification of certain personnel information that reveals compensation paid to specified employees. As set forth in AUF's Request, the information for which AUF seeks confidential classification is protected by §367.156(3)(d), Florida Statutes (information concerning contractual data, which if disclosed would impair AUF's ability to contract for services on favorable terms) and §367.156(3)(e) (information relating to AUF's competitive interests, which if disclosed would impair the company's competitive businesses). AUF's Request was denied in Order No. PSC-07-0579-CFO-WS, dated July 13, 2007. AUF urges the Commission to reconsider its decision.¹

2. Section 367.156(3) describes confidential information generally as information that "is intended to be and is treated by the person or company as private in that the disclosure of

¹ OPC filed an Objection to AUF's Request for Confidential Classification on March 5, 2007, to which AUF responded on March 12, 2007. Order No. PSC-07-0579-CFO-WS states that OPC's Objection was untimely and thus the prehearing officer did not consider either of these filings in reaching his decision.

the information would cause harm to the ratepayers or the person's or company's business operations....” The statute then provides six examples of such information in subsections (a) through (f), but specifies that the term “proprietary confidential business information” is not limited to those examples:

(3) Proprietary confidential business information means information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public.

Proprietary business information includes, but is not limited to:

- (a) Trade secrets.
- (b) Internal auditing controls and reports of internal auditors.
- (c) Security measures, systems, or procedures.
- (d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the utility or its affiliates to contract for goods or services on favorable terms.
- (e) Information relating to competitive interests, the disclosure of which would impair the competitive businesses of the provider of the information.
- (f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

§367.156(3), Florida Statutes (emphasis added). Thus, information that falls into one of the six specified categories is confidential *per se* without further justification, but other information that does not fit into one of those six categories also may qualify as proprietary and confidential.

3. In its Request, AUF explained that the information for which it seeks confidential classification is *per se* proprietary and confidential under §367.156(3)(d) and (e), Florida Statutes. Specifically, AUF demonstrated, under oath, that it must compete with other

businesses to attract and retain personnel on terms that are favorable to its ratepayers; that disclosure of current salary levels, compensation philosophy and comparative salary information would impair its competitive business interests as well as its ability to attract and retain personnel for those positions on favorable terms; and that the information, if disclosed, would provide other employers with valuable information regarding AUF's internal salary costs and cost structure, giving such competitors an artificial advantage in their ability to compete with AUF for employee services and disadvantaging AUF and its ratepayers. AUF also explained that disclosure of the information would be an unwarranted intrusion into the privacy interests of the affected personnel – an increasingly important issue, given the continuing increase in identity theft.

4. Rather than determine whether the information for which AUF seeks confidential classification meets the requirements of §367.156(3)(d) and (e), the Commission instead denied AUF's request on the grounds that "Section 367.156(3)(f), F.S. specifically excludes employee compensation." AUF agrees that employee compensation information is not *per se* confidential pursuant to §367.156(3)(f). The fact that employee compensation information is not *per se* confidential under (3)(f) does not automatically render it public information. The Commission overlooked or failed to consider the fact that the information for which AUF seeks protection undeniably meets two of the five other specified – and nonexclusive – categories of confidential information. Nothing in §367.156(3) indicates that employee compensation information cannot qualify as confidential under §367.153(d) and (e).

5. As noted in Order No. PSC-07-0579-CFO-WS, the Commission has repeatedly recognized that employee compensation information can, in fact, qualify as confidential under other sections of the statute. See, *e.g.*, Order No. PSC-04-0193-CFO-TP (personnel salary

information); Order No. PSC-05-0626-PCO-EI (employee compensation); Order No. PSC-02-1755-CFO-GU (base pay and total compensation information); Order No. PSC-02-0050-PCO-EI (employee benefit and compensation information); Order No. PSC-03-1280-CFO-EI (compensation for particular employee positions); Order No. PSC-02-1612-PCO-GU (payroll and incentive compensation information). However, the Commission failed to consider that each of these orders was issued *after* the orders upon which the prehearing officer relied in denying AUF's request. Thus, the Commission's most recent pronouncements hold that employee compensation information, although not confidential *per se*, may be granted confidential classification where – as here – the utility demonstrates that the information meets one or more of the other specified categories of confidential information.

6. Further, although Order No. PSC-07-0579-CFO-WS notes that these orders were not issued pursuant to §367.156(3)(f), the Commission overlooked or failed to consider that those orders implement and interpret statutory provisions in §§366.093 and 364.183, Florida Statutes, that are *identical* to §367.156(3)(f). All three statutes specify that the term proprietary confidential business information “includes, but is not limited to . . . (f) Employee personnel information unrelated to compensation, duties, qualifications or responsibilities.” The statutory mandate is exactly the same in all three statutes, and there is no possible justification for interpreting §367.156 in a radically different fashion from §§366.093 and 364.183, Florida Statutes.

7. Further, the Commission failed to consider that it has additional statutory authority to maintain the confidentiality of this information under §367.121(1)(g), which provides as follows:

- (1) In the exercise of its jurisdiction, the commission shall have power:

(g) To exercise all judicial powers, issue all writs, and do all things necessary or convenient to the full and complete exercise of its jurisdiction and the enforcement of its orders and requirements.

8. Finally, the Commission failed to consider the real and valid privacy concerns presented by publication of employee names and associated salaries. With identity theft on the rise, the Commission should avoid needlessly exposing this sensitive information, particularly when it will be freely available to the Commission and parties for use in this case.

WHEREFORE AUF respectfully requests that the Commission reconsider its grant its Order No. PSC-07-0579-CFO-WS.

Respectfully submitted this 23rd day of July, 2007.



Kenneth A. Hoffman, Esquire
Marsha E. Rule, Esquire
Rutledge, Ecenia, Purnell & Hoffman, P.A.
215 South Monroe St., Suite 420
Tallahassee, FL 32301
850.681.6788 (telephone)
850.681.6515 (facsimile)

ATTORNEYS FOR AQUA UTILITIES
FLORIDA, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice and attached Responses was served by hand delivery this 23rd day of July, to the following:

Florida Public Service Commission
Rosanne Gervasi, Esq.
Katherine E. Fleming, Esq.
Ralph Jaeger, Esq.
2450 Shumard Oak Blvd.

Tallahassee, FL 32399-0850
rgervasi@psc.state.fl.us

Office of the Public Counsel
Stephen C. Reilly, Esq.
Stephen Burgess, Esq.
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
reilly.steve@leg.state.fl.us



Marsha E. Rule