

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

Filed: August 13, 2007

**AQUA UTILITIES FLORIDA, INC.’S RESPONSE
IN OPPOSITION TO OPC’S MOTION FOR RECONSIDERATION**

Aqua Utilities Florida, Inc. (hereinafter “AUF”) hereby files its Response in Opposition to OPC’s Motion for Reconsideration of Order No. PSC-07-0598-PCO-WS, filed with the Commission on August 6, 2007. In support, AUF states as follows:

1. The purpose of a motion for reconsideration is to identify a point of fact or law which was overlooked or which the Prehearing Officer failed to consider in rendering his order. *See, Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So.2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So.2d 889 (Fla. 1962); and *Pingree v. Quaintance*, 394 So.2d 162 (Fla. 1st DCA 1981). A motion for reconsideration is not an appropriate vehicle to reargue matters that have already been considered by the Prehearing Officer. *Sherwood v. State*, 111 So.2d 96 (Fla. 3rd DCA 1959); citing *State ex. rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817 (Fla. 1st DCA 1958). Nor should a motion for reconsideration be granted “based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review”. *Stewart Bonded Warehouse*, 294 So.2d at 317. Importantly, a motion for reconsideration must necessarily be based on the record before the Prehearing

Officer at the time he made his original decision, and it is inappropriate to raise new arguments in a motion for reconsideration. Order No. PSC-92-0132-FOF-TL.¹

2. OPC's Motion for Reconsideration should be denied as it fails to meet the standard for reconsideration outlined under Florida law. OPC failed to identify any issue of fact or law raised by any party that the Prehearing Officer overlooked when ruling on OPC's Motion to Compel production of Interrogatory No. 97 or Document Request No. 48. Instead, OPC seeks to expand its Motion to Compel by alleging *new* facts and adding *new* arguments not previously raised in its Motion. These new factual allegations and arguments obviously could not have been overlooked by the Prehearing Officer as they were not raised in the initial Motion to Compel.

3. After OPC propounded Interrogatory No. 97 and Document Request No. 48 upon AUF, AUF objected to these discovery requests as follows:

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.

¹ Docket No. 099633-TL, *In re: Development of local exchange telephone company cost study methodology(ies)*.

- e. A statement if any of the pro forma plant if required by the Florida Department of Environmental Protection, and explain why it is required.

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 Document Request No. 48:

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.

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 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 document request 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.

4. The Prehearing Officer recognized that OPC *never* provided a factual or legal response to AUF's objections to these discovery requests: "OPC did not file a response to [AUF's] objections, but in its Motion to Compel, states that Interrogatory No. 97 stands as written." Order No. PSC-07-0598-PCO-WS, pg. 2; see also pg. 11, which recites that regarding AUF's objection to Document Request No. 48, "OPC states that 'OPC & Aqua are working together towards a mutual resolution.'"

5. The Prehearing Officer ruled on AUF's objections as follows:

Ruling [on AUF's objection to Interrogatory No. 97]

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.

Ruling [on AUF's objection to Document Request No. 48]

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.

Order No. PSC-07-0598-PCO-WS, pgs. 6, 11.

6. In its Motion for Reconsideration, OPC argues that the Prehearing Officer should reconsider these rulings because "the Commission misapprehended the facts in arriving at its conclusion." As shown above, however, the Prehearing Officer could not possibly have misapprehended the "facts" upon which OPC's Motion relies, because they

are raised for the very first time via new arguments in OPC's Motion for Reconsideration.

7. The Commission has long held that it is inappropriate to raise new arguments on reconsideration:

Neither new arguments nor better explanations are appropriate matters for reconsideration. . . . [W]e find that, based upon the pleading which was before the Prehearing Officer, the results which he reached were correct.

Order No. PSC-92-0132-FOF-TL, pg. 2. See also Order No. PSC-96-1024-FOF-TP,² Order No. PSC-04-0942-FOF-TP,³ and Order No. PSC-04-1160-PCO-EI.⁴ OPC failed to raise its new arguments in response to AUF's objections or in its Motion to Compel. Under consistent Commission precedent, OPC cannot raise these new arguments as a basis for reconsideration. Accordingly, OPC's Motion for Reconsideration must be denied.

8. As propounded, OPC's Interrogatory No. 97 and Document Request No. 48 require time-consuming and labor-intensive research. AUF has attempted to work amicably with OPC to resolve its objections to these discovery requests. Nevertheless, and without waiving its objections, AUF will voluntarily provide the information requested in Interrogatory No. 97 in an effort to remain cooperative and avoid further litigation, and despite its belief that the parties had negotiated a resolution of this

² Docket 950984-TP, *In Re: Resolution of petition(s) to establish nondiscriminatory rates, terms, and conditions for resale involving local exchange companies and alternative local exchange companies pursuant to Section 364.161, F.S.*

³ Docket No. 040301-TP, *In re: Petition by Supra Telecommunications and Information Systems, Inc. for arbitration with BellSouth Telecommunications, Inc.*

⁴ Docket No. 030623-EI, *In re: Complaints by Ocean Properties, Ltd., J.C. Penney Corp., Target Stores, Inc., and Dillard's Department Stores, Inc. against Florida Power & Light Company concerning thermal demand meter error.*

objection. AUF also will endeavor to provide the information requested in Document Request No. 48, again without waiving its objections. AUF expects to be able to provide such information in ten business days.

Respectfully submitted this 13th day of August, 2007.

/s/ Marsha E. Rule

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ATTORNEYS FOR AQUA UTILITIES
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email and U.S. Mail this 13th day of August, 2007, to the following:

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