

D. Bruce May, Jr.  
850 425 5607  
bruce.may@hklaw.com

July 14, 2008

**Via E-Mail**

Charles Beck  
Deputy Public Counsel  
c/o The Florida Legislature  
111 W Madison St, Room 812  
Tallahassee, FL 32399-1400

Re: *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*

Dear Charlie:

As you noted on our telephone conference last Thursday, Aqua Utilities Florida, Inc. ("Aqua") has objected to OPC's Third Set of Interrogatories on grounds that it exceeds the discovery limits set forth in the Order Establishing Procedure ("Order"). This responds to your request that we explain the method by which we have counted OPC's interrogatories. It also offers what we believe to be a reasonable and cost-effective approach to responding to discovery while honoring the discovery parameters established by the Order.

**Background**

Aqua has received OPC's recent discovery requests, including: Citizens' First Set of Interrogatories, dated May 29, 2008; Citizens' Second Set of Interrogatories, dated June 27, 2008; Citizens' First Request for Production of Documents, dated May 28, 2008; Citizens' Second Request for Production of Documents, dated May 29, 2008; and Citizens' Third Request for Production of Documents, dated June 27, 2008. Aqua has worked diligently to be forthcoming and accommodating with its responses to these discovery requests.

The Order provides that interrogatory requests, requests for production of documents, and requests for admissions, "shall be limited to 750", "including all subparts." See Order No. PSC-08-0429-PCO-WS, ¶ 5(A). The discovery limits established in the Order are more than sufficient for this type of proceeding – an \$8.4 million rate case. In fact, the discovery limits in this case dwarf the discovery parameters in a recent FPSC case involving rate impacts far greater and a utility much larger than that presented here. See *In re: Petition to determine need for Turkey Point Nuclear Units 6 and 7 electrical power plant, by Florida Power & Light Company,*

Docket No. 070650-EI, Order No. PSC-07-0869-PCO-EI (Dec. 30, 2007) (a multi-billion dollar nuclear power plant need case, wherein the Commission limited interrogatories to 300, including subparts).

At the outset of this case, Aqua expressed serious concern about the costs and burdens imposed by the sheer volume of discovery OPC had propounded. See my letter to you dated June 3, 2008. Nevertheless, Aqua has made every effort to comply with the discovery requirements set forth in the Order, and has worked diligently to be as responsive and as forthcoming to OPC's discovery requests as possible. Indeed, as you know, Aqua has established a protocol for weekly conferences with OPC and its consultants to accommodate and answer questions from OPC regarding previously provided discovery responses and the inter-workings of electronic files and programs developed by Aqua. These accommodations are uncommon in proceedings of this nature, and are especially extraordinary in that they parallel Aqua's efforts to respond to OPC's numerous formal discovery requests. Moreover, Aqua has agreed to answer follow up questions that OPC identifies without requiring OPC to submit additional interrogatories. In summary, OPC's voluminous discovery requests have imposed extraordinary costs and resource challenges to my client. While Aqua is committed to fully complying to the discovery requirements in the Order, it cannot be expected to continue to go beyond the ample discovery limits set forth in the Order.

### **Interrogatory Count**

We noted in our objections to Citizen's First Set of Interrogatories, served on June 30, 2008, that notwithstanding the numbering on that discovery request (Nos. 1-101), when subparts and compound requests were counted, the quantity of interrogatories totaled approximately 253 requests. For instance, No. 1—while numbered as only one request—clearly contains at least three distinct requests in three distinct sentences: 1) “a listing with a detailed explanation of each adjustment made to the Company's trial balance amounts in the preparation of the 2005, 2006, and 2007 Annual Reports”; 2) “a detailed description of material changes in accounting policies or procedures adopted by the Company since 2005 and as anticipated through the end of 2008”; and 3) “a detailed description of the impact of change in accounting policy or procedure on the test year and identify the basis of the change.” Such multiple or compound interrogatory requests, whether clearly labeled as subparts (*see e.g.*, Nos. 6(a)-(d), 11(a)-(e)) or not, are required to be counted pursuant to the Order entered in this case. Again, according to our careful count, the First Set of Interrogatories includes at least 253 distinct interrogatory requests.

Likewise, as we have noted in our expedited objections to Citizens' Second Interrogatories, served on July 7, 2008, that discovery request contains far more than 87 interrogatories. When subparts that are actually numbered are counted, in addition to the multiple requests contained within each numbered interrogatory, there are approximately 678 distinct interrogatory requests. For example, even by a conservative count, No. 108 contains at least 7 distinct requests, including the following: “for each system and each deferred maintenance item,” the interrogatory requests: 1) “a description of the deferred maintenance

including type and purpose”; 2) “the original . . . balance of the deferred maintenance”; 3) “the . . . test year balance of the deferred maintenance”; 4) “the date the deferred maintenance was incurred”; 5) “the years of amortization”; 6) “how often the maintenance is required”; and 7) “the annual amortization amount.” Moreover, 38 of the 87 numbered interrogatory requests contain numerous numbered subparts, all of which are to be included in the Order’s 750 limit. *See, e.g.* No. 162 (including 18 numbered subparts). According to our careful count, OPC's Second Set of Interrogatories includes at least 678 distinct interrogatory requests.

According to our conservative count, we believe that a total of 931 distinct interrogatories have been propounded to date.

### **Proposed Resolution**

As indicated, we want to be as cooperative as possible concerning your discovery but Aqua also has a responsibility to mitigate the rate case expense that will be passed to its customers. The 750 interrogatories allowed by the Order provides more than sufficient latitude for you to discover and gather the appropriate and relevant data to support your case. We believe that discovery beyond that limit is unreasonable and burdensome. The discovery limits in this case have already caused rate case expense to exceed projections; to go beyond those limits will only push those expenses even higher.

That noted, Aqua is prepared to answer up to 750 interrogatories, including subparts, pursuant to the Order. According to our conservative count, the 253 distinct interrogatory requests in OPC's First Set of Interrogatories left OPC with an additional 497 distinct interrogatory requests to propound. However, OPC's Second Set of Interrogatories contained 678 distinct interrogatory requests exceeding the 750 limit by 181 interrogatories. In the spirit of cooperation, we ask that you list (up to the 750 limit) which of the Second Interrogatories, including specific distinct interrogatories contained within numbered interrogatories and subparts, that you would like Aqua to answer at this time. Aqua, in turn, will prepare and serve responses to the interrogatory requests you list up to the 750 limit.

Charles Beck  
July 14, 2008  
Page 4

We look forward to hearing back from you on this proposal. It is our hope that we can mutually agree on how to balance the interest of all parties in this proceeding while avoiding the time and expense of addressing these issues before the pre-hearing officer.

Thank you for your consideration.

Sincerely,

HOLLAND & KNIGHT LLP



D. Bruce May, Jr.

DBM:gr

cc: Ralph Jaeger, Esq.  
Katherine Fleming, Esq.  
Caroline Klancke, Esq.  
Erik Sayler, Esq.  
Tim Devlin  
Marshall Willis  
Ms. Ann Cole

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