

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  
FILED: October 27, 2008

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Direct Testimony of Kimberly Dodson on behalf of the Florida Public Service Commission, has been furnished by U.S. Mail, on this 27<sup>th</sup> day of October, 2008, to the following.

*Hand Delivery*

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*Ralph R. Jaeger*

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DOCKET NO.: 080121-WS - 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.

WITNESS: Direct Testimony of Kimberly Dodson, Florida  
Department of Environmental Protection, Central District  
Appearing on Behalf of the Staff of the Florida Public Service Commission.

DATE FILED: October 27, 2008

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DIRECT TESTIMONY OF KIMBERLY DODSON

Q. Please state your name and business address.

A. Kimberly Dodson, Florida Department of Environmental Protection (FDEP), 3319 Maguire Blvd., Suite 232, Orlando, Florida 32803.

Q. Please provide a brief description of your educational background and experience.

A. I received a B.A. in Environmental Studies from Rollins College, Winter Park, Florida in 1995. I worked in environmental analytical laboratories from 1991 to 1996. I have worked for the FDEP Potable Water Program since 1996, where my responsibilities have involved inspection of drinking water systems, managing the Consumer Confidence Report (CCR) rule program, and conducting enforcement. I am currently the Program Manager for the Drinking Water compliance and enforcement section.

Q. What are your general responsibilities at the FDEP?

A. I oversee all activities of the field and compliance monitoring sections. I review enforcement documents, non-compliance letters, and inspection reports generated by compliance and enforcement staff.

Q. Are you familiar with Aqua Utilities Florida, Inc. (Aqua) water systems in Brevard (Kingswood and Oakwood), Lake (48 Estates, Carlton Village, East Lake Harris, Fern Terrace, Friendly Center, Grand Terrace, Haines Creek, Hobby Hills, Holiday Haven, Imperial Terrace, Kings Cove, Morningview, Palms MHP, Picciola Island, Piney Woods/Spring Lake, Quail Ridge, Ravenswood, Silver Lake Estates, Skycrest, Stone Mountain, Summit Chase, Valencia Terrace, Venetian Village and Western Shores), Marion (49th Street, Belleair, Belleview Hills Estates, Belleview Hills, Chappell Hills, Fairfax Hills, Hawks Point, Marion Hills, Ocala Oaks, Westview, and Woodberry Forest), Orange (Tangerine), and Seminole (Chuluota and Harmony Homes) Counties?

A. Yes. I am familiar with those water systems via review of inspection reports and other

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1 Department records.

2 Q. Is the overall operation and maintenance of the water treatment plants and distribution  
3 facilities satisfactory?

4 A. Yes. Each of the systems had a sanitary survey inspection during 2007 and were found to be  
5 substantially in compliance with all DEP requirements with the exception of the Chuluota  
6 water system which is addressed below.

7 Q. Has Aqua been the subject of any FDEP enforcement action within the past three years?

8 A. Yes. A consent order was sent to Aqua regarding the Morningview system in 2006 for  
9 monitoring compliance violations; however, the issues were resolved and the case was closed  
10 in 2007. In addition, sanitary survey inspections of the Chuluota treatment plants were  
11 conducted on August 29, 2006, and the system was found to be out of compliance for failing  
12 to use treatment processes previously approved by FDEP as corrective action for total  
13 trihalomethane (TTHM) maximum contaminant level (MCL) violations. The utility signed a  
14 Consent Order on January 4, 2007 (EX KD-1) and permits to modify the disinfection  
15 treatment processes at both water treatment plants were issued by FDEP on March 12, 2007.  
16 On February 26, 2008, FDEP issued final clearance for all permitted modifications, and the  
17 utility placed these modifications into service on April 7, 2008, changing from free chlorine  
18 disinfection to chloramine disinfection. TTHM results for sampling conducted on April 10,  
19 2008 were below the MCL; however, TTHM results for sampling conducted on April 22,  
20 2008, were above the MCL. On July 3, 2008, the utility temporarily reverted back to free  
21 chlorine disinfection due to malfunctioning equipment. New equipment was obtained and the  
22 utility returned to chloramine disinfection on September 3, 2008. TTHM compliance  
23 sampling for the 3<sup>rd</sup> quarter 2008 was conducted on September 17, 2008, and those results  
24 were below the MCL for TTHM; however, the system still exceeds the MCL on a running  
25

1 annual average.

2 Q. Other than the above violations, is Aqua in compliance with all DEP requirements for their  
3 water systems in Brevard, Lake, Marion, Orange, and Seminole Counties?

4 A. Paul Morrison's testimony addresses bacteriological MCL violations for total coliforms for  
5 Holiday Haven (2005), Hawks Point (2005), Skycrest (2007), and Chuluota (2008).

6 Q. Are you familiar with the independent water testing done after the customer meeting in  
7 Oviedo?

8 A. Yes. The Seminole County Health department collected water samples at Walker Elementary  
9 School on August 5, 2008, and tested for volatile organic contaminants. All of the sample  
10 results, with the exception of disinfection by-products (DBPs), were below the detection limit.  
11 For the DBPs, the TTHMs exceeded the MCL. On August 4, 2008, the Florida Rural Water  
12 Association conducted sampling from 6 locations in the distribution system. The samples  
13 were analyzed for nitrate, nitrite, e. coli, total coliform, and heterotrophic plate count. All  
14 results were satisfactory.

15 Q. Do you have anything further to add?

16 A. No. I do not.

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BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION,

IN THE OFFICE OF THE  
CENTRAL DISTRICT

Complainant,

OGC FILE NO. 06-2432

vs.

AQUA UTILITIES FLORIDA, INC.,

Respondent.

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**CONSENT ORDER**

This Consent Order is entered into between the State of Florida Department of Environmental Protection ("Department") and Aqua Utilities Florida, Inc. ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and the Respondent admits the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to administer and enforce the provisions of the Florida Safe Drinking Water Act, Sections 403.850 *et seq.*, *Florida Statutes*, and the rules promulgated thereunder, Title 62, *Florida Administrative Code*. The Department has jurisdiction over the matters addressed in this Consent Order.
2. Respondent is a person within the meaning of Section 403.852(5), *Florida Statutes*.
3. Respondent is the owner and operator of a community public water system, PWS# 3590186, located at 118 East 7<sup>th</sup> Street ("Water Treatment Plant #1") and the intersection of Brumley Road and Avenue H ("Water Treatment Plant #2"), Chuluota, Seminole County, Florida, which serves the Chuluota water system.

4. The Department finds that Respondent is in violation of Rule 62-550.310(3), ("Florida Administrative Code"), which establishes the maximum contaminant level ("MCL") for total trihalomethanes ("TTHMs") as 0.080 milligrams per liter ("mg/L"). The running annual average results for samples collected from the system on 12/30/05, 3/09/06, 5/18/06, 8/04/06 and analyzed for TTHMs is 0.135 mg/L.

Having reached a resolution of the matter the Department and the Respondent mutually agree and it is

**ORDERED:**

5. Respondent shall comply with the following corrective actions within the stated time periods:

a. Within 30 days of the effective date of this Consent Order, Respondent shall retain the services of a Florida-registered professional engineer to evaluate the system and submit an application, along with any required application fees, to the Department for a permit to construct any modifications needed to address the MCL violation(s).

b. The Department shall review the application submitted pursuant to paragraph 5a. above. In the event additional information, modifications or specifications are necessary to process the application, the Department shall issue a written request for information ("RFI") to Respondent for such information. Respondent shall accordingly submit the requested information in writing to the Department within 15 days of receipt of the request. Respondent shall provide all information requested in any additional RFIs issued by the Department within 15 days of receipt of each request. Within 45 days of the date the Department receives the application pursuant to paragraph 5a. above, Respondent shall provide all information necessary to complete the application.

c. Within 60 days of issuance of any required permit(s), Respondent shall complete the modifications approved pursuant to the permit(s) issued in accordance with paragraphs 5a. and 5b. above, and submit to the Department the engineer's certification of completion of construction, along with all required supporting documentation. Respondent shall receive written Department clearance prior to placing the system modifications into service.

d. Respondent shall continue to sample quarterly for TTHMs and HAA5s in accordance with Rule 62-550.514(2), *Florida Administrative Code*. Results shall be submitted to the Department within ten (10) days following the month in which the samples were taken or within 10 days following Respondent's receipt of the results, whichever is sooner.

e. In the event that the modifications approved by the Department pursuant to paragraphs 5a. and 5b. are determined to be inadequate to resolve the MCL violation(s), the Department will notify the Respondent in writing. Within 30 days of receipt of written notification from the Department that the results of the quarterly sampling indicate that the system modifications have not resolved the violation(s), Respondent shall submit another proposal to address the MCL violation(s). Respondent shall provide all information requested in any RFIs issued by the Department within 15 days of receipt of each request. Within 60 days of the date the Department receives the application pursuant to this paragraph, Respondent shall provide all information necessary to complete the application.

f. Within five months of the effective date of this Consent Order, Respondent shall complete all corrective actions needed to resolve the MCL exceedances and submit written certification of completion to the Department for all modifications.



g. Respondent shall continue to issue public notice regarding the MCL violation(s) every 90 days in accordance with Rule 62-560.410(1), until the Department determines that the system is in compliance with all MCLs. Respondent shall submit certification of delivery of public notice, using DEP Form 62-555.900(22), to the Department within ten days of issuing each public notice.

6. Within 30 days of the effective date of this Consent Order, Respondent shall pay the Department \$9,500 in settlement of the matters addressed in this Consent Order. This amount includes \$500 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Consent Order. (A) The civil penalties are apportioned as follows: *\$1,000 for violation of Rule 62-555.520(1)(b), pursuant to Section 403.121(4)(e), Florida Statutes; \$4,000 for violation of Rule 62-550.310(3), pursuant to Section 403.121(3)(a), Florida Statutes; and \$4,000 for violation of Rule 62-550.300, pursuant to Section 403.121(3)(a), Florida Statutes.* Payment shall be made by cashier's check or money order. The instrument shall be made payable to the "Department of Environmental Protection" and shall include thereon the OGC number assigned to this Consent Order and the notation "Ecosystem Management and Restoration Trust Fund." Payment shall be sent to the Department of Environmental Protection, 3319 Maguire Boulevard, Suite 232, Orlando, FL 32803.

7. In lieu of making cash payment of \$9,000.00 in civil penalties as set forth in paragraph 6, above, Respondent may elect to offset this amount by implementing a pollution prevention project, which is subject to approval by the Department. A pollution prevention project must be a source reduction, waste minimization, or on-site recycling project.

If Respondent chooses to implement a pollution prevention project, Respondent shall notify the Department of its election by certified mail within 15 days of the effective date of this Consent Order. Notwithstanding the election to implement a pollution prevention project, Respondent must pay the remaining \$500.00 in costs within 30 days of the effective date of the Consent Order. If Respondent elects to implement a pollution prevention project, then Respondent shall comply with all of the requirements and time frames in Exhibit I.

8. Respondent agrees to pay the Department stipulated penalties in the amount of \$100.00 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraph 5 of this Consent Order. A separate stipulated penalty shall be assessed for each violation of this Consent Order. Within 30 days of written demand from the Department, Respondent shall make payment of the appropriate stipulated penalties to "The Department of Environmental Protection" by cashier's check or money order and shall include thereon the OGC number assigned to this Consent Order and the notation "Ecosystem Management and Restoration Trust Fund." Payment shall be sent to the Department of Environmental Protection, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803. The Department may make demands for payment at any time after violations occur. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any of the terms of this Consent Order. Any penalties assessed under this paragraph shall be in addition to the settlement sum agreed to in paragraph 6 of this Consent Order. If the Department is required to file a lawsuit to recover stipulated penalties under this paragraph, the Department will not be foreclosed from seeking civil penalties for violations of this Consent Order in an amount greater than the stipulated penalties due under this paragraph.

9. If any event, including administrative or judicial challenges by third parties unrelated to the Respondent, occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Consent Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of the Respondent and could not have been or cannot be overcome by Respondent's due diligence. Economic circumstances shall not be considered circumstances beyond the control of Respondent, nor shall the failure of a contractor, subcontractor, material man or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines be a cause beyond the control of Respondent, unless the cause of the contractor's late performance was also beyond the contractor's control. Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department orally within 24 hours or by the next working day and shall, within seven calendar days of oral notification to the Department, notify the Department in writing of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay and the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended for a period equal to the agreed delay resulting from such circumstances. Such agreement shall adopt all reasonable measures necessary to avoid or minimize delay. Failure of Respondent to comply with the notice requirements of this Paragraph in a timely manner shall constitute a waiver of Respondent's right to request an extension of time for compliance with the requirements of this Consent Order.

10. Persons who are not parties to this Consent Order, but whose substantial interests are affected by this Consent Order, have a right, pursuant to Sections 120.569 and 120.57, Florida Statutes, to petition for an administrative hearing on it. The Petition must contain the information set forth below and must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS #35, Tallahassee, Florida 32399-3000, within 21 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the District Office named above at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, *Florida Statutes*.

11. The petition shall contain the following information:

- a. The name, address, and telephone number of each petitioner; the Department's Consent Order identification number and the county in which the subject matter or activity is located;
- b. A statement of how and when each petitioner received notice of the Consent Order;
- c. A statement of how each petitioner's substantial interests are affected by the Consent Order;
- d. A statement of the material facts disputed by petitioner, if any;
- e. A statement of facts which petitioner contends warrant reversal or modification of the Consent Order;
- f. A statement of which rules or statutes petitioner contends require reversal or modification of the Consent Order;

g. A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Consent Order.

12. If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, *Florida Statutes*, and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205.

13. A person whose substantial interests are affected by the Consent Order may file a timely petition for an administrative hearing under Sections 120.569 and 120.57, *Florida Statutes*, or may choose to pursue mediation as an alternative remedy under Section 120.573, *Florida Statutes*, before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for pursuing mediation are set forth below.

14. Mediation may only take place if the Department and all the parties to the proceeding agree that mediation is appropriate. A person may pursue mediation by reaching a mediation agreement with all parties to the proceeding (which include the Respondent, the Department, and any person who has filed a timely and sufficient petition for a hearing) and by

showing how the substantial interests of each mediating party are affected by the Consent Order. The agreement must be filed in (received by) the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, MS #35, Tallahassee, Florida 32399-3000, within 10 days after the deadline as set forth above for the filing of a petition.

15. The agreement to mediate must include the following:

a. The names, addresses, and telephone numbers of any persons who may attend the mediation;

b. The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;

c. The agreed allocation of the costs and fees associated with the mediation;

d. The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;

e. The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;

f. The name of each party's representative who shall have authority to settle or recommend settlement;

g. Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice of intent or a statement clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference; and

h. The signatures of all parties or their authorized representatives. As provided in Section 120.573, *Florida Statutes*, the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, *Florida Statutes*, for

requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of receipt of this notice. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57, *Florida Statutes*, remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

16. Entry of this Consent Order does not relieve Respondent of the need to comply with applicable federal, state or local laws, regulations or ordinances.

17. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 403.121, *Florida Statutes*. Failure to comply with the terms of this Consent Order shall constitute a violation of Section 403.859, *Florida Statutes*.

18. Respondent is fully aware that a violation of the terms of this Consent Order may subject Respondent to judicial imposition of damages, civil penalties up to \$5,000.00 per day per violation, and criminal penalties, except as limited by the provisions of this Consent Order.

19. Respondent shall allow all authorized representatives of the Department access to the facility at reasonable times for the purpose of determining compliance with the terms of this Consent Order and the rules and statutes of the Department.

20. All submittals and payments required by this Consent Order to be submitted to the Department shall be sent to the Florida Department of Environmental Protection, 3319 Maguire Boulevard, Suite 232, Orlando, FL 32803.

21. The Department, for and in consideration of the complete and timely performance by Respondent of the obligations agreed to in this Consent Order, hereby waives its right to seek judicial imposition of damages or civil penalties for alleged violations addressed in this Consent Order.

22. Respondent acknowledges and waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, *Florida Statutes*, on the terms of this Consent Order. Respondent acknowledges its right to appeal the terms of this Consent Order pursuant to Section 120.68, *Florida Statutes*, and waives that right upon signing this Consent Order.

23. No modifications of the terms of this Consent Order shall be effective until reduced to writing and executed by both Respondent and the Department.

24. In the event of a sale or conveyance of the facility or of the property upon which the facility is located, if all of the requirements of this Consent Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the property or facility, (1) notify the Department of such sale or conveyance, (2) provide the name and address of the purchaser, or operator, or person(s) in control of the facility, and (3) provide a copy of this Consent Order with all attachments to the new owner. The sale or conveyance of the facility, or the property upon which the facility is located shall not relieve the Respondent of the obligations imposed in this Consent Order.

25. This Consent Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Consent Order

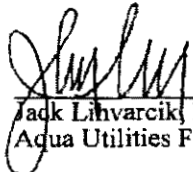


is not a settlement of any criminal liabilities, which may arise under Florida law, nor is it a settlement of any violation, which may be prosecuted criminally or civilly under federal law.

26. This Consent Order is a final order of the Department pursuant to Section 120.52(7), Florida Statutes, and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, Florida Statutes. Upon the timely filing of a petition this Consent Order will not be effective until further order of the Department.

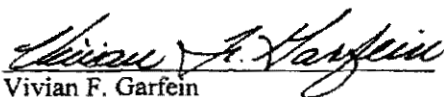
FOR THE RESPONDENT

JANUARY 4, 2007  
Date

  
\_\_\_\_\_  
Jack Lihvarcik, President  
Aqua Utilities Florida, Inc.

DONE AND ORDERED this 10th day of January, 2007,  
in Orlando, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

  
\_\_\_\_\_  
Vivian F. Garfein  
DF Director, Central District

FILED, on this date, pursuant to Section 120.52, F.S., with the designated Department Clerk, receipt of which is hereby acknowledged.

  
\_\_\_\_\_  
Clerk

1/10/2007  
Date

cc: Lea Crandall, Agency Clerk