

# Holland & Knight

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August 11, 2009

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COMMISSION  
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**VIA HAND DELIVERY**

Ms. Ann Cole, Director  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Betty Easley Conference Center, Room 110  
Tallahassee, FL 32399-0850

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 Ms. Cole:

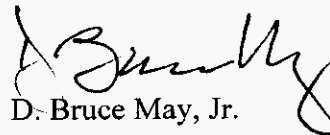
Enclosed for filing are the original and seven (7) copies of:

1. Aqua Utilities Florida, Inc.'s Response in Opposition to Motion to Compel and for Other Relief; and
2. Aqua Utilities Florida, Inc.'s Motion for Protective Order Based on Confidentiality.

Please acknowledge receipt of these filings by stamping the extra copy of this letter "filed" and returning the copy to me. Thank you for your assistance.

Sincerely,

HOLLAND & KNIGHT LLP

  
D. Bruce May, Jr.

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**ECR** \_\_\_\_\_  
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DBM:kjg  
Encls.

cc: Ralph Jaeger, Esq.  
Katherine Fleming, Esq.  
Caroline Klancke, Esq.  
Charles Beck, Esq.  
Cecilia Bradley, Esq.  
Kimberly A. Joyce, Esq.

# 8764054\_v1

**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: August 11, 2009**

**AQUA UTILITIES FLORIDA, INC.'S RESPONSE IN OPPOSITION TO  
MOTION TO COMPEL AND FOR OTHER RELIEF**

Aqua Utilities Florida, Inc. ("AUF") opposes the Motion to Compel and for Other Relief filed by the Citizens of the State of Florida through the Office of Public Counsel ("OPC") on August 4, 2009. Discovery in this case is closed and OPC has not demonstrated any legitimate reason to have it reopened. In fact, to reopen discovery at this juncture could undermine the independence of Commission staff's customer service monitoring program and unnecessarily increase expenses. Moreover, OPC's Motion is unnecessary because AUF is prepared to provide OPC with unredacted copies of the requested information under an appropriate protective order.

**BACKGROUND**

1. Pursuant to Order No. PSC-09-0385-FOF-WS (the "Order"), AUF is required to submit to the Commission (i) a monthly report listing all customer complaints for the first six (6) months after the Order is issued and (ii) sound recordings of customer complaints for the month for the first six (6) months after the Order is issued. Order at 22. The Order also requires AUF to submit to staff meter reading route schedules for the six (6) months after the Order is issued and meter reading logs for the same six (6) month period. *Id.*

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2. The monthly customer complaints reports, the monthly sound recordings and the meter reading logs all contain proprietary customer-specific information, the disclosure of which would harm the privacy interests of individual customers and subject those customers to other harm, including potential identity theft. Accordingly, AUF has requested that such customer-specific information be classified as confidential and exempt from Chapter 119, Florida Statutes, and Article I, Section 24(a) of the Florida Constitution.

3. Over the past month, AUF has received from OPC three separate requests for production of documents requesting "unredacted customer complaints, unredacted meter logs and . . . unedited disks filed with the Florida Public Service Commission." Those requests are dated July 1, 21 and 27, 2009.<sup>1</sup>

**THERE IS NO LEGITIMATE REASON TO REOPEN DISCOVERY**

4. Discovery in this matter has been closed, *see* Order PSC-08-0429-PCO-WS, and AUF is under no obligation to respond to OPC's discovery at this time. *See In re: Petition for arbitration of amendment to interconnection agreements with certain competitive local exchange carriers and commercial mobile radio service providers in Florida by Verizon Florida, Inc.*, 05 F.P.S.C. 5:33, Order No. PSC-05-0484-PCO-TP, Docket No. 040156-TP (May 4, 2005). Furthermore, OPC has shown no legitimate reason for the Commission to reopen discovery at this time. In determining whether to allow discovery, legal tribunals in Florida consider a number of factors including whether closure of discovery would deprive a party a full and fair hearing on a justiciable issue. *See Overton v. State*, 976 So.2d 536 (Fla. 2008). OPC cannot

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<sup>1</sup> In OPC's Tenth Request for Production of Documents dated July 1, 2009, it also requested documents related to a billing dispute referenced in television report by a Tampa station on July 1, 2009. AUF voluntarily provided Commission staff, OPC and the AG with detailed information concerning this billing dispute on July 8, 2009.

show that failure to reopen discovery at this juncture will deprive it of an opportunity of a full and fair hearing.

5. OPC claims that failure to reopen discovery in this case would exclude it from the Commission's service quality monitoring plan. A quick review of the procedural posture of this case shows that OPC's claim is without merit. At this phase of the Commission's service quality monitoring program, staff is conducting an independent audit of AUF's customer service operations and is scheduled to issue a recommendation on March 4, 2010 as to its findings. The Commission is scheduled to vote on staff's recommendation on March 16, 2010, and is currently scheduled to issue a proposed agency action ("PAA") order memorializing its vote on April 5, 2010. If, after the issuance of the PAA order, OPC objects to the Commission's conclusions with respect to AUF's performance, OPC will have an opportunity to file a protest and request a formal evidentiary hearing, during which all attendant discovery rights could be exercised. In the meantime, however, allowing OPC to conduct extensive discovery prior to completion of staff's service quality audit would interfere with the audit and effectively undermine the independence of that audit process. In addition, reopening full-fledged discovery in the midst of a staff's service quality audit will unnecessarily increase expenses.

**OPC'S MOTION TO COMPEL IS UNNECESSARY**

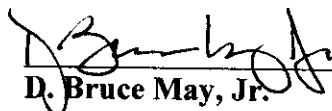
6. OPC's request to reopen discovery to review information pertaining to the staff's customer service monitoring program is unnecessary. As explained in detail in AUF's contemporaneously-filed motion for protective order, AUF is prepared to voluntarily provide OPC with unredacted copies of the information that OPC requests, provided that such

information is subject to an appropriate protective order. Thus, there is no need to reopen discovery in this matter in order for OPC to have access to the information that it requests.

WHEREFORE, based on the foregoing reasons, AUF respectfully requests that the Commission enter an Order:

- (1) denying OPC's Motion to Compel and for Other Relief;
- (2) granting AUF's Motion for Protective Order Based on Confidentiality;
- (3) granting such other relief as the Commission deems appropriate.

Respectfully submitted this 11<sup>th</sup> day of August, 2009 by:



**D. Bruce May, Jr.**

Florida Bar No. 354473

**Gigi Rollini**

Florida Bar No. 684491

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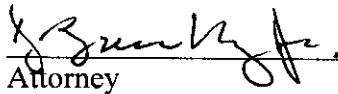
**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was furnished by hand delivery this 11<sup>th</sup> day of August, 2009 to the following:

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Attorney

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