

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in water/wastewater rates in Alachua, Brevard, DeSoto, Hardee, Highlands, Lake, Lee, Marion, Orange, Palm Beach, Pasco, Polk, Putnam, Seminole, Sumter, Volusia, and Washington Counties by Aqua Utilities Florida, Inc.

DOCKET NO. 100330-WS
ORDER NO. PSC-11-0018-PCO-WS
ISSUED: January 5, 2011

ORDER GRANTING CITIZENS MOTION
TO SET DISCOVERY PARAMETERS AND
MOTION TO COMPEL DISCOVERY RESPONSES

Background

On September 1, 2010, Aqua Utilities Florida, Inc. (AUF) filed its application for increased water and wastewater rates for 87 of its systems located in 17 different counties. By Order No. PSC-10-0532-PCO-WS, issued August 19, 2010, the Commission acknowledged that the Office of Public Counsel (OPC) had intervened in this docket.

AUF has requested that its application be processed using the Commission's Proposed Agency Action (PAA) process. The PAA process provides five months to process the request from the time the Minimum Filing Requirements (MFRs) are approved until the Commission renders its decision. OPC contends that it has an obligation to thoroughly review AUF's requested increase prior to the PAA decision and that in order to do so, it must send out discovery sufficient to conduct such review. Further, OPC asserts that any such discovery will assist in making a determination of whether a protest of the PAA order can be obviated.

On September 10, 2010, OPC propounded its First Set of Interrogatories (Nos. 1-118) and First Request for Production of Documents (Nos. 1-97). On October 11, 2010, AUF sent a letter to OPC stating that the discovery request was voluminous and citing to the Florida Rules of Civil Procedures numeric limitation. AUF served a portion of the responses due on October 11, 2010, proposing to provide the remainder of the discovery, 30 responses at a time every thirty days.

OPC's Motion

On October 14, 2010, OPC filed its Motion to Set Discovery Procedure and Motion to Compel (Motion). OPC noted that it has already begun discovery, given the limited timeframe for discovery until a PAA decision is made. Since this matter is being processed through the PAA process, no Order Establishing Procedure has been issued; thus, OPC is requesting that the Commission set a discovery process as was established in AUF's last rate case which involved a

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similar number of systems.¹ In its Motion, OPC requests that the Commission establish discovery limits for interrogatories, production of documents, and request for admissions at 750, including subparts. OPC also requests that discovery responses be served within 30 calendar days, inclusive of mailing, from the receipt of the request with any clarification or objections to the discovery to be served within 10 days of receipt. Finally, OPC requests that, in order to expedite the review of the discovery responses, that AUF be required to provide the requested documents in electronic form with all links and formulas intact, source data used, and with an explanation of all assumptions and calculations used. Furthermore, OPC requests that to the extent the data requested is not available in the form requested through discovery that the information be provided in electronic form that most closely matches what has been requested.

AUF's Response in Opposition to Citizens' Motion to Set Discovery
Procedure and Motion to Compel Discovery Responses (Response)

On October 21, 2010, AUF timely filed its Response. In its Response, AUF argues that OPC's Motion should be denied because it seeks unprecedented expansion of the discovery parameters in this PAA matter, which will cause rate case expense to needlessly increase. Moreover, AUF asserts that the relief sought by OPC is unnecessary because AUF has agreed to provide OPC with responses to the first set of discovery no later than December 13, 2010. AUF contends that there is more than a sufficient amount of time for OPC to digest the discovery information and make an informed decision as to whether to protest the PAA order.

AUF asserts that it has asked that the case be processed using the Commission's PAA process and that process was specifically intended to reduce rate case expense by streamlining rate case procedures. AUF contends that if OPC's Motion is granted and the discovery parameters are significantly expanded to track the parameters in the last full evidentiary case, the discovery costs in this PAA process will increase dramatically, and AUF and its customers will bear significant rate case expense that could match or exceed the rate case expense in the last case.

AUF's Objections to OPC's Second Set of Interrogatories and Second
Request for Production of Documents (Objection)

On November 16, 2010, OPC served its Second Set of Interrogatories (Nos. 119-150) and its Second Request for Production of Documents (Nos. 98-112). On December 16, 2010, AUF filed its objections. In its objection, AUF contends that, to date, AUF has already answered OPC's First Set of Interrogatories (consisting of over 208 interrogatories including subparts) and OPC's First Request for Production of Documents (consisting of 101 PODs including subparts). AUF contends that it formally objected to OPC's First Set of Interrogatories and OPC's First Request for Production of Documents because that discovery exceeded the numeric limits for interrogatories set forth in Rule 28-106.206, F.A.C., and the Florida Rules of Civil Procedure,

¹ See Order No. PSC-08-0429-PCO-WS, issued June 27, 2008, in Docket No. 080121-WS, 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.

was oppressive, unduly burdensome and would cause rate case expense to customers to increase dramatically.

AUF further contends that OPC has now served AUF with an additional set of Interrogatories and Production of Documents that exceed the numeric discovery limits under the rules and are oppressive and unduly burdensome. AUF further asserts that the excessive discovery propounded by OPC has already caused rate case expense to customers to increase dramatically. AUF states that it does not intend to respond to OPC's Second Set of Interrogatories and Production of Documents until receiving further direction from the Commission.

Decision

Upon consideration of the parties' arguments, I find it appropriate that discovery shall be conducted in accordance with the provisions of Chapter 120, F.S., and the relevant provisions of Chapter 367, F.S., Rules 25-22, 25-30, and 28-106, Florida Administrative Code (F.A.C.), and the Florida Rules of Civil Procedure (as applicable), as modified herein or as may be subsequently modified by the Prehearing Officer.

Unless subsequently modified by the Prehearing Officer, the following shall apply:

- (1) Discovery requests shall be served by e-mail, hand delivery, or overnight mail. If a request is served electronically, a hard copy of the request shall be served by hand-delivery, U.S. Mail, or overnight mail on the day that the request is served electronically.
- (2) Sets of interrogatories, requests for admissions, requests for production of documents, or other forms of discovery shall be numbered sequentially in order to facilitate their identification.
- (3) Discovery responses shall be served within 30 calendar days (inclusive of mailing) of receipt of the discovery request. Discovery responses for interrogatories and requests for admission shall be served by electronic mail. One hard copy of the response shall also be served by hand-delivery, U.S. Mail, or overnight mail on the day that responses are served electronically. Discovery responses to requests for production shall be served electronically when possible.
- (4) Staff data request responses shall be served within the time set forth in the body of the request (inclusive of mailing). Responses to staff data requests shall be served by electronic mail. Five hard copies of the response shall also be served by hand-delivery, U.S. Mail, or overnight mail on the day that responses are served electronically.
- (5) Copies of discovery requests and responses shall be served on parties other than the party from whom discovery is sought to the extent required by the applicable provisions of the Florida Rules of Civil Procedure. In addition, copies of all responses to requests for production of documents shall be provided to the Commission staff at its Tallahassee office unless otherwise agreed.

- (6) To the extent possible, all filings made electronically or on diskette shall be provided in Microsoft Word format and all schedules shall be provided in Microsoft Excel format with formulas intact and unlocked.

This rate case is unique in that AUF's request contains 87 systems in 17 counties throughout Florida. Given the broad scope of this matter, the parties' opportunity to conduct ample discovery must be balanced against the interests of protecting the ratepayers from excessive rate case expense. Taking these two countervailing considerations into account, I find that the following limitations on discovery shall apply:

- (1) Interrogatories, including all subparts, shall be limited to 400.
- (2) Requests for production of documents, including all subparts, shall be limited to 400.
- (3) Requests for admissions, including all subparts, shall be limited to 250.

As discussed above, in its Objection AUF contends that OPC's First and Second set of Interrogatories and Production of Documents exceed the numeric discovery limits contained within Rule 28-106.206, F.A.C., and the Florida Rules of Civil Procedure and therefore are oppressive and unduly burdensome. Although AUF asserts that OPC's First and Second sets of interrogatories contain 246 interrogatories and 116 requests for production of documents cumulatively, our staff determined that OPC has propounded a total of 169 interrogatories and 112 requests for production of documents in its First and Second Set of Interrogatories and Production of Documents. Therefore, since OPC's propounded discovery to date falls well within the numerical limitations set forth herein, AUF shall provide responses to OPC's Second Set of Interrogatories and Production of Documents within ten days from the date of this order.

Based on the foregoing, OPC's Motion shall be granted and AUF shall answer all of OPC's discovery propounded to date as set forth herein. OPC shall be limited to 400 interrogatories, including subparts and 400 requests for production of documents, including subparts. Absent good cause shown, no additional interrogatories or request for production of documents exceeding the discovery limitations set forth above shall be permitted.

In consideration of the above, it is

ORDERED by Chairman Art Graham, as Prehearing Officer, that the Citizens' Motion to Set Discovery Procedure and Motion to Compel Discovery Responses, is granted. It is further

ORDERED that the Office of Public Counsel shall be limited to 400 interrogatories, including subparts. It is further

ORDERED that the Office of Public Counsel shall be limited to 400 requests for productions of documents, including subparts. It is further

ORDERED that AUF shall provide responses to all outstanding discovery within ten days from the date of this Order.

By ORDER of Chairman Art Graham, as Prehearing Officer, this 5th day of January, 2011.



ART GRAHAM
Chairman and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.