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Sent: Tuesday, September 06, 2011 2:43 PM
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Subject: 100330-WS Electronic Filing - Motion to Compel
Attachments: Citizens' Motion to Compel Aqua's Responses to Discovery.pdf

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 100330-WS

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.

c. Document being filed on behalf of Office of Public Counsel

d. There are a total of 6 pages.

e. The document attached for electronic filing is **Citizens' Motion to Compel Aqua's Responses to Discovery.**

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DOCUMENT NUMBER - DATE
06387 SEP -6 =
FPSC - COMMISSION CLERK

9/6/2011

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No.: 100330-WS

Filed: September 6, 2011

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CITIZENS' MOTION TO COMPEL AQUA'S RESPONSES TO DISCOVERY

Citizens, by and through undersigned counsel, hereby files their Motion to Compel Aqua Utilities Florida, Inc. (AUF or Aqua) to respond to Citizens' Sixth Request for Production of Documents (Nos. 132-172) and Citizens' Sixth Set of Interrogatories (Nos. 204-244), pursuant to Rule 1.380, Fla. R. of Civ. P., and as grounds states as follows:

1. Pursuant to Rule 1.280(b)(1), Fla. R. Civ. P., Aqua is required to provide responses to discovery that is reasonably calculated to lead to the discovery of admissible evidence. Aqua has filed general and specific objections to Citizen's discovery questions that are reasonably calculated to lead to the discovery of admissible evidence. Citizens Sixth Set of Discovery has been propounded on Aqua based on previously served discovery and pre-filed testimony in this matter. Citizens are not on a fishing expedition, but rather are in the process of refining our positions and pre-filed testimony on the protested issues in this case. Contrary to Aqua's contention, Citizens discovery is not an impermissible attempt to expand the issues through discovery, which is not even possible, but to obtain information that will allow us to fully litigate the protested issues in this case.

2. Aqua made a general objection to providing responses that they claimed are beyond the scope of the protest such as "legal expenses". First, discovery is permissible on matters that superficially relate to issues not directly protested if such

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discovery may lead to admissible evidence. Citizens are not proposing adjustments to expense categories that are not part of the protest. That does not mean that fluctuations in accounts that are part of a complete financial statement that ties to the books and records year over year are not relevant to the understanding and testing the Company's proposed representative financial statements (including pro forma adjustments or lack thereof). Therefore, Citizens are entitled to propound discovery that is broader than just the limited protested issues since a complete and consistent financial picture is relevant and necessary to set rates using accounting information that directly impacts the protested issues on a forward looking basis.

Second, the only impermissible expansion of discovery and related rate case expense are Aqua's baseless objections. Citizens discovery request are ordinary and necessary for the prosecution of our case. These baseless objections cause delay and run up rate case expense unnecessarily. Further, if discovery was limited in the manner Aqua contends in its objections, parties would be chilled from limiting protested issues for fear being artificially prevented from gathering relevant information to prosecute their case. This would lead to an unnecessary increase in rate case expense. Inappropriately utilizing the test year, an analytical tool used to help set rate base, revenue and expenses on an annual timeframe, as an artificial limitation on the discovery of financial information is inconsistent with the usual practice before the Commission.

3. Aqua should be compelled to respond to Citizens' discovery on "legal expense" (Interrogatories Nos. 209 and 212, and Production of Document Nos. 134, 159, 160, 161, 162). The interrogatories and production of documents are designed to obtain information that is related to and may impact affiliate transactions and/or rate case expense. Despite Aqua's implication that affiliate transactions are not affected because "legal expenses" are not allocated to AUF by its affiliates, Citizens assert that Aqua's parents' "legal expenses" are affected, which in turn impacts AUFs regulated affiliated expenses. In fact, in response to OPC Interrogatory 130, the Company stated that: "For 2009 and years forward, AUF is directly charging legal expenses to the legal

expense line to the specific system as identified and any shared legal expense invoice is charged to all systems by customer count allocation to the legal expense line as well.” In addition, MFR Schedule B-7 explains increases in O&M costs since the last rate case that are greater than CPI and customer growth. The Company’s explanation for the 244% increase in “legal expense” for WBR 1 is an “increase in legal costs and a change in the allocation of legal costs from Misc.” Based on the Company’s explanation that the costs are allocated, Citizens are entitled to discovery on “legal expenses” under affiliate costs.

4. Aqua should be compelled to respond to Citizen’s discovery request that ask for the “budget variances” (Interrogatories Nos. 219, 222, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240 and Production of Document Nos. 141, 142, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154). Citizens are not limited to asking for information limited to the 12 month historic test year period. The Commission has not traditionally held that budgets are only relevant for the test year period. Such a result would cripple OPC’s statutory representation and the Commission’s own ability to regulate in the public interest. Budgeting is a normal yearly process that companies use to prioritize spending, compare current revenue and expenses to budget, and for which companies create budgeting documents, like the variance reports and analysis. Thus, the year to year budgeting information requested can be used to test the reasonableness of the historical test year expenses which is admissible evidence. In addition, explanations regarding budget variances are specifically calculated to lead to admissible evidence including reasons why expenses might be deferred into or out of a given financial reporting period. Further, the Company has asked for pro forma adjustments that occur outside the historic test year even though they did not protest the test year. Thus, Aqua cannot now in good faith object to routine and ordinary discovery seeking information covering several years based on no protest of the test year. As Aqua is well aware, the information gleaned from the years prior to the requested test year or that have subsequently occurred may well lead to recommended adjustments for protested issues. Disagreement with a potential use of relevant information is not a legitimate objection to discovery.

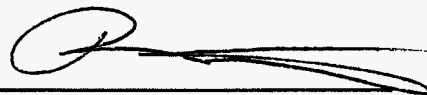
5. For Allocations- direct expenses- (Production of Documents Nos. 143) Aqua cannot arbitrarily determine that it will not provide a complete response to discovery questions. ACO is the Aqua Customer Service Organization and it a division of Aqua Services, Inc., which is an affiliate of the Company. Its "direct expense" may impact the recommended adjustment on affiliate costs.

6. For Miscellaneous expense (Interrogatories Nos. 210, 211, 215 and Production of Document Nos. 157, 165, 166, 167, 168) Aqua cannot arbitrarily limit its responses to discovery. The Company has shifted costs allocated from affiliates between accounts such as between Miscellaneous Expense and management fees and contractual services-other. Moreover, in response to OPC Interrogatory 130, the Company explained that part of the increase in test year management fees is due to shifting expenses from one account (miscellaneous expenses) to another (management fees). Citizens' seek information not only in the management fee account but in the accounts the Company claims are responsible for the increase to management fees. Even if these accounts no longer hold expenses from the affiliate, this is not adequate justification to refuse to provide the information about how the shifting of these expenses impacted test year management fees and other **shared** costs, especially when the Company uses this as an explanation justifying (as part of its burden of proof) the increase in management fees in the test year. Citizens have the right to discover information that will test the reasonableness of the level of test year affiliate charges including the causes of increases. Further, Citizens are entitled to discovery showing the accounts the Company claims are responsible for the increases, even if some of the accounts no longer hold affiliate expenses. Although Aqua states that it will provide a response, "to the extent a "Miscellaneous Expense" is allocated to AUF by its affiliates," Aqua should be compelled to provide full and complete responses, without limitations, because the impact on regulated AUF expenses and the substantial increase in affiliate charges to AUF regulated expenses are affected not only by the allocation of expenses but the movement of expenses from other expense accounts to the Management Fee account.

7. Based on Aqua's objections filed August 29, 2011, Citizens will be unduly prejudiced in filing its pre-filed testimony on September 22, 2011, unless Aqua is compelled to produce the discovery responses to OPC's Sixth Set of Production of Document and Interrogatories on the due date of September 9, 2011.

8. Citizens have contacted the other parties via email Friday, September 2, 2011. As of noon, September 6, 2011, Citizens have received a response back from Mr. Curtin who has no objection to the motion. Aqua stated that although they continue to believe that their specific objections are reasonable and justified they will need to review the motion before they can specifically articulate any opposition thereto. Citizens have had no response from Commission staff, Ms. Sullivan, or the Attorney General's Office as of the filing of this motion.

WHEREFORE, the Citizens hereby request that the Commission grant its Motion to Compel Aqua to provided full and complete answers to OPC's Sixth Set of Interrogatories and Production of Documents.



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CERTIFICATE OF SERVICE
DOCKET NO. 100330-WS

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Citizens' **Motion to Compel Aqua's Responses to Discovery** to Aqua Utilities Florida, Inc., has been furnished by E-mail and by U. S. Mail to the following parties this 6th day of September, 2011:

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