

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 060368-WS

Dated: March 12, 2007

**AQUA UTILITIES FLORIDA, INC.'S  
RESPONSE IN OPPOSITION TO OPC'S OBJECTION  
TO REQUEST FOR CONFIDENTIAL CLASSIFICATION**

Aqua Utilities Florida, Inc. ("AUF") by and through its undersigned counsel and pursuant to §367.156, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, hereby files this Response in Opposition to the Objection to AUF's Request for Confidential Classification filed by the Office of Public Counsel ("OPC") on March 5, 2007.<sup>1</sup> In support, AUF states as follows:

1. On February 23, 2007, AUF filed its Request for Confidential Classification of certain personnel information that reveals compensation paid to specified employees. As set forth in AUF's Request, the information for which AUF seeks confidential classification is protected by §367.156(3)(d), Florida Statutes (information concerning contractual data, which if disclosed would impair AUF's ability to contract for services on favorable terms) and §367.156(3)(e) (information relating to AUF's competitive interests, which if disclosed would impair the company's competitive businesses).

2. In its Request, AUF explained, under oath, that it must compete with other businesses to attract and retain personnel on terms that are favorable to its ratepayers; that

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<sup>1</sup> By filing this Response, AUF seeks to address OPC's Objection to its Request for Confidential Classification. To the extent that Staff views this filing as a reply which AUF must seek leave to file, AUF hereby requests leave for such filing.

disclosure of current salary levels, compensation philosophy and comparative salary information would impair its competitive business interests as well as its ability to attract and retain personnel for those positions on favorable terms; and that the information, if disclosed, would provide other employers with valuable information regarding AUF's internal salary costs and cost structure, giving such competitors an artificial advantage in their ability to compete with AUF for employee services and disadvantaging AUF and its ratepayers. AUF also explained that disclosure of the information would be an unwarranted intrusion into the privacy interests of the affected personnel.

3. OPC does not dispute AUF's factual averments. Rather, OPC asserts that AUF's Request should be denied because "Chapter 367.156(3)(f), Florida Statutes, expressly prohibits utilities from receiving proprietary confidential business classification for employee personnel information related to 'compensation, duties, qualifications or responsibilities.'" In fact, OPC is mistaken.

4. Section 367.156(3) describes confidential information generally as information that "is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations...." The statute then provides six examples of such information in subsections (a) through (f), but specifies that the term "proprietary confidential business information" is not limited to those examples:

(3) Proprietary confidential business information means information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an

order of a court or administrative body, or a private agreement that provides that the information will not be released to the public. *Proprietary business information includes, but is not limited to:*

- (a) Trade secrets.
- (b) Internal auditing controls and reports of internal auditors.
- (c) Security measures, systems, or procedures.
- (d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the utility or its affiliates to contract for goods or services on favorable terms.
- (e) Information relating to competitive interests, the disclosure of which would impair the competitive businesses of the provider of the information.
- (f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

§367.156(3), Florida Statutes (emphasis added).

5. Contrary to OPC’s assertion, nothing in the statute “expressly prohibits” confidential classification of any particular type of information. Rather, the statute merely provides a general definition of confidential information, followed by a non-exclusive list of six types of information that is *per se* confidential without further justification. Some – but not all – employee information is *per se* confidential pursuant to §367.156(3)(f). However, the fact that some employee information is not *per se* confidential does not automatically render it public information.

6. In fact, the Commission **has granted** confidential classification to employee compensation information. See, *e.g.*, Order No. PSC-04-0193-CFO-TP (personnel salary information); Order No. PSC-05-0626-PCO-EI (employee compensation); Order No. PSC-02-1755-CFO-GU (base pay and total compensation information); Order No. PSC-02-0050-PCO-EI (employee benefit and compensation information); Order No. PSC-03-1280-CFO-EI (compensation for particular employee positions); Order No. PSC-02-1612-PCO-GU (payroll

and incentive compensation information).<sup>2</sup> These recent orders, which were issued well after the orders cited by Public Counsel, demonstrate that employee compensation information, although not confidential *per se*, may be granted confidential classification where – as here – the utility demonstrates that its disclosure would impair the company’s efforts to contract for services on favorable terms, or impair its competitive business.

7. Further, the Commission has additional statutory authority to maintain the confidentiality of this information under §367.121(1)(g), which provides as follows:

(1) In the exercise of its jurisdiction, the commission shall have power:

(g) To exercise all judicial powers, issue all writs, and do all things necessary or convenient to the full and complete exercise of its jurisdiction and the enforcement of its orders and requirements.

8. In making its determination, the Commission also should consider the real and valid privacy concerns presented by publication of employee names and associated salaries. With identity theft on the rise, the Commission should avoid needlessly exposing this sensitive information, particularly when it will be freely available to Public Counsel for use in this case.

WHEREFORE AUF respectfully requests that the Commission grant its Request for Confidential Classification.

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<sup>2</sup> In each case, the Commission granted confidentiality pursuant to §366.093 or 364.183, Florida Statutes, both of which specify, in language identical to that found in §367.156(3)(f), that the term proprietary confidential business information “includes, but is not limited to . . . (f) Employee personnel information unrelated to compensation, duties, qualifications or responsibilities.”

Respectfully submitted this 12<sup>th</sup> day of March, 2007.

*s/ Marsha E. Rule*

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ATTORNEYS FOR AQUA UTILITIES  
FLORIDA, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice and attached Responses was served by electronic (email) delivery this 12<sup>th</sup> day of March, to the following:

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*s/ Marsha E. Rule*

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Marsha E. Rule