

BEFORE THE 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
ORDER NO. PSC-07-0592-PCO-WS
ISSUED: July 19, 2007

ORDER GRANTING IN PART AND DENYING IN PART
A PORTION OF OPC'S MOTION TO COMPEL DISCOVERY

I. OPC's Motion to Compel

On July 16, 2007, the Office of Public Counsel (OPC) filed a Motion to Compel Aqua Utilities Florida, Inc. (Aqua, AUF, or utility) to answer by July 20, 2007, all discovery requests propounded by OPC and by staff. The discovery requests propounded by OPC fall into two basic categories: (1) OPC discovery to which Aqua has specifically objected, but on which OPC has filed a pleading to dispute the grounds for the objection; and (2) OPC discovery to which Aqua has not specifically objected and which is overdue for response. OPC notes that its prefiled testimony is due on August 7, 2007, and that it is imperative that it receive the discovery responses requested from both OPC and staff in time to prepare its testimony.

OPC states that out of 183 OPC interrogatories, Aqua has not responded to 99 of them, and that "on average, the responses are more than 40 days overdue." Also, out of 174 OPC requests for production of documents (PODs), OPC states that Aqua has not responded to 91 of them, and that "on average, the responses are 33 days overdue." OPC notes that this does not include discovery requests propounded by staff, and that a substantial portion of Aqua's responses to those requests are also overdue. OPC states that it does not duplicate staff discovery to avoid redundancy. However, OPC relies on that discovery in drafting its testimony and some of the responses to staff discovery are overdue by more than one month.

II. Aqua's Response to Motion to Compel

On July 19, 2007, at staff counsel's suggestion, Aqua filed an expedited Response in Opposition to OPC's Motion to Compel (Response). In a footnote, Aqua states that it does not waive objections to the Commission's expedited consideration of OPC's Motion to Compel and the lack of opportunity to respond thereto. AUF states that its objections to OPC's discovery requests were made promptly and that OPC's decision to wait until its testimony was due before moving to resolve those objections and to compel other production is insufficient grounds to deny AUF a reasonable response period.

In its Response, Aqua points out that by filing specific objections to OPC Interrogatories 1, 2, 5, 6, 10, 12, 15, 16, 21(f), 25, 29, 31, 36, 40(a)-(d), 42, 97, 106, 110, 121, 129, 134 and 182,

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and to OPC PODs 4, 5, 17, 18, 26, 29, 30, 40, 42, 48, 128, 130, 133, 134, 143, 153, and 174, Aqua has timely responded to those discovery requests and that therefore its responses to those discovery requests are not overdue. Aqua states that OPC's Motion to Compel fails to address Aqua's specific objections and that the Commission should decline to consider OPC's Motion to Compel responses to those discovery requests until such time as OPC does so.

Aqua states that it has provided OPC with responses to a number of items to which it filed objections and that it intends to respond to all other items sought by OPC, and is diligently attempting to do so as soon as possible.

III. Ruling on Overdue Discovery Involving No Specific Objections

Aqua's responses to many outstanding discovery requests propounded in this docket to which it did not file a specific objection are overdue. A large number of such responses are considerably overdue. For all discovery requests propounded by OPC and by staff to which Aqua has not specifically objected and for which responses are overdue, OPC's Motion to Compel is granted in part and denied in part. To the extent possible, Aqua shall file its responses to all overdue discovery requests propounded by OPC and by staff to which it has not specifically objected by the close of business on July 20, 2007. If Aqua is unable to file all such responses by that date, the remaining uncontested responses shall be filed no later than the close of business on Monday, July 23, 2007.

A separate ruling on the remaining portion OPC's Motion to Compel regarding the discovery to which Aqua has specifically objected will be forthcoming.

Based on the foregoing, it is

ORDERED by the Commissioner Matthew M. Carter II, as Prehearing Officer, that OPC's Motion to Compel is granted in part and denied in part. The Motion to Compel is granted to the extent that Aqua shall file its responses to all overdue discovery requests propounded by OPC and by staff to which it has not objected by the close of business on July 20, 2007, to the extent possible. If Aqua is unable to file all such responses by that date, the remaining uncontested responses shall be filed no later than the close of business on Monday, July 23, 2007.

By ORDER of Commissioner Matthew M. Carter II, as Prehearing Officer, this 19th
day of July, 2007.



MATTHEW M. CARTER II
Commissioner and Prehearing Officer

(S E A L)

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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 25-22.060, 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.