

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Application for increase in water and 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 Filed: December 13, 2010 COMMISSION CLERK
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AQUA UTILITIES FLORIDA, INC.'S MOTION FOR TEMPORARY PROTECTIVE ORDER

Aqua Utilities Florida, Inc. ("AUF"), pursuant to Section 367.156, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, hereby moves the Commission, through the Prehearing Officer, for a temporary protective order to exempt from Section 119.07(1), Florida Statutes, certain confidential information in AUF's supplemental responses to the Office of Public Counsel's ("OPC's") First Request for Production of Documents ("RPODs") Nos. 64, 65, 66, 67, 68 and 82, and AUF's supplemental answers to OPC's First Set of Interrogatories ("ROGs") Nos. 74, 82 and 85. As grounds for its request, AUF states:

1. RPODs Nos. 64, 65, 66, 67 and 68. In RPODs Nos. 64 through 68, the OPC has requested proprietary executive and employee compensation information which AUF and its parent, Aqua America, Inc. ("Aqua"), treat as strictly confidential to prevent other utility companies from luring their executives and employees away with higher salaries, which leads to salary escalation that in turn would drive up rates. This information is also kept strictly confidential by AUF and Aqua in order to maintain morale and prevent internal disputes among employees that have similar positions but different salaries. This information is "proprietary confidential business information" and is exempt from Florida's Public Records Act pursuant to Sections 367.156(3)(d) and/or (3)(e), Florida Statutes. The First District Court of Appeal

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recently ruled that this type of competitively sensitive compensation information is proprietary confidential business information and should be protected from public disclosure. See *Florida Power & Light Company et al. v. Public Service Commission*, 31 So.3d 860 (Fla. 1st DCA 2010). Moreover, disclosure of this confidential employee compensation information would violate those employees' rights of privacy guaranteed by Article I, Section 23 of the Florida Constitution.

2. RPOD No. 82. In RPOD No. 82, OPC requests documents relating to "written operating plans that describe AUF's goals and objectives for the test year through 2012." The documents requested include strategic business plans, programs and activities the disclosure of which would impair AUF's competitive business position. This information is exempt from Florida's Public Records Act pursuant to Section 367.156(3)(e), Florida Statutes.

3. ROGs Nos. 74, 82 and 85. In ROGs Nos. 74 and 82, the OPC requests essentially the same compensation information that was requested in OPC's RPODs Nos. 64 through 68. As more fully explained above, that compensation information is treated by AUF and Aqua as strictly confidential. The information is "proprietary confidential business information" and is exempt from Florida's Public Records Act pursuant to Sections 367.156(3)(d) and/or (3)(e), Florida Statutes. See *Florida Power & Light Company et al. v. Public Service Commission*, *supra*. See also, *In re: Petition for rate increase by Peoples Gas Sys.*, Docket No. 020384-GU, Order No. PSC-02-1755-CFO-GU (Dec. 12, 2002) (granting request for confidential classification of information regarding Peoples' specific executive compensation and incentive compensation, including stock grants, pursuant to similar section 366.093(3), Florida Statutes).¹

¹ In *Peoples Gas System*, the Commission found that the information described by Peoples was "proprietary confidential business information, within the meaning of Sections 366.093(3) and 366.093(3)(e), Florida Statutes, for the reasons expressed by Peoples." *Id.* at *9. Peoples offered the

4. Rule 25-22.006(6)(c) specifically permits a utility to agree to allow OPC to inspect or take possession of information for the limited purpose of determining whether that information will be used in a proceeding, and to seek a temporary protective order to ensure the confidentiality of such material during that process.

5. Pursuant to Rule 25-22.006(6)(c), AUF agrees to make the requested documents available to OPC for inspection at the undersigned's offices in Tallahassee, Florida, and seeks a temporary protective order to ensure the confidentiality of such material related to that inspection. AUF will also make such documents available to Commission Staff for review upon issuance of the temporary protective order.

6. Rule 25-22.006(6)(c) prohibits OPC's retention of confidential information if OPC determines such information will not be used in a proceeding before the Commission. AUF requests that the Commission require OPC to promptly notify AUF if, after inspection, it intends to use AUF's confidential information at hearing so that AUF has fair opportunity to move for a full protective order under Rule 25-22.006(6)(a). *See Fla. Admin. Code R. 25-22.006(6)(c)* ("If

following reasons, which are equally applicable to the information requested by ROGs Nos. 74, 82 and 85:

Disclosure of [this] information would hamper the Company's ability to negotiate incentive compensation and stock grants with its executives and other management personnel [and] . . . would enable competing employers to meet or beat the incentive compensation and grants paid and awarded, and offered to be paid and awarded by the Company . . . to their executives and other managerial personnel. The result would be either loss of the executives and other managers, or increases in these types of compensation for the purpose of retaining their services, either of which would cause harm to the Company and its ratepayers. As such, the highlighted information [consisting of information identifying the Company's executive and incentive compensation] is "information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information." Section 366.093(3)(e), Florida Statutes.

Id. at *5-*6.

the information is to be used in a proceeding before the Commission, then the utility must file a specific request for a protective order under [Rule 25-22.006(6)](a) above.”).

7. AUF has been authorized by counsel for OPC to represent that OPC does not object to this request.

WHEREFORE, AUF respectfully requests that the Commission enter a temporary protective order protecting against public disclosure the confidential information provided by AUF in response to OPC’s First RPODs Nos. 64, 65, 66, 67, 68 and 82, and in response to OPC's First ROGs No. 74, 82 and 85.

Respectfully submitted this 13th day of December 2010, by:

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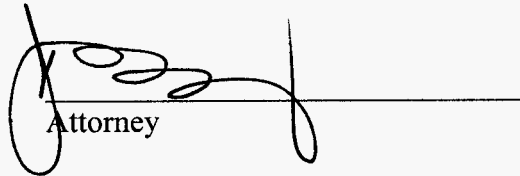
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was furnished by hand delivery this 13th day of December 2010, to the following:

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