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March 20, 2012

Via Hand-Delivery

Ms. Ann Cole, Director
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, FL 32399-0850

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COMMISSION
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Re: *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*

Dear Ms. Cole:

Enclosed for filing are the original and seven (7) copies of Aqua Utilities Florida, Inc.'s Motion For Reconsideration of Order No. PSC-12-0102-FOF-WS.

Please acknowledge receipt of this filing by stamping the extra copy of this letter "filed" and returning the copy to me. Thank you for your consideration and assistance.

Sincerely,

HOLLAND & KNIGHT LLP


D. Bruce May

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Enclosures

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Ann Cole
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cc: Ralph Jaeger, Esq.
Caroline Klancke, Esq.
Lisa Bennett, Esq.
J.R. Kelly, Esq.
Patricia Christensen, Esq.
Kenneth Curtin, Esq.
Joseph Richards, Esq.
Cecilia Bradley, Esq.
Troy Rendell
Kim Joyce, Esq.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for increase in water and)
wastewater rates in Alachua, Brevard, DeSoto,) DOCKET NO. 100330-WS
Hardee, Highlands, Lake, Lee, Marion, Orange,)
Palm Beach, Pasco, Polk, Putnam,) Dated: March 20, 2012
Seminole, Sumter, Volusia, and Washington)
Counties by Aqua Utilities Florida, Inc.)
_____)

**AQUA UTILITIES FLORIDA, INC.'S
MOTION FOR RECONSIDERATION OF ORDER NO. PSC-12-0102-FOF-WS**

Aqua Utilities Florida, Inc. ("AUF"), pursuant to Rule 25-22.060, Florida Administrative Code, hereby moves for reconsideration of those portions of Order No. PSC-12-0102--FOF-WS, issued March 5, 2012 ("Final Order"), which reflect what appear to be inadvertent oversights and scrivener's errors. Corrections to these oversights and scrivener's errors are not likely to change AUF's revenue requirements set forth in the Final Order but may result in fall-out changes to the calculated rates.

THE STANDARD FOR RECONSIDERATION

Rule 25-22.060(1), Florida Administrative Code, permits a party that is adversely affected by a Commission order to file a motion for reconsideration of the order. The standard for a motion for reconsideration is whether the motion identifies a mistake or inadvertence in the Commission's order, or a point of fact or law that the Commission overlooked or failed to consider in rendering its order. *See, e.g., Diamond Cab Co. of Miami v. King*, 146 So. 2d 889, 891 (Fla. 1962) (purpose of petition for reconsideration is to bring to an agency's attention a point of fact or law which it overlooked or failed to consider when it rendered its order); *see*

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also, Order No. PSC-98-1080-FOF-EI (Aug. 10, 1998) (standard for reconsideration met by showing there “may be mistake or inadvertence in the Order”).¹

As described below, the Final Order includes the following inadvertent oversights and scrivener’s errors that warrant reconsideration.

ARGUMENT

I. Rate Reduction for Expiration of Amortization of Prior Rate Case Expense

A. Corrections Needed Relating to the “Across-the-Board Decrease” for New Water Rate Band 2

On pages 163 and 164 of the Final Order, the Commission calculated the rate reductions to occur on April 1, 2013, when the four-year amortization of rate case expenses approved in Order No. PSC-09-0385-FOF-WS will expire. The unnumbered table appearing on page 164 of the Final Order sets forth the “Across-the-Board Decrease” percentages that would apply to the rates in AUF’s new rate bands starting on April 1, 2013 when the four-year amortization period expires.

In order to make these calculations, the Commission used the annual revenue requirements for each of the “Old” water and wastewater (“WW”) rate bands.² As shown on page 164, for “New” Water Rate Band 2, the Commission inadvertently used the revenue requirement for “Old” WW Rate Band 1 as the entry for “Old” Water Rate Band 4. To correct this error, the amount in the column labeled “Approved Revenue Req.” for “Old Water Rate

¹ This standard does not permit AUF to reargue matters that the Commission has already considered and decided against AUF in the Final Order. *See, e.g., In re: Petition by AT&T Commc’ns of the So. States, Inc.*, Docket No. 010345-TP, Order No. PSC-02-0200-FOF-TP (Feb. 15, 2002) (“In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered.”) (citing *Sherwood v. State*, 111 So. 2d 96 (Fla. 3d DCA 1959)); *see also, Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315 (Fla. 1974) (noting that it is not proper in a motion for reconsideration to ask the Commission to reexamine evidence presented and change its mind). To the extent any such claims of error are not raised herein, AUF specifically reserves the right to raise them on appeal.

² These revenue requirements are depicted in Schedule No. 2 on page 196 of the Final Order.

Band 4” should be \$4,807,804, instead of \$462,187.³ This matches the revenue requirement amount for Water Rate Band 4, Schedule 4-A, on page 224. When the correct amount is included, the “Across-the-Board Decrease” percentage for “New Rate Water Band 2” should be 2.33%, not 5.89%.

B. Additional Corrections Needed for the “Across-the-Board Decrease” for New Water Rate Bands 1 & 2, and New WW Rate Band 2

On page 164 of the Final Order, the Commission appears to have inadvertently failed to include the revenue requirements for the three new systems (Breeze Hill, Fairways, and Peace River) in the base revenue requirement for purposes of calculating the “Across-the-Board Decrease” percentages.

Under the cap band rate structure approved by the Commission, individual water and wastewater systems are grouped into “rate bands” within which rates are uniform. To establish uniform rates within a rate band, the revenue requirements for all individual systems within a band are totaled to create an aggregate revenue requirement for the band. Rates are then set uniformly for all systems within the rate band based upon that aggregated revenue requirement. The annual rate case expense amortization amounts were included in calculating the aggregate revenue requirement for each new rate band. Thus, the revenue requirement amounts for all systems within each rate band must be included in the calculations of each band’s “Across-the-Board Decrease” percentage, and then included in Tables 25 and 26. As set forth below, it appears that this was not done in the Final Order:

- For New Water Rate Band 1, the approved revenue requirement for the Fairways System was not included in the table on page 164, even though the Fairways System is part of that rate band.

³ The amount of \$462,187 should correspond with “New WW Rate Band 1.”

- For New Water Rate Band 2, the approved revenue requirements for the Breeze Hill and the Peace River Systems were not included in the table on page 164, even though those systems are part of New Water Band 2.
- For New WW Band 2 the approved revenue requirement for the Breeze Hill, Fairways and Peace River Systems were not included in the table on page 164 even though those three WW systems are all part of that WW rate band.

In order to properly calculate the “Across-the-Board Decrease” percentages, revenue requirements for these three systems (Breeze Hill, Fairways and Peace River) must be included.

Depicted below is the unnumbered table on page 164 of the Final Order with the above-noted corrections highlighted:

From Order No. PSC-12-0102-FOF-WS
Table on page 164 with corrections for wrong revenue requirements and missing systems

		Ann'l RCE Amort	RAF Factor	Grossed-up RCE	In Order Wrong Approved Rev Rqmnt	In Order Wrong Acrs-Brd Decrease	Crrctn1 Approved Rev Rqmnt	Crrctn1 Acrs-Brd Decrease	Crrctn2 Approved Rev Rqmnt	Crrctn2 Acrs-Brd Decrease
New Water 1	Old Water 1	82,218	0.955	86,092	2,556,973	3.37%	2,556,973		2,556,973	
	Fairways	-								
		<u>82,218</u>		<u>86,092</u>	<u>2,556,973</u>	<u>3.37%</u>	<u>2,556,973</u>	<u>3.37%</u>	<u>2,734,659</u>	<u>3.15%</u>
New Water 2	Old Water 2	36,565	0.955	38,288	1,474,868		1,474,868		1,474,868	
	Old Water 3	22,333	0.955	23,385	916,643		916,643		916,643	
	Old Water 4	101,592	0.955	106,379	462,187		4,807,804		4,807,804	
	Breeze Hill	-	0.955	-	-		-		62,926	
	Peace River	-	0.955	-	-		-		109,438	
		<u>160,490</u>		<u>168,052</u>	<u>2,853,698</u>	<u>5.89%</u>	<u>7,199,315</u>	<u>2.33%</u>	<u>7,371,679</u>	<u>2.28%</u>
New WW 1	Old WW 1	14,619	0.955	15,308			462,187	3.31%	462,187	3.31%
New WW 2	Old WW 2	67,035	0.955	70,194			3,572,176		3,572,176	
	Old WW 3	8,243	0.955	8,631			894,944		894,944	
	Breeze Hill	-	0.955	-			-		63,181	
	Fairways	-	0.955	-			-		181,253	
	Peace River	-	0.955	-			-		95,217	
		<u>75,278</u>		<u>78,825</u>	<u>4,467,120</u>	<u>1.76%</u>	<u>4,467,120</u>	<u>1.76%</u>	<u>4,806,771</u>	<u>1.64%</u>
New WW 3	Old WW 4	4,086	0.955	4,279	495,850	0.86%	495,850	0.86%	495,850	0.86%

II. Regulatory Asset for the Interim Deferral

To minimize the impact of the interim rate increase on its customers, AUF requested, and the Commission granted, permission to defer recovery of a portion of the interim rate increase to which AUF was entitled. The Commission also recognized that the deferred interim water and wastewater revenues are “regulatory assets” to be recovered by AUF over a two year period once final rates were determined. See Order No. PSC-10-0707-FOF-WS. In keeping with that ruling, the Final Order on page 170 states that after the two-year regulatory asset amortization period expires, “rates shall be reduced across-the-board to remove the respective grossed-up annual amortization of the regulatory assets.” However, as explained below, the Final Order inadvertently failed to apply the across-the-board rate reduction to all systems within each respective band.

The Commission has approved a cap band rate structure for AUF whereby individual water and wastewater systems have been grouped in “rate bands” within which rates are uniform. The revenue requirements for all systems within a band are totaled to create an overall revenue requirement for the band. Rates are then set uniformly for all systems within the band based upon that aggregated revenue requirement. Because the revenue requirements of all individual systems are aggregated within the band, any reductions to those rates within the band must be applied across-the-board to all systems within a rate band to avoid rate differentiation within a band. This policy was made clear in AUF’s last rate case in which the Commission specifically discussed how “pass-throughs” should be handled within the cap band rate structure:

. . . for service areas that are part of a rate band, pass-throughs must be shared by all facilities within the band. . . . The rates should not be differentiated once they have been combined for ratemaking purposes. . . . [F]or systems that are part of an approved rate band, pass-throughs shall be shared by all systems within each respective band.

Order No. PSC-09-0385-FOF-WS at 156 (emphasis added).

The Final Order inadvertently failed to apply the rate reduction associated with the expiration of the two-year regulatory asset amortization to all systems within “New Water Rate Band 2” and “New WW Rate Band 2.” As a result, unless corrected, systems within those rate bands will have different rates at the end of the two-year amortization period. As shown below, this will have the unintended consequence of effectively dismantling the cap band rate structure established in the Final Order.

A. New Water Rate Band 2

With respect to “New Water Rate Band 2”, the Commission determined that this band should consist of “Old” Water Rate Bands 2, 3 and 4, along with the Breeze Hill and Peace River Water Systems. All of the water systems in New Water Rate Band 2, including Breeze Hill and Peace River, have the same final rates as reflected on Schedules 5-A on pages 211, 219, 227, 235, and 251 of the Final Order. Further, on Schedules 5-A on pages 211 and 219 of the Final Order, the column for “2-year Rate Reduction” indicates that there would be no “2-year Rate Reduction” for Old Water Rate Bands 2 and 3. However, Schedules 5-A on pages 227, 235 and 251 of the Final Order have three completely different amounts for the “2-year Rate Reduction” for Old Water Rate Band 4, Breeze Hill, and Peace River. Therefore, if the “2-year Rate Reduction” were implemented as indicated in the Final Order, New Water Rate Band 2 would have four separate and different rates: one for the systems in “Old” Rate Bands 2 and 3; one for the systems in “Old” Rate Band 4; one for the Breeze Hill system; and, one for the Peace River system. To avoid this unintended consequence, and to ensure that rates are not “differentiated” within a rate band, the “2-year Rate Reduction” should be applied across-the-board to all systems within New Water Rate Band 2.

B. New WW Rate Band 2

With respect to “New WW Band 2”, the Commission determined that this band should consist of the “Old” WW Rate Bands 2 and 3, along with the Breeze Hill, Fairways and Peace River WW Systems. All of the systems in New Wastewater Band 2, including Breeze Hill, Fairways and Peace River have the same final rates as reflected on Schedules 5-B on pages 212, 220, 236, 244, and 252 of the Final Order. Further, on the rate Schedules 5-B, on pages 212, 236, 244, and 252, the column for “2-year Rate Reduction” indicates that there would be no rate reduction in two years for systems in Old WW Rate Band 2, Breeze Hill, Fairways and Peace River. However, Schedule 5-B on page 220 indicates that there would be a rate reduction in two years for systems in “Old” WW Rate Band 3. Therefore, if the “2-year Rate Reduction” were implemented as indicated in the Final Order, New WW Rate Band 2 would have two separate and different rates: one for the systems in “Old” WW Rate Bands 2, Breeze Hill, Fairways, and Peace River; and one for the systems in “Old” Rate Band 3. To avoid this unintended consequence, and to ensure that rates are not “differentiated” within a rate band, the “2-year Rate Reduction” should be applied across-the-board to all systems within New WW Rate Band 2.

To further clarify the appropriate rate reductions at the expiration of the 2-year regulatory asset amortization period, AUF respectfully requests that Tables 25 and 26 be updated to address the two-year rate reductions related to the expiration of the regulatory asset amortization period in a manner similar to that on page 164 for the 4-Year rate case expense reductions, and consistent with the methodology approved in AUF’s last rate case in Order No. PSC-09-0385-FOF-WS.

III. Scrivener's Error in Interim Refund Calculation

In its Final Order, the Commission calculated the Interim Refund and stated:

Adjustments made in the rate case test period that do not relate to the period that interim rates are in effect shall be removed. To establish the proper refund amount, we calculated a revised revenue requirement for the interim period using the same data used to establish final rates. Rate case expense was excluded because it was not an actual expense during the interim collection period.

Final Order at 167. However, in performing these calculations, it has been discovered that the Commission inadvertently removed rate case expense that had been previously approved by the Commission in AUF's last rate case. *See* Order No. PSC-09-0385-FOF-WS at 96-103. Because these previously approved rate case expense amounts were "actual expenses" incurred during the interim collection period, the plain language of the Final Order prevents their removal.

This inadvertent error can be seen when one reviews the total amount of \$727,528 on Table 27 in the "RAF Grossed RCE" column. Final Order at 168. The amount of approved annual rate case expense in the Final Order is \$352,261 (\$1,409,043 divided by 4). Final Order at 133-134. Therefore, the correct total RAF Grossed RCE amount on Table 27 is \$368,860 (based upon the approved \$352,261 annual rate case expense). This inadvertent error overstates the Commission's refund calculation by approximately \$358,668.

In Table 27, the Commission erroneously removed \$342,528 of prior rate case expense, which the Commission expressly approved in AUF's last rate case and is an appropriate expense item during the interim collection period. The total amount of the rate case expense amortization approved by the Commission in AUF's prior rate case was \$375,402 (or \$342,528 excluding Chuluota). Order No. PSC-09-0385-FOF-WS at 103. The error must be corrected; otherwise, the Final Order would be confiscatory and prevent AUF from recovering rate case expense approved by the Commission in the last rate case.

IV. PAA Refund Calculation Error

On pages 168 and 169 of the Final Order, the Commission described the PAA Refund calculation as follows: “To establish the proper refund amount, our staff calculated a revised revenue requirement for this period using the same data to establish final rates. . . . The incremental rate case expense above that which was embedded in the PAA rates was excluded because it was not an actual expense during the collection period.” (Emphasis added.) However, upon review of the Commission workpapers provided to the parties after the issuance of the Final Order, it was discovered that the entire amount of rate case expense was removed, and not just the incremental portion above the amount embedded in the PAA rates. Thus, the language in the Final Order is inconsistent with the actual PAA Refund calculation performed. The language in the Final Order should be corrected to accurately describe the actual calculations performed.

V. Inadvertent Repression Adjustment to New Water Rate Band 2

On page 137 of the Final Order, the Commission stated that “no repression is expected to occur in water Rate Band 2, and, as a result, no repression will be applied to that rate band in Table 24.” However, for New Water Rate Band 2, Table 24 on page 148 of the Final Order shows that the Commission repressed 7,900 kgals along with a repression expense adjustment of \$15,622 (reduction). Thus, AUF respectfully requests that the inconsistencies appearing on page 137 and in Table 24 on page 148 of the Final Order be reconciled.

VI. Post-Repression Revenue Requirement

On page 149 of the Final Order, the Commission stated that: “The appropriate post-repression revenue requirement, excluding miscellaneous service charges, is \$10,063,856 for the water system and \$5,764,808 for the wastewater system.” However, the Commission workpapers that were provided to the parties suggest that the number - \$10,063,856 - was used as

a total water revenue requirement from which \$271,177 was subtracted in order to arrive at a post-repression water revenue requirement of \$9,835,161 “excluding” miscellaneous charges.

Similarly, the post-repression wastewater revenue requirement of \$5,764,808 is described on page 149 of the Final Order as “excluding” miscellaneous revenue. Again, however, Staff’s workpapers suggest that the number - \$5,764,808 - was a “total” revenue requirement from which \$89,040 was subtracted in order to arrive at a wastewater revenue requirement of \$5,675,768 “excluding” miscellaneous charges. AUF respectfully requests that these inconsistencies relating to the post-repression water and wastewater revenue requirements be reconciled.

VII. Miscellaneous Typographical Errors

In addition to the foregoing, AUF respectfully brings to the Commission’s attention the following miscellaneous typographical errors appearing in the Final Order.:

- Page 93. The last sentence at the top of page 93 of the Final Order states: “As a result, water revenues shall be reduced by \$110,012 and wastewater revenue shall be reduced by \$58,306.” Those amounts are incorrect. The sentence should read: “As a result, water revenues shall be reduced by \$26,527 and wastewater revenue shall be reduced by \$141,791.” While the respective revenue amounts for water and wastewater are incorrect, the total overall reduction is correct. Thus, these appear to be mere typographical errors that have no impact on the ultimate revenue requirements or rates.
- Table 26. On page 166 of the Final Order (Table 26), for New WW Band 2 the BFC and rate reduction for the 8” meter size appears to have been inadvertently

copied and inserted for the 10” meter size. With respect to the 10” meter size, the BFC should be \$3,953.70 and the rate reduction should be \$69.76.

- Schedule 5-A. On page 203 of the Final Order, with respect to Schedule 5-A for the columns pertaining to “Commission Approved Final” and “4-year Rate Reduction” in Old Water Rate Band 1, the BFC amounts in the Irrigation Section differ from those in the Residential, General Service and Multi-Family Section. These amounts should be the same. The correct BFC amounts for Residential, General Service, Multi-Family, and Irrigation are set forth on Table 25 on page 165 of the Final Order.
- Schedule 5-B for WW Band 1. On page 204, with respect to Schedule 5-B for the column “Commission Approved Final” for WW Rate Band 1, the BFC amounts for the General Service class and the Flat Rate for Valencia Terrace are actually the “4-year Rate Reduction” amounts. The correct “Commission Approved Final” General Service BFC and Flat Rate amounts are therefore missing from the Final Order. Also, for those same lines, the amounts in the column “4-year Rate Reduction” are incorrect. The correct numbers for this table appear to be in the Commission workpaper file named “Wastewater Band 1.XLS” which was provided to all the parties.

POSITIONS OF OTHER PARTIES

In accordance with Rule 28-106.204(3), Florida Administrative Code, the undersigned contacted counsel for each party in this docket to determine whether they object to this motion. AUF is authorized to represent that counsel for the Office of Public Counsel, YES Companies, LLC, Pasco County, and the Florida Attorney General have no objection to AUF filing a motion

for reconsideration to address “clerical” errors, but reserve the right file a response based on the actual content of AUF’s motion.

WHEREFORE, AUF respectfully requests that the Commission (1) reconsider the Final Order and make the appropriate corrections as set forth herein, (2) suspend the 90 day refund period requirement until such time as the Commission votes on this motion for reconsideration, (3) direct that the 90 day refund period begin upon issuance of the Commission’s order on reconsideration, and (4) grant such other relief as the Commission deems appropriate.

Respectfully submitted this 20th day of March, 2012.

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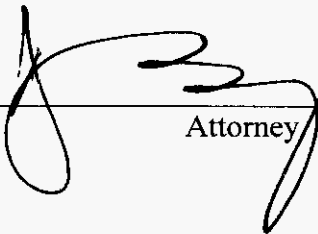
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Attorneys for Aqua Utilities Florida, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished by U.S. Mail this 20th day of March 2012 to: Ralph Jaeger and Caroline Klancke, Office of General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850; J.R. Kelly, Patricia Christensen, Office of Public Counsel, c/o The Florida Legislature, 111 W Madison St, Room 812, Tallahassee, FL 32399-1400; Joseph D. Richards, Senior Assistant County Attorney, Pasco County Attorney's Office, 8731 Citizens Drive, Suite 340, New Port Richey, FL 34654; Kenneth M. Curtin, Adams and Reese LLP, 150 Second Avenue North, Suite 1700, St. Petersburg, Florida 33701; Cecilia Bradley, Senior Assistant Attorney General, Office of the Attorney General, The Capitol - PL01, Tallahassee, FL 32399-1050.



Attorney