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Subject: Aqua Utilities Florida, Inc. Rate Action (Dkt. No. 100330-WS) - Memorandum of Law in Opposition to Rate Increase Application
Attachments: YES MEMO.pdf
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 YES Companies, LLC d/b/a Arredondo Farms

d. There is a total of 23 pages

e. The document attached for electronic filing is YES Companies, LLC d/b/a Arredondo Farms' Memorandum of Law in Opposition to Aqua Utilities Florida, Inc.'s Rate Increase Application

Thank you for your cooperation and attention to this matter.

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4/11/2011

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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.

Docket No. 100330-WS

Filed: April 11, 2011

**INTERVENER YES COMPANIES, LLC D/B/A ARREDONDO
FARMS' MEMORANDUM IN OPPOSITION TO AQUA
UTILITIES FLORIDA, INC.'S RATE INCREASE APPLICATION**

Intervener, YES Companies, LLC d/b/a Arredondo Farms ("Yes"), by and through its undersigned counsel, files this Memorandum in Opposition to Petitioner, Aqua Utilities Florida, Inc.'s, Rate Increase Application ("Memorandum"), and states:

I. Introduction and Background

On June 15, 2010, Aqua informed the Florida Public Service Commission ("PSC") of its intention to submit an application for general rate relief for its water and wastewater systems in Alachua, Brevard, DeSoto, Hardee, Highlands, Lake, Lee, Marion, Orange, Palm Beach, Pasco, Polk, Putnam, Seminole, Sumter, Volusia, and Washington Counties ("Rate Case"). As to Alachua County, the systems operated by Aqua serve Arredondo Farms Mobile Home Park ("Park"). The Park consists of 441 mobile home lots and common elements. Aqua supplies the water and wastewater to all of the mobile home lots and common areas in the Park.

Yes is the owner of the Park. Yes leases to residents who own their own home located on a lot ("Lot Leases") and to residents who lease both a home and a lot ("Lot and Home Leases"). The Park is designed and intended to provide quality, affordable housing to residents of Alachua County in need of such affordable housing. As such, the Park provides affordable housing to young families, military personnel, elderly residents, and others on fixed incomes. In fact, Yes,

through efficient management practices, has even in these trying financial times kept rent on Lot Leases at around \$277.00/month and rent on Lot and Home Leases at around \$638.00/month.

Yes's policy is to be a responsible corporate citizen and provide both affordable housing and affordable, high-quality services, such as water and wastewater services, that are consistent with the standards and norms of the local community. Further, Yes provides recreational and other facilities to its residents such as a clubhouse, laundry room, swimming pool, outdoor recreational area, a children's playground, and other common areas.

The current Rate Case is Aqua's second rate application in less than three years. In Aqua's 2008 rate increase, Docket No. 080121-WS, even though Aqua's quality of service was found to be "marginal"¹, Aqua was permitted an increase subject to a monitoring plan to ensure that Aqua's product and service improved ("Monitoring Plan"). This Monitoring Plan focused on Aqua's failure to properly handle customer complaints, Aqua's inadequate call center process for complaints, and incorrect meter reading and billing. *See* Order No. PSC- 10-0297-PAA-WS, issued May 10, 2010 at p.1. The Monitoring Plan has been continued beyond its original six month term due to Aqua's failure to comply with the spirit of the Monitoring Plan and continuing complaints and concerns over Aqua's quality of service.

The Office of Public Counsel ("OPC") in its Response to Aqua's Summary Report and Current Status of Aqua's Quality of Service ("OPC Response") highlights that Aqua's service is unsatisfactory as to all of Aqua's systems and fails to comply with the spirit of the Monitoring Plan. As to the Park it is evident, as highlighted below, that Aqua continues to provide substandard water quality and service that is inconsistent with the standards and norms of the community. Aqua's poor performance is not only detrimental to the living conditions and quality of life of the Park's residents, but is unconscionable in light of Aqua's extraordinarily high rates.

¹ Except as to the Chulota system, which was deemed to be "unsatisfactory," and denied a rate increase altogether.

Further, the current increase being sought only highlights the inequities being suffered by Yes's residents. Consequently, Aqua's current rate application, regardless of any decision as to any other system maintained by Aqua, should be denied in its entirety as to Yes's Park unless and until Aqua can demonstrate that its water quality and service is of a quality consistent with the standards and norms of the local community and within the intent of the PSC's Monitoring Plan.

II. Legal Standard for Rate Increases

Florida law provides for procedures for changing utility rates. These procedures include accounting issues such as the costs to provide the services² and issues of the reasonableness of rates and the value and quality of the service provided. The guidelines for approval of rate increases are provided in Section 367.081, Fla.Stat., which states in pertinent part:

367.081 Rates; procedure for fixing and changing.--

(1) Except as provided in subsection (4) or subsection (6), a utility may only charge rates and charges that have been approved by the commission.

(2)(a)1. The commission shall, either upon request or upon its own motion, fix rates which are ***just, reasonable, compensatory, and not unfairly discriminatory***. In every such proceeding, ***the commission shall consider the value and quality of the service*** and the cost of providing the service.... [emphasis added].

In fact, Florida courts have consistently recognized the broad legislative grant of authority that these statutes confer and the considerable license the PSC enjoys as a result of this delegation. *Citizens of the State of Florida v. PSC*, 425 So.2d 534, 540 (Fla. 1982). Moreover, Chapter 25 of the Florida Administrative Code also elaborates upon the PSC's authority in evaluating the value and quality of service by holding:

25-30.433 Rate Case Proceedings. (1) ***The Commission in every rate case shall make a determination of the quality of service provided by the utility. This shall be derived from an evaluation of three separate components of water and***

² On most accounting issues, unless otherwise specified, Yes will repeat the objections to the rate increase based upon OPC's findings and conclusions. However, Yes also maintains the right to specifically address any accounting issues directly related to its Park.

wastewater utility operations: quality of utility's product (water and wastewater); operational conditions of utility's plant and facilities; and the utility's attempt to address customer satisfaction. Sanitary surveys, outstanding citations, violations and consent orders on file with the Department of Environmental Protection (DEP) and county health departments or lack thereof over the preceding 3-year period shall also be considered. DEP and county health department officials' testimony concerning quality of service as well as the testimony of utility's customers shall be considered. [Emphasis added].

Therefore, in order to award a rate increase, the PSC must take into consideration not only the reasonableness of an increase, but also the value and quality of the service provided. If the value or quality is deemed insufficient, the increase can be denied or reduced. *See United Tel. Co. v. Mayo*, 215 So.2d 609 (Fla. 1968)(PSC may decrease rate for poor service); *Gulf Power Co. v. Wilson*, 597 So.2d 270 (Fla. 1992) (PSC may decrease rate due to inefficiency in management; *North Fla. Water Co. v. Bevis*, 302 So.2d 129, 130 (Fla. 1974)(fixing of rates involves a balancing of the public's interest in withholding rate relief due to inadequate service and utility's interest in obtaining rate increases to finance necessary improvement programs).

Consequently, if justice or the reasonableness of the increase requested weighs against granting the increase or the value or quality of the service provided is unsatisfactory, the PSC is empowered to deny the increase. Further, the PSC not only has the power to deny the increase in its totality, but may also "carve out" any unsatisfactory system from an increase while still permitting the increase to proceed as to other systems if the PSC finds that the quality of water provided is not comparable to community standards and norms. *See Order No. 10463*, issued December 18, 1981, in Docket No. 800594-WS.

III. The Value and Quality of Aqua's Water and Service is Substandard and Aqua's Proposed Rate Increase is Unjust and Unreasonable

The value and quality of service provided by Aqua to the Park is unsatisfactory and not consistent with the standards and norms of the local community. Therefore, any rate increase

should be denied. The quality of Aqua's potable water, Aqua's service, and Aqua's attempt to address customer grievences all demonstrate that Aqua has not only failed to meet its statutory obligations, but also has failed meet the spirit of the Monitoring Plan that was a condition set by the PSC in granting Aqua's prior rate increase. Further, Aqua's current requested rate increase is unjust, unreasonable, and unaffordable especially in light of the fixed income residents served by Aqua.

A. Poor and Unsatisfactory Potable Water Quality

Aqua's potable water is not only substandard and produces a product with a bad appearance, odor, and taste, but also produces a product which tends to degrade plumbing fixtures and appliances. Numerous residents due to the water's bad appearance, odor, and taste have purchased water filtration systems, used bottled water, or boil their water. For many of the Park's fixed income residents this is an unsustainable financial burden. Residents have also complained of physical ailments, such as stomach aches and dental issues. Numerous residents have provided Complaint Forms and Resident Interviews documenting their grievances which are being filed contemporaneously, but separately, with this Memorandum as **Exhibit "A."** Further, residents have taken pictures of the bad appearance of the water to document their rationale and fear of drinking the water (see Figure No. 1).

Figure No. 1

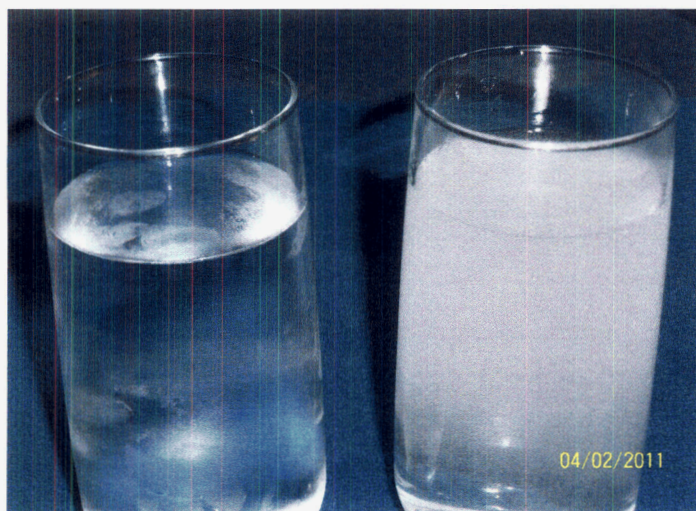


Figure No. 1 is a picture taken by a resident of the physical appearance of Aqua's water. The glass on the left comes from bottled water while the glass on the right is tap water provided by Aqua. The pictures were taken on April 2, 2011.

Further, Aqua's water has damaged and continues to damage plumbing fixtures and appliances. Aqua merely pumps raw water from two nearby wells which are connected to a automated chlorination device. Aqua does not treat the water in any other manner. As a result, the water provided at the Park at times contains high levels of sediment which clog and destroy plumbing fixtures and appliances. Further, the water provided by Aqua also contains high levels of calcium carbonate which, when heated (such as in a hot water heater or in small appliances such as coffee makers) solidifies and destroys plumbing fixtures and appliances. Once again, this produces an unsustainable financial burden on the Park's residents that own their own home and on Yes who rents homes to residents.³ Numerous residents due to this poor water quality have canceled leases or removed their home from the Park.

As to sediment in the water, the following pictures from the Park demonstrate the type, size, and nature of the sediment that infiltrates and damages plumbing fixtures and appliances throughout the Park (see Figure Nos. 2-5).

Figure No. 2



Figure No. 3



Figure No. 2 is of sediment collected in a toilet flow valve which damaged. The sediment in the value caused the toilet to run and waste water causing a large bill from Aqua. Figure No. 3 demonstrates the size of the sediment.

³ Yes has attempted to not increase rates on its fixed income residents due to the extra costs associated with Aqua's poor water, but Yes cannot indefinitely fail to raise rates and will eventually be compelled to pass these extra costs to its residents.

Figure No. 4



Figure 5



Figure Nos. 4 and 5 are pictures of the sediment clogging water supply lines in two separate homes. Once again, the sediment caused leaks which resulted in a large bill from Aqua. When discovered, Yes had to replace the clogged and destroyed lines.

As to calcium buildup, the following pictures are just a few examples of damaged fixtures related to calcification of heating elements and hot water heaters throughout the Park (see Figures Nos. 6-9).

Figure No. 6



Figure No. 7

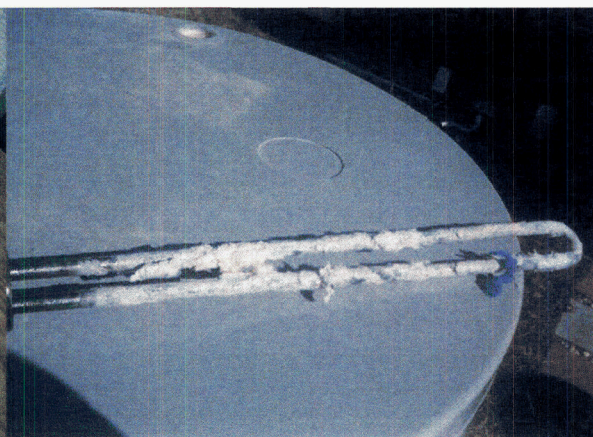


Figure No. 6 is of both a new heating element and an old element that has been corroded with calcium due to Aqua's poor quality water. Figure No. 7 is a picture of a heating element that was placed into a hot water heater four weeks prior and had to be replaced due to calcification.

Figure No. 8

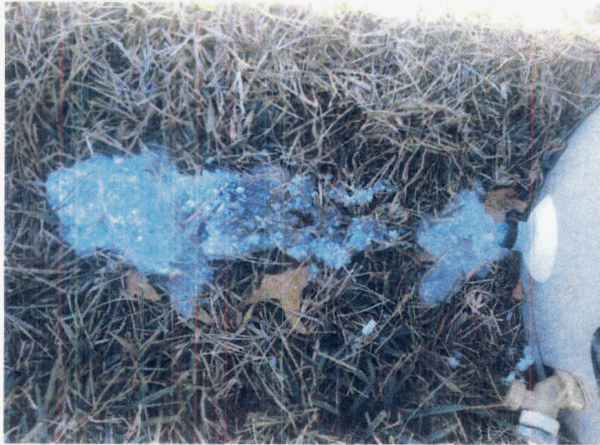


Figure No. 9



Figures Nos. 8 and 9 demonstrate the same hot water heater that had to be replaced due to calcification buildup. The crystallization of the water makes it impossible to flush the hot water heaters, but rather they must be discarded and replaced.

The calcification issues have been an ongoing concern and continue up until the present. In fact, as pictured below, recently, a resident complained of low water pressure and Yes discovered a relatively new hot water heater was inundated with calcium buildup (see Figure Nos. 10-13).

Figure No. 10



Figure No. 11



Figures Nos.10 and 11 are pictures taken on March 30, 2011 of an incident wherein yet another relatively new hot water heater was destroyed by Aqua's poor quality water and calcification of the water when heated.

Figure No. 12

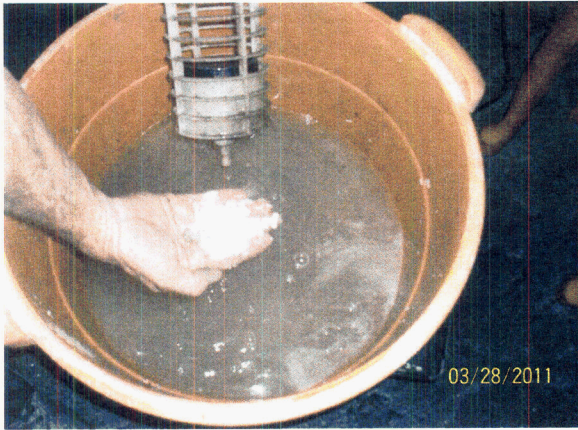
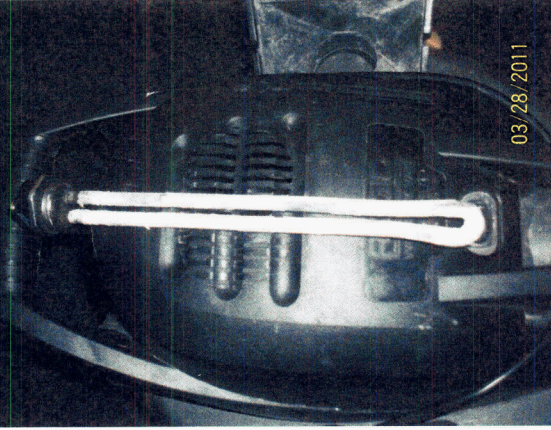


Figure No. 13



Figures Nos. 12 and 13 are pictures taken on March 28, 2011 of yet another home wherein a relatively new hot water heater element and hot water heater were corroded with calcium deposits.

The poor water quality is self-evident by the problems it causes. Moreover, Aqua's water quality is inconsistent with the water quality provided to residents who live outside of the Park in the local community. A sister company of Yes owns a mobile home community by the name of Hidden Oaks that is a mere 4.75 miles from the Park and contains a similar number of residents. Despite the similarities in the communities, the difference in the number and type of plumbing related repairs is startling. In a three month period between January-March 2011, the Park had 77 plumbing related repairs while Hidden Oaks only had 18. Further, the plumbing related issues at Hidden Oaks did not concern issues related to sedimentation or calcification of fixtures while at the Park, the vast majority of the repair orders concerned such issues.⁴ The only difference between the parks is that Hidden Oaks receives potable water from Gainesville Regional Utilities ("GRU"), not Aqua. It is interesting to note that GRU pumps water from the same Florida Aquifer, but also treats its water with lime softening, recarbonation, filtration, fluoridation, and

⁴ These repair orders only cover homes owned by Yes. Yes not only owns and leases homes, but also rents lots to residents who own their own home. The repair orders referenced above are related solely to homes owned by Yes. Yes has also received complaints from private owners of similar problems, but the repairs to these private homes are not Yes's responsibility.

disinfection. Meanwhile, Aqua merely pumps water from the Aquifer, chlorinates the water, and then supplies the water to the Park's residents.

Consequently, Aqua's water quality has not only not improved since the last rate increase and in spite of the Monitoring Plan, but has significantly decreased. The water quality is not only causing physical damage to plumbing fixtures and appliances, but is inconsistent with the quality of water provided to other residents of the local community. This is in spite of the fact that GRU's water rates are significantly lower than those of Aqua (see Section III(E) on affordability). As a result, Aqua's rate increase should be denied as to the Park unless and until Aqua can remediate and cure the lack of quality water provided to its customers at the Park.

B. Poor Quality Service – Excessive Leaks

Aqua's service is also inadequate due to excessive water leaks directly related to Aqua's poor water and Aqua's failure to address leaks. The excessive sedimentation and calcification due to Aqua's poor quality water is the major reasons for a high frequency of leaks at the Park resulting in higher usage bills. This is especially true with running toilets clogged with sediment that slowly, but continuously run water. This type of leak is hard to detect by residents until after they receive a large bill from Aqua.

This has resulted in residents that experience leaks and, thereafter, receive high bills to leave the Park as they are unable to pay Aqua's excessive bills. Not only have tenants of a Yes home left the Park, but also owners of their own home have incurred the expense of removing their home from the Park due to large bills due to leaks caused by Aqua's poor quality water. As a result, Aqua has experienced an excessive delinquency rate in relation to customers at the Park. This delinquency rate is compounded by Aqua's high tier rate for usage over 10,000 gallons which amounts to over \$20/1,000 gallons. Residents have had exorbitant water bills ranging

from \$300.00 to \$1,900.00 due to leaks. This is in a Park providing “affordable housing” where rent on a Lot Lease averages only \$277.00/month and rent on Lot and Home Leases average only \$638.00/month. In fact, one of the reasons for Aqua’s alleged rate increase is to seek reimbursement for lost profits due to an excessive delinquency rate. This delinquency rate is directly due, in large part, to Aqua’s poor water quality which causes leaks, excessive bills (which customers on fixed incomes cannot afford) and which often forces residents of the Park to abandon their homes and not pay Aqua or the Park.

Aqua admits it has no proactive leak prevention program and does not even attempt to identify customers who have excessive water usage that is indicative of a leak.⁵ Yes has requested Aqua assist Yes in identifying potential leaks by providing a list of high water users or a copy of the meter readings so Yes can identify such users, inspect the subject home, and identify and repair any leak. Aqua has refused to provide this information. At the most, Aqua has agreed to a billing insert which would merely inform customers to be aware of possible leaks.

Further, Aqua states they have a leak adjustment policy on a “case by case basis” wherein one month, and only one month, may be adjusted by giving a credit of 50% of the excessive bill.⁶ Not only is this policy for only one month and solely at the discretion of Aqua, but Aqua insists that the leak must be repaired and Aqua provided with a copy of the repair bill. In reality, Yes knows of only one leak credit issued by Aqua and this was for only 25% of the difference, not 50%. In reality, Aqua threatens residents with turning off the water unless bills are paid and in some instances where the water was turned off, Aqua has refused to turn on the water so the leak can be repaired and a credit issued. In numerous instances, Yes has been forced to pay a resident’s bill in order to keep the water on and to prevent the resident from abandoning the Park.

⁵ See letter from dated February 2, 2011 from Aqua in response to the OPC’s Sixteenth Data Request.

⁶ See letter from dated February 2, 2011 from Aqua in response to the OPC’s Sixteenth Data Request.

As a result of Aqua's refusal to institute any leak prevention program, Yes has been forced at its expense to institute a program entitled "Gold Key Service Process." In this process, Yes retains maintenance technicians on a monthly basis to inspect every Yes owned home because of Aqua's poor service. This inspection and maintenance process requires the following:

1. Reading water meter and making sure it is not running;
2. If meter is running, check to see if the resident is using water;
3. Take the meter reading and write it down for tracking to find high users;
4. Compare meter read to prior month read and if detect high usage alert resident;
5. Check for leaks in kitchen and bathrooms sinks;
6. Check shower for leaks;
7. Check toilet for leaks;
8. Leave Yes water leak flyer about water usage and leaks;
9. Check meter again and make sure not spinning;
10. If any issues uncovered write up Service Form;
11. If problem is fixable on the spot then it is fixed; and,
12. All major problems are prioritized and major leaks take priority for repair.

The major issues uncovered by Yes's monthly Gold Key Service Process are as follows: issues of low pressure which is a result of clogged shower heads, supply lines, faucets, and the like; hot water heater failures due to heating element calcification; and, leaks due to clogged and failing toilet valves, supply lines, faucets, and the like due to sedimentation and calcification. These issues are all the result of the poor quality water provided by Aqua.

Aqua has failed to provide quality service despite the Monitoring Plan. Aqua has failed to take any proactive policy to prevent excessive customer bills due to leaks (which, for the most part, are the result of Aqua's own poor water). Incredibly, Aqua now seeks a rate increase in part due to a delinquency rate caused by its own failure to cure and identify leaks. Aqua has no right to a rate increase for this and it should be denied as to the Park.

C. Poor Quality Service – Billing Errors

Aqua's service is also inadequate in that Aqua continually submits incorrect bills to residents. These billing errors are the result of Aqua's meter equipment and are compounded by the fact that Aqua has no review or supervision to detect obvious meter errors. In fact only after numerous billing cycles does Aqua attempt to "back charge" residents for meter errors and this produces huge bills to residents which they cannot afford.

Aqua's water meters are largely to blame. Aqua's water meters, as demonstrated in Figure No. 14, contain three parts: 1) a dial measuring the water by a turbine system; 2) a battery operated read mechanism that allegedly digitizes the physical dial read; and, 3) a transmitter attached to the digitalized reader that sends a signal to an Aqua employee who drives through the Park collecting meter reads. The billing errors are the result of Aqua's meters and failure to monitor its meter reads for obvious errors.

Figure No. 14



Figure No. 14 demonstrates a sample of Aqua's meters at the Park and the components of the meter.

Many residents have received bills that include "back charges" spanning months and in one case over 19 months into the past, resulting in enormous bills multiples above the normal monthly amount and at a rate that is unaffordable for the Park's fixed income residents. These billing errors are all the result of Aqua's faulty equipment and are multiplied by Aqua's lack of any oversight of obvious billing errors. For example, Aqua failed to bill several residents for

wastewater charges for nearly a year and then attempted to back charge the residents for the full amount all at once. Moreover, numerous residents had zero usage for months and then Aqua charged the residents for all of their usage in one pay period. Other residents were double billed for the same usage period. Chart No. 1 below summarizes some of the most recent billing errors.

CHART NO. 1: AQUA RECENT BILLING ERRORS		
Lot No.	Resident	Description of Billing Error & Aqua's Response
2321	Monica Thomas	Back charged in October 2010 for over \$900.00 in sewer charges that Aqua negligently failed to bill. Refused to place resident on payment plan and resident's two children moved into their grandmother's house. Only after resident borrowed money from her family to pay the bill was the water turned back on.
46	Eugene Davis	Back charged in September 2010 for over \$900.00 in sewer charges that Aqua negligently failed to bill. Aqua agreed to a payment plan of \$50.00 a month for 17 months.
35	Katherine Smith	Back charged in February 2011 for over \$800.00 in water charges and 33,800 gallons. Aqua was only charging resident for base fees over a 12 month period in that Aqua's meter was not registering any usage for 12 months. Aqua has agreed to set up payment plan.
97	Justin Houlker	Back charged in October 2010 for over \$900.00 in that Aqua negligently failed to bill resident for months. Aqua has agreed to a monthly payment plan of \$38.00 until bill is paid in full.
2407	William & Margaret Wright	Back charged in February 2011 for over \$2,088.00 in that Aqua negligently failed to bill residents for a portion of their water and wastewater usage for over 19 months. Aqua has agreed to a payment plan of \$25.00 a month for 84 months. Thereafter, resident's next bill was for 5,600 gallons with no leaks which appears to be excessive use and residents not capable of using such an amount of water.
2621	Joyce Helm	Back charged \$424.97 for 8 months of alleged water usage for a time period in which she had paid her bills. After complaining to an Aqua supervisor at a public hearing in this Rate Case, Aqua, removed the charge with no explanation for the error.
2205	MaryAnn Walker	Back charged \$6,143.07 for alleged use of 222,500 gallons in December 2010 due to fact that Aqua showed the unit "inactive" even though resident was in unit. Alleged water usage of 222,500 gallons was impossible and eventually Aqua billed an estimated amount of \$671.87 which resident could not afford and abandoned the home.

Moreover, a telling factor related to all of these recent incidents of billing errors is the fact that Aqua, except for one resident who complained at a public meeting in this Rate Case, failed in any manner to admit any fault and at the most agreed to a payment plan for the full amount of the alleged bill. In one horrible example, Aqua turned off a single mother's water until the resident borrowed funds from a relative to pay Aqua's bill.

The other telling factor is the total lack of any proactive review by Aqua of their billing to uncover glaring errors. The fact that a resident is charged for water services, but not wastewater services for over a year should have easily been recognized by Aqua. The same is true for the failure of Aqua to recognize that for over a year they were only charging the base water rate and no usage charges to some residents. Further, even more distressing, Aqua in assessing back charges improperly billed residents at the highest rate per gallon as if the water had all been dispensed during a one month period instead of over a multiple months. Copies of Billing Error Statements and Interviews with residents who are victims of recent billing errors and the supporting documentation for such billing errors are being filed contemporaneously, but separately with this Memorandum, as **Exhibit "B."**

Consequently, in spite of the Monitoring Plan Aqua's service has significantly deteriorated. Aqua fails to monitor its billing to detect even the simplest of errors. Further, Aqua, when confronted with billing errors of its own making, has responded completely inappropriately. In those cases, it has either turned off a resident's water to obtain payment or entered into long and onerous payment plans with residents. At the same time Aqua compounds its own billing errors by back-charging residents at the highest usage rate. As a result, Aqua's rate increase should be denied as to the Park.

D. Poor Quality Service – General Items

In general, Aqua's service is woefully inadequate. Aqua consistently fails to timely and courteously respond to residents' concerns and issues. Park residents who have billing, metering, leaks, or other issues are instructed by Aqua to contact Aqua's 1-877 customer service number. Aqua supervisors and onsite personnel have refused to talk to residents and only refer them to the 1-877 number. When calling this 1-877 number, Park residents are then greeted by rude, arrogant, and condescending customer service representatives.

Further, Aqua on numerous occasions has shut off all water supplies and flushed wells without any notice to Yes or the residents. For example on February 8, 2011, Aqua provided absolutely no notice to the Park before flushing a well on site and causing an entire playground to flood while families were trying to use the facilities (see Figures Nos. 15-16).

Figure No. 15



Figure No. 16

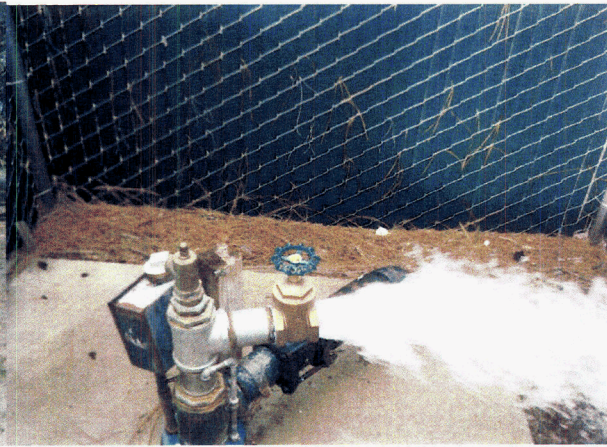


Figure No. 15 depicts approximately 3-4 inches of water inundating the Park's common area playground after Aqua flushed a well at the Park with no notice. Figure No. 16 depicts the open well which was left open by Aqua with no supervision as the area flooded.

Additionally, on January 27, 2011, Aqua provided no notice to residents that water to the Park would be shut off for approximately one (1) full hour. This is a time when many residents are

running washing machines, dishwashers, and taking showers. Aqua has offered no explanation for this shutdown and no rationale for failing to inform residents of the impending shutdown.

Once again, these items of general customer service are solely within the control of Aqua. Yet Aqua has not seen fit to improve their service despite the Monitoring Plan and Aqua's current request for a rate increase. As a result, Aqua's rate increase should be denied as to the Park.

E. Aqua's Rates are Unjust, Unreasonable, and Unaffordable

In 2009, as part of Aqua's last rate increase application, residents of the Park saw an almost 100% increase in their rates. By Yes's calculations, the rate increase sought by Aqua in this Rate Case will result in an additional 10% increase for the Park's residents who use an average of 5,000 gallons/month. Chart No. 2 depicts the rate history for an average resident in the Park using 5000 gallons per month:

CHART NO. 2: RATE INCREASES FOR 5,000 GALLON AVERAGE CUSTOMER				
Year	Water Rate	Sewer Rate	Total	Percentage Increase
2008	27.02	34.31	61.33	
2009	48.47	77.02	118.48	93%
2010	52.26	70.99	123.25	4%
2011	50.11	85.52	135.63	10%

In contrast, Gainesville Regional Utilities ("GRU") 2010 rate for the average 5,000 gallon/month customer equates to \$17.70 for water and \$32.95 for wastewater for a total bill of only \$50.65/month. In other words, Aqua's water rate is 2.95 times more than GRU's rate and its wastewater rate is 2.15 times more. Aqua's rates are entirely unjust, unreasonable, and unaffordable at their current level let alone at the higher amounts as requested by Aqua in this Rate Case. Park residents now pay an average of \$125.00/month for a household of 2-4 people. Senior citizens living alone and using less than 1,500 gallons/month face monthly bills of

approximately \$72.00. Moreover, due to the low quality of water, the majority of the residents are forced to purchase bottled water at a cost of \$35-60 per month. The average rent in the Park for a home site is only \$277.00/month and the average rent in the Park for a home and site is only \$638.00/month. As a result, a monthly bill of \$125.00 per family represents 45% of their monthly lot rent or 20% of their lot and home rent. As such residents are simply priced out of the housing market not due to rent charges, but rather due to Aqua's utility charges.

Moreover, the high cost of water and wastewater services has forced Yes to close the common area laundry facilities. The Park's laundry facility is charged a \$409.25 facility charge and a combined water/sewer rate of \$16.95 per 1,000 gallons for water. Therefore, if the facility uses 10,000 gallons monthly the charge would be \$578.75/month. Unfortunately, Yes is unable to break even at this rate and closed the facility, forcing the Park's residents to go offsite to perform this basic daily task.

The high cost and unaffordability of Aqua's rates coupled with the low water quality and inferior service makes Aqua's current rates, let alone the rate increase sought by Aqua, simply unjust and unreasonable. As a result, Aqua's rate increase should be denied as to the Park.

IV. The Application of the Law to Facts Supports a Denial of Aqua's Rate Increase as to the Park

Yes has demonstrated that the quality of the Aqua's water and Aqua's customer service are not only severely lacking, but are inferior and unsatisfactory as compared to the surrounding community. Aqua's rates for such an inferior product and service are not only astronomically higher than those in the surrounding community, but also are unconscionable, unjust, and unreasonable when considering Aqua is requesting yet another rate increase without improving its quality or service. As a result, Aqua has failed to meet its obligations under Florida law to qualify for any rate increase as to the Park.

In determining the quality of the water product , the PSC must not only consider whether any consent orders or infractions are pending, but must also consider the input of customers regarding the water quality. *See* Order No. 09-0385-FOF-WS, issued May 9, 2009, in Docket No. 080121-WS. Customer complaints regarding low water pressure, odor, sediment, unpleasant taste, excessive amounts of foreign substances, corrosion of piping, and non-potability of the water must be considered. *Id.* at 10. These issues may partially form the basis for a denial or reduction of rate increase. *Id.* at 21-22.

Further, a rate increase is improper when the quality of a water product is insufficient. In *Island Services, Inc. v. PSC*, DOAH Case No. 80-1176, issued August 6, 1980, in Docket No. 790857-W, under facts similar to the instant Rate Case, the Florida Division of Administrative Hearings held that a utility was not even permitted a return on its equity, let alone a rate increase and reasoned that:

The utility has not properly maintained this system and water (sic) taste, smell and clarity are generally poor. The customers also experience frequent periods of very low water pressure....Thus, overall service is unsatisfactory and must be improved before the Petitioner is allowed to receive a return on its investment. See Section 367.081(2), Florida Statutes, which requires the Commission to consider service in setting rates.

Id. at para. 5.

Additionally, in Order No. PSC-96-1320-FOF-WS, issued October 30, 1996, in Docket No. 950495-WS, the PSC reduced a utility's requested increase when it determined that the utility was dispensing water of inadequate and inferior quality and held:

Customers from several regions in the state complained that the water is not potable. Others shared physical or medical problems that apparently occurred from the water. Customers from numerous service areas complained about the strength or odor from chlorine disinfection. Customers also reported a sulfur or rotten egg odor. Some customers have purchased home purifying systems or filters because of odor, taste, or other reasons. Others stated that they purchase bottled water to drink.

A number of customers in numerous service areas complained of water that stained tile and fixtures, and clogged pipes. Others spoke of corrosion and premature replacement of plumbing fixtures, and in some cases complete repiping of homes due to leaks caused by corrosive water. Some customers found the water pressure to be unacceptably low, while others stated that it was too high. A few customers complained of sewage odors, overflows, or backups.

Id. at 31. *See also* Order No. 11760, issued June 29, 1987, in Docket No. 850646-SU (where the PSC found that utility's service was only marginally satisfactory and reduced the utility's requested increase).

The PSC must also evaluate a utility's attempts to address customer grievances and satisfaction generally when determining whether an increase is justified. The PSC should consider customer testimony, such as what is contained in this Memorandum, as well as the results of customer service hearings in deciding Aqua's requested rate increase. *See* Order No. 09-0385-FOF-WS, issued May 9, 2009, in Docket No. 080121-WS. Complaints pertaining to billing issues, metering problems, and incorrect charges are relevant. *Id.* at 17. Also relevant is the difficulty or ease by which customers can have complaints heard, the ability to access call centers, and the ability to speak directly with supervisors. *Id.* at 18-21. Again, these issues can contribute to a decision to reduce or deny a rate increase. *Id.* at 21. For example, in Order No. PSC-96-1320-FOF-WS, issued October 30, 1996, in Docket No. 950495-WS, *supra*, the PSC again gave credence to customer service issues when reducing the amount of an increase. In fact, the PSC noted:

Customers expressed concern over the utility's failure to notify its customers of outages, or to notify them of the potential health or safety problems that might result from the outages. There was also general dissatisfaction with the utility's response to service calls or questions. Customers reported that the utility was slow to respond, or did not properly respond to water quality problems such as sedimentation, discoloration, or excessive lead levels. Incidents were reported where the company damaged customers' property and would not repair the damage. The utility took a long time to answer requests to have tests conducted.

Customers presented a variety of complaints with billing. Two customers had problems with their meter readings. They either had not seen anyone read their meter, or could not obtain meter reading data from the utility. Others cited billing problems where SSU was not responsive, or gave an answer that did not aid in resolving the problem.

Additionally, in *Island Services, Inc. v. PSC*, DOAH Case No. 80-1176, issued August 6, 1980, in Docket 790857-W, *supra*, the Florida Division of Administrative Hearings relied not only on water quality issues in restricting the utility's rate increase, but also on the presence of customer service issues. *Id.* at para. 5.

The PSC also has the authority to determine that the quality of water or service in one community being serviced is insufficient as compared to another local community serviced by different facility and deny or reduce an increase as to the unsatisfactory facility. In Order No. 10463, issued December 18, 1981, in Docket No. 800594-WS, the PSC considered a utility's request for an increase where the quality of water provided was inadequate in one location but satisfactory in others. The PSC determined that the quality of the water furnished depended on the customer's location with some customers receiving satisfactory water and others not receiving water of a comparable quality.

The customers receiving satisfactory water received water treated by a central lime-softening plant while the unsatisfactory water was only pumped from a well, chlorinated, and conveyed to the residents without treatment. As a result, the customers with unsatisfactory water received water with excessive chlorine and hydrogen sulfide and repeatedly complained about the quality, taste, and odor. *Id.* at 19-21. Ultimately, in light of these water quality issues, no rate increase was allowed as to the customers receiving unsatisfactory water and the rate increase was only effective as to the customers receiving satisfactory water until improvements were completed to bring the water quality to the level of those in the surrounding area. *Id.* at 30-33.

The instant case involving the Park is similar in that the surrounding community, including the similarly situated park of Hidden Oaks, is receiving substantially different water quality which does not contain sedimentary deposits, does not calcify plumbing fixtures and appliances, and is overall of a higher quality, appearance, and taste. Further, the community outside of the Park is not only receiving a higher quality water, but is also paying substantially less than Aqua's customers. Moreover, the lack of service in the form of leaks, billing errors, and a general lack of customer attentiveness all mitigate against imposing any increase on the Park.

V. Conclusion

In conclusion, Section 367.081, Fla.Stat., and Rule 25-30.433, Fla.Admin.C., require the PSC to make a determination regarding the value and quality of the service provided and to only award rates which are just and reasonable given the totality of the circumstances. In Aqua's last rate increase application, the PSC found that Aqua's quality of service as to the Park was "marginal" and issued Aqua a reduced increase as a result of that deficient service and compelled Aqua to submit to a Monitoring Plan to ensure that Aqua improved the quality of its product and service. Aqua failed as to the Park to improve its product or service and has now moved for yet another rate increase.⁷ In fact, Aqua's water product, service, and affordability as to the Park have decreased since the last rate action. Based on the foregoing, Aqua's rate increase should be denied as to the Park.

⁷ Yes only represents the Park at issue and makes no determination as to whether Aqua has improved the quality of its product or service as to any other facility subject to this Rate Action.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing has been furnished via email (where provided below) and U.S. Mail on April 11, 2011 to: **Kimberley A. Joyce, Esq.**, Aqua American, Inc., 762 West Lancaster Avenue, Bryn Mawr, PA 19010 kajoyce@aquaamerica.com; **D. Bruce May, Jr., Esq.**, P.O. Box 810, Tallahassee, Florida 32302-0810 (bruce.may@hklaw.com); **J.R. Kelly, Esq. and Patty Christensen, Esq.**, Office of Public Counsel, c/o Florida Legislature, 111 W. Madison Street, Room 812, Tallahassee, Florida 32399-1400 (Kelly.jr@leg.state.fl.us) and Christensen.patty@leg.state.fl.us; **Robert Lloyd**, P.O. Box 63, Captiva, Florida 33924 (Rlloyd1@aol.com); **William Coakley**, 5934 Lake Osborne Drive, Lantana, Florida 33461 (wdco@comcast.net); **David L. Bussey**, 4948 Britni Way, Zephyrhills, Florida 33541 (dbussey@hotmail.com); **Kelly Sullivan, Esq.**, 570 Osprey Lakes Circle, Chuluota, FL 32766-6658 (kelly.sullivan.woods@gmail.com).

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