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COMMISSION  
CLERK

October 18, 2011

*Via Hand-Delivery*

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

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 in the above-referenced docket are the originals and seven (7) copies each of the following:

1. Aqua Utilities Florida, Inc.'s Motion to Strike YES Companies, LLC d/b/a Arredondo Farms' Unauthorized Rebuttal to Response to Motion for Investigation, and Motion to Treat Motion for Investigation as Request to Initiate Customer Complaint Resolution Process; and, **07638-11**

2. Aqua Utilities Florida, Inc.'s Motion to Quash Subpoena and Notice of Deposition of Steve Grisham served by YES Companies, LLC d/b/a Arredondo Farms. **07639-11**

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**07638 OCT 18 =**  
FPSC-COMMISSION CLERK

Ann Cole  
October 18, 2011  
Page 2

Please acknowledge receipt of these filings 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, Jr.

DBM:kjg

Enclosures

cc: Caroline Klancke  
Ralph Jaeger  
Lisa Bennett  
Larry Harris  
Patricia Christensen  
Kenneth Curtin  
David Bernstein  
Andrew McBride  
Joseph Richards  
Cecilia Bradley  
Troy Rendell  
Kim Joyce

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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.	<b>Docket No. 100330-WS</b>  <b>Filed: October 18, 2011</b>
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**AQUA UTILITIES FLORIDA, INC.'S MOTION TO STRIKE YES COMPANIES, LCC D/B/A ARREDONDO FARMS' UNAUTHORIZED REBUTTAL TO RESPONSE TO MOTION FOR INVESTIGATION, AND MOTION TO TREAT MOTION FOR INVESTIGATION AS REQUEST TO INITIATE CUSTOMER COMPLAINT RESOLUTION PROCESS**

Pursuant to Rule 28-106.204, Florida Administrative Code ("F.A.C."), and Rule 1.140(f), Florida Rules of Civil Procedure, Aqua Utilities Florida, Inc. ("AUF"), respectfully files this Motion to Strike the clearly unauthorized Rebuttal that YES Companies, LLC d/b/a Arredondo Farms ("YES") filed on October 12, 2011, following AUF's October 4, 2011 Verified Response ("AUF's Verified Response") to YES's Motion for Investigation, Entry of Cease and Desist Order and Entry of Order to Show Cause that YES filed on September 27, 2011 ("YES Motion"). Because the YES Motion contains no request for a hearing, and because AUF's Verified Response shows YES is not entitled to any relief on the grounds alleged therein, AUF asserts this Commission has authority to and should deny the YES Motion outright. However, should the Commission determine the YES Motion warrants any further consideration, AUF respectfully moves the Commission to treat the YES Motion as a request to initiate the Commission's customer complaint resolution process, either as outlined in Rule 25-22.032 or Rule 25-22.036, F.A.C. AUF states in support as follows:

**BACKGROUND**

On September 27, 2011, YES filed the YES Motion in AUF's pending rate case. The YES Motion did not request a hearing, but rather, implored the Commission to initiate an investigation and enter cease and desist and show cause orders based on actions AUF allegedly

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took against three AUF customers in response to their testimony at the Gainesville Customer Hearing on October 12, 2011.

On October 4, 2011, AUF filed a Verified Response to the YES Motion explaining, through the Affidavit of Susan Chambers, AUF's National Customer Service Manager that the facts alleged in the YES Motion were both incomplete and inaccurate. Accordingly, AUF requested that this Commission deny the YES Motion as wholly lacking of necessary factual and legal support.

On October 12, 2011, YES then filed a Rebuttal to AUF's Verified Response. YES's Rebuttal cites no legal authority to support YES's filing of such a pleading. Moreover, YES's Rebuttal raises multiple factual issues never even mentioned in the YES Motion, and treats AUF as somehow interfering with YES's right to a hearing that YES has never requested.

Accordingly, AUF submits this Motion to Strike YES's unauthorized Rebuttal and its impermissible contents. Additionally, should this Commission determine that, based on the YES Motion and AUF's Verified Response, the YES Motion requires further consideration, AUF respectfully moves this Commission to treat the YES Motion as what it really is—a request to initiate the Commission's customer complaint process, either as outlined in Rule 25-22.032 or Rule 25-22.036, F.A.C.

### **MOTION TO STRIKE**

YES's "Verified Rebuttal to [AUF's] Verified Response" to the YES Motion is nothing more than a response to a response. Because YES's pleading is not authorized under any Uniform or Commission Rule, it should be stricken. This Commission has repeatedly explained in no uncertain terms that its Rules do not provide for the filing of "a response to a response." *In re: Commission review of numeric conservation goals*, Docket No. 080407-EG, Ord. No. PSC-09-0467-PCO-EG, 3 & n.1 (June 30, 2009) (refusing to rely on unauthorized reply to a

response, noting that “our Rules do not contemplate a response to a response or a reply to a response”).

In addition to its clearly unauthorized nature, the scope of YES’s Verified Rebuttal far exceeds both AUF’s Verified Response and the initial YES Motion. Even where a reply is permitted (which, here, it is not), it is entirely inappropriate to introduce new issues to which the respondent has no vehicle by which to respond. To consider such a pleading would necessarily prejudice AUF by depriving AUF of the opportunity to fully respond to YES’s allegations.

Accordingly, pursuant to Commission precedent and Rule 1.140(f), Fla. R. Civ. P., AUF respectfully requests the YES Verified Rebuttal and its impermissible contents to be stricken as an unauthorized pleading.

**MOTION, IN THE ALTERNATIVE, TO TREAT THE YES MOTION  
AS A REQUEST TO INITIATE THE COMMISSION’S  
CUSTOMER COMPLAINT PROCESS**

AUF maintains, as more fully explained in its Response to the YES Motion, that the Commission should deny the YES Motion outright. However, in the event that the Commission determines further review is required, AUF alternatively moves the Commission to treat the YES Motion as a request to initiate the customer complaint process, as set forth either in Rule 25-22.032 or Rule 25-22.036, F.A.C., and to remove the matter from decision in the pending rate case.

The Commission’s Rules set forth straightforward processes for customers to seek resolution of complaints against regulated utilities. Rule 25-22.032, F.A.C., sets forth a detailed process for seeking the Commission’s assistance in resolving a dispute between a regulated utility and its customers “as quickly, effectively and inexpensively as possible.” Rule 25-22.032(1), F.A.C. This process includes the opportunity for a “General Commission Staff Complaint Investigation,” like that requested in the YES Motion, which could result in

Commission Staff action ordering the company to submit a response in explanation. *See* Rule 25-022.032(6), F.A.C. This process also contemplates further review, including the filing of a formal complaint with the Commission pursuant to Rule 25-22.036, in the event Staff's proposed resolution is not agreeable to the customer, or if ultimately determined necessary to finally resolve the dispute. *See* Rule 25-022.032(7)-(8)(h), F.A.C.

This process, starting with a Commission investigation, is precisely the relief which the YES Motion seeks. However, no legal authority exists which permits an intervenor to hijack a utility's rate case as the forum to formally litigate a customer complaint. By comparison, where a customer complaint is brought to the Commission's attention in the course of a rate case, there is precedent for the Commission to address the complaint outside of the rate case using the Commission's adopted procedures for resolving complaints. *See, e.g., In re: Application for a rate increase by GTE Fla. Inc.*, Docket Nos. 920188-TL, 920939-TL, Ord. No. PSC-92-1469-FOF-TL, at 11 (Dec. 17, 1992) (noting that the Commission "opened a second complaint docket . . . to resolve an alleged service problem . . . brought to our attention" in the course of a rate case); *In re: Petition of railroads in the State of Florida for authority to increase rates and charges under Ex Parte 357*, Docket No. 790225-RR, Ord. No. 9264, at 6-7 (Feb. 26, 1980) (explaining that the Commission's ability to address customer concerns raised during the course of a rate case is limited to resolving the issues presented in the rate case).

Moreover, there are sound policy reasons not to formally litigate customer complaints in the midst of a rate case. First, permitting one customer to use a utility's rate case to litigate his or her individual customer complaint would mean that all customers are at risk of paying the cost of litigating that one customer's specific complaint. Here, YES appears to request that the Commission hold a mini-action within AUF's rate case to resolve three complaints specific to residents of one mobile home park. Permitting YES to litigate these complaints in this manner

will necessarily drive up rate case expense. YES cannot justify its request that would potentially cause all customers to shoulder the cost of litigating YES's specific disputes with the company.

Second, the Commission's customer complaint procedures set forth a clear path which, if a hearing ultimately proves necessary, takes more time than the pending rate case can possibly permit.<sup>1</sup> The rate case is nearing its end. There is insufficient time to conduct meaningful discovery and fully litigate YES's requested mini-action in the month remaining before the rate case goes to final hearing.<sup>2</sup> Thus, even if YES's mini-action could be shoehorned into the rate case, AUF would effectively be deprived of its right to discover the true facts and fully litigate the very serious allegations made in the YES Motion.

Third, the purpose of Rule 25-22.032 is to create a process by which alternative dispute resolution is attempted prior to full litigation of a customer complaint. To permit a customer to bypass these efficient and economical measures, and instead fully and immediately litigate those complaints in the context of a pending utility rate case, is antithetical both to the goal to minimize rate case expense and to the Rule which contemplates that alternative methods to litigation will first be attempted.

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<sup>1</sup> Even if the Commission determines the YES Motion should be treated as a complaint to initiate the Commission's formal complaint process pursuant to Rule 25-22.036, thereby bypassing the investigatory aspect and other informal resolution processes set forth in Rule 25-22.032, there still would be insufficient time for that complaint to be fully litigated to resolution within the rate case. In the event the Commission determines the YES Motion does constitute a formal complaint, AUF should be permitted to formally respond to that complaint following the opening of the new docket, and then to conduct the full range of discovery ordinarily available to parties to such a proceeding in order to defend against YES's factual allegations, prior to any hearing on that complaint.

<sup>2</sup> The claims made in the YES Motion contain factual assertions which AUF vehemently denies. In addition to disputing the factual allegations made in the YES Motion for the reasons explained in AUF's Verified Response to the YES Motion, AUF also disputes the additional facts submitted in YES's unauthorized Rebuttal. AUF stands ready to submit, at the appropriate time, an Affidavit from AUF field technician Steven Grisham directly refuting each and every claim in Ms. Mallory Starling's YES Rebuttal Affidavit. If YES is permitted to litigate these complaints, then AUF must be given the opportunity to test, through a proper period of discovery, all of the factual disputes which clearly exist.

Nor does the sole authority the YES Motion cites—Order No. PSC-96-0624-FOF-WS—support litigating the YES Motion within AUF’s rate case. In the case YES cites, the allegations were of misconduct aimed at influencing the rate case decision so as to deny the parties of their right to due process in the rate case. The YES Motion contains no such allegations. Instead, the YES Motion alleges that AUF sent correspondence to customers after the customers testified. It is unclear how post-testimony correspondence—even if the allegations regarding AUF’s motives for sending such correspondence were credible—can be equated to a utility’s direct attempts to influence the Commission’s decision in a pending rate case.

Moreover, it is important to put the YES Motion in context relative to the schedule for the submission of prefiled testimony in the rate case. The deadline for YES to file its testimony was September 22, 2011. The YES Motion was filed on September 27, 2011. The events about which the YES Motion complains occurred immediately following the Gainesville Customer Hearing held on September 12, 2011. While YES had ample time to submit these alleged “facts” in its prefiled testimony. Thus, it is questionable how YES can contend that any of this information—information that was not timely supplied to the Commission—is properly considered in the rate case. Indeed, if the YES Motion is not actually seeking to initiate the Commission’s complaint resolution procedures pursuant to Rule 25-22.032, then it appears the YES Motion was filed in the rate case solely to put untimely, supplemental “testimony” before the Commission to influence its decision in the rate case. This would be in direct contravention of the Order Establishing Procedure, which governs the pending rate case, and it should not be permitted under the guise of resolving a customer complaint.

Accordingly, in the event the Commission does not deny the YES Motion outright on the bases enumerated in AUF’s Verified Response, AUF respectfully requests that the Commission treat the YES Motion as a request to initiate the Commission’s customer complaint processes

detailed in the Commission's rules, and remove the matter from consideration within in the pending rate case.

Respectfully submitted this 18th day of October, 2011.



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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was furnished by U.S.

Mail this 18<sup>th</sup> day of October, 2011 to:

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