

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
ORDER NO. PSC-11-0474-PCO-WS
ISSUED: October 19, 2011

ORDER DENYING YES'S MOTION FOR INVESTIGATION, ENTRY OF CEASE AND DESIST ORDER, AND ENTRY OF ORDER TO SHOW CAUSE WHY SANCTIONS SHOULD NOT BE IMPOSED AGAINST PETITIONER, AQUA UTILITIES FLORIDA, INC. FOR IMPROPERLY RETALIATING AGAINST CUSTOMERS WHO TESTIFIED AT THE SEPTEMBER 12, 2011 CUSTOMER SERVICE HEARING

On September 27, 2011, YES Companies, LLC d/b/a Arredondo Farms (YES) filed its Motion for Investigation, Entry of Cease and Desist Order, and Entry of Order to Show Cause Why Sanctions Should Not Be Imposed Against Petitioner, Aqua Utilities Florida, Inc. (AUF or Aqua) for Improperly Retaliating Against Customers Who Testified at the September 12, 2011 Customer Service Hearing in Gainesville, Florida (Motion). In that Motion, YES notes that it is the owner of a mobile home park (Property) consisting of 445 mobile home lots that receive service from AUF, and that YES is also a customer of AUF. In its Motion, YES alleges that AUF retaliated against several customers, including itself, who testified (YES's employees testified) at the September 12, 2011 Service Hearing for the rate proceeding in this docket.

Allegations of YES

Specifically, YES alleges that AUF improperly retaliated against: (1) Mr. Eugene Davis, by sending a shut-off notice to this customer on the day following the hearing; (2) Ms. Regina Lewis, by sending her a "Dear OCCUPANT" letter on the next day following the service hearing which required her to apply for service from Aqua or face discontinued service; and (3) YES, by sending an improper collections letter for service YES received at Lot 2440 from AUF. YES alleges that all the above followed the damaging testimony of Mr. Davis, Ms. Lewis, and several YES representatives at the Gainesville Service Hearing. YES argues that the above-noted instances demonstrate that AUF is retaliating and harassing witnesses who testify against AUF, and that these actions of AUF should be immediately investigated by the Commission, and AUF should be ordered to cease and desist all retaliation, and that AUF should also be ordered to show cause why sanctions should not be imposed against AUF.

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Verified Response of AUF

On October 4, 2011, AUF timely filed its Verified Response to YES's Motion (Response). Attached to that Response was the affidavit of Ms. Susan Chambers, AUF's National Customer Service Manager, in which she addressed each of YES's allegations. Also, in the body of its Response, AUF addressed each of YES's three allegations. In general AUF alleges that the three exhibits were "nothing more than routine, computer generated notices that have absolutely nothing to do with any testimony these customers may have offered at the Gainesville Customer Hearing," and that the exhibits all dealt with "documented failure of customers to timely pay bills or documented water usage by occupants that are not current customers of AUF." Based on all the above, AUF requests that YES's Motion be denied.

Verified Rebuttal of YES

On October 12, YES filed its Verified Rebuttal (Rebuttal) to AUF's Response. In that Rebuttal, YES attached affidavits of Mr. Davis and Ms. Starling rebutting AUF's allegations that these were "nothing more than routine, computer generated notices." Based on the above, YES reiterates that its Motion should be granted.

Conclusion

Clearly, AUF must provide service in accordance with its tariffs and the rules and statutes of this Commission, and must not discriminate against customers. However, the allegations of YES appear to be more in the nature of a complaint, and would be better handled under our complaint procedures. Moreover, the issues for this rate case have already been determined, all service hearings have been completed, and all prefiled testimony, except rebuttal testimony, has been filed. At this late a time in this rate proceeding, it does not appear appropriate to add an additional issue. Therefore, the Motion of YES for an investigation and entry of an order to show cause is denied. However, if YES, Mr. Davis, or Ms. Lewis want to pursue a complaint against AUF, they should contact the Commission's Bureau of Consumer Assistance at 1-800-342-3552.

Based on the foregoing, it is

ORDERED by Commissioner Ronald A. Brisé, as Prehearing Officer, that the Motion of YES, Companies, LLC d/b/a Arredondo Farms, for Investigation, Entry of Cease and Desist Order, and Entry of Order to Show Cause Why Sanctions Should Not Be Imposed Against Petitioner, Aqua Utilities Florida, Inc. for Improperly Retaliating Against Customers Who Testified at the September 12, 2011 Customer Service Hearing in Gainesville, Florida is denied to the extent set forth in this Order.

By ORDER of Commissioner Ronald A. Brisé, as Prehearing Officer, this 19th day of October, 2011.



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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 25-22.0376, 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.