

**Dorothy Menasco**

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**Sent:** Monday, November 07, 2011 2:23 PM  
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**Subject:** AQUA UTILITIES FLORIDA, INC. RATE ACTION (Docket. No. 100330-WS):EMERGENCY MOTION OF INTERVENER, YES COMPANIES, LLC D/B/A ARREDONDO FARMS', TO COMPEL AQUA UTILITIES FLORIDA, INC.'S RESPONSE TO YES'S THIRD SET OF INTERROGATORIES AND THIRD REQUEST TO PRODU  
**Attachments:** 3835\_001.pdf  
 Electronic Filing

a. Person Responsible for this 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 are a total 5 pages

e. The document attached for electronic filing is Intervener, YES Companies, LLC d/b/a Arredondo Farms', EMERGENCY MOTION OF INTERVENER, YES COMPANIES, LLC D/B/A ARREDONDO FARMS', TO COMPEL AQUA UTILITIES FLORIDA, INC.'S RESPONSE TO YES'S THIRD SET OF INTERROGATORIES AND THIRD REQUEST TO PRODUCE

Thank you for your cooperation and attention to this matter.

ADAMS AND REESE LLP

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11/7/2011

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: November 7, 2011

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**EMERGENCY MOTION OF INTERVENER, YES COMPANIES, LLC. D/B/A ARREDONDO FARMS', TO COMPEL AQUA UTILITIES FLORIDA, INC.'S RESPONSES TO YES'S THIRD SET OF INTERROGATORIES AND THIRD REQUEST TO PRODUCE**

Intervener, Yes Companies, LLC d/b/a Arredondo Farms ("Yes"), by and through its undersigned counsel, respectfully files this Emergency Motion to Compel Aqua Utilities Florida, Inc.'s ("Aqua") Responses to Yes's Third Set of Interrogatories ("Third Set of Interrogatories") and Third Request to Produce ("Third Request to Produce")(collectively, the "Discovery Requests") served by Yes on October 17, 2011, because Aqua has failed to provide any meaningful response to the Discovery Requests but has only made baseless objections thereto. As grounds hereof, Yes states as follows:

1. The Discovery Requests clearly fall within the ambit of 1.280(b)(1), *Florida Rules of Civil Procedure*, as they seek relevant, discoverable information and documents for purposes of this proceeding.

2. This motion should be heard and granted on an emergency basis. Yes requires responses to the Discovery Requests in order to effectively prepare for the Prehearing Conference in this matter, set for tomorrow, and the Technical Hearing in this matter, which begins in only three weeks. Further, Yes only received Aqua's baseless objections late last week.

3. Aqua acts in bad faith by filing form objections to the Discovery Requests and failing to make a good faith effort to respond to the Discovery Requests.

4. In fact, the Discovery Requests contain many of the exact same Interrogatories and Requests to Produce as contained in Aqua's First Set of Interrogatories to Yes (NOS. 1-48) and First Request to Produce to Yes (NOS. 1-43). In particular, the wording of Interrogatories 5-28 in the Third Set of Interrogatories correspond almost exactly to Interrogatories 1-24 in Aqua's First Set of Interrogatories to Yes (NOS. 1-48). Similarly, the wording of Requests 7-20 in the Third Requests for Production correspond almost exactly and have considerable overlap with Requests 1-17 in Aqua's First Request to Produce to Yes (NOS. 1-43). Aqua acts in bad faith by objecting to Interrogatories and Requests that it itself has produced and even compelled against other parties to this rate case. *See e.g.* Aqua Utilities Florida, Inc.'s Motion to Compel Lucy Wambsgan's Responses to First Set of Interrogatories and First Request for Production of Documents, filed October 5, 2011.

5. Moreover, the Discovery Requests are eminently reasonable and proper. Interrogatories 5-28 located in the Third Set of Interrogatories and Requests 7-20 located in the Third Request to Produce all apply to basic, preliminary information and documents necessary for Yes's effective preparation for the Technical Hearing in this matter. It is absolutely improper for Aqua to refuse to meet its basic discovery obligations by responding that Yes may obtain the requested information and documents by referring to Aqua's pre-filed testimony and documents already filed by Aqua in this action. Yes is entitled to receive answers to its Third Set of Interrogatories under oath for use at the Technical Hearing. Yes is further entitled to receive documents responsive to

Yes's Third Request to Produce. Yes should not be forced to dig through thousands of pages of documents to locate responsive information due to Aqua's obstreperous refusal to comply with Florida law.

6. Similarly, Interrogatories 29-35 and Requests 21-29 are also appropriate, reasonable, and pertain only to discoverable information and documents. Aqua should be compelled to respond as each of these Interrogatories and Requests seek information and documents responsive to issues relevant to this case, and specifically, whether the quality of service provided by Aqua is satisfactory and merits a rate increase pursuant to Section 367.081, *Florida Statutes*. The requested information and documents are necessary for Yes's effective preparation for the Technical Hearing in this matter. There is no conceivable reason why Aqua cannot or should not respond to these reasonable discovery requests.

7. Aqua seeks to avoid responding to the aforementioned Interrogatories and Requests by asserting a number of baseless objections. First, Aqua's objection relating to Yes's definition of "back-bill" contained in the Discovery Requests is improper and disingenuous. Yes's definition is clearly provided in the "Definitions" section of the Third Set of Interrogatories and Third Request to Produce. The fact that an alternative definition of "back-bill" may exist does not prevent Aqua from reading Yes's definition and providing legal responses as required by Florida law.

8. Aqua's objection that it cannot disclose confidential "customer" or "employee" specific information also misses the mark. Aqua cites no authority for this bold statement. None exists. Although the Florida Administrative Code specifically protects disclosure of "proprietary business information," F.A.C. 25-22.006, no such

protection exists for the employee and customer data sought in this case. Pursuant to Section 367.156, *Florida Statutes*, employee information related to compensation, duties, qualifications, or responsibilities is expressly not “proprietary business information” and therefore freely discoverable. Furthermore, Aqua acts improperly in raising this objection as Aqua has routinely disclosed customer and employee information in this rate case. *See e.g.* Supplemental Rebuttal Testimony of Susan Chambers, filed November 3, 2011. Aqua has no excuse for its failure to turn over this vital information and documentation to Yes.

9. Finally, Aqua’s objection that the Discovery Requests are overbroad or burdensome is unavailing. As a major corporate entity, it is disingenuous for Aqua to suggest that it does not have the capabilities or resources to answer these Discovery Requests as required by Florida law. Further, the aforementioned Interrogatories and Requests seek discrete and reasonable information and documents that Aqua should maintain in the ordinary course of its business. It is obvious that Aqua simply does not want to comply. Despite that obstinacy, Aqua should be compelled to do so.

WHEREFORE, Intervener, Yes Companies LLC, d/b/a Arredondo Farms, respectfully requests that this Commission grant its Emergency Motion to Compel Aqua Utilities Florida, Inc.’s Responses to Yes’s Third Set of Interrogatories and Third Request to Produce, and for all further relief the Commission deems just and necessary.

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 November 7th, 2011 to: **Kimberley A. Joyce, Esq.**, Aqua American, Inc., 762 West Lancaster Avenue, Bryn Mawr, PA 19010 (kajoyce@aquaaamerica.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, Esquire**, 570 Osprey Lakes Circle, Chuluota, Florida 32766-6658 (Kelly.Sullivan.Woods@gmail.com); **Ralph Jaeger**, Florida Public Service Commission, 2540 Shummard Oak Blvd., Tallahassee, Florida 32399-0850 (RJaeger@Psc.State.fl.us); **Joseph D. Richards, Esquire**, Pasco County Attorney's Office, 8731 Citizens Drive, Suite 340, New Port Richey, Florida 34654 (jrichards@pascocountyfl.net); **Cecilia Bradley, Esquire**, Office of the Attorney General, The Capitol - PL01, Tallahassee, Florida 32399 (Cecilia.Bradley@myfloridalegal.com)

s/ Andrew J. McBride  
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