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Subject: 100330-WS - Electronic Filing
Attachments: Response to Motion to Compel.pdf

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b. Docket number and title for electronic filing are: Docket No. 100330-WS - 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.

c. The name of the party on whose behalf the document is filed: Aqua Utilities Florida, Inc. ("AUF").

d. Total number of pages: 36

e. Brief description of filing: AUF'S RESPONSE TO YES' EMERGENCY MOTION TO COMPEL AQUA'S REPOSSES TO DISCOVERY REGARDING THIRD REQUEST FOR PRODUCTION OF DOCUMENTS AND THIRD SET OF INTERROGATORIES AND MOTION FOR PROTECTIVE ORDER AND, ALTERNATIVELY, MOTION FOR TEMPORARY PROTECTIVE ORDER

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11/17/2011

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11/17/2011

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.)
_____)

DOCKET NO. 100330-WS

Dated: November 17, 2011

**AQUA UTILITIES FLORIDA, INC.'S RESPONSE TO YES' EMERGENCY MOTION
TO COMPEL AQUA'S REPOSES TO DISCOVERY REGARDING
THIRD REQUEST FOR PRODUCTION OF DOCUMENTS AND
THIRD SET OF INTERROGATORIES AND MOTION FOR PROTECTIVE ORDER
AND, ALTERNATIVELY, MOTION FOR TEMPORARY PROTECTIVE ORDER**

Aqua Utilities Florida, Inc. ("AUF" or the "Company"), by and through its undersigned counsel, hereby responds to the Emergency Motion to Compel AUF's Responses to Discovery (the "Motion") filed by Yes Companies, LLC d/b/a Arredondo Farms ("YES") on November 15, 2011, and moves the Commission to deny YES' Motion and to enter a Protective Order determining YES is not entitled to receive the quantity of information and the type of sensitive, customer-specific information YES seeks through its Third Set of Interrogatories ("ROG") and its Third Request for Production of Documents ("POD"). Alternatively, AUF requests that the Commission enter a Temporary Protective Order prior to the exchange of such documents requiring YES to strictly protect such customer-specific information from disclosure beyond the law firm which represents YES; recognizing the significant expense of responding as valid rate case expense or ordering YES to bear the expense of its substantial request; and permitting AUF to exchange with YES such unredacted information without requiring the additional burden and expense of redacting at least 1,500 pages of documents in order to file such redacted information with the Commission. In support thereof, AUF states as follows:

DOCUMENT NUMBER DATE

08453 NOV 17 =

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YES' Third Set of Discovery Requests

In this Proposed Agency Action ("PAA") rate case, YES served its Third Set of Interrogatories and Third Request for Production of Documents on October 17, 2011 (the "Discovery Requests"). On November 3, 2011, in accordance with the Orders on Prehearing Procedure, AUF timely served its advanced objections to the Discovery Requests, including specific objections to some of the interrogatories and requests for production.

On November 14, 2011, AUF filed its Answers and Objections to the YES ROGs (Nos. 5-35) and its Responses and Objections to the YES PODs (Nos. 7-29), which fully responded to the Discovery Requests to the extent they were not objectionable.¹ Therein, AUF objected to answering the type of confidential customer-specific information sought in YES ROG Nos. 30(a), 31(b) and 32(c), which seek identification of all Arredondo Farms customers and details of their account if, in the last three years, the customer received a backbill, entered into payment plan for nonpayment or underpayment, or had been shut off for nonpayment or underpayment. AUF also objected to responding to the type of confidential customer-specific information sought in YES POD Nos. 22, 24 and 26, which seek all documents relating to the above Arredondo Farms customers and facts regarding their situation that led to nonpayment. Finally, AUF objected to YES ROG No. 34 and POD No. 28, which seek "any Documents exchanged between Aqua and customer . . . during the past three (3) years" at 78 different properties, which would include every regularly monthly bill and every customer payment received by AUF.

¹ YES contends its Motion pertains to YES ROG Nos. 30-34 and YES POD Nos. 21-28. (YES Mot., at 1 & 4.) However, without waiving its prior objections, AUF fully responded to YES ROG Nos. 30, 31, 32 (but not their subparts) and 33, as well as YES POD Nos. 21, 23, 25 and 27, none of which sought information or documents containing customer-specific information.

On November 15, 2011, YES moved to compel responses to certain interrogatories and requests for production of documents in YES' Discovery Requests. This timely filed response follows.

Response to YES' Motion

The Commission has consistently ruled that detailed customer-specific information such as customer name and address are confidential proprietary information "the disclosure of which would harm the privacy interest of individual customers and deter customers from contacting the Company in the future if such information is subject to public disclosure[.]" *In re: Review of Fla. Power Corp.'s earnings, including effects of proposed acquisition of Fla. Power Corp. by Carolina Power & Light*, Docket No. 000824-EI, Order No. PSC-02-0356-CFO-EI (Mar. 15, 2002).

Similarly, the Commission has found that disclosure of a utility customer's "personal account numbers could provide unauthorized access to third parties; thus, potentially harming [the utility's] customers." *See In re: Request for confidential treatment of certain information contained in draft report setting forth a review of customer deposit procedures of Florida's five investor-owned utilities, by Progress Energy Fla., Inc.*, Docket No. 070245-EI, Order No. PSC-07-0552-CFO-EI (June 29, 2007).

Thus, before a party may demand immediate exchange of confidential customer information during discovery in a case before the Commission, certain protocols to protect such confidential information must be in place. *See Fla. Admin. Code R. 25-22.006*. Throughout this Rate Case, each time a party has sought unredacted documents containing customer-specific

information, AUF has taken the steps necessary to respond fully and to ensure that the customer information is protected from improper disclosure.²

Regarding the particular YES Discovery Requests at issue here, AUF is legitimately concerned that YES, the landlord of AUF customers who reside at Arredondo Farms, is seeking particularly sensitive current and past customer information from AUF about YES' tenants. For instance, by seeking "any Documents exchanged between" AUF and its customers, what YES seeks as "discovery" in this Rate case includes, *inter alia*, not only its tenants' AUF account information and payment delinquency history, but also its tenants' bank account information which, of course, would likely appear in copies of payments customers have made to AUF.

AUF cannot simply turn over such information without fear of reprisal from its customers who could suffer damaged credit ratings, embarrassment, harassment, damaged reputations, or worse as a result of AUF turning over such sensitive information to YES, their landlord, without their consent. Nor is it clear to AUF, and YES still has not explained, how all of this information

² YES inaccurately implies that AUF failed to turn over to YES prior discovery that YES requested from AUF. (YES Mot. to Compel, at 2 ¶ 5-6.) The discovery request underlying Order No. PSC-11-0356-PCO-WS, issued on August 25, 2011 in this Rate Case (the "TPO"), specifically pertained to YES' First PODs and ROGs to which an AUF Arredondo Farms Service Order History Report was responsive. So that AUF could produce this report, which included customer names and addresses, AUF affirmatively sought the TPO from the Commission. In AUF's motion seeking the TPO, AUF specifically stated that "AUF is providing the Report in redacted form to protect certain specified confidential information," and described the information that had been redacted. (AUF Apr. 20, 2011 Mot. for Protective Ord., at 2 ¶ 1 & 3 ¶ 4.) YES filed no response to AUF's motion, and did not otherwise ask AUF to produce an unredacted copy of the report. The Commission agreed with AUF that the information deserved confidential treatment, and granted the protective order to protect the materials and information from disclosure. (*Id.*) The Commission also placed the burden on YES to complete its review of the materials AUF provided to YES, and to advise AUF if YES had any intent to use the information in the proceeding. (*Id.*) Until YES filed a Motion to Compel on November 15, 2011—almost three months after the TPO was issued—YES never contacted AUF to request an unredacted copy of the report after issuance of the TPO, or informed AUF that YES had any intent to use the information at hearing. Treating YES' Motion to Compel as the first request ever made to AUF to provide YES with an unredacted copy of the AUF Arredondo Farms Service Order History Report, AUF will produce such to YES as soon as YES executes a confirming Confidentiality Agreement expressing that YES' counsel will not share the sensitive information with anyone else.

is relevant to this Rate Case.³ Unlike the Office of Public Counsel, YES does not represent YES tenants or any prior AUF customer in this proceeding. (See YES Amended Mot. for Intervention.)

In situations such as this, where a private party seeks sensitive information relating to other customers—information which, if released, could harm or embarrass the other customers—the requesting party must establish that such discovery is relevant. See Fla. R. Civ. P. 1.280(b)(1). A private party seeking sensitive customer information over objection must also be able to demonstrate that the request is actually necessary for a proper purpose. See Fla. R. Civ. P. 1.280(c)(1) (authorizing protective order determining “that the discovery not be had,” where it is shown that such discovery may lead to “annoyance, embarrassment, oppression or undue burden or expense”).

Having failed to name any basis in its Motion for requesting such a broad amount of sensitive customer information, YES has failed to show that all of the discovery it seeks is both relevant and pertinent to a proper purpose. Nor has YES provided any assurance to AUF or to this Commission that no harm will come to the customers as a result of their sensitive account information being disclosed to their landlord.⁴ As a result, YES’ Motion should be denied.

³ YES states in its Motion that the information is relevant because it seeks documents relating to backbilling, water shut offs, payment plans, and account histories for customers of AUF who testified in this proceeding. (YES Mot., at 4 ¶ 10.) AUF agrees that, if AUF must respond to ROG 34 and POD 28, the requests should be narrowed to seek only such information. However, AUF specifically asked YES if it would agree to narrow in this precise manner the overly broad and burdensome language in ROG 34 and POD 28. As demonstrated by the correspondence between AUF and YES on this issue, attached hereto as Exhibit “A,” YES’ unequivocal answer was no. Thus, if the Commission orders AUF to respond to ROG 34 and POD 28, AUF requests that this Commission also order that YES is entitled only to responsive documents to the extent that they relate to backbilling, water shut offs, payment plans, and account histories for customers of AUF who testified in this proceeding. While responding will still be a tremendous undertaking, it will at least reduce the significant overall cost of responding.

⁴ YES appears to rely entirely on the Commission’s prior TPO issued regarding YES’ First Set of Discovery to contend that all confidential information YES requests in this proceeding is already

Moreover, where there is legitimate urgency requiring disclosure of customer-specific information prior to entry of a TPO, the common practice is to enter into an agreement like the one employed by AUF and the Office of Public Counsel, an example of which is attached hereto as Exhibit "B." YES should not be heard to complain that AUF failed to immediately turn over unredacted, sensitive customer information where YES has taken no informal measures to first establish that the current or prior customers have consented to AUF disclosing their information to YES, or that the information would otherwise be protected from disclosure. Nor has YES attempted to more narrowly construe its requests to ensure each request is both relevant and requested for a proper purpose. Absent such a demonstration, and there being no current measures in place to protect the customers from disclosure or improper use of their sensitive customer information, YES' premature Motion should be denied.

Alternative Motion for Temporary Protective Order

Notwithstanding AUF's legitimate concerns with producing the type of sensitive customer-specific information YES seeks and in the manner in which YES has demanded the information, AUF does not intend to delay or adversely affect YES' ability to fully participate in the rate case. Accordingly, in the event the Commission determines YES has demonstrated entitlement to some or all of the discovery YES seeks, AUF alternatively moves the Commission for a Temporary Protective Order to ensure the confidential customer information the Commission orders AUF to produce is protected from disclosure. *See Fla. Admin. Code R. 25-22.006; see also § 367.156, Fla. Stat.* (authorizing the Commission to keep confidential and

protected. But that TPO specifically described the discovery to which it pertains in the TPO's first paragraph, and also clearly states: "This Order shall have no effect on the subsequent determination of any request for specified confidential classification[.]"

exempt from section 119.07(1), Florida Statutes, “proprietary confidential business information”).

However, while AUF believes that its objections have merit, it finds itself in a “Catch 22” scenario in which, by answering objectionable Discovery Requests, it will certainly increase rate case expense—a protested item in this proceeding. If AUF does not challenge the Discovery Requests, which it believes in good faith are not discoverable in the manner YES desires, the expense associated with answering that discovery is foreseeably at risk.

If the Commission does not agree with AUF’s objections, AUF certainly will do everything in its power to promptly provide the requested information to the extent it exists. However, AUF would respectfully ask the Commission to recognize that the time, effort and costs of answering, printing, reviewing, processing, redacting, Bates stamping, copying and serving the requested information is valid rate case expense. As the Affidavit of William Kephart attached hereto as Exhibit “C” demonstrates, the cost of production of the requested information is very expensive and extraordinarily burdensome, and will require monumental effort by AUF to comply.

YES’ requests, along with its other discovery tactics, have caused and continue to cause rate case expense in this docket to increase. Counsel for AUF has specifically requested that YES pay for the additional costs associated with answering the requested information and YES’ counsel advised that he checking on this matter. In addition, counsel for AUF has specifically asked whether the Office of Public Counsel (“OPC”) would agree not to object to AUF’s recovery of the costs incurred in responding to YES’ Discovery Requests. OPC counsel advised that OPC could not agree to that request at this time. Accordingly, to minimize the effect of YES’ Discovery Requests on rate case expense to be borne by other customers, if the

Commission does not agree with AUF's objections, AUF respectfully requests that the Commission order YES to bear the expense resulting from responding to YES' remaining Discovery Requests. *See In re: Petition for increase in rates by Fla. Power & Light Co.*, Docket No. 080677-EI, Order No. PSC-09-0239-PCO-EI (Apr. 17, 2009) (finding it reasonable to require, for discovery that would impose on a utility increased and unexpected expense, that "the requesting party . . . bear the costs of production").

Responding to the discovery at issue will require an extraordinary amount of time by AUF to fully respond to YES' remaining Discovery Requests. To provide the information YES seeks, it would take AUF an estimated 12 employees approximately 219 total hours to print, review, and prepare more than 1,500 pages of documents. (*See Exhibit C, Affidavit of Mr. Kephart.*) These figures do not include the time and expense for AUF's counsel to review those 1,500+ pages prior to service to ensure they are fully responsive and that all customer-specific information is redacted.

AUF's personnel and time commitment translates to a respective cost of at least \$8,691.88, not including the time and expense of review of AUF's responses by its legal counsel. (*Id.*) Moreover, this type of personnel and time commitment would cause internal havoc. As Mr. Kephart's Affidavit states, to promptly respond to YES' remaining Discovery Requests to which AUF has objected, the Company would have to dedicate its entire Service Order Team to fulfilling this request. (*Id.*) Taking the Company's entire Service Order Team out of commission from its present duties would result in the halting of all service order processing for all Aqua customers in all states. It could also impact the Company's ability to timely issue accurate bills, and Team members would be unavailable for other, already scheduled projects, meetings and internal and external staff conferences as well. Multiple initiatives will be delayed

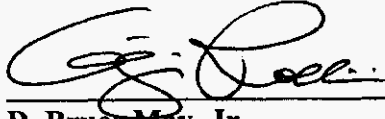
due to the need to reschedule planned activities, possibly resulting in stranded vendor costs. (*Id.*) While AUF continues to work hard to cooperate with all parties to this case on discovery issues, to contain rate case expense, AUF is compelled to bring to the Commission's attention discovery that it believes in good faith is excessive, harassing, irrelevant and overly burdensome and costly.

Finally, as another means to attempt to contain the substantial expense of this endeavor, in the event it is required, AUF also requests that AUF be permitted to provide unredacted information to YES without also requiring AUF to undertake the additional burden of redacting more than 1,500 pages of documents in order to submit to the Commission a request for confidential classification. However, even under this approach, as the Mr. Kephart's Affidavit shows, the cost of producing the documents requested is estimated to be significant. (*See Exhibit C.*)

Conclusion

For the reasons set forth above, AUF respectfully requests that the Commission deny YES' Motion to Compel. If, however, the Commission determines to grant the Motion, AUF will endeavor to provide the requested discovery responses as soon as possible. To that end, AUF respectfully requests that the Commission limit YES' requests to the extent YES has not demonstrated they are relevant, including ROG 34 and POD 28. Moreover, AUF requests that the Commission order YES to bear the financial burden of its requests. To further manage the expense of providing to YES unredacted documents, AUF requests that the Commission waive the requirement that AUF must also file a redacted version of the documents with the Commission.

Respectfully submitted this 17th day of November, 2011.



D. Bruce May, Jr.

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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 e-mail and

U.S. Mail this 17th day of November, 2011 to:

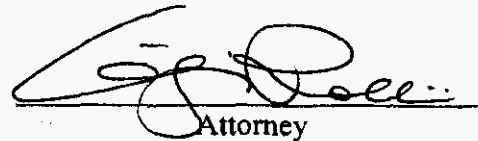
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EXHIBIT A

Rollini, Gigi (TAL - X35627)

From: Andrew McBride [Andrew.McBride@arlaw.com]
Sent: Friday, November 11, 2011 3:12 PM
To: Rollini, Gigi (TAL - X35627)
Cc: David Bernstein; Kenneth Curtin; Lisa D'Angelo
Subject: RE: Aqua Utilities Florida/Yes Companies - Yes's Discovery Requests

Gigi:

Thank you for your response. Let me address the issue of Yes's entitlement to the requested customer records first. I disagree with your position on this issue and would direct you to the Temporary Protective Order (11-0356) entered by the PSC in this very case as precedent, wherein, just three months ago, in an earlier round of discovery by Yes seeking customer records, the PSC ordered Aqua to turn over those documents to Yes subject to the confidentiality protections of 25-22.996. No distinction was made in this Order between Yes, as an intervener to the case, and the Office of Public Counsel, as a governmental entity. Pursuant to 25-22.996, Aqua was ordered to turn over the requested documents to Yes; Yes was to identify which of those materials it intends to use in this proceeding and notify Aqua of same; Aqua was ordered to file a motion for a permanent protective order as to those materials to request "proprietary confidential treatment" of those materials; and Yes was then ordered to take measures to preserve the confidentiality of the documents then obtained.

The clear import of this language is that the allegedly confidential materials are to be given to Yes so that they may be used at trial. You confuse the issue by suggesting that the Protective Order speaks to entitlement to the materials. The Protective Order only speaks to dissemination of the materials once received by Yes, use of the materials at trial, and exemption of the materials from public records requests pursuant to Section 117.07(1). To maintain confidentiality, 25-22.996(6)(a) is clear that Aqua may move for a protective order in order to determine "how the confidential information is to be handled during the course of this proceeding and prescribe measures for protecting the information from disclosure outside of the proceeding." However, nothing in the Code prevents Aqua from providing these materials to Yes for use in this proceeding. Further, 25-22.996(8) is clear that the confidential information may be used in the technical hearing in this matter, subject to reasonable precautions to keep the materials confidential. Yes does not object to such precautions.

As to the additional points of clarification included in your email, again, Yes cannot agree to limit these requests.

Sincerely,

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From: Gigi.Rollini@hklaw.com [mailto:Gigi.Rollini@hklaw.com]
Sent: Friday, November 11, 2011 1:26 PM
To: Andrew McBride
Subject: RE: Aqua Utilities Florida/Yes Companies - Yes's Discovery Requests

Andrew,

Thank you for your response. What we discussed yesterday is whether redacted documents will provide anything meaningful to you to warrant the resulting substantial expense. We are willing to work with you to be responsive while minimizing the expense on your end and our end, which we could accomplish if we can narrow the request in a way to avoid it seeking confidential customer information (e.g., providing the quantity of payment plans entered into, rather than a stack of payment plans with all customer specific information redacted that you would have to count to determine the quantity, which would make unnecessary work for both parties). I understand your response below as insisting on disclosure of customer-specific information and as rejecting AUF's offer to respond in a manner which does not reveal customer-specific information, for the reasons you state below.

I believe you are misreading AUF's Motion for Protective Order, the Order granting that Motion, the case law and Commission precedent on this issue (examples of which are cited in the Motion), and the rule governing confidential classification. If you review them carefully, you will see that the Order's language regarding the public records exemption/confidential classification pertains to the state agency that receives the information, e.g., the Commission or Public Counsel. There is no authority of which I am aware which permits YES unfettered access to confidential customer information simply based on its status as an intervenor in a rate case, just as the general public or an intervening customer would have no right to obtain customer-specific information from governmental entities which might possess it. The reasons why are obvious. But, in the spirit of cooperation and working out the issues we can resolve amicably, if you find any authority stating otherwise when you do your due diligence on this issue, please forward it and I certainly will review and consider it.

Based on our discussion yesterday, I do have two points of clarification stemming from your response below:

- 1) Please clarify if the narrowing we discussed yesterday for ROG 34 and POD 28--you stated that the lots listed were included because YES is seeking account information regarding the customers who testified at the Gainesville Service Hearing, as opposed to just any customer who might have had an account at the listed lots in the last 3 years--is no longer acceptable to YES.
- 2) Please confirm that you are not narrowing the "any documents exchanged" language to exclude routine documents like regular monthly bills that do not in any way pertain to backbills, payments plans or water shut off notices (at which the request appears to be primarily aimed).

In advance, I appreciate your prompt response.

Thanks,
Gigi

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From: Andrew McBride [mailto:Andrew.McBride@arlaw.com]
Sent: Friday, November 11, 2011 7:43 AM
To: Rollini, Gigi (TAL - X35627)
Cc: David Bernstein; Kenneth Curtin; Lisa D'Angelo
Subject: Aqua Utilities Florida/Yes Companies - Yes's Discovery Requests

Gigi:

With regard to our conversation yesterday regarding Aqua's objections to Yes's Third Request to Produce and Third Set of Interrogatories, please know that I have reviewed the "Motion for Protective Order and Request for Confidential Classification" previously filed by Aqua to Yes's First Set of Interrogatories and First Request to Produce, as well as the Temporary Protective Order (11-0356) entered by the PSC on that Motion. It is obvious from these documents that the "customer specific information" requested by Yes is freely discoverable subject to exemption from Florida's public record laws. Further, the Order is clear that this information shall be given to Yes subject to that confidentiality for use at the final hearing in this matter. Therefore, I expect Aqua to comply with the discovery demands contained in Yes's Third Request to Produce and Third Set of Interrogatories. Aqua is free to move for confidential status if it chooses but this shall not prevent disclosure of these documents and information to Yes for use in this matter.

Further, as to Interrogatory # 34 and Request # 28, I do not see any way to narrow the scope of these discovery requests. However, if this discovery is burdensome to Aqua, I am prepared to grant a 3-day extension on these requests only. Please let me know if Aqua anticipates needing this extra time.

Sincerely,

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EXHIBIT B

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.**

DOCKET NO. 100330-WS

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the "Agreement") is entered into by and between the undersigned parties (the "Parties" or a "Party") for the purpose of inducing Aqua Utilities Florida, Inc. ("AUF") and Aqua America, Inc. ("AAI") to make available or provide confidential or designated confidential information to expert witnesses and consultants engaged by the Office of Public Counsel ("OPC"). This Agreement applies only to confidential and designated confidential information provided with regard to Florida Public Service Commission (the "FPSC" or the "Commission") Docket No. 100330-WS.

1. **Applicability.**

The terms of this Agreement shall apply to:

- (a) all information found to be confidential by the FPSC pursuant to Rule 25-22.006, Florida Administrative Code (the "Confidentiality Rule"), and Section 367.156, Florida Statutes ("Confidential Information"); and
- (b) all other information, regardless of format, that AUF or AAI designates confidential ("Designated Confidential Information"). This Agreement applies to the Confidential

Information and Designated Confidential Information made available or provided by AUF or filed with the FPSC in above-mentioned docket.

- (c) To the extent there is any inconsistency between the provisions of this Confidentiality Agreement and the Florida Public Records Act, including the Commission rule implementing such Act, the Public Records Act and Commission rule shall control.

2. Obligation to Act in Good Faith.

- (a) By signing this Agreement, no Party accepts the validity of, or waives the right to contest a claim of confidentiality on any grounds. However, in the event of a dispute over a claim of confidentiality, Parties to this Agreement shall safeguard the confidentiality of the subject material pending final resolution of the matter by the Commission.

3. Procedure for Review of Confidential Information.

- (a) Each person, other than employees of the OPC, who will have access to Confidential Information or Designated Confidential Information, shall, before such access is granted, sign a written Acknowledgement, in the form attached as Exhibit A, that he or she has read this Agreement and agrees to abide by its terms. (Exhibit A, Non-Disclosure Acknowledgement). The Confidential Information or Designated Confidential Information may be disclosed to consultants/expert witnesses who are engaged by the OPC in the above-mentioned docket who have responsibility for formulating and/or presenting OPC's positions in the above-mentioned docket. The

total number of persons, other than employees of the OPC, who may have access to the Confidential Information or Designated Confidential Information, shall not exceed ten (10) without the express written permission of AUF or AAI. Each person given access to Confidential Information or Designated Confidential Information shall sign the Acknowledgement attached to this Agreement as Exhibit A.

- (b) Each person who has signed the Acknowledgement on behalf of a Party to this Agreement may have access to Confidential Information or Designated Confidential Information for the sole purpose of the Party's participation in the above-mentioned docket. Each person who has been given access to the Confidential Information or Designated Confidential Information made available or provided pursuant to this Agreement shall not disclose any Confidential Information or Designated Confidential Information to anyone other than a person who has been given access under the terms of this Agreement or an employee of the OPC.
- (c) A Party may reproduce Confidential Information or Designated Confidential Information only to the extent necessary to provide a copy to persons who have executed the Acknowledgement appended to this Agreement as Exhibit A. OPC, or its consultants, will maintain a copy control log of all copies made of any Confidential Information and Designated Confidential Information and shall provide AUF monthly updates to such log.
- (d) While any Confidential Information or Designated Confidential Information is in the possession of a Party to this Agreement, each person who has access to the information shall individually and collectively implement procedures that are adequate to ensure that Confidential Information or Designated Confidential

Information shall not be disclosed to anyone other than those persons who have executed the Acknowledgement appended to this Agreement as Exhibit A. The Parties agree to use all reasonable means to preserve confidentiality, including, but not limited to, measures customarily undertaken by each Party to prevent disclosure of its own confidential information.

- (e) The Confidential Information or Designated Confidential Information made available by AUF and/or AAI pursuant to this Agreement shall remain the property of AUF and AAI. Confidential Information or Designated Confidential Information shall not be used for any purposes unrelated to the above-mentioned docket.
- (f) Any Party who includes Confidential Information or Designated Confidential Information supplied pursuant to this Agreement in prefiled testimony or exhibits or any other information or documents submitted to the Commission shall follow the procedure for use of such information prescribed by order of the prehearing officer and Rule 25-22.006, including providing notice, through OPC, to AUF prior to submitting the information and complying with the procedures of the Confidentiality Rule for the handling of information for which confidential classification will be sought. The purpose of this requirement is to afford AUF an adequate opportunity to invoke the provisions of Rule 25-22.006 to protect the confidentiality of the information. In this regard each person covered by this Agreement hereby expressly acknowledges that all Confidential Information and Designated Confidential Information supplied to them will by that time be the subject of a Motion for Temporary Protective Order filed by AUF in this proceeding pursuant to Rule 25-22.006, Florida Administrative Code, and each such person agrees and commits to

abide by and uphold the protections afforded such Confidential Information by the pendency of said Motion for Temporary Protective Order.

- (g) Each person afforded access to Confidential Information or Designated Confidential Information pursuant to this Agreement shall not, without the prior written consent of AUF and/or AAI, disclose the contents of any such information to anyone other than parties to this docket and their consultants, all of whom have signed non-disclosure agreements with AUF and AAI in connection with this docket, or parties including staff otherwise bound not to disclose such information due to a prior Commission ruling that the information is confidential or because of the pendency of a request for confidential treatment or a motion for temporary protective order addressing such information.

4. Terms and Termination.

The Agreement shall be effective from the date it is executed by the Parties until all Confidential Information or Designated Confidential Information has been returned to AUF or AAI, or (at the written direction of AUF) destroyed by the Party to whom it is provided, or as to any information for which a determination of confidential status has been sought, until the FPSC has made a final adjudication as to the confidential status of the information. Except for information for which the FPSC has issued a final order holding that the information is not granted confidential status, each Party's obligation not to disclose Confidential Information or Designated Confidential Information continues unless or until the information is otherwise publicly disclosed in a manner not in violation of this Agreement. The continuing obligation not to disclose by each Party and each person who has been granted access to Confidential Information or Designated

Confidential Information under the terms of this Agreement shall survive the expiration of this Agreement in accordance with Section 367.156, Florida Statutes. All Confidential Information or Designated Confidential Information shall be returned to AUF and AAI or it shall be certified to that Party that it has been destroyed at the written direction of AUF and AAI no later than 45 days after the date the FPSC issues its final decision or order in the final phase of this proceeding, unless any decision of the FPSC in the above-mentioned docket is appealed, in which case the Agreement shall continue until all appellate review is completed. At the end of the term of the Agreement, or before, each Party shall either return all Confidential Information or Designated Confidential Information remaining in its possession to AUF and AAI or, alternatively, certify in writing to AUF and AAI that all Confidential Information and Designated Confidential Information has been destroyed as directed in writing by AUF.

5. Remedies.

The owner of the information shall be entitled to any remedy at law, injunctive, or other equitable relief to prevent or remedy a breach of this Agreement or any part of it. Nothing herein is intended to restrict any remedies available to the owner of Confidential Information or Designated Confidential Information for the unauthorized disclosure, dissemination or release of proprietary information by any of the Parties to this Agreement. This Agreement shall be interpreted, governed, and construed under the laws of the State of Florida.

6. Authority.

The undersigned acknowledge and represent that they have actual authority to enter into this Agreement.

7. Modifications.

This Agreement may be modified only in writing and only upon the mutual consent of the Parties to the modification.

AQUA UTILITIES FLORIDA, INC.

ACADIAN CONSULTING GROUP, LLC

Date _____

Date 8-23-11

By: _____

D. Bruce May, Jr.
Gigi Rollini
Holland & Knight, LLP
Post Office Drawer 810
Tallahassee, Florida 32302-0210
(850) 224-7000 (Telephone)
(850) 224-8832 (Facsimile)

By: 
Kimberly Dismukes

-and-

Kimberly A. Joyce, Esquire
Aqua America, Inc.
762 West Lancaster Avenue
Bryn Mawr, PA 19010
(610) 645-1077 (Telephone)
(610) 519-0989 (Facsimile)

Attorneys for Aqua Utilities Florida, Inc.

EXHIBIT "A"

NON-DISCLOSURE ACKNOWLEDGEMENT

The undersigned hereby certifies that, prior to the disclosure to him or her of certain information and documents belonging to, or in the possession of, or made available through a Party to this Confidentiality Agreement, which are Confidential Information or Designated Confidential Information as those terms are defined in this Agreement, he or she has read the Agreement and agrees to be bound by its terms.

Kimberly Dismukes
Signature

Kimberly Dismukes
Printed Name

Partner, Acadian Consulting
Affiliation GROUP

Date 8.23-11

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Sally M. Ash
Signature

Sally M. Ash
Printed Name

Acadian Consulting Group
Affiliation

Date 8/23/11

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Matthew Rappolo
Signature

Matthew Rappolo
Printed Name

Acadian Consulting Group
Affiliation

Date 8/23/2011

EXHIBIT "A"

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Alex Aguilera
Signature

Alex Aguilera
Printed Name

Acadian Consulting Group
Affiliation

Date 8-23-11

EXHIBIT "A"

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Marlene Lawson
Signature

MARLENE LAWSON, BOOKKEEPER
Printed Name

ACADIAN CONSULTING GROUP
Affiliation

Date 08/23/2011

EXHIBIT "A"

NON-DISCLOSURE ACKNOWLEDGEMENT

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Signature

Jon McCable

Printed Name

Acadian Consulting Group, LLC

Affiliation

Date 8/23/11

EXHIBIT "A"

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Allison Lewis
Signature

Allison Lewis
Printed Name

Acadian Consulting Group, LLC.
Affiliation

Date 8/24/11

EXHIBIT "A"

NON-DISCLOSURE ACKNOWLEDGEMENT

The undersigned hereby certifies that, prior to the disclosure to him or her of certain information and documents belonging to, or in the possession of, or made available through a Party to this Confidentiality Agreement, which are Confidential Information or Designated Confidential Information as those terms are defined in this Agreement, he or she has read the Agreement and agrees to be bound by its terms.



Signature

BRIAN A. BOURGEOIS

Printed Name

ACG

Affiliation

Date **8/24/2011**

EXHIBIT "A"

NON-DISCLOSURE ACKNOWLEDGEMENT

The undersigned hereby certifies that, prior to the disclosure to him or her of certain information and documents belonging to, or in the possession of, or made available through a Party to this Confidentiality Agreement, which are Confidential Information or Designated Confidential Information as those terms are defined in this Agreement, he or she has read the Agreement and agrees to be bound by its terms.


Signature

MATHEW T. BRAUD
Printed Name

RESEARCH ASSISTANT
Affiliation

Date AUG 24, 2011

EXHIBIT C

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.	Docket No. 100330-WS
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AFFIDAVIT OF WILLIAM KEPHART

STATE OF PENNSYLVANIA)
)
COUNTY OF MONTGOMERY)

BEFORE ME, the undersigned authority, authorized to administer oaths and take acknowledgments, personally appeared WILLIAM KEPHART, who after being duly sworn on oath, deposes and states as follows:

1. I am employed by Aqua America ("Aqua") and serve as its National Billing Manager. As part of my duties and responsibilities, and under my direction and supervision, I am responsible for serving the customers of Aqua Utilities Florida, Inc. ("AUF" or the "Company") in the area of customer billing.

2. I served as National Customer Service Manager from December 2004 to August 2011, prior to serving as National Billing Manager.

3. I have reviewed the Emergency Motion to Compel filed by YES Companies, LLC d/b/a Arredondo Farms ("YES") on November 15, 2011. Since its filing, I have independently and extensively reviewed AUF's records relating to the Motion and YES's Third Set of Discovery.

4. Under my supervision, Company employees have commenced an effort to respond to just a small portion of YES's discovery requests. Based on that effort it is clear that, in order to promptly respond to YES's remaining discovery requests to which AUF has objected, the Company would have to dedicate its entire Service Order Team to fulfilling this request.


5. Taking the Company's entire Service Order Team out of commission from its present duties would result in the halting of all service order processing for all Aqua customers in all states. It could also impact the Company's ability to timely issue accurate bills. Team members would also be unavailable for other, already scheduled projects, meetings and internal and external staff conferences. Multiple initiatives will be delayed due to the need to reschedule planned activities. In some cases, the delay could result in stranded vendor costs.

6. YES's discovery requests to which the Company has objected ask for an extraordinary amount of information and documents. For instance, from the sample completed of reviewing accounts requested by YES's Request No. 34, gathering the information just for the first six accounts took an entire day and resulted in printing 104 individual bills, not to mention the printing of other documents related to these accounts. To fully comply with YES's Request No. 34, there would remain at least 72 more accounts to manually review and print all of the requested documents that the Company possesses, all of which would contain customer account details and personal information about the customer that ordinarily would then have to be manually redacted.

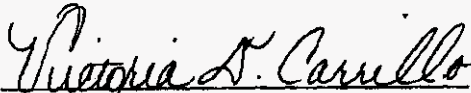
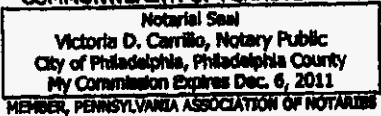
7. The Company's best estimate of the amount of personnel, time commitment and related costs it would take for the Company to fully respond, excluding the personnel, time and cost of the work required by outside legal counsel and any time required for redaction, includes: 10 Company business employees, 1 member of business management, and 1 employee in the

Company's IT department, for a total of 219 hours to fully respond to YES's remaining discovery requests. This personnel and time translates to a respective cost of at least \$8,691.88. Again, this is not including the time and expense of review of the Company's responses by outside legal counsel.

Further, Affiant sayeth not.

By: 
William Kephart

Subscribed and sworn to before me this 17th day of November, 2011, by William Kephart, who is personally known to me.


Notary Public's Signature
COMMONWEALTH OF PENNSYLVANIA

Notarial Seal
Victoria D. Carrillo, Notary Public
City of Philadelphia, Philadelphia County
My Commission Expires Dec. 6, 2011
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

Print, Type or Stamp Commissioned
Name of Notary Public