

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 Filed: October 18, 2011
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**AQUA UTILITIES FLORIDA, INC.'S, AND STEVE GRISHAM'S
 JOINT MOTION TO QUASH SUBPOENA AND
 NOTICE OF DEPOSITION OF STEVE GRISHAM
SERVED BY YES COMPANIES, LLC D/B/A ARREDONDO FARMS**

Pursuant to Rules 28-106.204 and 28-106.206, Florida Administrative Code, and Rules 1.280(c) and 1.410(c) and (e), Florida Rules of Civil Procedure, Aqua Utilities Florida, Inc. ("AUF"), and AUF employee Steve Grisham ("Mr. Grisham"), hereby file this Joint Motion to Quash Subpoena and Notice of Deposition of Mr. Grisham that YES Companies, LLC d/b/a Arredondo Farms ("YES") has served in the instant case. Consistent with Commission precedent, because Mr. Grisham is not a testifying witness in this rate case and, because YES cannot show, prior to deposing any of AUF's testifying witnesses, that there is a need to put Mr. Grisham and AUF through the inconvenience and expense of a deposition of a non-testifying witness, the movants respectfully request that the Commission quash the YES Subpoena and Notice of Deposition. AUF states in support as follows:

- On October 10, 2011, YES attempted to serve on counsel for AUF, on behalf of its employee Steve Grisham, a Subpoena and Notice of Deposition to depose Mr. Grisham on October 27, 2011, at 1:00 p.m. at the offices of Anderson Court Reporting in Dade City, Florida.¹ A copy of the YES Subpoena and Notice of Deposition are attached hereto as Exhibit "A."

¹ At the time of service, the undersigned neither represented nor had authority to accept service on behalf of Mr. Grisham. Since that time and solely in response to YES's Subpoena and Notice of Deposition, the undersigned was retained to represent Mr. Grisham for the purpose of handling YES's request to depose him.

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FPSC-COMMISSION CLERK

2. The movants recognize that Florida's rules governing discovery are broad in scope. *See generally* § 120.569(2)(f), Fla. Stat.; Fla. Admin. Code R. 28-106.206. However, this does not mean the breadth of discovery is without limit. *See In re Nuclear Cost Recovery Clause*, Docket No. 110009-EI, Ord. No. PSC-11-0246-PCO-EI, at 22 (June 3, 2011) (“[D]iscovery without limit may not be obtained.”); § 350.123, Fla. Stat. (2011) (“The commission may . . . compel the attendance of witnesses and the production of . . . evidence necessary for the purpose of any . . . proceeding.”); § 120.569(2)(k)(1), Fla. Stat. (2011) (permitting any subpoena not lawfully issued, unreasonably broad in scope, or which requires the production of irrelevant material to be invalidated).

3. In the context of a case like this—a utility rate case initiated under statutory procedures designed specifically to minimize the impact of rate case expense on customers—there are other, equally important interests that must be weighed against a request for discovery. Recognizing the importance of obtaining balance between a potentially overbroad or unnecessary discovery request, this Commission has taken a practical and reasoned approach:

The balancing test that must be used under these facts and circumstances is the litigants' right to pursue full discovery with the deponent's . . . right to protection against annoyance, embarrassment, oppression, or undue burden or expense that justice requires.

In re Nuclear Cost Recovery Clause, Ord. No. PSC-11-0246-PCO-EI, at 24-25.

4. An intervenor's discovery request to depose a non-testifying utility employee in a case in which the Commission requires parties to submit all testimony in writing necessarily places an additional burden and expense on a utility. In addition to the increased legal expense, there is additional, unanticipated cost to an employer whose employees are taken out of the workplace for the time it takes to prepare for and attend the requested deposition. There is also a

toll taken on the non-testifying employees, including the expense and personal toll of having to miss a day or more of work.

5. Accordingly, where, like here, an intervenor requests to depose a utility employee not otherwise involved in the case, this Commission balances the need for the discovery against the right to protection against annoyance, embarrassment, oppression and undue burden or expense. *See* § 350.123, Fla. Stat. (2011) (“The commission may . . . compel the attendance of witnesses and the production of . . . evidence necessary for the purpose of any . . . proceeding.”); Fla. R. Civ. P. 1.280(c).

6. To satisfy this “necessity” requirement, the party seeking such discovery should at least be able to show that the potential deponent has personal knowledge and impressions due to direct involvement in the development of certain facts at issue in the case, and that the role the potential deponent has played in coming to know those facts at issue in the case is singular and unique. *In re Nuclear Cost Recovery Clause*, Ord. No. PSC-11-0246-PCO-EI, at 25-26.

7. Here, the person YES has subpoenaed for deposition—Mr. Steven Grisham—is not an AUF corporate officer, but an AUF field technician. He is not a testifying witness in the pending rate case. As the Order Establishing Procedure that governs this proceeding makes clear, the parties are required to “file, in writing, all testimony and exhibits.” *See* Ord. No. PSC-11-0309-PCO-WS, at 2 (July 25, 2011). All direct testimony to be considered in this case was required to be filed before YES issued the Subpoena and Notice of Deposition of Mr. Grisham. Based on the direct testimony filed in this case, Mr. Grisham is not being offered by any party as a testifying witness. *Id.* at 9. AUF’s rebuttal testimony is the only testimony which remains to be filed in the rate case, and AUF does not intend to offer Mr. Grisham as a rebuttal witness.

8. YES cannot meet the necessity requirement because YES cannot show that Mr. Grisham has any unique information that is relevant to the facts at issue in the rate case. YES’s

Notice of Taking Deposition of Mr. Grisham states that the deposition is desired only for the purpose of supporting the allegations contained in YES's Motion for Investigation. (Ex. A, Notice at 1.) As detailed in AUF's "Motion to Strike YES's Unauthorized Rebuttal to Response to Motion for Investigation and Motion to Treat Motion for Investigation as Request to Initiate Customer Complaint Resolution Process (the "AUF Motion to Strike"),² YES is not entitled to litigate its Motion for Investigation (the "YES Motion") in the pending rate case. (AUF Mot. to Strike, at 3-6.) There is also no legal basis for YES to disregard the Order Establishing Procedure and submit supplemental testimony in the rate case—testimony YES could have, but simply did not timely file in the rate case—under the guise of litigating the customer complaints described in the YES Motion. (*Id.*) The facts raised in the YES Motion are not relevant to any timely submitted prefiled testimony in the rate case.³

9. Moreover, YES deposed no testifying witness in this case before subpoenaing Mr. Grisham. This Commission's precedent makes clear that, where the case schedule allows (as it does here), parties should first attempt to depose testifying witnesses, to then determine whether any actual need exists to depose a non-testifying witness. *Id.* at 31 (ordering the parties "to first depose the available FPL[] witnesses, and depending on whether any areas of questioning remain[] unexplored, then depose [the non-testifying witness]").

10. Consistent with Commission precedent and the goal of minimizing rate case expense, when YES initially indicated interest in deposing Mr. Grisham the undersigned informed YES that AUF stands ready to make available any of its testifying witnesses for deposition and, once those depositions have taken place, if there remains a need to depose Mr.

² AUF's Motion to Strike is being filed contemporaneously herewith.

³ In addition to being outside the scope of the pending rate case, as demonstrated by the Affidavit of Steven Grisham attached hereto as Exhibit "B," the allegations on which YES's Motion for Investigation rest are patently false.

Grisham, that request would be addressed at that time. That correspondence is attached hereto as Exhibit "C."

11. Without responding to that correspondence, however, YES issued the Subpoena and Notice of Deposition to depose Mr. Grisham on October 27, 2011, which is the deadline for AUF to file rebuttal testimony in the rate case. YES's attempt to unilaterally set the deposition of Mr. Grisham on the same day that AUF is required to file prefiled rebuttal testimony is not coincidental; instead, it shows that the requested deposition is calculated to harass.

12. Because YES has not and cannot show any need to depose Mr. Grisham at this time, as it must show pursuant to section 350.123, Florida Statutes, the movants respectfully request that the Commission quash YES's Subpoena and Notice of Deposition. In the alternative, the movants respectfully request that the Commission advise YES that it should first depose AUF's testifying witnesses to determine thereafter that such a need actually exists before seeking to place this imposition on Mr. Grisham and AUF.

13. AUF and Mr. Grisham respectfully request oral argument on this Motion.

Respectfully submitted this 18th day of October, 2011.



D. Bruce May Jr., Esquire

Florida Bar No. 0354473

Gigi Rollini, Esquire

Florida Bar No. 684491

Holland & Knight

315 South Calhoun Street, Suite 600

Tallahassee, FL 32301

(850) 224-7000 (Telephone)

(850) 224-8832 (Facsimile)

*Attorneys for Aqua Utilities Florida, Inc.
and Steven Grisham*

CERTIFICATE OF SERVICE

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

Mail this 18th day of October, 2011 to:

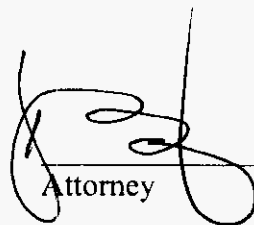
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Tallahassee, FL 32399-1050



Attorney

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Docket No. 100330-WS)
)
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.)

SUBPOENA FOR DEPOSITION

THE STATE OF FLORIDA

TO: Steve Grisham, Aqua Utilities Florida, Inc. ("Aqua")
510 Highway 466, Suite 204, Lady Lake, Florida 32159


Served 10/10/2011 at 4:00 p.m.
by C.M.C CPS#101
2nd Judicial Circuit of FL

The time and place of the deposition is as follows:

YOU ARE COMMANDED to appear before a person authorized by law to take depositions at the offices of Anderson Court Reporting, 14150 3rd Street, Dade City, FL 33525, on Thursday, October 27, 2011, at 1:00 p.m., to testify in this action.

YOU ARE SUBPOENAED to appear by the following attorney(s) and, unless excused from this subpoena by these attorney(s) or the Commission, you shall respond to this subpoena as directed.

DATED October 10, 2011

By: 
Ann Cole, Commission Clerk
Office of Commission Clerk
Florida Public Service Commission
(850) 413-6744

(SEAL)

Subpoena was issued at the request of:
David S. Bernstein, FL Bar No. 454400
Andrew J. McBride, FL Bar No. 0067973
Adams and Reese LLP
150 Second Ave North, Suite 1700
St. Petersburg, Florida 33701
727-502-8200 (phone)
727-502-8282 (fax)

Attorney for:
Yes Companies LLC, an intervener

EXHIBIT A

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in water/wastewater DOCKET NO. 100330-WS
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. Filed: October 10, 2011

NOTICE OF TAKING DEPOSITION

THE STATE OF FLORIDA

TO: Steve Grisham
Aqua Utilities Florida, Inc. ("Aqua")
510 Highway 466 , Suite 204
Lady Lake, Florida 32159

PLEASE TAKE NOTICE that the Intervener, Yes Companies, LLC d/b/a Arredondo Farms ("YES"), will take the deposition, upon oral examination, of **Steve Grisham, Aqua Utilities Florida, Inc.**, on *Thursday, October 27, 2011, at 1:00 p.m.*, at the offices of Anderson Court Reporting, 14150 3rd Street, Dade City, FL 33525, before a person who is duly authorized to administer oaths. The deposition is being taken for the purposes of discovery and for use at the Technical Hearing in this action. The Deponent is put on notice that the scope of deposition will consist of Deponent's on-site activities for Aqua at Arredondo Farms and Aqua's billing and water and wastewater service practices, including specifically, allegations contained in 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 in Gainesville, Florida (the "Motion"). YES further states that said deposition is necessary to discover information relevant to this case and the Motion and ultimately prove the allegations contained in the Motion.

The examination of the Deponent may continue from day to day until completed or may be adjourned to be reconvened at such later date as may be established therefor by those in attendance at such deposition.

Dated this 10th day of October, 2011.

ADAMS AND REESE, LLP
David S. Bernstein, Esquire.
Andrew J. McBride, Esquire
150 Second Avenue North, Suite 1700
St. Petersburg, Florida 33701
Direct: (727) 502-8261
E-Fax: (727) 502-8961
Kenneth.curtin@arlaw.com

By: s/ Andrew J. McBride
Andrew J. McBride
FL Bar No. 0067973
David S. Bernstein, Esquire.
FL Bar No. 454400
Attorneys for Intervener

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 October 10, 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, Esquire**, 570 Osprey Lakes Circle, Chuluota, Florida 32766-6658 (Kelly.Sullivan.Woods@gmail.com); **Ralph Jaeger**, Florida Public Service Commission, 2540 Shumard 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
Attorney

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 STEVEN E. GRISHAM

STATE OF FLORIDA)
)
COUNTY OF ALACHUA)

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

1. I am employed by Aqua Utilities Florida, Inc. (“AUF” or the “Company”) and serve as a field technician. As part of my duties and responsibilities, I take care of customer issues in the field in AUF’s Northwest Region, which includes AUF's water and wastewater systems in Alachua County, Florida that serve customers at the Arredondo Farms Trailer Park (the “Park”). I have reviewed the attached affidavit dated October 12, 2011 of Mallory Starling (“Starling Affidavit”) filed as an attachment to the YES Companies, LLC’s Verified Rebuttal to Aqua Utilities Florida, Inc.’s Verified Response to Motion for Investigation, Entry of Cease and Desist Order, and Entry of Order to Show Cause. I can unequivocally state and affirm that:

- I never informed, advised or suggested to Ms. Starling that AUF was changing its policies as it relates to residents at the Park. I did advise Ms. Starling that AUF

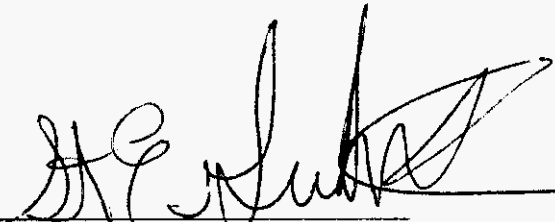
instructed me that I was to assure that residents at the Park were treated the same as other customers of AUF.

- I never informed, advised or suggested to Ms. Starling that I had been instructed to treat any resident at the Park different from the way AUF treats any other customer.
- I never informed, advised or suggested to Ms. Starling that AUF would shut off water to residents at the Park at the earliest possible opportunity or that I was instructed to only reconnect a customer on the day following payment confirmation. It always has been and continues to be my practice to reconnect a customer immediately upon notification of payment if I am on the premises.

2. In addition, I can unequivocally affirm that I was never instructed by anyone with AUF to “scrutinize all accounts of residents who testified at the Gainesville Hearing, particularly those who were most vocal in their opposition to AUF, to determine if any usage or billing discrepancies existed so that AUF could backbill for the full amount allegedly owing,” as claimed in the Starling Affidavit. Furthermore, contrary to the claim in the Starling Affidavit, I was acquiring additional meter locks as needed for the Park both prior to and after the Gainesville Hearing, and my acquisition of the locks had nothing to do with the Gainesville Hearing. Finally, I was never directly or indirectly instructed by anyone at AUF to delay reconnecting Park residents whose water had been shut off for nonpayment until the day following payment confirmation “in order to maximize the time that water service was disconnected to the resident”, as claimed in the Starling Affidavit.

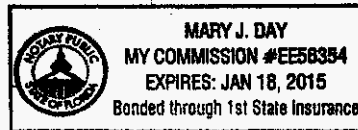
3. My instructions from AUF have always been to treat all customers fairly, promptly and cheerfully, and to be as helpful as possible. Moreover, I have tried to work with Ms. Starling and to be as helpful as possible to her. I have never been instructed, directly or indirectly, by anyone at AUF to retaliate or take putative action against YES, Ms. Starling, Ms. Regina Lewis, or any other customer, including any customer that may have testified in a rate case proceeding.

Further, Affiant sayeth not.

By: 
Steven E. Grisham

Subscribed and sworn to before me this 14th day of October, 2011, by Steven E. Grisham who is personally known to me.


Notary Public's Signature



Print, Type or Stamp Commissioned
Name of Notary Public

Rollini, Gigi (TAL - X35627)

From: May, D Bruce (TAL - X35607)
Sent: Thursday, October 06, 2011 4:34 PM
To: 'Andrew McBride'
Cc: Rollini, Gigi (TAL - X35627); Joyce, Kimberly A.; 'Rendell, William T.'
Subject: RE: PSC CASE NO. 100330-WS

Mr. McBride,

Thank you for your October 5, 2011 email. Of course we are happy to make AUF's testifying witnesses (Luitweiler, Chambers, Rendell and Szczygiel) available for deposition. I'm inquiring now as to available dates and will provide you with those dates as soon as possible.

As you know, Mr. Grisham is not a testifying witness in this proceeding. In conformance with the governing discovery standards and Commission precedent, we are prepared to address your request to depose Mr. Grisham after depositions of AUF's testifying witnesses conclude if additional areas of questioning remain. Thank you for your consideration.

D. Bruce May, Jr. | Holland & Knight

Partner

315 South Calhoun Street, Suite 600 | Tallahassee FL 32301

Phone 850.425.5607 | Fax 850.224.8832

bruce.may@hklaw.com | www.hklaw.com

[Add to address book](#) | [View professional biography](#)

From: Andrew McBride [<mailto:Andrew.McBride@arlaw.com>]
Sent: Wednesday, October 05, 2011 10:54 AM
To: May, D Bruce (TAL - X35607)
Cc: David Bernstein; Lisa D'Angelo; Kenneth Curtin
Subject: PSC CASE NO. 100330-WS

Mr. May:

Please be advised that with regard to the above-referenced PSC case, this firm will be issuing a notice and subpoena to take the deposition of Aqua employee Steve Grisham. The deposition will take place in Pasco County in the next 2-3 weeks. Please advise regarding your availability during this time frame. If I do not hear from you by close of business tomorrow, I will set a time and date convenient to my client.

Sincerely,

Andrew J. McBride
Attorney
Adams and Reese LLP

EXHIBIT C

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