

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-11-0540-PCO-WS
ISSUED: November 21, 2011

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

Yes's Motion

On November 7, 2011, Yes Companies, LLC d/b/a Arrendondo Farms (Yes) filed an Emergency Motion to Compel Aqua Utilities Florida, Inc's (AUF) responses to Yes's third set of discovery. In its motion, Yes stated that AUF filed baseless objections to its discovery requests. Yes raised these objections at the Prehearing Conference. However at the time, of the Prehearing Conference, the responses were not due. Therefore, the November 7 motion to compel was deemed premature.

On November 15, 2011, Yes filed another Motion to Compel. In its November 15 motion, Yes explains that it has now received AUF's responses and is asking that AUF be compelled to respond to certain customer specific discovery requests found in interrogatories 30-34 and production of document requests 21-28 in Yes's third set of discovery to AUF.

In its November 15 Motion to Compel, Yes argues that it is entitled to the information and documentation that contains customer data. Yes argues that a prior temporary protective order issued in this docket, Order No. PSC-11-0356-PCO-WS, issued August 25, 2011 (prior order), covers this instance because the prior order covers customer information. Yes states that pursuant to the prior order, Aqua was ordered to turn over the earlier round of requested documents. Yes contends that AUF has not provided the documentation required to be provided pursuant to that prior order.

Yes states that AUF has once again filed objections and refuses to turn over documents and information to Yes. Yes argues that Rule 25-22.006, F.A.C., together with the prior order, makes it clear that the documents and information are discoverable and must be given to Yes, subject to reasonable safeguards.

Yes states that the information requested falls within the ambit of Rule 1.280(b)(1), Florida Rules of Civil Procedure. Yes claims that the information and documents relate to back-

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billing, water shutoffs, payment plans, and account histories for customers of AUF who have testified in the proceeding regarding the poor quality of service provided by AUF. Yes requests that the motion be heard on an emergency basis.

Yes did not provide copies of its discovery requests or AUF's responses to those discovery requests as part of its motion.

AUF's Response

On November 17, 2011, AUF filed a response to Yes's motion. AUF asks that Yes's motion be denied and that the Commission enter an order protecting AUF from Yes's discovery requests. AUF states that Yes is not entitled to receive the quantity of information and the type of sensitive, customer-specific information Yes seeks. In the alternative, AUF asks that the Commission enter a Temporary Protective Order prior to the exchange of the documents requiring Yes to strictly protect such customer-specific information from disclosure beyond the law firm which represents Yes, and to recognize the significant expense of responding as valid rate case expense. AUF asks that if the alternative is ordered, that it not be required to redact the 1,500 pages of documents in order to file the redacted information with the Commission.

In its response, AUF states that it fully responded to all of the discovery requests referred to in Yes's motion except interrogatories 30(a), 31(b), and 32(c), and document requests 22, 24, and 26. According to AUF, the objectionable interrogatories 30(a), 31(b), and 32(c) seek identification of all Arrendondo 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 states that the objectionable document requests seek all documents relating to certain Arrendondo Farms customers and facts regarding their situation that led to nonpayment. AUF also objected to interrogatory 34 and document request 28 because they ask for any documents exchanged between Aqua and customers during the past three years at 78 different properties. AUF states that this would include every monthly bill and every customer payment received by AUF.

AUF asserts that the Commission has consistently ruled that detailed customer-specific information such as customer name and address are confidential proprietary information.¹ AUF further contends that the Commission has found that the disclosure of a utility customer's "personal account numbers could provide unauthorized access to third parties; thus, potentially harming [the utility's] customers."² AUF concludes that 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. AUF asserts that it has taken steps to protect customer sensitive information in this proceeding.

¹ Order No. PSC-02-0356-CFO-EI, issued March 15, 2002, in Docket No. 000824-EI, In re: Review of Florida Power Corp.'s earnings, including effects of proposed acquisition of Florida Power Corp. by Carolina Power & Light.

² Order No. PSC-07-0552-CFO-EI, issued June 29, 2007, in Docket No. 070245-EI, 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 Florida, Inc.

AUF contends that it is concerned that Yes, the landlord of AUF customers who reside at Arrendondo Farms, is seeking particularly sensitive current and past customer information from AUF about Yes's tenants. AUF gives the examples that by seeking "and documents exchanged between" AUF and its customers, what Yes seeks as discovery is not only its tenants' AUF account information and payment delinquency history, but also its tenants' bank account information which would likely appear in copies of payments customer have made to AUF.

AUF argues that it 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, the landlord, without the tenants' consent.

AUF also argues that it is not clear how the information is relevant to the rate case. AUF asserts that Yes does not represent Yes's tenants or any prior AUF customer in this proceeding.

AUF also asserts that this discovery request is overbroad and will, if provided, be at a great expense. AUF filed an affidavit asserting that the request will require 10 company business employees, 1 member of business management, and 1 employee in the Company's IT department, for a total of 219 hours, exclusive of attorney review time. According to AUF, this employee time would cost at least \$8,691.88.

Analysis and Ruling

By Order No. PSC-11-0356-PCO-WS, issued August 25, 2011, I granted AUF's motion for protective order and determined that the information which is the subject of Yes's request is proprietary confidential information. The information in Document No. 02730-11 is customer-specific information, consisting of names and addresses. Accordingly, I have previously ruled in this docket that customer specific information is confidential. This is consistent with prior Commission orders.³

There are two avenues by which a party may obtain confidential information. The first is by entering into a consent agreement pursuant to Rule 25-22.006(7)(b), F.A.C. The second is by the Prehearing Officer's ruling, Rule 25-22.006(7)(a), F.A.C. Yes has not indicated that it has consent of AUF to review confidential information. Therefore, I must determine whether to require the disclosure to Yes of confidential information.

In determining whether a party is entitled to discovery of confidential information, there is a balance between the need to protect the confidentiality of the information as compared to the relevance of the information to the proceeding.⁴ Section 367.156(2), F.S. states that information which affects a utility's rates or cost of service shall be considered relevant for purposes of discovery in any docket or proceeding where the utility's rates or cost of service are at issue. I

³ Order No. PSC-11-0323-CFO-EG, issued July 28, 2011, in Docket No. 110002-EG, In re: Energy Conservation cost recover clause;

⁴ See, Order No. PSC-04-0518-PCO-EI, issued May 21, 2004, in Docket No. 040206-EI, In re: Petition to determine need for Turkey Point Unit 5 electrical power plant, by Florida Power & Light Company, Inc.

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find that individual customer information, which is confidential and protected, is not relevant to the utility's rates or cost of service. Accordingly, Yes's Motion to Compel is denied.

ORDERED that Yes Companies, LLC d/b/a Arrendondo Farms' Motion to Compel filed November 15, 2011 is denied.

By ORDER of Commissioner Ronald A. Brisé, as Prehearing Officer, this 21st day of November, 2011.



RONALD A. BRISÉ

Commissioner and Prehearing Officer

Florida Public Service Commission

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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.