

Diamond Williams

100330-WS

From: Kenneth Curtin [Kenneth.Curtin@arlaw.com]
Sent: Tuesday, February 08, 2011 2:58 PM
To: Filings@psc.state.fl.us
Cc: Charles Beck; D. Bruce May, Jr.; KELLY.JR@leg.state.fl.us; Robert Lloyd; William Coakley
Subject: Aqua Utilities Florida, Inc. Rate Action (Dkt. No. 100330-WS)
Attachments: 2905_001.pdf

Electronic Filing

a. Person Responsible for this electronic filing:

Kenneth M. Curtin, Esquire
 Adams and Reese LLP
 150 Second Avenue North, Suite 1700
 St. Petersburg, Florida 33701
 Direct: (727) 502-8261
 E-Fax: (727) 502-8961
kenneth.curtin@arlaw.com

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 Communities, Inc. d/b/a Arredondo Farms

d. There is a total of 5 pages

e. The document attached for electronic filing is YES Communities, Inc. d/b/a Arredondo Farms' Amended Motion for Intervention by YES Communities, Inc. d/b/a Arredondo Farms in Relation to the Arredondo Farms Mobile Home Park in Alachua County, Florida

Thank you for your cooperation and attention to this matter.

Kenneth M. Curtin, Esquire
 Adams and Reese LLP
 101 E. Kennedy Boulevard, Suite 4000
 Tampa, Florida 33602
 Main: (813) 402-2880
 Fax: (813) 402-2887
 Direct: (813) 227-5521
 E-Fax: (813) 227-5621
 150 Second Avenue North, Suite 1700
 St. Petersburg, Florida 33701
 Main: (727) 502-8200
 Fax: (727) 502-8282
 Direct: (727) 502-8261
 E-Fax: (727) 502-8961
kenneth.curtin@arlaw.com
www.adamsandree.com

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2/8/2011

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: February 8, 2011

AMENDED MOTION FOR INTERVENTION BY YES COMMUNITIES, INC. D/B/A ARREDONDO FARMS IN RELATION TO ARREDONDO FARMS MOBILE HOME PARK

Intervener, YES Communities, Inc. d/b/a Arredondo Farms ("YES"), by and through its undersigned counsel, files this its Amended Motion for Intervention in Relation to Arredondo Farms Mobile Home Park and in support states:

1. On or about June 15, 2010, Aqua Utilities Florida, Inc. ("Aqua") informed the Florida Public Service Commission ("PSC") of its intention to submit an application of general rate relief for its water and wastewater systems in Alachua, Brevard, DeSoto, Hardee, Highlands, Lake, Lee, Marion, Orange, Palm Beach, Pasco, Polk, Putnam, Seminole, Sumter, Volusia, and Washington Counties ("Rate Case").

2. As to Alachua County, the water and wastewater systems operated by Aqua and which are part of the Rate Case serve what is known as the Arredondo Farms Mobile Home Park ("Park"). The Park consists of 445 mobile home lots along with various common area elements and facilities. Aqua supplies the water and wastewater to all of the mobile home lots and the common area elements and facilities.

3. YES is the owner of the Park and, as such, would and can be greatly affected by the outcome of the Rate Case in relation to the Park and, as a result, has a substantial interest in the outcome of the Rate Case.

4. Consequently, on January 31, 2011, YES filed a Motion for Intervention in this case. On February 7, 2011, Aqua filed an objection to the Motion for Intervention alleging several procedural deficiencies in regards to the requirements of Rule 28-106.201(2), Fla.Admin.Code. Aqua alleges that the alleged absence of certain pleading requirements fails to give Aqua fair notice of YES' position and prejudices Aqua.

5. Without admitting any alleged deficiencies or prejudice, but solely in an attempt to alleviate the concerns of Aqua this Amended Motion for Intervention is being filed to clarify YES' original Motion for Intervention, give Aqua additional notice of YES's position, and alleviate any alleged prejudice that Aqua may suffer. The following additional information is given in relation to Rule 28-106.201(2), Fla.Admin.Code:

6. **Name and Address of Intervener.** YES Communities, Inc. d/b/a Arredondo Farms, c/o Kim Kurtz of YES! Communities, 2401 15th Street, Suite 350, Denver, Colorado 80202. Telephone Number: (303) 483-7314.

7. **Name and Address of Intervener's Representative for Service.** Kenneth M. Curtin, Esquire, Adams & Reese, LLP, 150 Second Avenue North, Suite 1700, St. Petersburg, Florida 33701. Telephone Number: 727-502-8261.

8. **Substantial Interests of Intervener that will be Affected.** YES is the owner of the Park and any increase in rates will directly, immediately and adversely affect YES. In particular, YES is not only paying Aqua for water and wastewater services, but also rents lots and mobile homes to third parties at the Park. YES' ability to rent lots and mobile homes is directly, immediately and adversely affected by increased rates for water and wastewater services. *See Agrico Chemical Co. v. Dept. of Environmental Regulation*, 406 So.2d 478, 482 (Fla. 2nd DCA 1981); *Int'l Jai-Alai*

Players Assn. v. Fla. Pari-Mutuel Commission, 561 So.2d 1224, 1225-26 (Fla. 3rd DCA 1990); Order No. PSC-10-0508-PCO-EG; Order No. PSC-10-0524-PCO-EG; Order No. PSC-11-0019-PCO-WS.¹

9. **How and When Intervener Received Notice.** Intervener received notice of the Rate Case, in writing, pursuant to Rules 25-22.0407 and 25-30.4345, Fla.Admin.Code, approximately within 50 days from the official date of filing.

10. **Statement of Disputed Issues of Fact, Facts Warranting Denial of Rate Increase, and Specific Rules and Statutes Relied Upon.** YES is only intervening on behalf of the Park owned by YES and not on behalf of any other park being serviced by Aqua. In relation to the Park, YES has not yet intervened and discovery is still ongoing in the Rate Case, therefore, additional discovery may reveal additional disputed issues of fact warranting denial of the Rate Increase. However, at this time, YES disputes that Aqua is entitled to any rate increase in relation to the Park. In particular, YES states the following facts are in dispute and will contest any rate increased due to the following:

- a. That, in relation to the Park, the quality of the service provided by Aqua including, but not limited to, the quality of Aqua's water and wastewater services, the operational conditions of Aqua's plant and facilities, and Aqua's attempts to address customer satisfaction is unsatisfactory, not to industry norms and standards, and, as a result, Aqua is not entitled to a

¹ Aqua cites to the case of *Fla. Wildlife Federation, Inc. v. Board of Trustees of the Internal Improvement*, 707 So.2d 841 (Fla. 5th DCA) as authority that the Office of Public Counsel ("OPC") can adequately protect YES' substantial interests. However, that case is not applicable in that it deals with an intervention motion pursuant to Rule 1.230, Fla.R.Civ.P., not an intervention motion pursuant to the Florida Administrative Code. In other words, a completely different intervention standard and forum. Further, the OPC is representing all customers of Aqua in some 40 different locations throughout the State and the interests of one park may not coincide with the interests of YES's Park. On issues where the interests of one park may be adverse to another park, the OPC cannot represent YES. For example, the OPC will not argue for or against YES' inclusion in a lower or higher rate band or whether the service provided by Aqua is of a lower or higher quality at one park versus YES' Park.

rate increase in accordance with Section 367.081(2)(a)(1), Fla.Stat., and Rule 25-30.433(1), Fla.Admin.Code; *See also North Fla. Water Co. v. Bevis*, 302 So.2d 129 (Fla. 1974)(wherein the Florida Supreme Court stated that the public should not be compelled to pay increased rates because of an inefficient system);

- b. That, in relation to the Park, Aqua is not entitled to a rate increase based upon the financial data provided by Aqua in accordance with Sections 367.081(2)(a)(2), Fla.Stat., 367.081(4)(f), Fla.Stat, Rule 25-30.433(4), Fla.Admin.Code, and Rule 25-30.433(11), Fla.Admin.Code;
- c. That, in relation to the Park, Aqua is not entitled to an interim rate increase based upon the financial data provided by Aqua in accordance with Section 367.082(5), Fla.Stat., and Rule 25-30.437(5), Fla.Admin.Code; and,
- d. That, in relation to the Park, that the Park should not be placed on a fully-consolidated statewide uniform rate structure as requested by Aqua and/or that the rate band in which the Park was placed was too high and/or should be lowered.

11. **Statement of Relief Sought:** YES seeks to have no rate increase for the Park at issue.

WHEREFORE, Intervener, YES Communities, Inc. d/b/a Arredondo Farms, respectfully requests that this Public Service Commission grant its Amended Motion for Intervention in Relation to Arredondo Farms Mobile Home Park and any further relief that is necessary, just and proper.

Respectfully submitted,

ADAMS AND REESE, LLP
Kenneth M. Curtin, 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/ Kenneth M. Curtin
Kenneth M. Curtin
FL Bar No. 087319
Attorneys for YES

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 February 8, 2011 to: **Kimberley A. Joyce, Esq.**, Aqua American, Inc., 762 West Lancaster Avenue, Bryn Mawr, PA 19010; **D. Bruce May, Jr., Esq.**, P.O. Box 810, Tallahassee, Florida 32302-0810 (bruce.may@hklaw.com); **Charlie Beck, Esq. and J.R. Kelly, Esq.**, Office of Public Counsel, c/o Florida Legislature, 111 W. Madison Street, Room 812, Tallahassee, Florida 32399-1400 (BECK.CHARLES@leg.state.fl.us) (KELLY.JR@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).

s/ Kenneth M. Curtin
Attorney