

**Dorothy Menasco**

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**Sent:** Monday, July 11, 2011 2:37 PM  
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**Subject:** RE: Aqua Utilities Florida, Inc. Rate Action (Dkt. No. 100330-WS)  
**Attachments:** YES CROSS PETITION.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 and wastewater rates in Alachua, Brevard, DeSoto, 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 Intervener, YES Communities, Inc. d/b/a Arredondo Farms

d. There is a total of 8 pages

e. **The document attached for electronic filing is Intervener, YES Communities, Inc. d/b/a Arredondo Farms' Cross-Petition Protesting Certain Portions of Proposed Agency Action.**

Thank you for your cooperation and attention to this matter.

Lisa M. D'Angelo, Secretary to  
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 and Susan G. Sherman, CP  
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DOCUMENT NUMBER-DATE

04756 JUL 11 =

7/11/2011

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**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: March 18, 2011

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**INTERVENER, YES COMMUNITIES, INC. D/B/A  
ARREDONDO FARMS', CROSS-PETITION PROTESTING CERTAIN  
PORTIONS OF PROPOSED AGENCY ACTION.**

Intervener, Yes Communities, Inc. d/b/a Arredondo Farms ("Yes"), by and through its undersigned counsel, and in accordance with Sections 120.569 and 120.57, *Fla.Stat.*, and Rules 25-22.029, 28-106.201, and 25-22.029, *Fla.Admin.Code*, here files this its Cross-Petition Protesting Certain Portions of the Florida Public Service Commission's ("PSC") Order No. PSC-11-0256-PAA-WS, issued on June 13, 2011 ("PAA Order") in which the PSC approved, in part, water and wastewater increases for Aqua Utilities Florida, Inc. ("Aqua") and in support thereof states the following:

1. **Name and Address of the Agency Affected and Agency's File Number**

Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
Docket Nos.: 100330-WS and 080121-WS

2. **Name, Address, and Telephone Number of Cross-Petitioner**

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

3. **Name, Address, and Telephone Number of Cross-Petitioner's Representative**

Kenneth M. Curtin, Esquire  
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4. **Statement of Substantial Interest**

The PAA Order affects water and wastewater systems owned and/or operated by Aqua in Alachua, Brevard, DeSoto, Hardee, Highlands, Lake, Lee, Marion, Orange, Palm Beach, Pasco, Polk, Putnam, Seminole, Sumter, Volusia, and Washington Counties. As to Alachua County, the water and wastewater systems operated by Aqua and which are part of the PAA Order serve what is known as the Arredondo Farms Mobile Home Park (the "Community"). The Community 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.

Yes is the owner of the Community and, as such, would and can be greatly affected by the outcome of the PAA Order and any protest of the PAA Order in relation to the Community and, as a result, has a substantial interest in the outcome and any changes to the PAA Order and/or the rates charged for water and wastewater services by Aqua in relation to the Community. Any increase in rates or other changes in the services provided in relation to water and wastewater rates at the Community by Aqua 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 in the Community. Yes' ability to rent lots and mobile homes is directly, immediately and

adversely affected by any change in rates for water and wastewater services. *See Agrico Chemical Co. v. Dept. of Environmental Regulation*, 406 So.2d 478, 482 (Fla. 2<sup>nd</sup> DCA 1981); *Int'l Jai-Alai Players Assn. v. Fla. Pari-Mutuel Commission*, 561 So.2d 1224, 1225-26 (Fla. 3<sup>rd</sup> DCA 1990); Order No. PSC-10-0508-PCO-EG; Order No. PSC-10-0524-PCO-EG; Order No. PSC-11-0019-PCO-WS.

5. **Notice of Receipt of PAA Order**

Yes is a party to this action pursuant to an Order Granting Intervention dated March 8, 2011 by the PSC. Yes received notice of the PAA Order through an electronic copy of the PAA Order on June 13, 2011. On July 1, 2011, the Citizens of the State of Florida by and through the Office of Public Counsel (“OPC”) and Lucy Wambsgan, another intervener in this action, both filed Petitions Protesting Portions of the PAA Order (collectively “Initial Protest Petitions”). Yes received these Initial Protest Petitions through an electronic copy on July 1, 2011. In accordance with Rule 25-22.029, *Fla.Admin.Code*, Yes as a person whose interests will be substantially affected by the PAA Order may file a cross-petition identify additional particular issues on which a protest and hearing is requested within ten (10) days of service of the Initial Protest Petitions, or, in other words, by July 11, 2011. Consequently, this Cross-Petition is timely filed.

6. **Disputed Issues of Fact, Statement of Ultimate Facts Alleged and Facts Warranting Reversal**

In accordance with Sections 367.081, *Fla.Stat.*, and 25-30.433, *Fla.Admin.Code*, the PSC must make a determination of the value and quality of the water and wastewater services provided by Aqua. The finding of a marginal quality of service should be

downgraded to unsatisfactory as to all of Aqua's water and wastewater systems, or, at least, as to the Community. Further, Aqua's return on equity ("ROE") should be diminished by 100 basis points, rather than merely 25 basis points, regardless of whether the finding of quality is reduced from marginal to unsatisfactory. Aqua's poor service and product, as it relates to all of Aqua's water and wastewater systems, or, at least, as to the Community, includes, but is not necessarily limited to: 1) poor and unsatisfactory potable water quality; 2) excessive leaks and a failure to adequately address the same by Aqua; 3) excessive billing errors and a failure to adequately address the same by Aqua; and, 4) a general overall failure of quality service such as flushing of wells and water shuts offs without notice and inadequate customer service.

Further, Section 367.081, *Fla.Stat.*, also provides in pertinent part that rates shall be "just, reasonable, compensatory, and not unfairly discriminatory." The rate charges to by Aqua as to all of Aqua's water and wastewater systems, or, at least, as to the Community, are not just, reasonable, compensatory, nor affordable. Further, the quality of service and product provided by Aqua at the Community is not similar to either the local community or to other water and wastewater systems maintained by Aqua. Therefore, the rates charged to the Community are discriminatory. Further, the high cost and unaffordability of Aqua's rates coupled with the low water quality and inferior service makes the rates in the PAA Order unjust, unreasonable, and unaffordable as to all of Aqua's water and wastewater systems, or, at least, as to the Community

Moreover, Yes is in agreement with OPC in that the net operating income ("NOI"), rate base, and revenue requirements approved in the PAA Order are overstated. As a result, the rates based upon the NOI, rate base, and revenue requirements are unjust

and unreasonable and appropriate adjustments are required so as to conform the rates to a just, reasonable, and affordable rate. Moreover, the NOI, rate base, and revenue requirements set in the PAA Order are based, in part, on income lost and expenses which are overstated and inflated due to Aqua's own failures, such as the failure to adequately address such issues as excessive leaks, billing errors, and an overall failure of quality customer service. These failures cause Aqua to lose income and increase its bad debt due to rate payers who are disenfranchised with Aqua's lack of service and quality and leave the communities serviced by Aqua, including, but not limited to the Community. As a result, adjustments to the NOI, rate base, and revenue requirements should be based, in part, upon the fact that Aqua's own inadequate business performance is the cause for in the increase in NOI, rate base, and revenue requirements.

Yes protests the above portions of the PAA Order relating to service, quality, affordability, NOI, rate base, and revenue requirements as they relate to all of Aqua's water and wastewater systems and, in particular, as to the Community. Moreover, Yes reserves the right to protest any further fallout issues resulting from the areas specifically identified above as they may relate to all of Aqua's water and wastewater systems and, in particular, as to the Community. As a result, a tentative issue list is as follows:

**a. Quality of Service**

- i. Should Aqua's quality of service remain at marginal or be reduced to unsatisfactory?
- ii. Should Aqua's ROE be decreased further than 25 basis points based upon Aqua's lack of quality of service?

**b. Affordability**

- i. Are the rates to be charged by Aqua just, fair, and affordable?

**c. Rate Base**

- i. What are the appropriate used and useful percentage adjustments for the water treatment plant for Arredondo Estates and Arredondo Farms?
- ii. What are the appropriate used and useful percentage adjustments for the water distribution systems at Arredondo Estates and Arredondo Farms?
- iii. What are the appropriate used and useful percentage adjustments for the wastewater treatment plant for Arredondo Estates and Arredondo Farms?

**d. NOI**

- i. Should any adjustments be made to Aqua's NOI as to all of Aqua's water and wastewater systems and, in particular, as to the Community due to Aqua's own inadequate business performance, including such items as bad debt expense?
- ii. Should any adjustments be made to reduce the NOI based upon test year revenues and billing determinates, rate case expense, and affiliate revenues, costs, and charges?

**e. Revenue Requirements**

- i. What are the appropriate revenue requirements?



Pursuant to Section 120.80(13)(b), *Fla.Stat.*, a Section 120.57 hearing may only address those issues in dispute and any other issues not in dispute are deemed stipulated. Yes reserves the right to take positions and file testimony on any additional issues raised by an other party's protest or cross-protest or any fallout issues resulting from those issues identified above or identified in any other party's protest or cross-protest.

7. **Relief Sought**

Yes requests that the PSC set the PAA Order for hearing on the above referenced issues and all other issues in any other party's protest or cross-protest.

WHEREFORE, Intervener, Yes Communities, Inc. d/b/a Arredondo Farms, hereby timely files this its Cross-Petition Protesting Certain Portions of the Florida Public Service Commission's ("PSC") Order No. PSC-11-0256-PAA-WS issued on June 13, 2011 and petitions the PSC to conduct a formal evidentiary hearing, under the provisions of Section 120.57(1), *Fla.Stat.*, and any other and further relief the PSC deems just and appropriate.

Respectfully submitted,

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By: s/ Kenneth M. Curtin  
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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 July 11, 2011 to: **Kimberley A. Joyce, Esq.**, Aqua American, Inc., 762 West Lancaster Avenue, Bryn Mawr, PA 19010 [kajoyce@aquaamerica.com](mailto:kajoyce@aquaamerica.com); **D. Bruce May, Jr., Esq.**, P.O. Box 810, Tallahassee, Florida 32302-0810 ([bruce.may@hkclaw.com](mailto:bruce.may@hkclaw.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](mailto:KELLY.JR@leg.state.fl.us)) and [CHRISTENSEN.PATTY@leg.state.fl.us](mailto:CHRISTENSEN.PATTY@leg.state.fl.us) ; **Robert Lloyd**, P.O. Box 63, Captiva, Florida 33924 ([Rlloyd1@aol.com](mailto:Rlloyd1@aol.com)); **William Coakley**, 5934 Lake Osborne Drive, Lantana, Florida 33461 ([wco@comcast.net](mailto:wco@comcast.net)); **David L. Bussey**, 4948 Britni Way, Zephyrhills, Florida 33541 ([dbussey@hotmail.com](mailto:dbussey@hotmail.com)); Kelly Sullivan, Esquire, 570 Osprey Lakes Circle, Chuluota, Florida 32766-6658 ([Kelly.Sullivan.Woods@gmail.com](mailto:Kelly.Sullivan.Woods@gmail.com)); Ralph Jaeger, Florida Public Service Commission, 2540 Shummard Oak Blvd., Tallahassee, Florida 32399-0850 ([RJaeger@Psc.State.fl.us](mailto:RJaeger@Psc.State.fl.us)).

s/ Kenneth M. Curtin  
Attorney