

**Diamond Williams**

**From:** Lisa D'Angelo [Lisa.D'Angelo@arlaw.com]  
**Sent:** Wednesday, October 12, 2011 4:52 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** bruce.may@hkclaw.com; kajoyce@aquaamerica.com; kelly.jr@leg.state.fl.us; CHRISTENSEN.PATTY@leg.state.fl.us; Rlloyd1@aol.com; wdco@comcast.net; David Bernstein; Kenneth Curtin; dbussey@hotmail.com; Kelly.Sullivan.Woods@gmail.com; Ralph Jaeger; jrichards@pascocountyfl.net; kkurz@yescommunities.com; Andrew McBride; cecilia\_bradley@oag.state.fl.us; Kenneth Curtin; Susan Sherman  
**Subject:** FW: AQUA UTILITIES FLORIDA, INC. RATE ACTION (Docket. No. 100330-WS): 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  
**Attachments:** 3280\_001.pdf

**Electronic Filing**

## a. Person Responsible for this electronic filing:

David S. Bernstein, Esq.  
 Adams and Reese LLP  
 150 Second Avenue North, Suite 1700  
 St. Petersburg, Florida 33701  
 Direct: (727) 502-8215  
 E-Fax: (727) 502-8915  
[David.Bernstein@arlaw.com](mailto:David.Bernstein@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 COMPANIES, LLC d/b/a ARREDONDO FARMS

d. There are a total of **22** pages

## e. The document attached for electronic filing is Intervener, YES Companies, LLC d/b/a Arredondo Farms', 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

Thank you for your cooperation and attention to this matter.

DOCUMENT NUMBER+DATE

07497 OCT 12 =

10/12/2011

FPSC-COMMISSION CLERK

# ADAMS AND REESE LLP

**Baton Rouge | Birmingham | Houston | Jackson | Memphis | Mobile | Nashville | New Orleans | Sarasota | St. Petersburg | Tampa  
| Washington, D.C.**

The contents of this e-mail and its attachments are intended solely for the addressee(s). In addition, this e-mail transmission may be confidential and it may be subject to privilege protecting communications between attorneys and their clients. If you are not the named addressee, or if this message has been addressed to you in error, you are directed not to read, disclose, reproduce, distribute, disseminate or otherwise use this transmission. Delivery of this message to any person other than the intended recipient(s) is not intended in any way to waive privilege or confidentiality. If you have received this transmission in error, please alert the sender by reply e-mail. Treasury Circular 230 requires that we inform you that any statements regarding tax matters made herein, including attachments, cannot be relied upon for the purpose of avoiding tax penalties, and such statements are not intended to be used or referred to in any marketing or promotional materials. Additionally, Adams and Reese LLP does not and will not impose any limitation on the disclosure of the tax treatment or tax structure of any transactions to which such statements relate.

10/12/2011

---

**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: October 12, 2011

---

**INTERVENER, YES COMPANIES, LLC D/B/A ARREDONDO FARMS'  
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**

Intervener, YES Companies, LLC d/b/a Arredondo Farms ("Yes"), by and through its undersigned counsel, files this its Verified Rebuttal (the "Rebuttal") to Aqua Utilities Florida, Inc.'s Verified Response (the "Response") to Motion for Investigation, Entry of Cease and Desist Order, and Entry of Order to Show Cause (the "Motion"), and in support states:

1. Aqua is under a Monitoring Program (the "Monitoring Program") as imposed by the Commission in Order No. PSC-09-0385-FOF-WS, Order No. PSC-10-0218-PAA-WS, and Order No. PSC-10-0297-PAA-WS. The Monitoring Program was imposed against Aqua due to its poor service and unacceptable billing practices in its Florida systems, including at Arredondo Farms.

2. Yes's Motion was necessitated in part due to Aqua's continued violations of the intent and purpose of the Monitoring Program imposed by the Commission.

3. On or about September 27, 2011, Yes filed the Motion stemming from well-documented, improper retaliation by Aqua against multiple residents of Arredondo Farms (the "Property") who testified at the September 12, 2011 customer service hearing in

Gainesville, Florida (the "Gainesville Hearing") in the instant rate case. These testifying residents include, but are not limited to, Mr. Eugene Davis ("Mr. Davis"), Ms. Regina Lewis ("Ms. Lewis"), and Yes itself.

4. On or about October 4, 2011, Aqua filed the Verified Response, seeking to evade all responsibility for its retaliation and bad faith conduct by disingenuously shifting blame to victims at the Property and Yes.

5. This Commission should not be misled by Aqua's repugnant attempt to summarily dispose of this matter without affording Yes full due process of law and the right to an evidentiary hearing on Aqua's malfeasance and bad deeds.

6. It is Aqua, not Yes, which fails to disclose all material facts pertinent to the claims referenced in the Motion and Response and as such continues its charade of refutable rhetoric before the Commission.

7. As it relates to Mr. Davis, Aqua would have this Commission believe that the 10-day shut off notice attached to the Motion was merely the result of Mr. Davis's alleged failure to make a purported August 31, 2011 payment under a payment plan with Aqua. This is yet another example of Aqua blaming the customer to cover its own unscrupulous practices.

8. In fact, as attested to in the affidavit of Mr. Davis attached hereto as Exhibit "A," Mr. Davis made the above-referenced payment under the payment plan on September 2, 2011 as part of his September, 2011 payment, as he has always done. What Aqua fails to disclose to this Commission is that it customarily accepts Mr. Davis's payment plan payment as part of the next month's payment and does not require Mr. Davis to make it as a separate payment. The fact that Aqua held Mr. Davis's payment

until September 13—more than 11 days after it was made—evidences a clear discriminatory intent toward Mr. Davis that arose curiously after his testimony at the Gainesville Hearing and that cannot be ignored by this Commission.

9. As Aqua customarily accepted Mr. Davis's payment plan payment as part of the next month's payment and Mr. Davis was led to believe by Aqua's actions that he was free to make his payment in this manner, Aqua has acted in bad faith by serving 10-day shut off notices on Mr. Davis following his timely payment pursuant to the parties' course of dealings.

10. The manner in which Aqua conducts business and treats its customers such as Mr. Davis is inconsistent with the representations made by Rick Fox ("Mr. Fox"), President of Aqua, during his speech at the Gainesville Hearing. During this speech, Mr. Fox stated:

Good afternoon. My name is Rick Fox, and I'm the President of Aqua Utilities Florida. Before I begin, we have a number of AUF employees here today that will be available to answer any of the questions that you may have.

Present today in the back, and I'll ask that they stand and you can turn around and see what they look like: Harry Householder, he's out Manager of Operations statewide; Stacey Barnes, our Customer Field Service Manager; Tricia Williams, our head Environmental Engineer, she's over here to the right, my right; and Paul Thompson, Area Coordinator for this area. **Some of these AUF employees who are in the back of the room have computer access and they can go into your account and hopefully address any issues that you may have.** So please feel free to contact them at your convenience.

Commissioners, I want to thank you for the opportunity to speak briefly to our customers in Alachua and Marion Counties this afternoon, **but more importantly thank you for giving us a chance to listen to our customers and to hear what they have to say. At the end of the day we are a service company and we value customer input on the services we provide...**

I know a lot of you want to speak and we are here to listen. So I just want to thank you for coming out and taking time out of your day to be here. **I look forward to hearing what you have to say, and I'll be available after the meeting to answer any questions that you may have.** Thank you. [Gainesville Hearing, Transcript, Page 13-14, 16-17]. [Emphasis added].

11. Notwithstanding these representations to the contrary, neither Mr. Fox nor Aqua have shown any intention of working with customers such as Mr. Davis to cure their longstanding billing and payment issues. In fact, even following Mr. Davis's passionate testimony and exchange with Aqua counsel regarding the hardships he has experienced in his time with Aqua, neither Mr. Fox nor any representative of Aqua made any effort to resolve Mr. Davis's billing disputes. Instead, Aqua sent Mr. Davis a 10-day shut off notice, as attached to the Motion. The facts make clear that Aqua portrays itself one way to the Commission, but acts in a completely different way in its dealing with customers at the Property. As Mr. Davis's experience exemplifies, Mr. Fox's representations to the Commission are patently false and misleading and cannot be ignored by the Commission.

12. Moreover, Aqua would have every motive to retaliate against Mr. Davis as he not only testified persuasively against Aqua at the Gainesville Hearing, but he also allowed Yes to include his prior experiences with Aqua in its Memorandum in Opposition to Aqua Utilities Florida, Inc.'s Rate Increase Application, filed in this case on April 11, 2011.

13. Next, as it relates to Ms. Lewis, Aqua again seriously misleads this Commission in its Response by omitting key facts.

14. Aqua would have this Commission believe that Ms. Lewis is not a current customer of Aqua and has made no effort to contact Aqua since her water was shut off on

July 26, 2011. Aqua's repugnant allegations are purposely off-base, misleading, and omit relevant information.

15. On the contrary, as provided in the affidavit of the manager of the Property, Mallory Starling ("Ms. Starling"), attached hereto as Exhibit "B," Aqua knew or should have known at all relevant times that Ms. Lewis was living at the Property and using Aqua service.

16. Specifically, as stated in Ms. Starling's affidavit, Aqua maintenance worker, Steven Grisham ("Mr. Grisham"), visited the Property and spoke with Ms. Starling regarding issues at the Property almost daily between July 26, 2011 and the present. It was common knowledge to Aqua that Ms. Lewis was utilizing Aqua service during this time period and Mr. Grisham was aware or should have been aware of Ms. Lewis's use of utility services at the Property.

17. Further, Aqua's contention that Ms. Lewis had not contacted Aqua regarding water service since July 26, 2011 is also off-base and seeks to mislead this Commission. In fact, Ms. Starling has spoken with Aqua representatives and Aqua employee Mr. Grisham on Ms. Lewis's behalf on several occasions. Further, Ms. Starling requested, and Aqua provided, an account statement for Ms. Lewis on July 27, 2011 so that Yes could pay the balance owing and maintain Ms. Lewis's water service. Based on that statement, and to the best of Ms. Starling's knowledge and belief, Ms. Starling made a payment on Ms. Lewis's behalf to cure any arrearage owing to Aqua. Therefore, in light of these communications from Ms. Starling, and from Ms. Lewis's persuasive testimony at the Gainesville Hearing for which Aqua was present, Aqua was

clearly on notice of Ms. Lewis's identity and occupancy at the Property at the time the retaliatory, September 13, 2011 "Dear OCCUPANT" letter was sent to Ms. Lewis.

18. Notwithstanding Ms. Starling's payment on behalf of Ms. Lewis, and following the filing of the Motion by Yes on September 27, 2011, Ms. Lewis's water was unexpectedly turned off by Aqua on October 3, 2011. As provided in the affidavit of Ms. Starling, service was only reconnected the next day following payment of the alleged arrearage by Yes.

19. This Commission should also be advised of several conversations between Ms. Starling and Aqua employee Mr. Grisham in the two weeks following the Gainesville Hearing which expressly demonstrate and prove the retaliatory actions of Aqua against Yes and residents of the Property who spoke at the Gainesville Hearing, including Ms. Lewis. During these conversations, Mr. Grisham informed Ms. Starling that Aqua has changed its policies as it relates to residents at the Property, and from then on, Mr. Grisham was instructed to scrutinize all accounts of residents who testified at the Gainesville Hearing, particularly those who were most vocal in their opposition to Aqua, to determine if any usage or billing discrepancies exist so that Aqua can back-bill for the full amount allegedly owing. Further, Mr. Grisham informed Ms. Starling that Aqua would no longer extend any grace to any resident of the Property and shut off residents' water at the earliest possible opportunity, and that he was also provided directly from Aqua more than enough locks to lock the meter box of every delinquent account at the Property for the first time ever. And finally, Mr. Grisham informed Ms. Starling that if a resident's water was shut off for non-payment, and the resident or Yes ultimately paid the outstanding bill after the shut off order had been written, Mr. Grisham was specifically



instructed to only reconnect the water the following day under a separate work order. This would be done to maximize the time that water service was disconnected to the resident.

20. Aqua's retaliatory intentions are made clear by Mr. Grisham's admissions and directly refute the empty gestures of Mr. Fox and Aqua at the Gainesville Hearing.

21. Finally, Aqua's Response once again misleads this Commission and omits key facts with respect to allegations in the Motion that Aqua has retaliated against Yes by sending Yes to collections.

22. As provided in the affidavit of Kim Kurz ("Ms. Kurz"), Director of Special Projects for Yes, attached hereto as Exhibit "C," the September 22, 2011 bill (the "Collection Notice") provided to Yes by NCO Financial Systems, Inc. (the "Collector") was the first notice that Yes received that this account was sent to collections.

23. In fact, Yes received a final bill on this account on February 22, 2011 in the amount of \$22 (the "Final Bill"), which was promptly paid by Yes on April 1, 2011.

24. Despite Aqua's false allegations to the contrary, Yes did not receive the bills attached to the Response as Composite Exhibit "E" dated March 15, 2011 and January 11, 2011 and had no knowledge that any additional charges were owing on the account.

25. On September 22, 2011, upon receiving the Collection Notice, Ms. Kurz spoke with Aqua customer service and was informed that Yes had paid the Final Bill in full on April 1, 2011.

26. Ms. Kurz next contacted Aqua customer service on October 6, 2011. The customer service representative Ms. Kurz spoke with looked up the account and informed

Ms. Kurz for the first time that additional bills had allegedly been sent to Yes on this account, including the March 15, 2011 bill attached to the Response.

27. When questioned, the customer service representative stated to Ms. Kurz that the bills had been improperly sent to 7117 SW Archer Road, Lot 2440, Gainesville, Florida—the address for the physical home where the service occurred—and not Yes's remittance address for Aqua bills, a P.O. Box in Charlotte, North Carolina. As provided in the affidavit of Ms. Kurz, Aqua knows or should know the correct address but failed to properly serve the aforementioned notices on Yes.

28. Accordingly, Yes never received the aforementioned bills nor any notification that an arrearage was owing on the account and Aqua acted improperly in sending Yes to collections.

29. Significantly, the Response filed by Aqua does not state that Aqua did not direct the Collector to send the Collection Notice to Yes. Aqua offers no explanation for the nearly six (6) month gap between the date Aqua alleges in its Response that Yes's account was sent to the Collector—March 31, 2011—and the date that Yes received the Collection Notice from the Collector, September 22, 2011. The fact that the Collection Notice was served a mere ten (10) days following the damaging testimony of several Yes witnesses at the Gainesville Hearing gives rise to a presumption that Aqua directed Collector to serve the Collection Notice to retaliate against Yes for its actions in this case.

30. Additionally, since receiving the Collection Notice from the Collector, Yes has investigated and discovered that multiple other accounts with Aqua have been improperly sent to collections. This material fact which strongly evidences Aqua's retaliatory intent against Yes is not disclosed by Aqua in its Response. Examples of

multiple other Yes accounts sent to collections by Aqua are described in the affidavit of Ms. Kurz. In at least one of these instances, Aqua sent the same bill to two separate collection agencies.

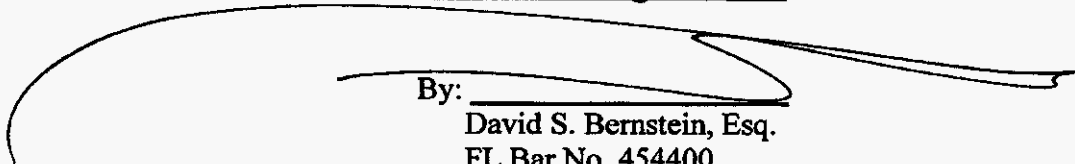
31. The fact that so many Yes accounts have recently been sent to collections when Yes has received no notice that any arrearage is owing is *prima facie* evidence of Aqua's retaliatory conduct. Although Aqua President Mr. Fox represents to this Commission that Aqua is committed to working with its customers to resolve billing issues in good faith, its actions belie that contention and affirmatively demonstrate the bad faith and improper motives of Aqua.

32. It would be an injustice and reversible error for the Commission to disregard these acts as set forth in Yes's Motion and supported by this Rebuttal and the affidavits submitted herewith given that the Commission has an affirmative duty to govern this utility by statute, regulation, and the Monitoring Program that the Commission has imposed against Aqua to prevent these very acts.

WHEREFORE, Intervener, YES Companies, LLC d/b/a Arredondo Farms, respectfully requests that this Public Service Commission grant its Motion, disregard Aqua's attempt to deprive it of fundamental due process of law and the right to an evidentiary hearing on this matter, investigate the retaliation alleged herein, order Aqua to immediately cease and desist all retaliation against witnesses to this proceeding, enter an order to show cause why sanctions should not be imposed against Aqua, and any further relief that is necessary, just and proper.

Respectfully submitted,

ADAMS AND REESE, LLP  
David S. Bernstein, Esquire  
150 Second Avenue North, Suite 1700  
St. Petersburg, Florida 33701  
Direct: (727) 502-8200  
E-Fax: (727) 502-8282  
[David.Bernstein@arlaw.com](mailto:David.Bernstein@arlaw.com)

By:   
David S. Bernstein, Esq.  
FL Bar No. 454400  
Andrew J. McBride, Esq.  
FL Bar No. 0067973  
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 October 10<sup>th</sup>, 2011 to:

**Kimberley A. Joyce**  
Aqua American, Inc.,  
762 West Lancaster Avenue,  
Bryn Mawr, PA 19010  
[kajoyce@aquaamerica.com](mailto:kajoyce@aquaamerica.com)

**Robert Lloyd**  
P.O. Box 63  
Captiva, Florida 33924  
[Rlloyd1@aol.com](mailto:Rlloyd1@aol.com)

**D. Bruce May, Jr.**  
P.O. Box 810,  
Tallahassee, Florida 32302-0810  
[bruce.may@hklaw.com](mailto:bruce.may@hklaw.com)

**William Coakley**  
5934 Lake Osborne Drive  
Lantana, Florida 33461  
[wco@comcast.net](mailto:wco@comcast.net)

**Patricia Christensen**  
**J.R. Kelly**  
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)  
[Christensen.Patty@leg.state.fl.us](mailto:Christensen.Patty@leg.state.fl.us)

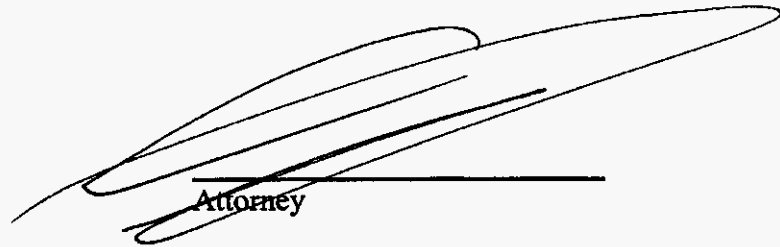
**Cecilia Bradley**  
Office of the Attorney General  
The Capitol – PL101  
Tallahassee, Florida 32399-1050  
[cecilia\\_bradley@oag.state.fl.us](mailto:cecilia_bradley@oag.state.fl.us)

**Kelly Sullivan**  
570 Osprey Lakes Circle  
Chuluota, Florida 32667  
[kelly.sullivan.woods@gmail.com](mailto:kelly.sullivan.woods@gmail.com)

**Joseph D. Richards**  
Pasco County Attorney's Office  
8731 Citizens Drive  
Suite 340  
New Port Richey, Florida 34654  
[jrichards@pascocountyfl.net](mailto:jrichards@pascocountyfl.net)

**Ralph Jaeger**  
Florida Public Service Commission  
2540 Shumard Oak Blvd  
Tallahassee, Florida 32399  
[RJaeger@PSC.STATE.FL.US](mailto:RJaeger@PSC.STATE.FL.US)

**David L. Bussey**  
4948 Britni Way  
Zephyrhills, Florida .33541  
[dbussey@hotmail.com](mailto:dbussey@hotmail.com)



Attorney

**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

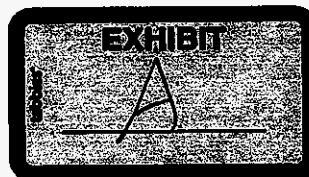
---

**AFFIDAVIT OF EUGENE DAVIS**

STATE OF FLORIDA        )  
                                  )  
COUNTY OF ALACHUA    )

BEFORE ME, the undersigned authority, authorized to administer oaths and take acknowledgements, personally appeared EUGENE DAVIS, who after duly sworn on oath, deposes and states as follows:

1. I have knowledge of the facts recited herein based on my personal knowledge.
2. I am *sui juris* and over 18 years of age.
3. I am a resident of Arredondo Farms, residing at 7117 S.W. Archer Road, Lot 46, Gainesville, Florida (the "Property") and have lived at the Property for almost five (5) years.
4. As a resident at the Property, I am entitled to receive the essential service of water and wastewater at the Property.
5. I am a customer of Aqua Utilities Florida, Inc. ("Aqua") and testified at the customer service hearing in Gainesville, Florida on September 12, 2011 (the



“Gainesville Hearing”) regarding Aqua’s predatory billing practices and the low quality of Aqua’s water and wastewater service at the Property.

6. At the Gainesville Hearing, I was cross-examined by counsel for Aqua, D. Bruce May, and had a passionate and heated exchange with him.

7. In addition to my testimony at the Gainesville Hearing, I also participated in this rate case by allowing Intervener, Yes Companies, LLC d/b/a Arredondo Farms to include facts regarding my prior experience with Aqua in its Memorandum in Opposition to Aqua Utilities Florida, Inc.’s Rate Increase Application, filed in this case on April 11, 2011.

8. Prior to the Gainesville Hearing, and on or about September 2, 2011, I made a payment plan payment to Aqua as I do every month.

9. Based on my past dealings with Aqua, I have always made my payment plan payment as part of the next month’s payment. Aqua has never objected to me doing so.

10. However, in this instance, Aqua did not deposit my payment after it was sent but instead held my payment until September 13, 2011, the same day Aqua sent me a 10-day shut off notice.

11. I did not believe that my payment dated September 2, 2011 was untimely as it was sent at the same time and in the same manner as all of my other payments to Aqua.

12. Notwithstanding that it was not late, I received multiple 10-day shut off notices from Aqua.

13. In my opinion, Aqua's actions were purely retaliatory for my involvement in this action.

FURTHER AFFIANT SAYETH NOT

By:   
Eugene Davis

STATE OF FLORIDA     )  
                                  )  
COUNTY OF ALACHUA    )

SWORN AND SUBSCRIBED before me this 12 day of October, 2011, by Eugene Davis, who is personally known to me, or who provided FL DL as identification.

  
Notary Public, State of Florida [www.myfloridajob.com](http://www.myfloridajob.com)





**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

**AFFIDAVIT OF MALLORY STARLING**

STATE OF FLORIDA       )  
  )  
COUNTY OF ALACHUA    )

BEFORE ME, the undersigned authority, authorized to administer oaths and take acknowledgements, personally appeared MALLORY STARLING, who after duly sworn on oath, deposes and states as follows:

1. I am employed by YES! Communities Inc. YES! Communities Inc. is a related corporate entity to Yes Companies, LLC ("Yes"). My position is property manager of Arredondo Farms (the "Property").

2. I am *sui juris* and over 18 years of age.

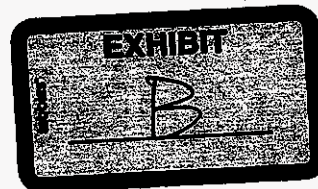
3. I have reviewed the Motion for Investigation, Entry of Cease and Desist Order, and Entry of Order to Show Cause Why Sanctions Should not be Imposed against Petitioner, Aqua Utilities Florida, Inc. ("Aqua") for Improperly Retaliating against Customers Who Testified at the September 12, 2011 Customer Service Hearing in Gainesville, Florida (the "Motion"), as well as Aqua Utilities Florida, Inc.'s Verified Response to the Motion (the "Response").

4. This Affidavit is based upon my personal knowledge, a review of the Motion and Response, and upon my review of Yes's business records, as those records are kept in the ordinary course of business. I am a custodian of those business records.

DOCUMENT NUMBER - DATE

07497 OCT 12 =

FPSC-COMMISSION CLERK



5. I will first address the allegations contained in the Motion regarding Regina Lewis ("Ms. Lewis"), resident of Yes at Lot 2639 on the Property.

6. Despite Aqua's allegations in its Response to the contrary, Aqua knew at all pertinent times that Ms. Lewis was residing at Lot 2639 and utilizing water service at that address.

7. Specifically, Aqua maintenance worker, Steven Grisham ("Mr. Grisham"), visited the Property and spoke with me regarding issues at the Property almost daily between July 26, 2011 and the present. It was common knowledge that Ms. Lewis was utilizing Aqua service during this time period and Mr. Grisham was aware or should have been aware of Ms. Lewis's use of utility services at the Property.

8. Further, Aqua's contention that Ms. Lewis had not contacted Aqua regarding water service since July 26, 2011 is also off base and inaccurate. In fact, I have spoken with Aqua, Mr. Grisham, and Aqua employee Stacey Barnes on Ms. Lewis's behalf on several occasions. In fact, I requested and Aqua provided an account statement for Ms. Lewis on July 27, 2011 so that Yes could pay the balance owing and maintain Ms. Lewis's water service. Based on that account statement, and to the best of my knowledge and belief, in or around August, 2011, I made a payment on Ms. Lewis's behalf to cure any arrearage owing to Aqua. I did this because Ms. Lewis is disabled and requires the use of an oxygen machine in order to breathe. It is paramount that she have uninterrupted access to water.

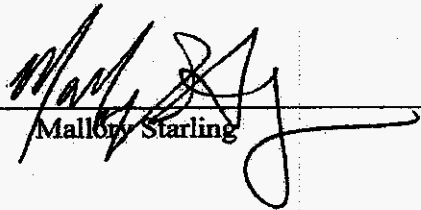
9. Notwithstanding the above-referenced payment, Ms. Lewis's water was shut off without notice by Aqua on October 3, 2011. I paid the alleged arrearage the following day and service was reactivated.

10. I have reason to believe that the September 13, 2011 "Dear OCCUPANT" letter sent to Ms. Lewis was an act of retaliation against her for speaking at the September 12, 2011 customer service hearing in Gainesville, Florida (the "Gainesville Hearing") based on several conversations I had with Mr. Grisham, on behalf of Aqua,

during the two weeks following the Gainesville Hearing. During these conversations, Mr. Grisham informed me that Aqua was changing its policies as it relates to residents at the Property, and from then on, Mr. Grisham was instructed to scrutinize all accounts of residents who testified at the Gainesville Hearing, particularly those who were most vocal in their opposition to Aqua, to determine if any usage or billing discrepancies exist so that Aqua could back-bill for the full amount allegedly owing. Further, Mr. Grisham informed me that Aqua would no longer extend any grace to any resident of the Property and shut off residents' water at the earliest possible opportunity, and that he was also provided directly from Aqua more than enough locks to lock the meter box of every delinquent account at the Property for the first time ever. And finally, Mr. Grisham informed me that if a resident's water was shut off for non-payment, and the resident or Yes ultimately paid the outstanding bill after the shut off order had been written, Mr. Grisham was specifically instructed to only reconnect the water the following day under a separate work order. This would be done to maximize the time that water service was disconnected to the resident.

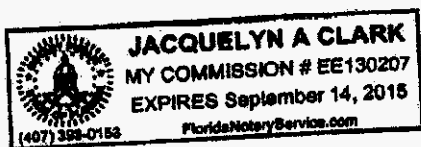
11. In my opinion, Aqua's acts were purely retaliatory, especially in light of what Aqua's employee Mr. Grisham has told me.

FURTHER AFFIANT SAYETH NOT

By:   
Mallory Starling

STATE OF FLORIDA        )  
  )  
COUNTY OF ALACHUA    )

SWORN AND SUBSCRIBED before me this 12 day of October, 2011, by Mallory Starling, who is personally known to me, or who provided Known as identification.



  
Notary Public State of Florida

**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

**AFFIDAVIT OF KIM KURZ**

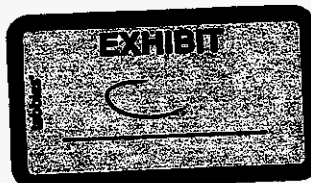
STATE OF COLORADO    )  
                                  )  
COUNTY OF THOMAS    )

BEFORE ME, the undersigned authority, authorized to administer oaths and take acknowledgements, personally appeared KIM KURZ, who after duly sworn on oath, deposes and states as follows:

1. I am employed by YES! Communities Inc. YES! Communities Inc. is a related corporate entity to Yes Companies, LLC ("Yes"). My position is Director of Special Projects.

2. I am responsible for all of the utility expense and pass through charges to our residents in all of Yes's 69 communities, including Arredondo Farms (the "Property"). I am responsible for other special projects as assigned, including but not limited to involvement in billing disputes and contract issues at the Property.

3. I have reviewed the 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. ("Aqua") for Improperly Retaliating against Customers Who Testified at the September 12, 2011 Customer Service Hearing in Gainesville, Florida (the "Motion"), as well as Aqua Utilities Florida, Inc.'s Verified Response to the Motion (the "Response"). This Affidavit is based on my review of the



DOCUMENT NUMBER: DAPP  
07497 OCT 12 =  
FPSC-COMMISSION CLERK

Motion and Response, as well as upon my review of Yes's business records, as those records are kept in the ordinary course of business. I am a custodian of those business records.

4. As it relates to the allegations contained in the Motion, and specifically the allegation that Aqua has retaliated against Yes by sending Yes to collections for alleged non-payment incurred at Lot 2440 at the Property, despite the allegations of Aqua in the Response to the contrary, the September 22, 2011 bill (the "Collection Notice") provided to Yes by NCO Financial Systems, Inc. (the "Collector") was the first notice that Yes received that this account was sent to collections.

5. In fact, Yes received a final bill on this account on February 22, 2011 in the amount of \$22 (the "Final Bill"), which was promptly paid by Yes on April 1, 2011, check #92112.

6. Yes did not receive the bills attached to the Response as Composite Exhibit "E" dated March 15, 2011 and January 11, 2011 and had no knowledge that any additional charges were owing on the account.

7. On September 22, 2011, upon receiving the Collection Notice, I spoke with Aqua customer service representative "Terry" at extension 53442.

8. At that time, I informed Terry that Yes had paid the Final Bill in full on April 1, 2011. Terry was not surprised that there was an error on this account and even acknowledged Aqua's failure to properly bill and notice account delinquencies by stating "we have had these problems on these write off accounts."

9. Although Terry took down my information and promised to call me back, she never did.

10. I next contacted Aqua customer service on October 6, 2011. The customer service representative I spoke with looked up the account and informed me for the first

time that additional bills had allegedly been sent to Yes on this account, including the March 15, 2011 bill attached to the Response.

11. When questioned, the customer service representative stated that the bills had been improperly sent to 7117 SW Archer Road, Lot 2440, Gainesville, Florida—the address for the physical home where the service occurred—and not Yes's remittance address for Aqua bills, a P.O. Box in Charlotte, North Carolina. Aqua knows or should know the correct address but failed to properly serve the aforementioned notices on Yes.

12. Accordingly, as Yes never received the aforementioned bills nor any notification that an arrearage was owing on the account, Aqua acted improperly in sending Yes to collections.

13. Additionally, since receiving the Collection Notice from the Collector, Yes has investigated and discovered that multiple other accounts with Aqua have been improperly sent to collections.

14. For example, I recently discovered that Aqua account #649165, for Lot 2221 at the Property was sent to Collector for collections.

15. On this account, Yes was presented two final bills: a \$66.36 bill for service through February 8, 2011, and a second bill for \$2.34. Yes paid the outstanding amount of \$69.70 on March 1, 2011, check #89592. Shortly thereafter, a new resident leased the Lot and assumed all further service obligations to Aqua.

16. Notwithstanding the final payment made by Yes, Collector has informed me that an arrearage of \$67.69 is owing against Yes on this account. Yes owes Aqua no such monies and Aqua's attempt to send Yes to collections over this amount is improper.

17. Another example is Aqua account #649156, Lot 2212 at the Property.

18. On this account, Yes was presented a final bill for \$61.71 for service through June 4, 2009. The bill was paid by Yes on June 17, 2009, check #45465. Although all communication from Aqua indicated that this represented the entire amount

owing on the account, I was recently advised by Collector that an additional \$19.65 is owing.

19. Yet another example is Aqua account #649301, for Lot 2714 at the Property. This account was improperly sent to Collector notwithstanding payment in full of the only bill ever received on this account from Aqua. The payment by Yes, check #82469, was for the full amount billed by Aqua, \$93.84, and represented service through November 10, 2010.


20. Notwithstanding that payment in full by Yes, Collector recently advised that \$22 is owing on this account.

21. Finally, Yes recently received an additional collection notice from a second bill collector on behalf of Aqua, Contract Callers, Inc. ("New Collector"). The bill received on this account reflects Aqua account #6494192. Although Yes is uncertain which lot at the Property this account even applies to, as it never once received a bill referencing this account number, Yes recently paid New Collector the full amount owing of \$15.94 via check #85518. However, notwithstanding that payment, Aqua has also sent this account to the original Collector and Yes was recently informed by Collector that this account is also in collections for an arrearage in the amount of \$15.94. Aqua is attempting to collect this alleged arrearage twice.

22. In all of the above-referenced instances, Yes was unaware that any deficiency was owing to Aqua or that Aqua was attempting to collect any amount allegedly owing from Yes. In all of these instances, Aqua failed to properly notice the alleged arrearages to Yes and/or failed to send said notices to the proper addresses. It is my opinion, based on a review of these bills and collection notices, that Aqua is retaliating against Yes by aggressively sending accounts to collections.

23. Further, Yes was not aware that any of the above-referenced accounts had been sent to collections nor received a single collection letter until after the September 12, 2011 customer service hearing in Gainesville, Florida in which several Yes employees and multiple residents of the Property testified in opposition to Aqua.

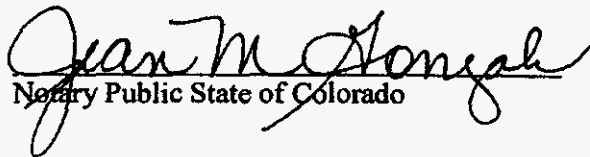
FURTHER AFFIANT SAYETH NOT

By:   
Kim Kurz

STATE OF COLORADO    )  
                                  )  
COUNTY OF THOMAS    )

SWORN AND SUBSCRIBED before me this 10<sup>TH</sup> day of October, 2011, by Kim Kurz, who is personally known to me, or who provided \_\_\_\_\_ as identification.



  
Notary Public State of Colorado