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Subject: AQUA UTILITIES FLORIDA, INC. RATE ACTION (Docket. No. 100330-WS); YES' RESPONSE TO AUF AND GRISHAM'S JOINT MOTION TO QUASH & NOTICE OF GRISHAM DEPO.
Attachments: YES' RESPONSE TO AUF & GRISHAM'S MOTION TO QUASH & NOTICE OF DEPO.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/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 6 pages

e. The document attached for electronic filing is: INTERVENER, YES COMPANIES, LLC D/B/A ARREDONDO FARMS', RESPONSE TO AUF AND GRISHAM'S JOINT MOTION TO QUASH & NOTICE OF GRISHAM DEPO.

Thank you for your cooperation and attention to this matter.

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10/24/2011

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 24, 2011

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

Intervener, YES Companies, LLC ("Yes") d/b/a Arredondo Farms ("Arredondo Farms"), by and through its undersigned counsel, files this its Response (the "Response") to Aqua Utilities Florida, Inc.'s ("Aqua") and Steve Grisham's ("Mr. Grisham") Joint Motion to Quash Subpoena and Notice of Deposition of Steve Grisham Served by Yes Companies, LLC d/b/a Arredondo Farms (the "Motion to Quash"), and in support states:

1. On October 10, 2011, Yes served a subpoena for deposition on Aqua employee Steve Grisham, care of Aqua's counsel, Holland and Knight. By the terms of the subpoena, the deposition will be held on October 27, 2011 (the "Deposition").
2. On October 13, 2011, Mr. Grisham was personally served with a separate subpoena for the Deposition.
3. On October 12, 2011, Yes served a Notice of Taking Deposition (the "Notice of Deposition") on all parties to this rate case.
4. On or about October 18, 2011, Aqua and Mr. Grisham filed the Motion to Quash. The Motion to Quash incorrectly alleges that the Deposition is not "necessary" because Yes cannot show that Mr. Grisham "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 is unique.” Motion to Quash, para. 6.

5. In fact, Mr. Grisham is central to this rate case and Aqua’s obligations to provide quality water and wastewater service and improve its customer service and billing practices as required by the Monitoring Program (the “Monitoring Program”) imposed by this Commission in Order No. PSC-09-0385-FOF-WS, Order No. PSC-10-0218-PAA-WS, and Order No. PSC-10-0297-PAA-WS. Therefore, Mr. Grisham’s testimony is explicitly necessary to this matter and Yes’s right to take his deposition is consistent with Section 350.123, *Florida Statutes*.

6. In connection with his employment as a field technician with Aqua, Mr. Grisham visits Aqua sites throughout the state—and specifically, Arredondo Farms—and actively and personally observes and addresses water and wastewater quality deficiencies; predatory billing and metering practices; and water and wastewater shut offs for alleged non-payment of Aqua services. In this role, Mr. Grisham has personal knowledge of Aqua’s poor service and non-compliance with the Monitoring Program and has made several admissions to the property manager at Arredondo Farms, Ms. Mallory Starling, regarding that poor and unacceptable service.

7. Specifically, as it relates to Arredondo Farms, Mr. Grisham has had the unique and singular opportunity to visit the property almost daily for multiple years and view, observe, and address, first hand: i) the poor quality of water and wastewater service provided to residents at Arredondo Farms; ii) the failure of Aqua to properly maintain and service its water and wastewater facilities at Arredondo Farms; iii) Aqua’s deceptive and predatory billing and metering practices at Arredondo Farms and Aqua’s

longstanding failure to address those practices; iv) the high number of water shut offs that occur at Arredondo Farms due to those deceptive and predatory billing and metering practices and the suffering that those shut offs cause to the residents of Arredondo Farms.

8. No other employee of Aqua has such extensive, unique, singular, and first hand knowledge of the quality of service provided to Aqua's customers residing at Arredondo Farms or Aqua's Monitoring Program violations at the property. Certainly, Aqua's paid company witnesses have no basis to and will not testify as to any of the foregoing.

9. Yes's right to take Mr. Grisham's deposition is entirely consistent with established Commission precedent and the Notice of Deposition filed in this case.

10. First, the Notice of Deposition filed by Yes clearly puts Aqua on notice of the nature of the Deposition and the significance of the Deposition to this action. It states:

[T]he 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 (the "Motion for Sanctions")...

YES further states that said deposition is necessary to discover information relevant to this case and the Motion [for Sanctions] and ultimately prove the allegations contained in the Motion [for Sanctions]. [Emphasis added].

11. Nothing contained in the Notice of Deposition limits the Scope of the Deposition to the Motion for Sanctions and Aqua misleads this Commission by asserting otherwise. Motion to Quash, para. 8.

12. Second, Yes's right to take the deposition is entirely consistent with Commission precedent, including but not limited to the Order Denying Motion to Quash

Subpoena, No. PSC-11-0246-PCO-EI, entered by the Commission just four months ago in *In re: Nuclear cost recovery clause*, Docket No. 110009-EI.

13. In *In re: Nuclear cost recovery clause*, this Commission expressly permitted an intervener to depose a non-party where that non-party's testimony was "singular and unique" to the rate case proceeding, notwithstanding that the intervener did not elect to depose the other witnesses first. In its ruling, the Commission stated

This is the discovery phase of this proceeding, and as stated in the rules above, the Florida Rules of Civil Procedure allows for a broad discovery standard. Moreover, the Commission's Order Establishing Procedure, which governs issue identification and other procedural matters, allows parties to identify issues up to and until the date of the Prehearing Conference in a docket. Thus, formulation of issues is a critical reason for the parties to conduct discovery and conduct depositions [Emphasis added]. Order No. PSC-11-0246-PCO-EI, page 11.

14. Similarly, the Order on Procedure in the instant case also sets a Prehearing Conference subsequent to the scheduled date of the Deposition. Therefore, any information obtained in the Deposition may help supplement issues that have already been identified by the parties as well as form the basis for additional issues that may be determined at the Prehearing Conference and incorporated into Yes's Prehearing Statement, due in this matter no later than October 31, 2011.

15. In fact, it was for this reason that Yes elected to schedule the Deposition on October 27, 2011. This date provides all parties a full business day subsequent to the Deposition in order to incorporate any information revealed at the Deposition into the Prehearing Statements. Yes rejects Aqua's repugnant suggestion that the Deposition was set on a particular date in order to "harass" Aqua. As reflected in Exhibit "C" attached to the Motion to Quash, Aqua was afforded an opportunity to coordinate dates for the Deposition but failed to do so.

16. Therefore, as the "Commission's practice is governed, statutorily, by provisions that establish broad discovery rights in accordance with the Florida Rules of Civil Procedure, and in that context provide that a deposition can be taken of any person (including a nonparty witness) as a tool with which to pursue the broad scope of discovery," and there is absolutely no ground to believe that this Deposition is for purposes of "annoyance, embarrassment, [or] oppression," the Deposition must be allowed. Order No. PSC-11-0246-PCO-EI, page 9.

17. To deprive Yes of this necessary and reasonable discovery would be to deprive it of a fair hearing in this matter.

18. Further, due to the pending deadline for the Prehearing Statement and upcoming Prehearing Conference, Yes cannot agree to stay the Deposition.

WHEREFORE, Intervener, YES Companies, LLC d/b/a Arredondo Farms, requests that this Commission deny the Motion to Quash, allow the Deposition to occur unimpeded, and for any other relief that the Commission deems just and proper.

Respectfully submitted,

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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 24th, 2011 to:

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