

**Dorothy Menasco**

**From:** Lisa D'Angelo [Lisa.D'Angelo@arlaw.com]  
**Sent:** Tuesday, November 15, 2011 4:58 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** kajoyce@aquaamerica.com; bruce.may@hklaw.com; kelly.jr@leg.state.fl.us; CHRISTENSEN.PATTY; Rlloyd1@aol.com; wdco@comcast.net; dbussey@hotmail.com; Kelly.Sullivan.Woods@gmail.com; Ralph Jaeger; jrichards@pascocountyfl.net; Cecilia.Bradley@myfloridalegal.com; Andrew McBride; David Bernstein; Kenneth Curtin  
**Subject:** AQUA UTILITIES FLORIDA, INC. RATE ACTION (Docket. No. 100330-WS); EMERGENCY MOTION OF INTERVENER, YES COMPANIES, LLC DBA ARREDONDO FARMS, TO COMPEL AQUA UTILITIES FLORIDA, INC.'S PRODUCTION OF RESPONSIVE DOCUMENTS

**Attachments:** 0501\_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 7 pages

e. The document attached for electronic filing is Intervener, YES Companies, LLC d/b/a Arredondo Farms', EMERGENCY MOTION OF INTERVENER, YES COMPANIES, LLC DBA ARREDONDO FARMS, TO COMPEL AQUA UTILITIES FLORIDA, INC.'S PRODUCTION OF RESPONSIVE DOCUMENTS AND INFORMATION TO CUSTOMER-SPECIFIC DISCOVERY REQUESTS CONTAINED IN YES'S THIRD SET OF INTERROGATORIES AND THIRD REQUEST TO PRODUCE

Thank you for your cooperation and attention to this matter.

ADAMS AND REESE LLP

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DOCUMENT NUMBER DATE

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11/15/2011

**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: November 15, 2011

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**EMERGENCY MOTION OF INTERVENER, YES COMPANIES, LLC. D/B/A ARREDONDO FARMS, TO COMPEL AQUA UTILITIES FLORIDA, INC.'S PRODUCTION OF RESPONSIVE DOCUMENTS AND INFORMATION TO CUSTOMER-SPECIFIC DISCOVERY REQUESTS CONTAINED IN YES'S THIRD SET OF INTERROGATORIES AND THIRD REQUEST TO PRODUCE**

Intervener, Yes Companies, LLC d/b/a Arredondo Farms ("Yes"), by and through its undersigned counsel, respectfully files this Emergency Motion to Compel Aqua Utilities Florida, Inc.'s ("Aqua") Production of Responsive Documents and Information to Customer-Specific Discovery Requests (defined below) Contained in Yes's Third Set of Interrogatories ("Third Set of Interrogatories") and Third Request to Produce ("Third Request to Produce")(collectively, the "Discovery Requests") served by Yes on October 17, 2011, because Aqua has failed to provide discoverable documents and information in response to the Customer Specific Discovery Requests found in Interrogatories 30-34 in the Third Set of Interrogatories and Requests 21-28 in the Third Request to Produce (the "Customer-Specific Discovery Requests") but instead made baseless objections thereto. As grounds hereof, Yes states as follows:

1. On or about November 3, 2011, Aqua filed its Objection to Yes's Discovery Requests. In this Objection, Aqua made a number of baseless objections and stated nowhere that it would provide any information or documents requested in the Discovery Requests.

2. On or about November 7, 2011, Yes filed its Emergency Motion to Compel Responses to the Discovery Requests.

3. At the Prehearing Conference on November 8, 2011, attorneys for Aqua represented to the Commission that they would cooperate with Yes to provide the responsive documents within the required timeframe.

4. Later that week, on or about November 10 and 11, 2011, the undersigned spoke with and emailed counsel for Aqua regarding Aqua's specific objections to the Customer-Specific Discovery Requests. As stated to counsel for Aqua at that time, Yes is entitled to this information and documentation notwithstanding the fact that it contains customer data pursuant to F.A.C. 25-22.006 and the previously entered Temporary Protective Order (the "Turn Over Order"), Order No. 11-0356, which required Aqua to provide Yes with previously requested documentation containing customer information for use at the final hearing in this matter.

5. Pursuant to the Turn Over Order and F.A.C. 25-22.006, Aqua was ordered to turn over this earlier round of requested documents to Yes; Yes was to identify which of those materials it intended to use in this proceeding and to notify Aqua of same; Aqua was ordered to file a motion for a permanent protective order as to those materials to request "proprietary confidential treatment" of those materials; and Yes was then to take measures to preserve the confidentiality of the documents then obtained.

6. However, notwithstanding Aqua's counsel's knowledge that it was required to turn over the requested documents to Yes, Aqua failed to turn over said documents. A copy of an email from Aqua counsel acknowledging that Yes is entitled to

receive non-redacted documents containing customer information for use in this proceeding is attached hereto as Exhibit "A."

7. Now, with respect to the current Customer-Specific Discovery Requests, Aqua has filed objections and is once again refusing to turn over the necessary documents and information to Yes for use at the technical hearing which is now only two (2) weeks away. Aqua acts in bad faith by intentionally withholding this vital information from Yes when it has acknowledged in writing that Yes is entitled to it. Aqua's obstreperous refusal to provide the required documentation and information impedes Yes's ability to conduct a fair and free trial in this action.

8. Pursuant to F.A.C. 25-22.006, the Turn Over Order, and Aqua's own written admission, Yes's entitlement to the non-redacted information sought in the Customer-Specific Discovery Responses is clear and unambiguous; the only issue for determination is how the confidential information is to be handled during the course of the proceedings and which measures will be adopted for protecting the information from disclosure outside of the proceedings. F.A.C. 25-22.006(6)(a). Yes is more than amenable to reasonable safeguards for the protection of this customer information against disclosure to non-parties to this action.

9. Further, F.A.C. 25-22.006(8) is clear that the documents and information provided pursuant to the Customer-Specific Discovery Requests may be used at the final hearing in this matter and may be admitted in that forum. Again, the only issue is what protections will be put in place to protect against dissemination of the information outside of this proceeding.

10. The Customer-Specific Discovery Requests fall clearly within the ambit of 1.280(b)(1), *Florida Rules of Civil Procedure*, as they seek relevant, discoverable information and documents for purposes of this proceeding, and specifically, information and documents relating to back-billing, water shut offs, payment plans, and account histories for customers of Aqua who have testified in this proceeding regarding the poor quality of service provided by Aqua. The Customer-Specific Discovery Requests go directly to the issue of whether the quality of service provided by Aqua is satisfactory and merits a rate increase pursuant to Section 367.081, *Florida Statutes*. Yes's due process rights depend upon timely receipt of these documents and information for use at the technical hearing.

11. This motion should be heard and granted on an emergency basis. Yes requires the information and documents responsive to the Customer-Specific Discovery Requests in order to effectively prepare for the Technical Hearing in this matter, which begins in only two weeks.

WHEREFORE, Intervener, Yes Companies LLC, d/b/a Arredondo Farms, respectfully requests that this Commission grant its Emergency Motion to Compel Aqua's Production of Responsive Documents and Information to Customer-Specific Discovery Requests Contained in Interrogatories 30-34 in the Third Set of Interrogatories and Requests 21-28 in the Third Request to Produce, Order Aqua to immediately turn over the documents and information responsive to the Customer Specific Discovery Requests, and for all further relief the Commission deems just and necessary.

Respectfully submitted,

ADAMS AND REESE, LLP  
David S. Bernstein, Esquire.  
Andrew J. McBride, Esquire  
Kenneth M. Curtin, Esquire  
150 Second Avenue North, Suite 1700  
St. Petersburg, Florida 33701  
Direct: (727) 502-8200  
E-Fax: (727) 502-8282  
Andrew.McBride@arlaw.com

By: s/ Andrew J. McBride  
Andrew J. McBride  
FL Bar No. 0067973  
David S. Bernstein  
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 November 15th, 2011 to: **Kimberley A. Joyce, Esq.**, Aqua American, Inc., 762 West Lancaster Avenue, Bryn Mawr, PA 19010 (kajoyce@aquaaamerica.com); **D. Bruce May, Jr., Esq.**, P.O. Box 810, Tallahassee, Florida 32302-0810 (bruce.may@hkllaw.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) and CHRISTENSEN.PATTY@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); **David L. Bussey**, 4948 Britni Way, Zephyrhills, Florida 33541 (dbussey@hotmail.com); **Kelly Sullivan, Esquire**, 570 Osprey Lakes Circle, Chuluota, Florida 32766-6658 (Kelly.Sullivan.Woods@gmail.com); **Ralph Jaeger**, Florida Public Service Commission, 2540 Shummard Oak Blvd., Tallahassee, Florida 32399-0850 (RJaeger@Psc.State.fl.us); **Joseph D. Richards, Esquire**, Pasco County Attorney's Office, 8731 Citizens Drive, Suite 340, New Port Richey, Florida 34654 (jrichards@pascocountyfl.net); **Cecilia Bradley, Esquire**, Office of the Attorney General, The Capitol - PL01, Tallahassee, Florida 32399 (Cecilia.Bradley@myfloridalegal.com)

s/ Andrew J. McBride  
Attorney



**Kenneth Curtin**

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**From:** bruce.may@hklaw.com  
**Sent:** Thursday, April 28, 2011 2:38 PM  
**To:** RJaeger@PSC.STATE.FL.US; James Dickson  
**Cc:** Kenneth Curtin; David Bernstein; WTRendell@aquaaamerica.com; KAJoyce@aquaaamerica.com  
**Subject:** RE: Aqua Utilities Motion for Protective Order concerning discovery served by YES Companies; Docket No 1000330-WS

That is correct. Pursuant to Rule 25-22.006, if a protective order is issued, AUF will provide counsel for YES with an unredacted version with the protective order prescribing how the customer-specific information is to be kept confidential.

**D. Bruce May | Holland & Knight**

Partner  
315 South Calhoun Street, Suite 600 | Tallahassee FL 32301  
Phone 850.425.5607 | Fax 850.224.8832  
bruce.may@hklaw.com | www.hklaw.com

[Add to address book](#) | [View professional biography](#)

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**From:** Ralph Jaeger [mailto:RJaeger@PSC.STATE.FL.US]  
**Sent:** Thursday, April 28, 2011 2:25 PM  
**To:** James Dickson  
**Cc:** May, D Bruce (TAL - X35607); Kenneth Curtin; David Bernstein  
**Subject:** RE: Aqua Utilities Motion for Protective Order concerning discovery served by YES Companies; Docket No 1000330-WS

I am waiting for replies from intervenors which are due by May 2, 2011 -- if a Protective Order and Confidential Classification is granted, it is my understanding that Aqua will provide the unredacted version to YES, with the Protective Order requiring that YES keep it confidential.

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**From:** James Dickson [mailto:James.Dickson@arlaw.com]  
**Sent:** Thursday, April 28, 2011 2:20 PM  
**To:** Ralph Jaeger  
**Cc:** bruce.may@hklaw.com; Kenneth Curtin; David Bernstein  
**Subject:** Aqua Utilities Motion for Protective Order concerning discovery served by YES Companies; Docket No 1000330-WS

Mr. Jaeger,

This firm represents Yes Companies Inc. d/b/a Arredondo Farms an Intervener in the Application for increase in water/wastewater Rates in Alachua, Brevard, Desoto ... Counties by Aqua Utilities Florida Inc.

In speaking with Bruce May, counsel for Aqua Utilities, this morning regarding the above referenced Motion for Protective Order, he indicated that you were in the process of preparing an Order. We further discussed the fact that Yes Companies as an intervening party to the utility's Application for a Rate Increase would be entitled to see all of the information submitted including the unredacted report referenced in Attachment A to Mr. May's letter dated April 20, 2011. Rather the he Order would be limited to maintaining a confidential classification as shown on Attachment B of Mr. Mays letter as to access of information by Non-Parties. Based on that understanding, the Yes Companies has no objection to an Order that maintains customer confidentiality as to Non Parties in the proceeding so long as it, as a Party, is able to timely obtain

the requested information for purposes of this rate increase proceeding.

I am copying counsel for the Utility Mr. Mays to verify that I have correctly summarized our conversation.

*Jim Dickson*

V. James (Jim) Dickson  
Adams and Reese LLP  
150 2nd Avenue North  
Suite 1700  
St. Petersburg, FL 33701  
727-502-8200 Main  
727-502-8206 Direct  
727-502-8282 Fax  
727-502-8906 E-Fax  
68206 Internal  
[james.dickson@arlaw.com](mailto:james.dickson@arlaw.com)  
[www.adamsandreese.com](http://www.adamsandreese.com)

Please note new email address of:  
[james.dickson@arlaw.com](mailto:james.dickson@arlaw.com)

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11/15/2011