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100330-WS

**From:** jennifer.gillis@hklaw.com  
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**To:** Filings@psc.state.fl.us  
**Cc:** christensen.patricia@leg.state.fl.us; Katherine Fleming; KELLY.JR@leg.state.fl.us; kenneth.curtin@arlaw.com  
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a. Person responsible for this electronic filing:

D. Bruce May, Jr.  
Holland & Knight LLP  
Post Office Drawer 810  
Tallahassee, FL 32302-0810  
(850) 224-7000  
[bruce.may@hklaw.com](mailto:bruce.may@hklaw.com)

b. Docket number and title for electronic filing are: 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. The name of the party on whose behalf the document is filed: Aqua Utilities Florida, Inc. ("AUF")

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e. Brief description of filing: Aqua Utilities Florida, Inc.'s Response in Opposition to Motion for Intervention by YES Communities, Inc. d/b/a Arredondo Farms in Relation to Arredondo Farms Mobile Home Park.

**Jennifer Gillis | Holland & Knight**

Sr Legal Secretary

315 South Calhoun Street, Suite 600 | Tallahassee FL 32301

Phone 850.425.5605 | Fax 850.224.8832

[jennifer.gillis@hklaw.com](mailto:jennifer.gillis@hklaw.com) | [www.hklaw.com](http://www.hklaw.com)

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Application for increase in water and 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 7, 2011
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**AQUA UTILITIES FLORIDA, INC.'S RESPONSE  
IN OPPOSITION TO MOTION FOR INTERVENTION  
BY YES COMMUNITIES, INC. D/B/A ARREDONDO FARMS  
IN RELATION TO ARREDONDO FARMS MOBILE HOME PARK**

Pursuant to Rule 28-106.204, Florida Administrative Code, Aqua Utilities Florida, Inc. ("AUF"), hereby files its response in opposition to the motion to intervene filed by YES Communities, Inc. d/b/a Arredondo Farms ("Arredondo Farms") on January 31, 2011. As explained below, Arredondo Farms' motion to intervene should be denied because it fails to comply with rules governing intervention in Commission proceedings.

**Background**

1. On September 1, 2010, AUF filed its application for increased water and wastewater rates and requested that the matter be processed under Commission's proposed agency action ("PAA") procedures under Section 367.081(8), Florida Statutes.
2. On June 17, 2010, the Office of Public Counsel (OPC) filed its notice of intervention in this docket pursuant to Section 350.0611, Florida Statutes, which charges the OPC with the duty to provide legal representation to the people of Florida in Commission proceedings and, in so doing, advocate any position that it deems to be in the public interest. On August 19, 2010, the Commission granted OPC's intervention and thereafter the OPC has actively represented the people of Florida, including AUF's customers, in this proceeding.

3. On January 31, 2011, Arredondo Farms filed a sparsely worded motion to intervene which made the following general allegations:

- 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.
- [Arredondo Farms] 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.

#### Argument

4. Arredondo Farms' motion to intervene should be denied because it fails to comply with Rules 25-22.039 and 28-106.201(2), Florida Administrative Code, which govern intervention in Commission proceedings. Rule 25-22.039, Florida Administrative Code, states:

**Intervention.** Persons other than the original parties to a pending proceeding, who have a substantial interest in the proceeding, and who desire to become parties may petition the presiding officer for leave to intervene. Petitions for leave to intervene must be filed at least five (5) days before the final hearing, *must conform with Rule 28-106.201(2)*, and must include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or the substantial interests of the intervenor are subject to termination or will be affected through the proceeding. Interveners take the case as they find it. (Emphasis added.)

5. As set forth in the above rule, a petition for intervention in a Commission proceeding must conform to Rule 28-106.201(2), and therefore must contain:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition

must so indicate;

(e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, and;

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

R. 28-106.201(2)(a)-(g), Fla. Admin. Code.

6. The specific pleading requirements in Rule 28-106.201(2) are designed to ensure regulatory efficiency, control costs and to provide the agency and all parties fair notice of factual matters in dispute.

Just as the agency is obligated to give citizenry "fair notice" of the charged being faced, see *Totura v. Department of State*, 553 So. 2d 272, 273 (Fla. 1st DCA 1989), it is fair to narrow the factual matters in dispute and alert the agency to the undisputed aspects of the charges at issue. Considering the costs associated with any agency action, an effort to tailor those expenses while still providing a full and fair opportunity to be heard, cannot be faulted. Thus, we find application of the rule [Rule 28-106.202] both logical and entirely capable of being accomplished.

*Brookwood Extended Care Center of Homestead v. Agency for Healthcare Administration*, 870 So.2d 834 (Fla. 3<sup>rd</sup> DCA 2003).

7. The specific pleading requirements set forth in Rules 25-22.039 and 28-106.201(2) are not to be taken lightly. *Id.*, see also *Blackwood v. Agency for Healthcare Administration*, 869 So.2d 656 (Fla. 4th. DCA 2004) (upholding denial of petition for failure to comply with the pleading requirements in Rule 28-106.201(2)). Indeed the Commission has been quick to dismiss petitions which fail to comply with these specific pleading requirements. See e.g. Order No. PSC-01-1674-PCO-WU (motion to intervene was not in substantial compliance with Rule 28-106(2) and therefore was dismissed without prejudice); Order No.

PSC-05-0301-PCO-WU; Order No. PSC-99-0146-FOF-TX; Order No. PSC-99-0147-FOF-TI.

8. Arredondo Farms' motion to intervene completely fails to comply with subsections (b), (c), (d), (e), (f) and (g) of Rule 28-106.201(2). Arredondo Farms' failure to comply with Rule 28-106.201(2) is material and prejudicial. Allowing Arredondo Farms to intervene in blatant disregard to Rule 28-106.201 would eviscerate the regulatory efficiency and cost control policies of the rule, and leave AUF to speculate as to:

- a) the issues of material fact that Arredondo Farms disputes (*see* Rule 28-106.201(2)(d) above);
- b) the ultimate facts that Arredondo Farms alleges (*see* Rule 28-106.201(2)(e) above);
- c) the specific rules or statutes, if any, that support the relief Arredondo Farms seeks (*see* Rule 28-106.201(2)(f)); and,
- d) the relief Arredondo Farms seeks (*see* Rule 28-106.201(2)(g)).

Arredondo Farms' motion to intervene should be denied for failure to comply with Rules 25-22.039 and 28-106.201(2), Florida Administrative Code.

9. In addition, the motion to intervene should be denied because Arredondo Farms has failed to show that its interests in this PAA proceeding are not being adequately protected by the OPC. *Florida Wildlife Federation v. Board of Trustees of the Internal Improvement*, 707 So.2d 841 (Fla. 5th DCA 1998) is instructive. In that case, the Florida Wildlife Federation and the Save Our St. Johns River, Inc. ("Affected Groups"), sought to intervene in support of a lawsuit initiated by the Board of Trustees of the Internal Improvement Trust Fund ("Trustees")<sup>1</sup> over the

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<sup>1</sup> The Trustees is a state agency vested with title to all sovereignty lands underlying navigable water bodies held by the state in trust for the use and benefit of the public.

ownership of lakefront land in Brevard County. The Affected Groups alleged that they had a direct and immediate interest in the controversy and moved to intervene arguing that the Trustees could not adequately protect their interest. The trial court denied the Affected Groups' motion to intervene. On appeal, the District Court upheld the trial courts ruling on grounds that while the Affected Groups had shown a direct and immediate interest in the case, the trial court properly found that the Trustees-- "a responsible governmental entity"-- could fully protect the Affected Groups' interests. 707 So.2d at 842.

10. Like the Trustees in *Florida Wildlife*, OPC is "a responsible governmental entity" and is actively representing the people of Florida as a party in this PAA rate case pursuant to its authority under Section 350.0611, Florida Statutes. Clearly, OPC is in a position to, and is fully capable of, representing any conceivable interest of Arredondo Farms before the Commission. Arredondo Farms has made no allegation to the contrary. Notably, this rate case proceeding is being processed under the Commission's PAA procedures under Section 367.081(8), Florida Statutes, and the Commission has not yet rendered a proposed decision. The PAA procedures in Section 367.081(8) are "specifically intended to reduce rate case expense by streamlining rate case procedures." Order No. 23809-A. *See also* Order No. 99-0513-FOF-WS ("The purpose of processing this case as a PAA is to save costs."). To allow Arredondo Farms to intervene at this preliminary stage of this PAA proceeding would be duplicative of OPC, inefficient, and undermine the cost-savings purpose of the PAA process.

WHEREFORE, for the foregoing reasons, AUF respectively requests that the Prehearing Officer deny the motion to intervene filed by Arredondo Farms.



D. Bruce May Jr., Esquire  
Florida Bar No. 0354473  
Gigi Rollini  
Florida Bar No. 684491  
Holland & Knight  
315 South Calhoun Street, Suite 600  
Tallahassee, FL 32301  
(850) 224-7000 (Telephone)  
(850) 224-8832 (Facsimile)

-and-

Kimberly A. Joyce, Esquire  
Aqua America, Inc.  
762 West Lancaster Avenue  
Bryn Mawr, PA 19010  
(610) 645-1077 (Telephone)  
(610) 519-0989 (Facsimile)

*Attorneys for Aqua Utilities Florida, Inc.*

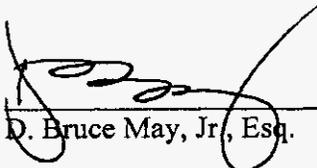
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by E-Mail and U.S. Mail to the following this 7th day of February, 2011:

Katherine Fleming  
Office of General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

J.R. Kelly  
Patricia Christensen  
Deputy Public Counsel  
c/o The Florida Legislature  
111 W Madison St, Room 812  
Tallahassee, FL 32399-1400

Kenneth M. Curtin  
Adams and Reese LLP  
150 Second Avenue North, Suite 1700  
St. Petersburg, Florida 33701

  
\_\_\_\_\_  
D. Bruce May, Jr., Esq.