

Holland & Knight

315 South Calhoun Street, Suite 600 | Tallahassee, FL 32301 | T 850.224.7000 | F 850.224.8832
Holland & Knight LLP | www.hklaw.com

RECEIVED-FPSC

11 APR 28 PM 12:33

COMMISSION
CLERK

D. Bruce May, Jr.
(850) 425-5607
bruce.may@hklaw.com

April 28, 2011

Via Hand Delivery

Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, FL 32399-0850

Re: *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., Docket No. 100330-WS*

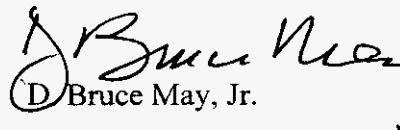
Dear Ms. Cole:

On behalf of Aqua Utilities Florida, Inc. ("AUF"), enclosed for filing are the original and seven (7) copies of AUF's Response to YES Companies, LLC d/b/a Arredondo Farms' Memorandum in Opposition to Rate Increase Application.

Please acknowledge receipt of this filing by stamping the extra copy of this letter "filed" and returning the copy to me. Thank you for your assistance.

Sincerely,

HOLLAND & KNIGHT LLP


D. Bruce May, Jr.

DBM:kjg
Enclosures

Atlanta | Bethesda | Boston | Chicago | Fort Lauderdale | Jacksonville | Lakeland | Los Angeles | Miami | New York
Northern Virginia | Orlando | Portland | San Francisco | Tallahassee | Tampa | Washington, D.C. | West Palm Beach

DOCUMENT NUMBER-DATE

02911 APR 28 =

FPSC-COMMISSION CLERK

Ann Cole
April 28, 2011
Page 2

cc: Caroline Klancke
Ralph Jaeger
Patricia Christensen
Kenneth Curtin
Kelly Sullivan
Kim Joyce
Troy Rendell

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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.)	DOCKET NO. 100330-WS
)	DATED: April 28, 2011
)	
)	
)	
)	
)	

AQUA UTILITIES FLORIDA, INC.'S RESPONSE TO YES COMPANIES, LLC D/B/A ARREDONDO FARMS' MEMORANDUM IN OPPOSITION TO RATE INCREASE APPLICATION

Aqua Utilities Florida, Inc. ("AUF"), by and through undersigned counsel, files its Response to the Memorandum In Opposition to AUF's Rate Increase Application filed by YES Companies, LLC D/B/A Arredondo Farms ("YES") on April 11, 2011. YES' memorandum is a compilation of sensationalized allegations that overlook the facts and the law and obscure the good quality of service at AUF's Arredondo Farms Water and Wastewater Systems ("Systems"). YES' arguments to deny or carve itself out of the rate case are without merit. To set the record straight, AUF states:

I. Overview of the Arredondo Farms Water and Wastewater Systems.

The Systems are located in Alachua County, Florida and currently serve approximately 343 water customers and 328 wastewater customers. Water is provided from two 6-inch wells that were drilled approximately 150 feet deep and have a casing length of 66 feet. Wastewater service is provided by a 60,000 gallon per day extended aeration wastewater treatment plant.

COM _____
 APA 1 All 343 water and 328 wastewater customers served by the Arredondo Farms water and
 ECR 5 wastewater systems reside in mobile homes located in the Arredondo Farms mobile home park
 GCL 1
 RAD _____ owned by YES. YES acquired the mobile home park on or about January 18, 2008.
 SSC _____
 ADM _____
 OPC _____
 CLK _____

DOCUMENT NUMBER-DATE
 02911 APR 28 =
 FPSC-COMMISSION CLERK

The Arredondo Farms water and wastewater systems were originally owned by Arredondo Utility Corporation (“AUC”). After the Commission gained jurisdiction over investor-owned water and wastewater systems in Alachua County in June of 1992, AUC was granted a grandfather certificate. *See* Order No. PSC-92-1454-FOF-WS (Dec. 15, 1992). AUC thereafter applied for and received a staff-assisted rate case wherein rates were set. *See* Order No. PSC-93-0509-FOF-WS (Apr. 5, 1993). In 1996, AUC applied for and received another staff-assisted rate case wherein new rates were set. *See* Order No. PSC-96-0728-FOF-WS (May 30, 1996).

In March of 1999, the Commission approved the transfer of majority organizational control of AUC to AquaSource Utility, Inc. Order No. PSC-01-0631-FOF-WU (Mar. 14, 2001). AUF’s parent acquired the Arredondo Farms Systems in 2003 when it acquired the stock of AquaSource Utility, Inc.¹ In 2006, the Commission authorized AUC to operate under the fictitious name of Aqua Utilities Florida, Inc. In 2008, AUF applied for and received a water and wastewater rate increase from the Commission which included the Arredondo Farms Systems. *See* Order No. PSC-09-0385-FOF-WS (May 29, 2009).

II. The Legal Standard for Rate Increases.

YES’ memorandum misrepresents the legal standard for rate increases by ignoring Florida’s extensive jurisprudence on a public utility’s entitlement “to an opportunity to earn a fair or reasonable rate of return on its invested capital.” *United Tel. Co. of Fla. v. Mann*, 403 So. 2d 962, 966 (Fla. 1981) (citing *Gulf Power Co. v. Bevis*, 289 So. 2d 401 (Fla. 1974)). Indeed, “[t]he cases universally hold that utility rates, when adopted, must be adequate to produce a reasonable return on capital investment and to meet operating expenses.” *Village of Va. Gardens*

¹ The Commission’s approval of the acquisition is addressed in Order No. PSC-03-0163-FOF-WS (Feb. 3, 2003).

v. *Haven Water Co.*, 91 So. 2d, 181, 183 (Fla. 1956) (collecting cases). As further explained by the Florida Supreme Court:

A fair rate of return is for the benefit of the utility's investors. *Gulf Power Co. v. Bevis*, 296 So.2d 482 (Fla.1974). This amount "should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain credit and to attract capital." *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603, 64 S. Ct. 281, 288, 88 L.Ed. 333 (1944); see also *Bluefield Waterworks & Improvement Co. v. Public Service Commission*, 262 U.S. 679, 43 S. Ct. 675, 67 L.Ed. 1176 (1923). Therefore the purpose of establishing a fair or reasonable rate of return is to "fairly compensate investors for the risks they have assumed..." *Permian Basin Area Rate Cases*, 390 U.S. 747, 792, 88 S. Ct. 1344, 1373, 20 L.Ed.2d 312 (1968).

Mann, 403 So. 2d at 966. Therefore, refusal to grant a public utility a reasonable rate of return on its investment would be "confiscatory." *Keystone Water Co., Inc. v. Bevis*, 278 So. 2d 606, 609 (Fla. 1973); see also, *N. Fla. Water Co. v. City of Marianna*, 235 So. 2d 487 (Fla. 1970).

YES also fails to mention the due process protections that are afforded to a utility in a proceeding where compensatory rates are to be set. See *City of Miami v. Fla. Pub. Serv. Comm'n*, 226 So. 2d 217, 224 (Fla. 1969) (The determination of whether a public utility is receiving fair and reasonable returns "should be made in accordance with due process of law and in keeping with recognized rules of trial or administrative hearing procedure and practice. In such cases, neither the Commission nor the courts should countenance any harassment of the public utility or the making of it a 'whipping boy' for political or other extraneous purposes.").

As YES acknowledges, in fixing rates that are "just, reasonable, compensatory, and not unfairly discriminatory," the Commission is to consider among other things the "value and quality of the service and the cost of providing the service." § 367.081(2)(a)(1), Fla. Stat. However, YES attempts to heighten this standard by reference to unique utility cases involving

instances of criminal mismanagement or gross neglect which are not remotely at issue here.² YES suggests that because rates were reduced or not increased due to the extreme and inapposite facts in those unique cases, the Commission should exercise that same authority here. YES' logic is flawed. A review of the cases cited by YES demonstrates their inapplicability.

For instance, in *Gulf Power Company v. Wilson*, 597 So. 2d 270 (Fla. 1992), the Commission temporarily reduced an electric utility's return on equity ("ROE") after finding criminally corrupt practices and gross mismanagement which "reflect[ed] a disregard for the ratepayers and public service." *Id.* at 272 (quoting Commission's findings). These practices included "theft of company property, use of company employees on company time to perform services for management personnel, utility executives accepting appliances without payment, and political contributions made by third parties and charged back to" the utility. *Id.* Accordingly, the Commission penalized the utility by imposing a penalty of 50 basis points on its ROE "as a message to management" to stop its misconduct. *Id.* Notably, even under these extreme circumstances (which are certainly not present here), the Commission still approved a rate increase and only imposed the ROE penalty for a temporary two-year period.³

² To be sure, "[i]f the commission finds that a utility has failed to provide its customers with water or wastewater service that meets the standards promulgated by the Department of Environmental Protection or the water management districts, the commission may reduce the utility's return on equity until the standards are met." § 367.111(2), Fla. Stat. But those are not the facts here.

³ In implementing its authority to reduce a utility's return on equity the Commission has been careful to limit such reductions to situations where the utility has flagrantly disregarded the Commission's rules and charged unauthorized rates, *see* Order No. PSC-03-0699-SU (June 9, 2003); ignored Staff's request for information, *see id.*; or repeatedly violated FDEP regulations, *see* Order No. PSC-98-0763-FOF-SU (June 3, 1998) (ROE reduced by 100 basis points for poor quality of service and mismanagement, where the utility had not had a single satisfactory field inspection by either FDEP or the Health Department, had received numerous warning letters, failed to perform timely after entering into consent agreements with FDEP, and incurred fines and possible penalties in excess of the value of the utilities planned). There is no evidence in this case, and indeed no claim, that AUF has flagrantly disregarded the Commission's rules, charged unauthorized rates, ignored staff's requests for information, or repeatedly violated FDEP requirements. Indeed, AUF has shown a commitment to taking actions beyond that required by law as described below.

Similarly, in *North Florida Water Company v. Bevis*, 302 So. 2d 129 (Fla. 1974), the Court affirmed the Commission's denial of a rate increase where the Commission had determined that (i) the utility's system was plagued by "insufficient past maintenance," (ii) the utility's system "leak[ed] like a sieve," and (iii) the utility's meter program was "virtually non-existent[t]." See Order No. 5853 (Sept. 14, 1973). In so ruling, the Court agreed that the public should not be compelled to pay increased rates due to egregious inefficiencies resulting from the utility's total neglect of the system. 302 So. 2d at 129-130. None of those extreme facts are present here.

Likewise, the administrative order in *Island Services Inc. v. Florida Public Service Commission*, DOAH Case No. 80-1176 (Aug. 6, 1980), involved other issues far beyond what is presented here. See also, Order No. 9773 (Jan. 29, 1981) (adopting administrative order). In *Island Services*, it was found that the system was not properly maintained, there were frequent periods of very low water pressure, customers were unable to contact the utility when outages occurred after business hours because no emergency phone number was provided, and that tests by the Department of Environmental Regulation demonstrated inadequate chlorine residuals which would require further monitoring. *Id.* at ¶ 5. The request for the rate increase was further complicated by the fact that there was no basis on which to determine the utility's investment. *Id.* at ¶ 6.

YES' citation to the Commission order in *In Re: Application of Palm Coast Utility Corporation*, Order No. 10463 (Dec. 18, 1981), is no more helpful. In that instance, the Commission granted a rate increase for all customers except for eight single-family residences and one duplex where, for those limited customers, water was found to have an "excessive chlorine taste, offensive odor, and high sodium content." *Id.* at 30. In so ruling, the Commission

found that it was “undisputed” that the quality of water provided to the eight single family residences and the duplex was “of a lesser quality than that received by the main body of customers . . . , especially when the factors of taste and odor are considered.” *Id.* This notwithstanding, the Commission conditionally granted a rate increase to that small group of customers once their quality of water was elevated to the quality received by the utility’s main body of customers. There is nothing here to suggest that AUF is failing to meet the minimal water quality standards which were not being met in that case. In fact, as is explained below, empirical water quality test results demonstrate that the quality of water supplied at the Arredondo Farms System is good. Moreover, the aesthetic quality of the water at Arredondo Farms actually exceeds the aesthetic standards of other systems that are included as part of the first phase of AUF’s secondary/aesthetic water quality initiative.

For these reasons, and for all the reasons set forth below, the cases cited by YES are in no way comparable to the facts at issue here.

III. The Value and Quality of AUF’s Water Service are Good.

As prescribed by rule, when determining the quality of service provided by a utility, the Commission shall make this determination based on an evaluation of three separate components of water and wastewater utility operations:

- (i) Quality of the utility’s product (water and wastewater);
- (ii) Operational condition of the utility’s plant and facilities; and
- (iii) The utility’s attempt to address customer satisfaction.

Rule 25-30.433(1), Fla. Admin. Code. As demonstrated below, the quality of AUF’s water and wastewater product at the Arredondo Farms Systems is good, as is the operational condition of those Systems. Furthermore, AUF has made, and continues to make, concerted attempts to address customer satisfaction at the Arredondo Farms Systems.

A. The Quality of Water Service is Good.

YES' memorandum is conspicuously silent as to the facts that the Arredondo Farms Water System is current in all of the required chemical analyses and that there are no outstanding enforcement issues. Indeed, YES' memorandum completely ignores empirical test results which demonstrate that the quality of water supplied at the Arredondo Farms system is good.

The U.S. Environmental Protection Agency (EPA) National Primary Drinking Water Regulations set enforceable Maximum Contaminant Levels ("MCLs") for drinking water to protect the public from contaminants that might present some risk to human health. An MCL is the maximum allowable amount of a contaminant in drinking water which is delivered to the consumer. EPA National Secondary Drinking Water Regulations set non-mandatory Secondary Maximum Contaminant Levels ("SMCLs") for 15 other contaminants based on aesthetic considerations such as taste, color and odor. EPA does not enforce these SMCLs. They are established as guidelines to assist public water suppliers in managing their drinking water systems. These contaminants are not considered to present a risk to human health at or below the SMCL. There is no SMCL for hardness. There is a SMCL for total dissolved solids (TDS) at 500 mg/L based largely on taste when the TDS is comprised mainly of salt (sodium and chloride).

AUF is required to regularly monitor for primary and secondary standards. Since AUF acquired the Arredondo Farms Water System in 2003, the System has provided water meeting all primary and secondary federal and state drinking water standards. *See, e.g.*, AUF's Responses to YES' First Request for Production of Documents Nos. 1, 2 and 8. The TDS of the water at Arredondo Farms is 306 mg/L, well below the SMCL. Neither sodium nor chloride are significant components of the TDS in the water at Arredondo Farms. The hardness of the water

in Arredondo Farms is around 320 mg/L as calcium carbonate. This is hard water, but not exceptionally hard for Florida. Contrary to the claims by YES, hard water does not contribute to corrosion and, in fact, protects against corrosion of household plumbing. For example, the most common indicator of corrosivity of water is the Langelier Index (or Saturation Index, SI). Water with a positive SI (like the water at the Arredondo Farms System) has a tendency to deposit a protective layer of calcium carbonate and other minerals that inhibit corrosion of metal pipe and plumbing fixtures. Water with a negative SI has a tendency to dissolve calcium carbonate and other metallic oxides and complexes that form on the metal surfaces, exposing the metal surface to corrosion.⁴

The Commission has consistently recognized that it is not unusual for Florida water utilities to experience water “hardness” issues, and the Commission has not taken punitive actions against utilities that do.⁵ Indeed, in the 1996 rate case involving the Arredondo Farms Systems (which were then owned by AUC), the Commission expressly found that, while the water at the system was hard, it did not present a health hazard. *See* Order No. PSC-96-0728-FOF-WS at 2-3. The Commission went on to conclude that the “treated water provided by Arredondo meets or exceeds all requirements for safe drinking water” and that the utility had satisfactory water quality. *Id.* The Commission also warned that a system-level solution to the “hard” water issue at Arredondo would not be cost-effective or prudent:

Those customers who attended the customer meeting were primarily concerned about mineral deposits on their kitchen and bath fixtures. This situation is generally treatable by lime softening. However, the cost to install lime softening equipment is from approximately \$80,000 to \$140,000 for each of the two water treatment plants. This cost would be passed on to the customers through their rates. We find that this solution would not be cost

⁴ Vernon Snoeyink & David Jenkins, *Water Chemistry* 289 (1980).

⁵ *See, e.g.*, Order No. PSC-00-2054-PAA-WS (Oct. 27, 2000); Order No. PSC-96-0728-FOF-WS (May 30, 1996); Order No. PSC-93-0027-FOF-WS (Jan. 5, 1993).

effective or prudent for this customer base. We note that customers who find the scaling problem to be intolerable have other options. They could either have a local water softening company install a water softening unit at a variable price, or they could purchase a whole house filter system for less than \$50.00. Filter cartridges are replaced as necessary and can be purchased to screen for a variance of compounds, including excessive minerals. . . . All things considered, we find that the utility's quality of service is satisfactory.

Id. at 3 (emphasis added).

Although the Commission has previously warned that a system-level solution to the “hard” water issue would not be cost-effective or prudent, the record should be made clear that AUF continues to try to actively address its customers’ concerns regarding hard water. AUF’s service technicians are trained to routinely advise customers that the effects of hard water can be mitigated by a variety of household products or by homeowners softening their water. Furthermore, for customers who consider obtaining water softeners, AUF recommends softening only the hot water to maximize benefits and minimize the cost of softening. AUF also regularly includes written materials in customers’ bills that explain how to mitigate the effects of hard water. As described below, AUF’s efforts to address hard water concerns have not stopped there.

Hard water is an aesthetic water quality issue, and AUF is proud of its proactive programs in Florida to address aesthetic quality. As the Commission knows, in early 2009, AUF evaluated several of its water systems as candidates for investigation for improvements to address secondary (aesthetic) water quality parameters. The Arredondo Farms Water System was one of the systems considered based solely on the relative hardness of the water. There was no other primary or secondary water quality issue with the water at Arredondo Farms. AUF worked with the Commission and the Office of Public Counsel (“OPC”) to determine which

systems would be targeted in the first phase of the secondary water quality projects and which would be targeted for subsequent phases. Ultimately, priority was given to systems with SMCL exceedances for taste and odor (due mainly to hydrogen sulfide), iron or manganese, especially where a system could have issues with primary drinking water standards. Because the Arredondo Farms Water System had no SMCL exceedances and no issues related to primary standards, it was placed in the next tier of systems to be addressed in the second phase of AUF's aesthetic water quality program.⁶ System-level alternatives to address the hardness at Arredondo Farms are being evaluated and will be presented as soon as the first phase projects have been completed. Some of the options being internally evaluated at this time include adding a sequestering agent, similar to those recently added to the Tangerine and Zephyr Shores water systems during the first phase of the secondary water quality project. AUF's ultimate goal is to find a balanced solution that will maximize benefits to customers and minimize upward pressure on rates.

B. The Quality of Wastewater Service is Good.

YES' memorandum completely ignores undisputed facts showing that AUF provides good quality of wastewater service at Arredondo Farms. First, YES completely ignores the fact that the Arredondo Farms Wastewater Treatment Facility ("WWTF") is currently operating in accordance with all applicable environmental standards, and there are no outstanding enforcement issues. Second, YES fails to mention that, subsequent to AUF's last rate case, AUF has made significant upgrades to the WWTF which were completed and placed into service in August 2010 at a cost of \$291,870.⁷ (In addition, it should be noted that during the construction

⁶ In addition to the Arredondo Farms Water System, AUF has also preliminarily included Hermit's Cove, River Grove and Arredondo Estates in the second phase of its aesthetic water quality program.

⁷ The factual details and the costs associated with the WWTF upgrade are set forth in AUF's Sixth Supplemental Response to Staff's Second Data Request dated February 28, 2011.

of the WWTF upgrade, AUF's contractor advised the potential development of a sinkhole. AUF hired Devoe Engineering to perform a site assessment and the sinkhole was stabilized. However, another sinkhole developed, which AUF stabilized at a cost of \$47,137.) FDEP issued a clearance letter regarding this project on August 27, 2010. Third, YES ignores that AUF has completed a pond rehabilitation project at the Arredondo WWTF to improve percolation rates. This project was completed in November 2010 at a cost of \$127,765.

Finally, AUF continues to incur substantial operational costs at the Arredondo Wastewater System because of fats, oils, grease and other materials disposed of in the sewer system by customers who are tenants of YES. AUF has been working with YES to address some of these wastewater issues, and AUF appreciates YES' cooperation in taking these steps to mitigate the wastewater rate increase.

Clearly, AUF's actions demonstrate that it offers good quality wastewater service at Arredondo Farms and is committed to maintaining that good quality of service going forward.

C. The Quality of AUF's Billing Services is Good.

YES claims that AUF has poor billing practices, which YES blames on AUF's water meters. *See* YES' memorandum at 13. AUF strongly disagrees with YES' claims about billing errors. There simply is no evidence to suggest that AUF's meters are causing billing errors. Such claims ring particularly hollow when one reflects on the fact that the Commission recently affirmed the accuracy of AUF's meters based on an independent meter audit conducted by staff, which audit included random sampling of meters at Arredondo Farms. The Commission expressly found that:

Our staff has randomly sampled 358 meter readings taken by AUF and compared those readings to a corresponding set of meter readings taken by Commission staff. Of these 358 meter readings taken by AUF, none were found to be significantly different from

the meter readings taken by our staff. Therefore, we find that no further testing of AUF's meter reading accuracy is necessary.

Order No. PSC-10-0297-PAA-WS (May 10, 2010).

Furthermore, YES' unfounded claims of metering deficiencies ignore AUF's proactive efforts to address the metering issues in the Arredondo Farms area that existed prior to AUF acquiring the Systems. For example, in the 1996 rate case involving the Arredondo Farms Systems, customers had expressed concern that the prior owner - AUC - had an inconsistent policy of meter reading. At that time, AUC explained that when meters were not read it was "because those meters are within fenced yards where the gate is locked, or the yards contained unrestrained dogs, or there is too much debris covering the meter." Order No. PSC-96-0728-FOF-WS at 4. AUF has proactively addressed this issue by installing radio frequency ("RF") meters as a consistent, cost-effective, and accurate means to measure and bill for water service.

On page 14 of its memorandum, YES makes reference to seven customers who have received backbills, and erroneously claims that those isolated instances reflect systemic billing problems. That simply is not true. As will be explained in detail below, YES overlooks the fact that AUF's backbilling practices comport with the Commission's rules and its Commission-approved Tariff. Furthermore, the customer scenarios which YES cites are not indicative of chronic billing problems, but rather reflect routine billing challenges that can arise where there is damage to metering equipment, repeated "move-ins/move-outs" and customer billing address changes. Each of the seven customer scenarios referenced in YES' memorandum is addressed and explained in Exhibit "A".

1. AUF's Policy for Billing for Past Usage Complies with Commission Rules.

The Commission's rules expressly authorize AUF to backbill customers:

A utility may not backbill customers for any period greater than 12 months for any undercharge in billing which is the result of the utility's mistake. The utility shall allow the customer to pay for the unbilled service over the same time period as the time period during which the underbilling occurred or some other mutually agreeable time period. The utility shall not recover in a ratemaking proceeding, any lost revenues which inure to the utility's detriment on account of this provision.

Rule 25-30.350, Fla. Admin. Code. Rule 25-30.350 is virtually identical to the Commission's rules that authorize backbilling by electric utilities - Rule 25-6.106, Florida Administrative Code,⁸ and by natural gas utilities - Rule 25-7.0851, Florida Administrative Code. AUF's backbilling practices also comply with Rule 25-30.350 and with Sections 23, 24 and 30 of its Commission-approved Tariff.

Both Rule 25-30.350 and AUF's approved Tariff allow AUF to backbill for up to 365 days. Thus, when AUF revises a bill to send to a customer to account for services used but not previously billed, the bill will be calculated based on the total amount of usage measured through the meter for the total time that service was received. If this time frame is longer than 365 days, AUF's policy is to include an adjustment on the bill that will credit the customer for usage beyond the 365 day look-back period. AUF's practice is designed to ensure that the backbilled period does not exceed 12 months. Furthermore, AUF's policy is to allow the customer to pay the backbill over the same time period in which the underbilling occurred or some other mutually agreeable time.

While AUF strives for perfection in its billing processes, it would be disingenuous to suggest that mechanical and human errors do not occur. The Commission has recognized this potential for billing mistakes as so have the courts. As set forth above, the Commission's rules

⁸ The Commission's rules concerning backbilling by electric utilities also authorize a utility to backbill for "up to four (4) years if the backbilling is necessary due to errors of an electrical contractor." *See*, R. 25-6.103(7), Fla. Admin. Code.

clearly recognize that, from time to time, billing mistakes will be made which will require the utility to backbill customers for service that was provided and used but was not captured in the normal monthly bill. The rationale for backbilling was clearly set forth in *Corporation de Gestion Ste-Foy, Inc. v. Fla. Power & Light*, 385 So. 2d 124 (Fla. 3rd DCA 1980). There the court found that a public utility “is not only permitted but is required to collect undercharges from established rates, whether they result from its own negligence, or even from a specific contractual undertaking to charge a lower amount.” *Id.* at 126. The court explained that it would be improper for a utility to give preferential treatment or to charge one customer less than another customer for the same service. *Id.* The Florida Supreme Court later endorsed this principle when it expressly upheld the right of a water utility to backbill for water undercharges. *Jacksonville Elec. Auth. v. Draper’s Egg & Poultry Co.*, 557 So. 2d 1357 (Fla. 1990).

In similar fashion, the Commission has expressly recognized the right of a water and wastewater utility to backbill customers pursuant to Rule 25-30.350. *See, e.g.*, Order No. PSC-94-0210-FOF-WS (Feb. 24, 1994); Order No. PSC-94-0501-FOF-WU (Apr. 27, 1994). Furthermore, the Commission has clearly explained the reason why a utility is entitled to backbill as follows: “regardless of whether the utility was aware of the connection or not, the customer has received service for which it has not paid.” Order No. PSC-94-0210-FOF-WS.

In the water and wastewater industry the need to backbill is not uncommon and can happen for a variety of reasons. Some examples of these circumstances are as follows:

The Damaged ERT

Where the electronic radio transmitter (“ERT”) component of an RF meter is damaged (*e.g.*, by weather event or vandalism) the meter reads will be captured but not transmitted, and thus the customer will be billed only for the relevant base facility charge. When this “no

consumption” issue⁹ is detected and the ERT is repaired, AUF’s billing system will retrieve the actual read for the consumption and will backbill the customer for the full services provided over the period that the customer was undercharged but not longer than 365 days. This is in strict accordance with the Commission’s backbilling rule - Rule 25-30.350. Under AUF’s policy, the new bill should spread the total usage over the period of months that the customer was undercharged based on the appropriate rate tier. Furthermore, AUF’s policy is to allow the customer to pay the backbill over the same time period in which the underbilling occurred or over some other mutually agreeable time.

Repetitive Billing Address Changes and Move-Ins/Move-Outs

A customer’s repetitive changes in his or her billing address can also result in the customer “missing” bills which, in turn, requires the utility to backbill for services rendered but not paid for by the customer. In addition, the potential for billing issues may increase where a customer repeatedly moves in and out of AUF’s billing system which causes constant changes in the customer account database. If an underbilling is detected in these scenarios, AUF’s policy is to backbill the customer for the services provided over the period that the customer was undercharged but not longer than 365 days. Under AUF’s policy the new bill should spread the total usage over the period of months that the customer was undercharged based on the appropriate rate tier. Furthermore, AUF’s policy is to allow the customer to pay the backbill over the same time period in which the underbilling occurred or over some other mutually agreeable time.

⁹ YES insinuates that AUF should automatically treat a bill with “no consumption” as problem needing immediate attention. That simply is not the case. YES fails to understand that, due to the seasonal nature of many of Florida’s residents, it is not unusual during many months of the year for a bill to have only a base facility charge, and no usage charges (i.e., “no consumption”).

2. YES' Cherry Picking Argument Should be Rejected.

Since AUF's last rate case in Docket No. 080121-WS, AUF has issued over 12,300 bills to customers in Arredondo Farms. YES lists 7 of those customer bills and attempts to argue that those bills show systemic billing problems. YES' argument is classic "cherry picking" and reflects the fallacy of incomplete evidence. As the Commission and the Courts have recognized, billing mistakes will occur in the ordinary course of a utility's business, and those mistakes may require the utility to backbill customers for service that was provided and used but was not captured in the normal monthly bill. As discussed above, such billing mistakes sometimes occur where there is damage to an ERT or a meter, where customers repeatedly move in and out of the billing system, and where the customer repeatedly changes his or her billing address. Of those 7 customer bills listed by YES: 4 involved backbills because of a damaged ERT or a replaced meter; 2 involved backbills because of move-ins/move-outs; and 1 involved a backbill because of repeated changes in the customer's billing address. Simply put, the 7 customer scenarios listed in YES' memorandum all involved isolated billing mistakes that, despite AUF's best practices, occur in the ordinary course of a utility's business. None reflect chronic or systemic billing problems. Each of the 7 customer billing scenarios listed by YES are addressed and explained in Exhibit "B".¹⁰ Furthermore, as shown in Exhibit "A", AUF has made a concerted effort to address each of these customer's concerns.

D. AUF Has Designed Rates Specifically to Address Affordability.

YES claims that AUF's proposed rates are unjust, unreasonable and unaffordable. Those claims are without merit. As explained above, AUF is entitled to rates that allow it the

¹⁰ The exhibits to YES' memorandum make passing reference to five (5) other customers who have expressed concerns with respect to the level of bills that did not relate to backbilling. Each of those customer scenarios are addressed and explained in Exhibit "B". Furthermore, as shown in Exhibit "B", AUF has made a concerted effort to address each of these customer's concerns.

opportunity to earn a reasonable return on its prudent capital investment and to recover its reasonable operating expenses. To ensure that its rates are affordable, AUF has requested that the Commission approve a statewide uniform rate structure which, if approved, would actually decrease water rates for customers in Arredondo Farms. While those customers would see a modest increase in wastewater rates, that increase is directly attributable to the substantial investments made by AUF to upgrade the Arredondo Farms WWTF. See Section III.C. above. The Commission has already allowed electric and natural gas utilities to implement uniform rates to address affordability concerns. Moreover, the Florida First District Court of Appeal (“1st DCA”) has made it clear that there are no legal impediments to the Commission adopting a similar uniform rate structure for multi-system water and wastewater utilities like AUF. See *S. States Utils. v. Fla. Pub. Serv. Comm’n.*, 714 So. 2d 1046 (Fla. 1st DCA 1998). In fact, the court recognized that uniform rates for water and wastewater utilities can enhance affordability for all customers by providing bona fide cost savings “due to a reduction in accounting, data processing and administrative expenses.” *Id.* at 1052 (quoting Order No. PSC-93-1480-FOF-WS (Oct. 11, 1993)).¹¹

Finally, YES’ attempt to compare AUF’s proposed rates to rates of Gainesville Regional Utilities is baseless and contrary to Commission precedent. The Commission has expressly rejected a similar attempt by OPC to compare an investor-owned water utility’s rates to rates of a municipally-owned utility:

A valid comparison would take into account all differences and similarities of the utilities whose rates were being compared. One example of a major consideration is the type of ownership. The rates of a municipally-owned utility may vary greatly from those of

¹¹ The 1st DCA also recognized that the Commission has set uniform rates in several other cases involving multiple water and wastewater systems. 714 So. 2d at 1052 (citing Order No. PSC-93-1092-FOF-WU (July 27, 1993); Order No. 23592 (Oct. 9, 1990); Order No. 14506 (June 26, 1985); Order No. 11507 (Jan. 13, 1983)).

an investor-owned utility. For instance, municipally-owned utilities generally have lower costs of debt and often subsidize their water and sewer systems through taxation. On the other hand, investor-owned utilities are required to pay property and income taxes. These utilities usually have a much higher cost of debt because they do not have the same access to federal and state funds as do municipalities. Other components that may impact on the cost and pricing of water and sewer service include the number of customers served and the age of the plant.

The Commission has previously addressed this issue. For example, by Order No. 4137, the Commission found that rate comparisons are without value as a measure of reasonableness in fixing telephone rates within a specific area and for a particular utility. The Commission observed in that case that if such comparisons were a valid test of reasonableness, there would be only one rate for a given service throughout the jurisdiction, regardless of the utility involved or the operating conditions encountered. We therefore find that, based on the record, the rate comparison proposed by Public Counsel is irrelevant to our disposition of this rate case.

Order No. 20066 (Sept. 26, 1988).

IV. Conclusion.

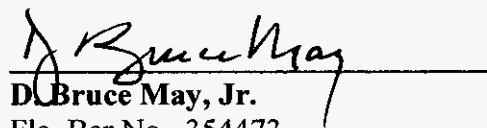
The Commission should not be misled by YES' sensationalized allegations, which overlook key facts and legal precedent. The Commission has previously found the quality of service at the Arredondo Farms Water and Wastewater Systems to be satisfactory. Order No. PSC-96-0728-FOF-WS, *supra*. Since that time, the facts show that the service quality has improved. With respect to Arredondo Farms Water System, the undisputed facts show that since AUF acquired the system in 2003, the water has met all primary and secondary federal and state drinking water standards, and there are no outstanding environmental enforcement issues. Similarly, AUF has made substantial improvements to the Arredondo Farms Wastewater System, which is currently operating in accordance with all applicable environmental standards and there are no outstanding enforcement issues. Furthermore, there is nothing wrong with the quality of AUF's billing services. The Commission has recently affirmed the accuracy of AUF's meters

based upon an independent meter audit conducted by staff. Moreover, AUF's backbilling practices are entirely consistent with its approved Tariff, the Commission's rules, and the backbilling policies previously upheld by the Courts and the Commission. Finally, AUF has made and continues to make concerted efforts to address customer satisfaction. Although the Commission has previously determined that water hardness at Arredondo Farms is an aesthetic issue and not a health compliance issue, and has warned that system-level improvements to address hard water would not be cost-effective or prudent, AUF has not ignored the issue. AUF continues to try to actively address its customers' concerns by including written materials in customers' bills and by training its service technicians to routinely advise customers on how to mitigate the effects of hard water. In addition, AUF has proactively included the Arredondo Farms Water System in the next phase of its aesthetic water quality program and continues to evaluate cost-effective solutions to address hard water.

In summary, the overall quality of service provided by AUF at the Arredondo Farms Systems is good. YES' arguments to deny or carve itself out of the rate case are without merit.

Respectfully submitted this 28th day of April, 2011.

HOLLAND & KNIGHT LLP



D. Bruce May, Jr.

Fla. Bar No. 354473

Gigi Rollini

Fla. Bar No. 684491

Holland & Knight LLP

Post Office Drawer 810

Tallahassee, Florida 32302-0810

Phone: (850) 224-7000

Fax: (850) 224-8832

E-Mail: bruce.may@hklaw.com

gigi.rollini@hklaw.com

-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

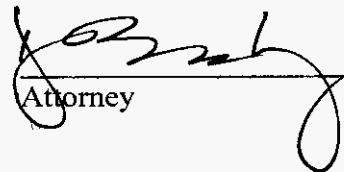
I hereby certify that a true and correct copy of the foregoing was furnished by hand delivery or overnight mail** this 28th day of April, 2011 to:

Ralph Jaeger
Caroline Klancke
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Kelly Sullivan**
570 Osprey Lakes Circle
Chuluota, FL 32667-6658

J.R. Kelly
Patricia Christensen
Office of 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



Attorney

EXHIBIT A

Monica Thomas

Ms. Thomas' scenario involved a backbill due to a move-in issue. The customer contacted AUF on March, 18, 2008 to have service put in her name. At the time of this move-in notification, the property was not identified as a wastewater account in AUF's billing system. Consequently the customer began receiving water and wastewater service in March of 2008, but was billed only for water service. Upon learning of the undercharge in October 2010, AUF backbilled the customer for wastewater service back to September 2009, consistent with Rule 25-30.350. Although Ms. Thomas had received wastewater service since March 2008, AUF did not charge her for such service she received for the period March 2008 to September 2009.

Ms. Thomas' bill for the prior wastewater service specifically notified her that the bill was for a long period and that payment arrangements could be made on the account. AUF's policy is to encourage and allow payment plans, and Ms. Thomas was notified that a payment plan was available to her.

Eugene Davis

Mr. Davis' scenario involved a backbill due to a move-in issue. The customer contacted AUF on August 28, 2007 to activate service. At the time of move-in notification, the property was not identified as a wastewater account in AUF's billing system. Consequently Mr. Davis began receiving water and wastewater service in late August 2007, but was billed only for water service. Upon learning of the undercharge in September 2010, AUF backbilled the customer for wastewater service back to September 2009, consistent with Rule 25-30.350. Although Mr. Davis received wastewater service since late August 2007, AUF did not charge him for such service he received for the period August 2007 through September 2009. Mr. Davis' bill for the prior wastewater service notified him that the bill was for a long period and that payment arrangements could be made on the account. This customer continues to make payments on his prior usage pursuant to a payment arrangement plan.

Katherine Smith

Ms. Smith's scenario involved a backbill due to a damaged ERT issue. As explained in Section III of the Response, where the ERT component of an RF meter is damaged (e.g., by weather event or vandalism) meter reads will be captured but not transmitted, and thus the customer will be billed only for the relevant base facility charge. When this issue is detected and the ERT is repaired, AUF will retrieve the actual read for the consumption and will backbill the customer for the full services provided over the period that the customer was undercharged but not longer than 365 days. This is in strict accordance with the Commission's backbilling rules. Furthermore, the bill should show the recalculated usage by month based on the appropriate tiered block rate structure. In Ms. Smith's case, when AUF detected that the ERT had been damaged and the customer had not been billed for usage for 361 days, it attempted to manually address the billing issue. As a result of human error, the manual override caused the customers' usage over the 361 day period (33,800 gallons) to be billed in a 28 day period. The customer's

revised bill, which was issued February 2011, thus reflected usage at the highest tier rate. Upon learning of this mistake, a corrected bill has been issued for the unbilled gallonage which has been spread over the 361 day period with the appropriate rate tier applied. AUF has also notified the customer that a payment plan is available to her.

Justin Houlker

Mr. Houlker's scenario involved a backbill due to a damaged ERT issue. Because of a damaged ERT, Mr. Houlker was not billed for water and wastewater services used from November 2009 to November 2010. A service technician discovered that the ERT was damaged and promptly repaired the ERT on November 24, 2010. In December 2010, the customer was backbilled for the unbilled service in accordance with the Commission's rules. The bill reflected usage calculations for the total time period that service was received but not billed (378 days). However, because the Commission's rule limits the backbill period to not more than 365 days, AUF's bill reflected a credit which credited Mr. Houlker's bill for usage beyond the 365 day period. AUF has notified the customer that a payment plan is available to him.

William Wright

Mr. Wright's scenario involved a backbill which was due to a damaged ERT issue. Mr. Wright has been a customer since 2001. In 2009, he began receiving a bill which contained only water and sewer base facility charges (with no usage charges) due to a damaged ERT.

The account was corrected and the customer was billed for 99,300 gallons of usage for 567 days of service. Because Florida's regulations state that Aqua can only back bill for 365 days of service, a credit was posted to the customer's account for the usage over 365 days. AUF has also notified the customer that a payment plan is available to him.

Joyce Helm

Ms. Helm's scenario involved a backbill due to repeated billing address changes requested by the customer. Records indicated that Ms. Helm called AUF on February 2, 2010 to activate her account, stating that she moved into the property on January 28, 2010. Between March 2, 2010 and April 22, 2010, the customer contacted AUF and stated that she had not received her bills. AUF sent the customer duplicates of the prior bills. Thereafter, at the customer's request, AUF changed the customer's billing address. On May 18, 2010 Ms. Helm called AUF and claimed that she was not a customer (Note that AUF's records show the Company received 2 credit card payments both in April 2010 showing Joyce Helm as the customer of record). Ms. Helm said that she did not live in Gainesville, that she lived in Titusville, Florida and that service should be taken out of her name. Pursuant to Ms. Helm's request, AUF took the service out of Ms. Helm's name at this property.

On June 28, 2010, after AUF's records indicated that there was consumption at the property but no customer of record, a service order was created to turn off and block service to this property. Ms. Helm then called in August 2010, asserting that she was not receiving bills for the 7171 Southwest Archer Road, Gainesville, Florida property.

The AUF representative advised Ms. Helms that she had previously stated that she did not live at the property and AUF's records indicated that there was no active customer at the property at that time. After speaking with Ms. Helm, the customer service representative put the service back into Ms. Helm's name. Because records indicated that she or someone authorized by her was using water and wastewater services at the property since she initially called and stated she had moved into the property, she was billed for the service used at this address as of January 28, 2010. Specifically, Ms. Helm was billed for 196 days of service. Ms. Helm raised this billing concern at the customer meeting in Gainesville on October 21, 2010 and spoke to a local AUF representative. As a one-time courtesy, a credit of \$318.56 was issued on the customer's account on October 22, 2010.

MaryAnn Walker

MaryAnn Walker's scenario involved a backbill due to a damaged meter issue. A brief history of Ms. Walker's account is as follows: Ms. Walker became an AUF customer at this address in March 2008. While she was a customer, this customer had numerous collection and payment issues which led to her service being discontinued in April 2009 for non-payment. In May 2009 AUF noticed that there was consumption but no customer of record at this property. On September 4, 2009, service was put back into Ms. Walker's name and a backbill was issued back to April 8, 2009 for services used but not paid for by the customer. Thereafter, Ms. Walker agreed to a payment plan to pay for the services she used but did not pay for.

On October 22, 2010, AUF determined that the meter at Ms. Walker's property was damaged, and thereafter the Company took prompt steps to exchange the meter. It was further determined that Ms. Walker had not been billed for usage from October 2009 through October 2010. The meter exchange was completed on October 22, 2010. As a one time courtesy, Ms. Walker was not billed for water and wastewater consumption from October 2009 to October 2010.

However, during the meter exchange on October 22, 2010, the service technician did not synchronize the new meter with the existing ERT. The technician's failure to synchronize the new meter with the ERT, which was contrary to AUF's training protocol, resulted in meter reading errors which were reflected in Ms. Walker's November and December bills. On January 5, 2011, an AUF field technician spoke with Ms. Walker, who inquired about her bill. AUF immediately reviewed the bill and issued a new bill on January 6, 2010 correcting the mistake. AUF also offered Ms. Walker a payment arrangement which was never accepted. Ms. Walker is no longer an active customer.

EXHIBIT B

Beverly Jane Turner

Ms. Turner asserts that she current pays \$118 - \$128 per month. She states that several months ago, she had an unexplained charge on her bill. Upon a review of her bills, she has recently been charged a late payment fee and a deposit and reconnection fee in February 2011 due to a shut off for non payment in January. The current balance is \$104.07. Her typical monthly bill, without late fees, averages less than a \$100 for both water and wastewater service.

Lola Ferguson

Ms. Ferguson incorrectly asserts that AUF improperly shut off her water. The facts of this account are as follows: The customer had a history of delinquent payments. A shut off notice was sent to the customer on February 11, 2010, requiring payment of \$416. When the customer failed to make the required payment in full, the service was discontinued and the account was closed on March 4, 2010. In April 2010, AUF's records showed consumption at the property, which indicated that someone had broken the lock and turned the water back on. In April of 2010, the customer made partial payments but did not make payments sufficient to reinstate service. Ultimately, the customer paid the required charges and service was reinitiated on May 3, 2010. Over the past 2 years, there have been approximately 25 service orders generated to this account, virtually all involving collections issues, move-in/move-out activities, and indications of consumption when the property was supposed to be "inactive."

It should be noted, that when the customer states she called in April 2010 regarding sand in her line, it was during the time period when she was "inactive with consumption" and receiving service but was not an active customer.

Teresa Jarvis

Ms. Jarvis' bills for monthly water and wastewater service average approximately \$90 per month. Review of her bill history shows that her payments tend to run a month behind, resulting in late charges and past due amounts which are reflected on the bill in accordance with AUF's Commission-approved Tariff.

Michelle Einmo

This billing issue arose in 2007 and has already been addressed in AUF's last rate case in Docket No. 080121-WS. Since that time, the customer's bills are correct. Recent collections notices and calls are not at all connected to the 2007 issue, but instead relate to her current balance which has been past due.

Virginia Witt

Ms. Witt is complaining about her June 2010 bill with 4,600 gallons of usage. Review of Ms. Witt's billing history shows that Ms. Witt's usage fluctuates. For example, in June of 2008 she used 7100 gallons. On August 17, 2010 an AUF service technician went to the property and verified the meter information and confirmed that there were no leaks. Ms. Kurz's assertion that she checked Ms. Witt's meter and "it was not moving" is to be expected where there are no leaks at the property.

Kathleen Delano

Ms. Delano initiated service in July 2010. Her average consumption is 5,600 gallons per month and her monthly bills average approximately \$150 per month. Her last bill was for \$136.17, though she is carrying a prior balance which makes her total bill \$231.45. Her average bill without any prior balance or late fees is not \$180-200 per month.