

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for
acknowledgement of transfer of
Nassau County land and
facilities to Nassau County and
for cancellation of Certificate
Nos. 171-W and 122-S, by Florida
Water Services Corporation.

DOCKET NO. 030542-WS
ORDER NO. PSC-03-0948-PCO-WS
ISSUED: August 21, 2003

ORDER DENYING AMENDED PETITION FOR LEAVE TO INTERVENE

On June 17, 2003, pursuant to Section 367.071(4), Florida Statutes, and Rule 25-30.038(4), Florida Administrative Code, Florida Water Services Corporation (Florida Water or utility) filed an Application for Acknowledgment of Transfer of Nassau County Land and Facilities to Nassau County and Cancellation of Certificate Nos. 171-W and 122-S (Application). According to the Application, Nassau County acquired title to Florida Water's land and facilities through a condemnation proceeding, and intends to begin operating the utility on or about August 1, 2003. Florida Water also maintains that it has complied with all requirements of Rule 25-30.038(4), Florida Administrative Code, and the Commission should therefore acknowledge the transfer as a matter of right pursuant to Section 367.071(4) (a), Florida Statutes.

On July 15, 2003, the American Beach Property Owners' Association, Inc. (ABPOA) filed a Petition for Leave to Intervene (Petition) in the transfer proceeding. Neither ABPOA itself nor any of its members are current customers of Florida Water, but they are located within Florida Water's service territory. In its Petition, ABPOA states that most of its residents reside on lots 50' by 100' in American Beach, and that they "receive their water from wells on their lots or other questionable groundwater sources" and utilize septic tanks which might be in close proximity to the water source. On July 17, 2003, ABPOA filed an Amended Petition for Leave to Intervene (Amended Petition). In its Amended Petition, ABPOA states that if Nassau County will not honor Florida Water's commitments, the residents will continue to have to use their own wells or other "questionable" groundwater sources and

DOCUMENT NUMBER-DATE

07757 AUG 21 03

FPSC-COMMISSION CLERK

"utilize substandard septic tanks for waste removal, all creating public health and environmental concerns."

On July 22, 2003, Florida Water filed a Response in Opposition to American Beach Property Owners' Association, Inc.'s Amended Petition for Leave to Intervene (Response). In that response, Florida Water argued that ABPOA failed both prongs of the two-pronged test set forth in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981), review denied, 415 So. 2d 1361 (Fla. 1982) [Agrico]. Also, Florida Water argued that ABPOA misstated the law and that in a condemnation proceeding of this nature by a governmental entity, the transfer proceeding is not subject to the public interest approval process pursuant to Section 367.071(1), Florida Statutes, but must be approved as a matter of right pursuant to Section 367.071(4), Florida Statutes.

ABPOA responded to Florida Water's Response by filing a Memorandum in Opposition to Florida Water Services Corporation's Response to Amended Petition to Intervene (Memorandum in Opposition) on July 29, 2003. In that memorandum, ABPOA claimed it did meet the standards set forth in Agrico in that Florida Water's exit from the utility business in Nassau County would cause ABPOA injury in fact, and it would be an injury of the type that the Commission was obligated to protect.

This Order addresses only ABPOA's pending Amended Petition to Intervene. A separate order will be issued at a later date on the disposition of the utility's application for a transfer. The Commission has jurisdiction pursuant to Section 367.071(4)(a), Florida Statutes.

AMENDED PETITION FOR LEAVE TO INTERVENE

ABPOA argues that its members' substantial interests will be affected because the residents of American Beach "will be forced to continue to receive their water from wells and other questionable groundwater sources and to utilize substandard septic tanks for waste removal, all creating public health and environmental concerns." ABPOA also alleges that as a potential customer of Florida Water, its injury is of the type that this transfer proceeding is designed to protect.

In Agrico, at 482, the Second District Court of Appeal set forth the two-pronged test for standing in an administrative proceeding. First, the petitioner must show that it will suffer injury in fact which is of sufficient immediacy to entitle it to a Section 120.57, Florida Statutes, hearing; and, second, that its substantial injury is of a type or nature which the proceeding is designed to protect. The first aspect deals with the degree of injury suffered and the second deals with the nature of the injury or the so-called "zone of interest." In Village Park Mobile Home Assoc. Inc. v. Dept. of Business Regulation, 506 So. 2d 426, 433 (Fla. 1st DCA 1987), the First District Court of Appeal states:

In order to satisfy this first aspect of the Agrico standard, a petitioner must allege with specificity either: 1) an actual injury in fact at the time the petition is filed; or 2) that the petitioner is immediately in danger of sustaining some direct injury as a result of an agency's action. . . . The injury or threat of injury must be both real and immediate, not conjectural, hypothetical or abstract.

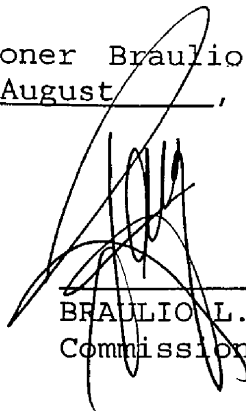
Florida Water argues that ABPOA has alleged "no damages or loss of any kind - immediate or speculative." Having considered the Amended Petition and Florida Water's Response in Opposition, I find that ABPOA has failed to demonstrate a possible injury that is real and immediate and not conjectural. Therefore, intervention must be denied because ABPOA has not met the first prong of Agrico. In consideration of all of the foregoing, ABPOA's Amended Petition to Intervene is denied for lack of standing.

Based upon the foregoing, it is

ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that the Amended Petition for Leave to Intervene filed by the American Beach Property Owners' Association, Inc. is denied.

ORDER NO. PSC-03-0948-PCO-WS
DOCKET NO. 030542-WS
PAGE 4

By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 21st day of August, 2003.



for Commissioner Braulio L. Baez

BRAULIO L. BAEZ
Commissioner and Prehearing Officer

(S E A L)

RRJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060,

ORDER NO. PSC-03-0948-PCO-WS

DOCKET NO. 030542-WS

PAGE 5

Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.