

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for staff-assisted rate case in Lee County by Mobile Manor Water Company, Inc.	DOCKET NO. 090170-WU ORDER NO. PSC-10-0325-PCO-WU ISSUED: May 21, 2010
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ORDER DENYING PETITION TO INTERVENE

Background

On April 6, 2009, this Commission received Mobile Manor Water Company, Inc.'s application for a staff-assisted rate case. After our staff held a customer meeting on September 30, 2009, and we received other customer input, we issued Proposed Agency Action Order No. PSC-09-0790-PAA-WU (PAA Order) on November 30, 2009. In the PAA Order we proposed to approve a 4.61 percent across-the-board increase over the rates in effect prior to filing.

On December 21, 2009, we received a timely petition protesting (Protest Petition) the amount of the proposed increase, and the PAA Order never became final. The Protest Petition contained approximately 156 separate customer signatures and represented approximately 109 residential connections. In the protest, the customers stated that they thought the rates were not "sufficient enough" for the water company to operate, and that such low rates would put the community at risk, and could cause an abandonment. The customers raised four issues which would have raised the revenue requirement from \$61,792 to \$74,822 (an additional increase of \$13,030), if the customers prevailed on those issues.

In response to the Protest Petition, 56 customers filed a Responsive Petition in which the customers attempted to refute three of the issues raised in the Protest Petition. In the Responsive Petition, the customers argued that no further increases above and beyond that approved in the PAA Order were appropriate.

Based on the Protest Petition, the staff-assisted rate case was assigned to a panel, and a formal hearing was scheduled. Staff Counsel for the Commission sent letters to all the customers who had signed the Protest Petition and Responsive Petition requesting that they respond in writing as to whether they wanted to be considered as a party in the formal proceeding. Only one customer, Mr. Tom Hawkins, responded that he wished to be considered a party.

Subsequently, on March 11, 2010, the Commission received a Settlement Agreement containing 212 separate customer signatures, including Mr. Hawkins, and representing 156 residential connections. In the Settlement Agreement, the customers proposed to accept rates that would generate a revenue requirement of \$71,603 (a \$9,811 increase), and not the \$74,822 (a \$13,030 increase) which was requested in the Protest Petition. The Commission also received a petition opposing (Opposing Petition) the Settlement Agreement which contained approximately 97 separate signatures, and represented 81 residential connections.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION OF P.S.

Mr. Edward LeMeur was a signatory to this Opposing Petition. By letter dated April 8, 2010, our staff counsel requested that Mr. LeMeur reply in a letter by April 26, 2010, if he wanted to be considered as a party in this proceeding. Prior to April 26, 2010, our staff counsel called Mr. LeMeur, and asked if he had received the April 8, 2010, letter. Mr. LeMeur confirmed that he had. However, as of May 4, 2010, he had not submitted any letter requesting party status.

At the Commission's regularly scheduled May 4, 2010, Agenda Conference, the assigned panel considered the staff recommendation on the proposed Settlement Agreement. Mr. LeMeur, along with two other customers opposing the Settlement Agreement, addressed the Commission panel assigned to the case. Also, Mr. Hawkins, the only party other than the Utility, addressed the panel and expressed his support for the Settlement Agreement. After hearing from those customers, the panel voted to issue a Final Order Approving the Settlement Agreement. Immediately after the May 4, 2010, Agenda Conference concluded, Mr. LeMeur drafted and filed his Petition to Intervene.

Petition to Intervene

As stated above, Mr. LeMeur filed his Petition to Intervene after we had voted to issue a Final Order Approving the Settlement Agreement. Rule 25-22.039, Florida Administrative Code, governs intervention and states that a petition "for leave to intervene must be filed at least five (5) days before the final hearing, . . . and . . . demonstrate . . . that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding. Intervenors take the case as they find it."


Although the final hearing was canceled pending our consideration of the Settlement Agreement, I note that Mr. LeMeur was specifically requested by PSC counsel's letter dated April 8, 2010, to respond in writing by April 26, 2010, if he wished to be considered a party. Staff contacted Mr. LeMeur prior to April 26, 2010, and confirmed that he had received the April 8, 2010 letter. Mr. LeMeur did not respond by the April 26, 2010, date. These additional steps were taken to help and facilitate Mr. LeMeur's participation in this docket. Mr. LeMeur did speak at the May 4, 2010, proceeding expressing his concerns regarding the settlement agreement, and waited until after the Commission took final agency action to file his Petition to Intervene. I also note that Mr. LeMeur was sent a letter on May 18, 2010, giving him additional notice of the date requirements for filing a Petition for Reconsideration or Appeal of the Final Order Approving Settlement Agreement.

Based on the above, I find that Mr. LeMeur's Petition to Intervene is untimely and it should be denied.

In consideration of the foregoing, it is

ORDERED by Commissioner Lisa Polak Edgar, as Prehearing Officer, that Edward LeMeur's Petition to Intervene in Docket No. 090170-WU is hereby denied.

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 21st day of May, 2010.



LISA POLAK EDGAR
Commissioner and Prehearing Officer

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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 Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, 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.