

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for a ) DOCKET NO. 960192-WU  
limited proceeding to include ) ORDER NO. PSC-96-0768-PCO-WU  
groundwater development and ) ISSUED: June 14, 1996  
protection costs in rates in )  
Martin County by Hobe Sound )  
Water Company. )  
\_\_\_\_\_ )

ORDER GRANTING IN PART, AND DENYING IN PART,  
THE TOWN OF JUPITER ISLAND'S MOTION TO INTERVENE

Hobe Sound Water Company (Hobe Sound or utility) is a Class A utility located in Martin County, which provides water service to approximately 1265 customers. The service area includes customers both in Hobe Sound and on Jupiter Island. The utility operates under the provisions of Certificate No. WU-43. On February 16, 1996, the utility filed a request for a limited proceeding with the Commission under Section 367.0822, Florida Statutes, to allow it to recover the costs associated with development and protection of groundwater resources.

On May 13, 1996, by and through its counsel, Herbert L. Gildan, Esq., the Town of Jupiter Island (Town) filed a Motion to Intervene in this docket. On May 24, 1996, the utility filed a Response to Motion to Intervene.

In support of its motion, the Town states that it is a water customer of Hobe Sound, and that Hobe Sound is requesting a substantial water rate increase. The Town states that the Commission's actions in ruling upon the utility's request will directly affect the Town's costs as a customer of the utility. Moreover, the Town states that the bulk of the customers of the utility are residents and taxpayers in the Town and look to the Town to represent their interests in matters such as this, thereby increasing the Town's interest in this limited proceeding. Additionally, the Town outlines several "disputed issues of material fact" to support its motion, and states that it is entitled to intervene in this docket pursuant to Section 120.53 and Chapter 367, Florida Statutes, and Rule 25-22.039, Florida Administrative Code. The Town requests to receive copies of all pleadings and filings in the docket.

In its response, Hobe Sound states that it does not object to intervention by the Town as a customer of the utility. However, Hobe Sound objects to the participation of the Town in this proceeding as a representative of the residents and taxpayers in

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the Town. The utility states that under Section 120.52(12)(d), Florida Statutes, only counties and their agencies, departments and units are authorized to participate in a representative capacity as parties to an administrative proceeding. The utility argues that under the principle of expressio unius est exclusio alterius, the legislature's grant to counties of a right to intervene to represent the interests of their residents demonstrates a legislative intent that a municipality has no similar authority to intervene in administrative proceedings in a representative capacity.

Moreover, the utility notes that it is unnecessary for the Commission to consider the "disputed issues of material fact" listed in the Town's motion at this stage in the proceeding, since this proceeding is being processed under our proposed agency action procedures. Nonetheless, the utility responds to some of the allegations in the Town's motion by way of attaching a copy of a Memorandum dated May 17, 1996, which the utility's consultants had previously provided to our staff.

As noted above, the Town relies upon Section 120.53 and Chapter 367, Florida Statutes, and Rule 25-22.039, Florida Administrative Code, as authority for its request to intervene. Rule 25-22.039, Florida Administrative Code, applies to all Section 120.57 hearings "including a hearing requested by a substantially affected person subsequent to proposed agency action." Rule 25-22.036(1), Florida Administrative Code. As such, Rule 25-22.039, Florida Administrative Code, is inapplicable at this stage of the proceeding. This matter has not been designated for a Section 120.57 hearing, and will not be so designated unless a substantially affected person timely files a protest to the Commission's proposed action in this docket. With regard to the Town's reliance upon Section 120.53, Florida Statutes, which pertains to the adoption of rules of procedure and public inspection, that Section is silent on a person's entitlement to intervene. Nor does Chapter 367, Florida Statutes, provide any authority for intervention.

Nevertheless, as a water customer of the utility, it appears that the Town's substantial interests may be affected by Commission action taken in this docket. Therefore, the Town's motion shall be granted to the extent that the Town requests permission to intervene itself as a customer of Hobe Sound.

However, intervention is not granted to the Town in a representational capacity on behalf of its residents and taxpayers. There is no authority cited in the motion to support such standing to intervene, and there is nothing in Chapter 120, Florida

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Statutes, to authorize a Town to intervene in administrative proceedings on behalf of its taxpayers. As noted by Hobe Sound, Section 120(12)(d), Florida Statutes, grants such authority only to certain county representatives "to represent the interests of the consumers of a county, when the proceeding involves the substantial interests of a significant number of residents of the county and the board of county commissioners has, by resolution, authorized the [representation]". Moreover, because this matter will not be designated for a Chapter 120.57 hearing unless a substantially affected person timely files a protest to the Commission's proposed action in this docket, it is not necessary to consider what the Town has prematurely identified as "disputed issues of material fact."

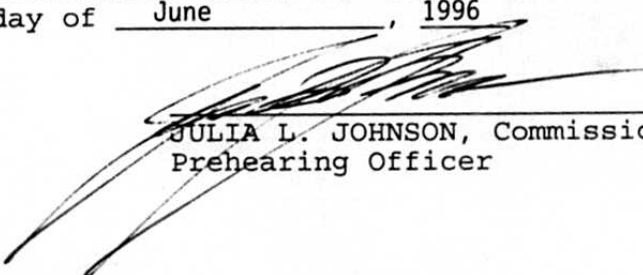
The Town's request to receive copies of all pleadings and filings in this docket shall be granted to the extent that the request is for receipt of such copies which are hereinafter filed. Intervenor take the case as they find it.

Based on the foregoing, it is

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that the Town of Jupiter Island's Motion to Intervene in this docket is hereby granted in part and denied in part, as set forth in the body of this Order. It is further

ORDERED that all parties to this docket shall furnish copies of all pleadings and other documents that are hereinafter filed in this proceeding to Herbert L. Gildan, Esq., Nason, Gildan, Yeager, Gerson & White, P.A., 1645 Palm Beach Lakes Boulevard, Suite 1200, West Palm Beach, Florida 33401.

By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 14th day of June, 1996



JULIA L. JOHNSON, Commissioner and  
Prehearing Officer

( S E A L )

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

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, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 Records and Reporting, in the form prescribed by Rule 25-22.060, 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.