

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for declaratory statement as to whether service availability agreement with United Water Florida Inc. requires prior Commission approval as "special service availability contract" and whether contract is acceptable to Commission, by St. Johns County.

DOCKET NO. 010704-SU  
ORDER NO. PSC-01-1531-PCO-SU  
ISSUED: July 24, 2001

ORDER GRANTING INTERVENTION

On July 11, 2001, United Water Florida Inc. (UWF or utility) filed a Motion for Leave to Intervene in this docket. In support of its motion, UWF states that St. Johns County's (County) Petition for Declaratory Statement requires the Commission to interpret provisions of UWF's service availability policy. UWF further states that the Commission's action in this matter will substantially affect its interests because it could result in a limitation on the ability of UWF to charge and collect service availability charges from the County and others. The utility also states that this matter could establish precedents in the interpretation of UWF's service availability policy adverse to the utility's interests.

UWF further states that it incorporates by reference paragraphs 9 through 13 of its Response to the County's Petition for Declaratory Statement, filed on July 10, 2001, as disputed issues of material fact. UWF also states that it does not intend to enter into a lease agreement and special service availability contract as outlined in the County's petition.

On July 17, 2001, the County filed its Response in Opposition to UWF's motion. In its response, the County states that UWF does not have standing to intervene in this matter pursuant to North Ridge General Hospital, Inc. v. NME Hospitals, Inc., 478 So. 2d 1138 (Fla. 1st DCA 1985), rev. denied, 415 So. 2d 1359 (Fla. 1982), and Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981), rev. denied, 415 So.

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2d 1359 (Fla. 1982). The County states that these cases require that the petitioner demonstrate an injury of sufficient immediacy and show that the injury is of the type that the proceeding is designed to protect.

The County argues that it is not requesting that the Commission approve the contract and lease agreement included with its petition for declaratory statement, but is simply asking whether the Commission can approve the general terms and conditions of the contract in light of Commission orders, rules, statutes and UWF's tariffs. The County states that if a declaratory statement is issued, it will apply only to the County and can only bind the County to the extent that UWF subsequently agrees to the terms and conditions in the contract and lease. The County asserts that since UWF has stated that it will not enter into the contracts as presented by the County, UWF, by its own admission, does not have substantial interests that will be affected.

The County states that UWF's contention that the County's petition will create a precedent in the interpretation of UWF's service availability policy is not the type of interest that is substantial enough to allow for intervention in this docket. The County states that in In re: Petition of Monsanto Company for a Declaratory Statement Concerning the Lease Financing of a Cogeneration Facility, Order No. 16581, issued September 11, 1986, in Docket No. 860725-EU, the Commission found that a potential adverse legal precedent was not enough to constitute a substantial interest which would allow for intervention. The County further states that in Order No. 16581, the Commission denied an entity intervention on the basis that a contention of economic damage alone does not constitute a substantial interest which would allow for intervention.

The County asserts that there is no question that UWF's service availability policies will be applied to the force main constructed by the County, that the County must finance the force main, and that the County must expend funds to process the preparation of the ad valorem property assessment to the Ponte Vedra Beach Municipal Service District. The County states that these basic terms must be included in such a contract for the County to be able to finance the force main. The County states that the purpose of its petition for declaratory statement is to

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determine whether the Commission would approve these terms. The County argues that this proceeding binds only the County and will provide the County with practical assistance regarding its rights under a specific set of conditions. The County thus argues that UWF has failed to show that it has an injury of a type that this proceeding is designed to protect.

Having reviewed the petition, it appears that UWF is alleging more than a mere economic loss or a potential adverse legal precedent in its Motion for Leave to Intervene. The County's petition seems to require the Commission to interpret provisions of UWF's service availability policy. Moreover, UWF states that it disagrees with the arrangement set forth in the County's petition. Thus, UWF's substantial interests may be affected by a Commission decision in this proceeding. Therefore, UWF's Motion for Leave to Intervene is hereby granted. Pursuant to Rule 25-22.039, Florida Administrative Code, UWF takes the case as it finds it.

Therefore, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that United Water Florida Inc.'s Motion for Leave to Intervene is hereby granted. It is further

ORDERED that all parties to this proceeding shall furnish copies of all documents which may hereinafter be filed in this proceeding to:

James L. Ade, Esquire  
Scott G. Schildberg, Esquire  
One Independent Drive, Suite 2000  
Jacksonville, FL 32202

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By ORDER of Commissioner J. Terry Deason as Prehearing Officer, this 24th day of July, 2001.

  
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J. TERRY DEASON  
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 120.569(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, 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 the

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Commission Clerk and Administrative Services, 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.