

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Citizens of
the State of Florida to open
investigation into quality of
service provided by Florida
Water Services Corporation to
Deltona service territory.

DOCKET NO. 010153-WU
ORDER NO. PSC-01-1674-PCO-WU
ISSUED: August 16, 2001

ORDER DISMISSING MOTION TO INTERVENE WITHOUT PREJUDICE

On February 1, 2001, the Office of Public Counsel (OPC) filed a petition to open an investigation into the quality of service provided by Florida Water Services Corporation (FWSC or utility) to the Deltona service territory in Volusia County.

On July 24, 2001, a Motion to Intervene was filed by counsel for Ms. Rosemarie Hester, who is a customer who receives service from FWSC's Deltona system. The Motion states that OPC's petition is based in part upon issues concerning the quality of service provided to Ms. Hester's property, and that she is an interested person in the proceedings whose interests will be thereby affected.

On July 27, 2001, OPC timely filed a response to the motion to intervene, stating its support that Ms. Hester should be granted intervenor status.

On July 31, 2001, FWSC timely filed a response in opposition to the motion for intervention, stating that the motion should be denied for its failure to comply with Rule 25-22.039, Florida Administrative Code. The rule provides that persons who have a substantial interest in a proceeding, and who desire to become parties, may petition the presiding officer for leave to intervene. The rule also provides that petitions for leave to intervene must conform with Uniform Rule 28-106.201(2), Florida Administrative Code, which sets forth several requirements with respect to the filing of a petition.

In its response, FWSC alleges that the motion to intervene fails to comply with the provisions of Rule 28-106.201(2), Florida Administrative Code. The utility states that it would therefore be prejudiced should intervention be granted because the utility is unaware of the movant's position regarding any disputed issues of

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material fact, the statement of ultimate facts which she alleged, the position regarding which specific rules or statutes, if any, support the relief sought, and what action the Commission should take with respect to OPC's petition. FWSC also argues that the motion to intervene should be denied because Ms. Hester's interests in the OPC petition, even if pled properly under Rules 25-22.039 and 28-106.201, Florida Administrative Code, are adequately protected by OPC.

On August 3, 2001, OPC filed a "Response to Motion to Strike," which alleges that FWSC's response is tantamount to a motion to strike the motion to intervene and therefore equally fails to comport with the requirements of Rules 25-22.039 and 28-106.201, Florida Administrative Code. I note that any party to this proceeding, including FWSC, has a procedural right to respond in opposition or support of the motion to intervene. Furthermore, our rules do not provide for the filing of a response to a response.

Having reviewed the pleadings, I find that the motion is not in substantial compliance with Rule 28-106(2), and therefore shall be dismissed without prejudice in accordance with Rule 28-106(4), Florida Administrative Code. It is noted that the pleading was prepared and filed by counsel on behalf of Ms. Hester, and that practitioners before this Commission should be cognizant of our rules and regulations. Pursuant to Rule 28-106(4), counsel for Ms. Hester may petition for leave to intervene again, in compliance with Rules 25-22.039 and Rule 28-106.201, Florida Administrative Code.

With respect to FWSC's remaining argument, the fact that OPC is charged with representing the interests of the citizens of this state pursuant to Chapter 350, Florida Statutes, does not in any way abrogate or curtail the right of a substantially affected individual to participate in a proceeding before this Commission.

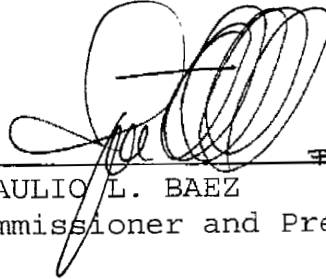
Based on the foregoing, it is

ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that the Motion to Intervene filed on behalf of Ms. Rosemarie Hester is dismissed without prejudice. Ms. Hester may

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file a new motion which complies with Rules 25-22.039 and 28-106.201, Florida Administrative Code.

By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 16th day of August, 2001.



BRAULIO L. BAEZ
Commissioner and Prehearing Officer

(S E A L)

JSB

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

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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.